



King County

JANUARY-JUNE 2013

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 30, 2013

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SEMI-ANNUAL REPORT OFFICE OF THE KING COUNTY HEARING EXAMINER

JANUARY - JUNE 2013

DAVID SPOHR
KING COUNTY HEARING EXAMINER

OVERVIEW

The King County Hearing Examiner is appointed by the [Metropolitan King County Council](#) to provide a public hearing process that is fair, efficient, and accessible to all citizens. We hear many land use applications and appeals of 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 the January through June 2013 reporting period. We start 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 current period, analyzing Examiner workload and compliance with the various, code-imposed deadlines. Throughout we compare our current workload and compliance with previous reporting periods. Finally, we close by describing our current office initiatives.

The current reporting period saw several improvements. Our caseload increased from the previous period, yet we reduced our average case processing times. We began attacking a long list of mostly inherited, “continued on-call” cases, closing some of our oldest matters and improving our related protocols. We continued with collaborative efforts to re-draft the code provisions that cover Examiner operations. And we advanced the Council’s commitment to equity and social justice in a variety of ways.

We appreciate the trust the Council puts in us, and 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 make our decisions and recommendations well-written, clearly-reasoned, legally-appropriate, and timely.

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.

20.24.010 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.

EXAMINER JURISDICTION

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.

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.

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.

King County Code 20.24 confers Examiner authority over matters for which the Examiner makes: (a) a recommendation to the Council; (b) a decision appealable to the Council; or (c) King County's final decision. Within these three main categories are over eighty distinct matters, in as disparate arenas as lobbyist disclosure (K.C.C. 1.07), career service review (K.C.C. 3.12A), and minority and women's business enterprises (K.C.C. 4.18). But the Examiner's caseload mainly consists of eight to twelve 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)

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

Permit billing fees

Fee estimates

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

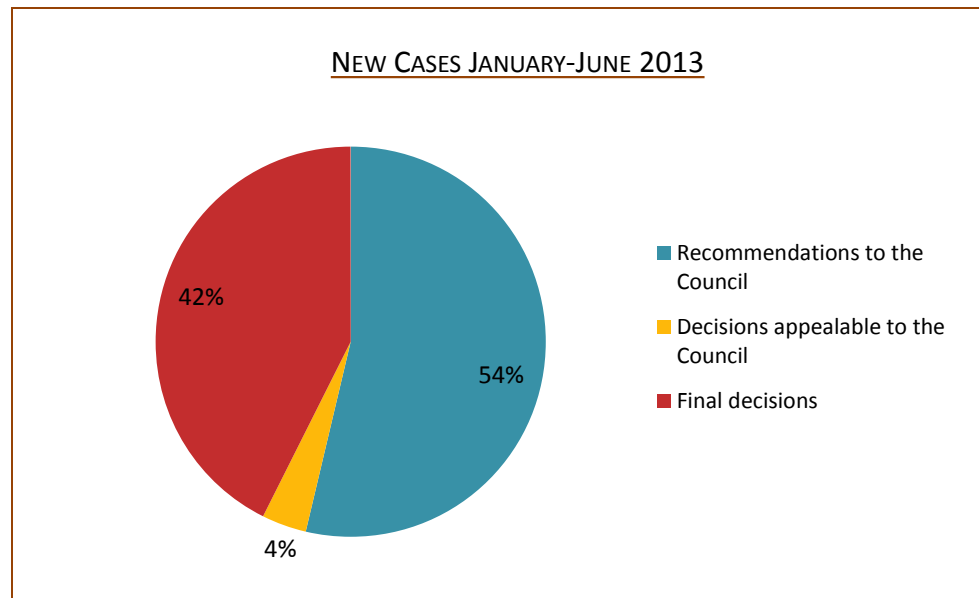
Zoning variances

Shoreline substantial development permits

NEW CASES

As noted in our last semi-annual report, new case filings for the second half of 2012 were lower than their historic levels, but had likely reached their nadir. The first half of 2013 indeed saw an increase in case filings. Some of that is attributable to the annual cycle. (A significant percentage of our new cases in any year are “current use” taxation, and most such applications come in the early part of any calendar year.) And some of that is likely the cyclical impact of an improving economy. (As economic conditions improve, more development – with or without permits – increases, meaning more applications and appeals for the Examiner to handle).

| NEW CASES JANUARY – JUNE 2013 | Number of Cases |
|--|-----------------|
| RECOMMENDATIONS TO THE COUNCIL | |
| Open space and Timber lands | 29 |
| DECISIONS APPEALABLE TO THE COUNCIL | |
| Preliminary plats | 2 |
| FINAL DECISIONS | |
| Type 2 land use | 2 |
| Code enforcement | 20 |
| Other | 1 |
| TOTAL | 54 |



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.

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 and is subject to the following:

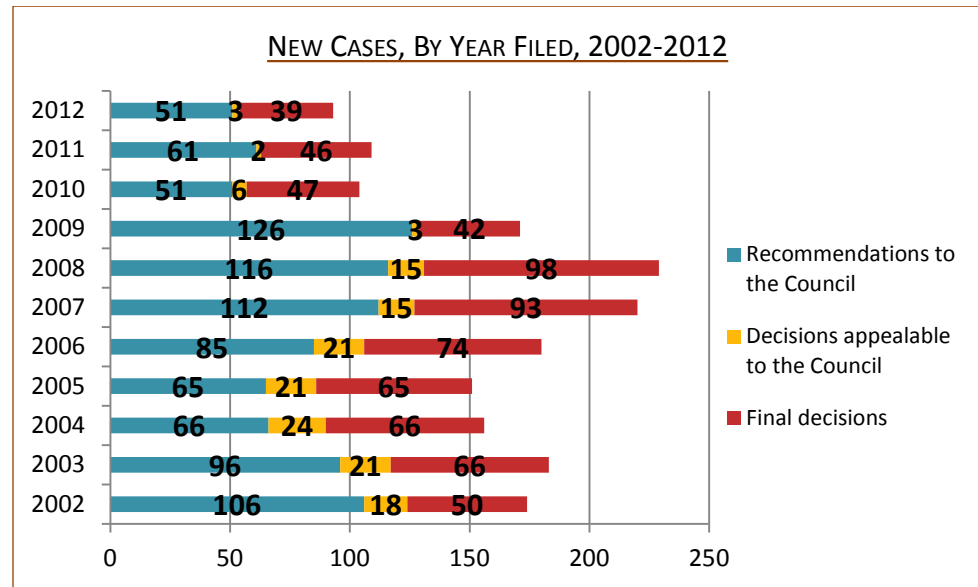
1. A procedural SEPA appeal to the hearing examiner is authorized only for an action classified as a Type 2, 3 or 4 land use decision in KCC 20.20.020 or as provided for by public rule adopted under KCC 20.44.075...

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.

With the permanent, long-term pattern of annexations shrinking the unincorporated areas that produce the overwhelming majority of our caseload, we do not expect to see a return to historic new case filing levels. However, based on current projections and the number of cases we have scheduled for hearings in the latter part of 2013, it is certain that the total number of new preliminary plat applications (as discussed below, often the most time-consuming cases) will rise significantly, while our overall case numbers may increase as well.



CASES CARRIED OVER FROM PREVIOUS YEARS

In addition to new matters received during the reporting period, as of January 1, 2013, our caseload included eighty-four matters carried over from previous reporting periods. Of those, seventy-three were “continued on-call”—matters where the parties jointly requested that we postpone action. Most of that list preceded our tenure and many had been continued on-call for several years without any recent updates from the parties. Our goal for 2013 has been working through the entire list of on-call cases so that, by the end of 2013, we will have closed those cases that should be closed, scheduled hearings in those cases that need hearings, or freshly determined the appropriateness of keeping each case on-call. For the first half of 2013, we closed eighteen of our on-call cases, including many of our oldest cases; our work continues in the second half. And for those matters that remain on-call – and for any new cases where we grant the parties’ request for on-call status – we instituted a protocol to schedule periodic status conferences to ensure that we stay on top of cases and keep parties’ feet to the fire.

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.

20.24.145 Pre-hearing conference

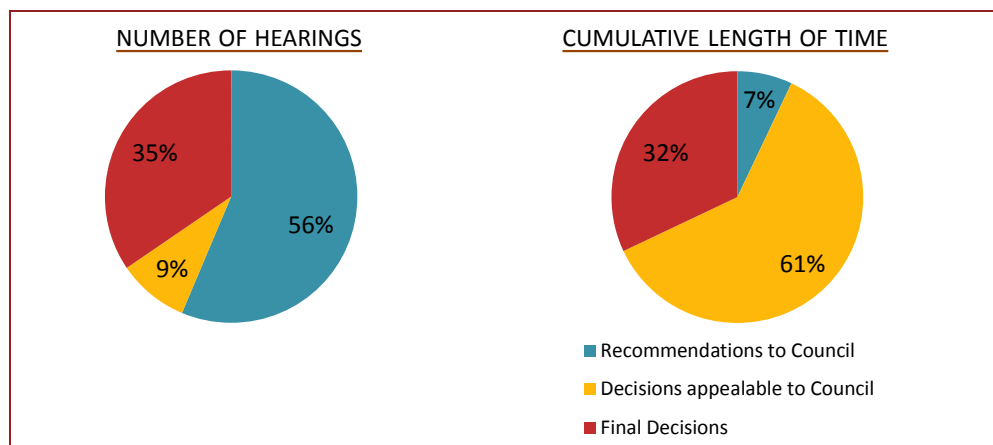
A pre-hearing conference may be called by the examiner pursuant to this chapter upon the request of a party, or on the examiner's own motion. A pre-hearing conference shall be held in every appeal brought pursuant to this chapter if timely requested by any party.

| CASES CARRIED OVER TO 2013 | 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 | |

PROCEEDINGS

We attempt to extend a high level of service to all our cases. After all, even where a matter raises no novel legal issue or has little impact beyond the parties, it is still crucially important to the parties themselves. But not all types of cases require the same level of Examiner involvement. For example, while applications for open space and timber lands accounted for fifty-six percent of the hearings conducted during this reporting period, they represented just seven percent of the total Examiner hearing time. Conversely, while preliminary plats accounted for nine percent of the hearings, they represented over sixty-one percent of the total Examiner hearing time.

| Number of Hearings | January – June 2013 | Number of hearings | Cumulative length of time |
|--|-----------------------------|--------------------|---------------------------|
| RECOMMENDATIONS TO THE COUNCIL | | | |
| | Open space and Timber lands | 31 | 2:30 |
| DECISIONS APPEALABLE TO THE COUNCIL | | | |
| | Preliminary plats | 5 | 21:34 |
| FINAL DECISIONS | | | |
| | Type 2 land use | 1 | 2:46 |
| | Code enforcement | 18 | 8:35 |
| | TOTAL | 55 | 35:25 |



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. Failure to complete the hearing process within the stated time shall not terminate the jurisdiction of the examiner.

REPORTS ISSUED

From January-June 2013, the Examiner issued sixty-nine reports. The following table illustrates recommendations and decisions issued during the reporting period:

| REPORTS ISSUED JANUARY – JUNE 2013 | Number of Reports |
|--|-------------------|
| RECOMMENDATIONS TO THE COUNCIL | |
| Open space and Timber lands | 31 |
| DECISIONS APPEALABLE TO THE COUNCIL | |
| Preliminary plats | 1 |
| FINAL DECISIONS | |
| Type 2 land use | 2 |
| Code enforcement | 33 |
| Other | 2 |
| TOTAL | 69 |

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.

DEADLINES ONE AND TWO

K.C.C. 20.24.098 establishes two distinct processing deadlines, described separately below. For each category, parties may (and often do) jointly waive these deadlines indefinitely. In addition, the Examiner may unilaterally extend the deadlines for up to thirty days. We strive to keep examiner-initiated extensions to a minimum; during the reporting period, we only so extended a deadline once.

DEADLINE ONE—21 DAYS FROM APPLICATION HEARING OPEN TO REPORT

For Examiner recommendations to the Council on an application, the deadline for issuing Examiner reports is twenty-one days after a hearing opens. We met this deadline in every instance.

| 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 | 9 | 100% |
| DECISIONS APPEALABLE TO THE COUNCIL | | |
| Preliminary plat | 1 | 100% |
| TOTAL | 8 | 100% |

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.

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. We met this deadline in every instance, averaging fifty days from appeal receipt to final decision.

| REPORT DEADLINE 2—90 DAYS FROM CASE OPEN TO REPORT: AVERAGES AND COMPLIANCE | Average days | Percent Compliant |
|--|-----------------|----------------------|
| FINAL DECISIONS | | |
| | 50 | 100% |
| TOTAL | 50 | 100% |

DEADLINE THREE—10 DAYS FROM HEARING CLOSE TO REPORT

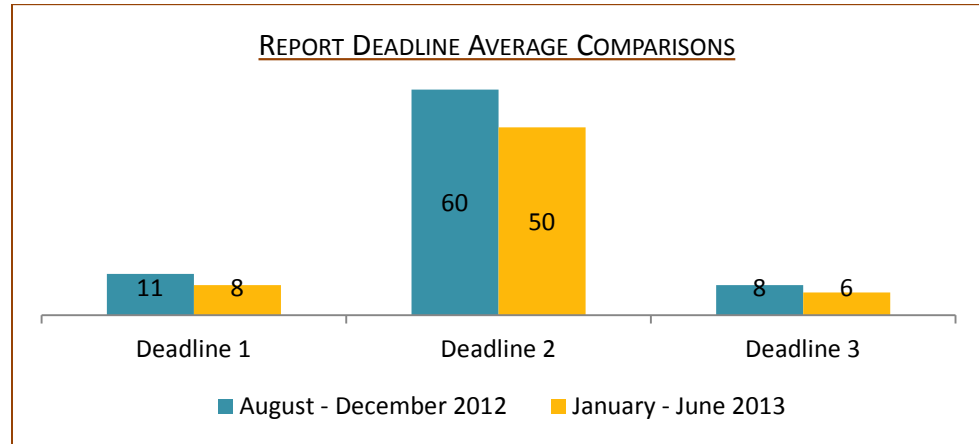
Finally, for both Deadline One and Deadline Two cases, K.C.C. 20.24.210(A) requires the Examiner to issue findings and conclusions no later than ten days following the conclusion of a hearing. During the current reporting period, we reduced our average hearing-close-to-report-issuance time down to five days, and we complied with the ten-day deadline in ninety-seven percent of all cases.

| 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 | 9 | 97% |
| DECISIONS APPEALABLE TO THE COUNCIL | | |
| Preliminary plats | 1 | 100% |
| FINAL DECISIONS | | |
| Type 2 land use | 4 | 100% |
| Code enforcement | 3 | 97% |
| Other | 6 | 100% |
| TOTAL | 5 | 97% |

DEADLINE AVERAGE COMPARISON TO THE PREVIOUS REPORTING PERIOD

As seen below, we have improved on our deadline compliance from the previous reporting period in almost every significant category. However, as we explained in our last semi-annual report, our first order of business after coming on board in June 2012 was issuing findings and conclusions for past-due cases – a task completed by the end of July 2012. This if we include our July 2012 data as part of our baseline to now compare against, it would artificially skew the data in our favor, making it appear that we have really, *really* improved our timeliness. For example we reduced our appeal-transmittal-to-final-report average from 135 days for July 2012 to 60 days for August-December 2012, to 50 days for January-June 2013. And we reduced our hearing-close-to-final-decision average from 147

days to 7 days to 5 days over the same three periods. We improved in a statistically significant manner, but not by as much as including July 2012 would indicate. Thus, the below figures compare our January-June 2013 performance with our August-December 2012 performance for the three main deadline groups, providing a more apples-to-apples comparison.



OFFICE INITIATIVES

CODE REVISIONS

Soon after taking office in June 2012, we set to work drafting revisions to our 1995 Examiner Rules of Procedure and Rules of Mediation; we completed an initial, internal draft in late 2012. Given that our Rules must flow from the Examiner Code (K.C.C. 20.24), it became apparent that our Rules could be better updated with a revised Code in place. In early 2013 we embarked with a Council team on a continuing series of weekly or at least bi-weekly meetings (and many hours between those meetings) to draft language related to the Examiner Code and to other provisions in other codes that directly impact Examiner operations. Our work continues into the latter half 2013. Final determinations on the timing of the amendment process and content of any such changes are the Council’s, but we hope for a proposal to present to Council by the end of 2013.

PERFORMANCE MANAGEMENT

In keeping with our efforts to establish a culture of professional development and accountability, we completed performance plans for all office employees by early May. The plans include goals and deadlines established to ensure employees – most assuredly the Examiner himself – understand expectations, and to assist with prioritizing workloads. At our monthly staff meetings, we routinely review one another’s goals and provide support to each other in achieving those goals.

EQUITY AND SOCIAL JUSTICE

As stated in our previous semi-annual report, our office is committed to furthering the Council's goals of equity and social justice. During the current reporting period, we have applied this commitment in a number of ways.

During the recruitment and hiring of a new pro tem examiner, we advertised the opening in a diverse range of publications (e.g., Loren Miller/King County/Washington State/Latino/a/GLBT bar associations and others) and strove to prevent implicit bias from influencing our decision-making by measuring and quantifying written application materials and interview responses according to a pre-determined set of key skills and abilities (one of which was an understanding of equity issues).

While revising King County Code 20.24, we have applied an equity perspective when considering the potential impacts of changes to code language, especially avoiding procedures that could in impede access to services for some groups.

Our use of videoconferencing, which began during the previous reporting period, offers participants from areas like Vashon, Skyway, and White Center an option of lowering their travel costs by appearing for proceedings in our offices in downtown Seattle, rather than requiring travel to Snoqualmie.

Submitted August 30, 2013,



David Spohr, Hearing Examiner