



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
February 29, 2016

JULY – DECEMBER 2015

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SEMI-ANNUAL REPORT OFFICE OF THE KING COUNTY HEARING EXAMINER

JULY – DECEMBER 2015

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 determinations, issue formal decisions, and make recommendations to Council.

Twice a year we report to Council on Examiner operations; this report covers July through December 2015 and more generally all of 2015. 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.

In a nutshell, our time spent in hearings for 2015 doubled from 2014 and we issued slightly more final reports. Conversely, our new case filings were down slightly from 2014. And we were almost 100 percent compliant with all our deadlines, our one miss being issuing a decision in one case a few days beyond our ten-day window.

But the biggest event chronicled in this report is not anything that occurred in 2015. Instead it is the Council's recent passage of (and the Executive's signature on) legislation thoroughly revising and improving the Examiner code and transferring jurisdiction for animal control and business licensing appeals from the Board of Appeals to the Examiner. Thus, this report has more of a "snapshot in time" feel than previous reports. For example, the code sections referenced throughout in the margins are mostly from K.C.C. 20.24; within the next week or so these will be recodified (often in amended form) into a new K.C.C. 20.22.

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. 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 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 electric vehicle recharging station penalties (K.C.C. 4A.700), discrimination and equal 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:

- Land Use (K.C.C Title 23)
- 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
- Preliminary determinations
- Temporary use permits
- Reasonable use exceptions
- Zoning variances
- Shoreline substantial development permits

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

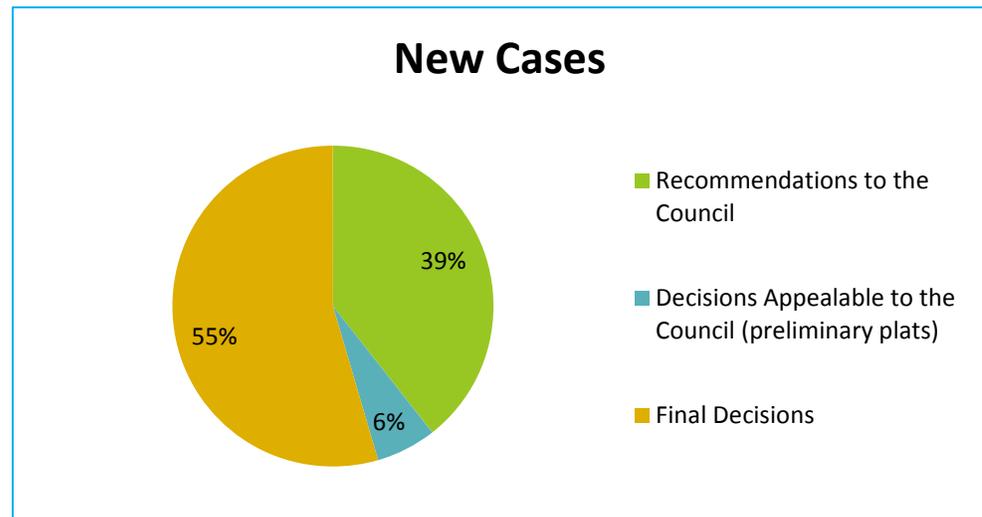
- Permit billing fees
- Fee estimates

NEW CASES

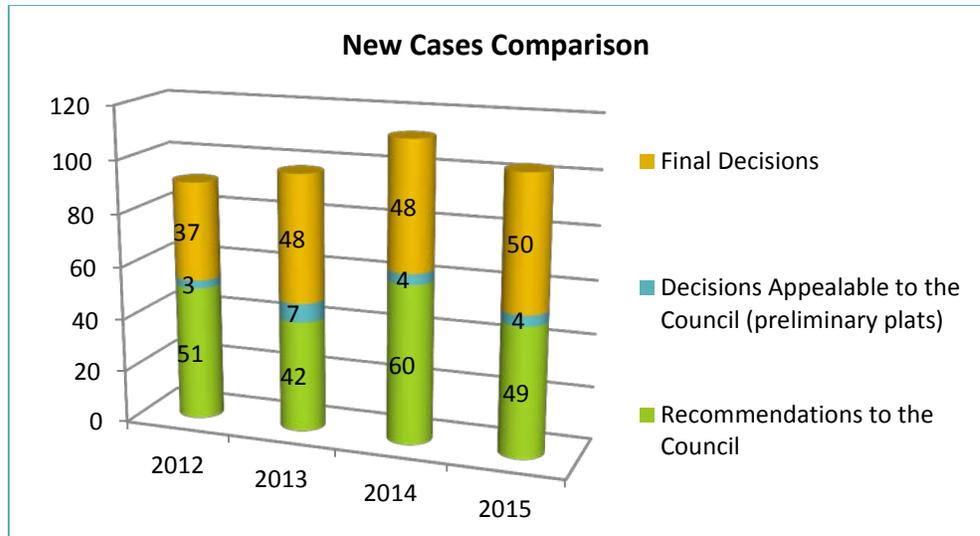
During the second half of 2015, we received 33 new cases, consisting of:

NEW CASES	JULY—DECEMBER 2015	Number of Cases
RECOMMENDATIONS TO THE COUNCIL		
	Open space	11
	Rezone	1
	Road vacation	1
DECISIONS APPEALABLE TO THE COUNCIL		
	Preliminary plats	2
FINAL DECISIONS		
	Code enforcement	18
	TOTAL	33

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

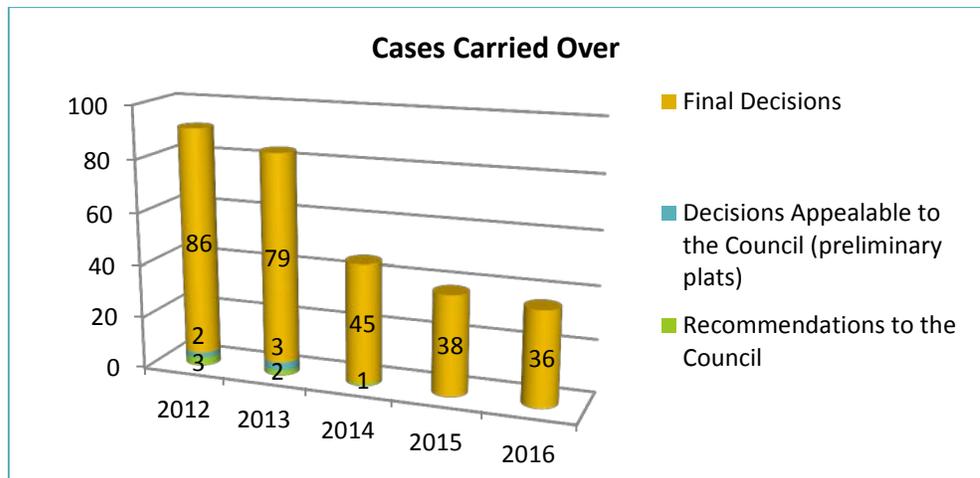


The 33 new case filings for the second half of 2015 were down from the 40 we received for the second half of 2014. As a year-over-year comparison, overall new case filings dropped slightly from our 2014 totals (103 versus 112), the main driver being a decrease in current use/open space cases (46 versus 60). With the Examiner taking on animal control and business licensing appeals, we expect our numbers for 2016 and for the foreseeable future will increase significantly. Late 2015 may be remembered as the “quiet before the storm.”



CASES CARRIED OVER FROM PREVIOUS YEARS

At the end of each year we carry a certain number of “continued” cases into the next year. A few are matters currently on appeal, where our case is stayed awaiting a court’s decision. Most are cases continued at the joint request of the parties, while the parties attempt to reach an amicable resolution. As noted in past reports, our primary focus for 2013 was to use more active case management techniques to winnow down the list of 84 carry-over cases to the 46 we carried into 2014. We have continued slightly culling the list the last two years, carrying 36 into 2016.



For the 36 cases carried into 2016, about a third came to us last year, about a third between 2013 and 2014, and one or two from each of the previous several years.

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.

...

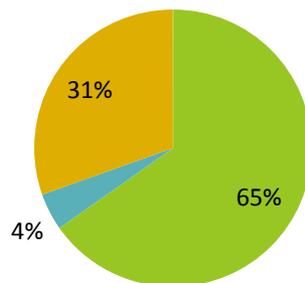
CASES	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
FINAL DECISIONS										
Continued on-call	1	2	2	2	2	2	1	5	6	13
TOTAL=36										

PROCEEDINGS

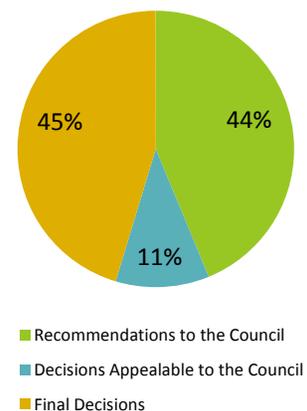
We attempt to extend a high level of service to all our participants. After all, even matters raising no novel legal issues or creating little impact beyond the parties are still crucially important to those parties. But not all types of cases require the same level of Examiner involvement. For example, for the one contentious rezone discussed on page seven, the open-record examiner hearing, followed by the closed-record hearing in front of Council, took over six times longer than the cumulative length of our eleven current use taxation hearings.

Number of Hearings	July – December 2015	Number of hearings	Cumulative length of time
RECOMMENDATIONS TO THE COUNCIL			
	Open space and Timber lands taxation	11	1:06
	Lake management district	1	2:00
	Rezone	2	6:30
	Road vacation	1	0:22
DECISIONS APPEALABLE TO THE COUNCIL			
	Preliminary plats	1	2:28
FINAL DECISIONS			
	Code enforcement	6	7:38
	Land use	1	2:30
	TOTAL	23	22:34

Number of hearings



Time spent in hearings

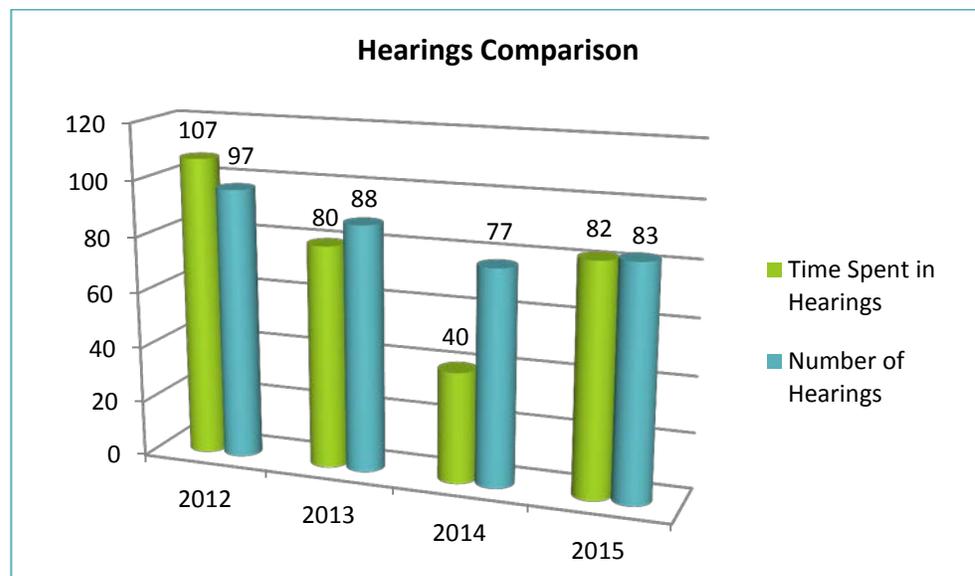


20.24.175 Case management techniques.

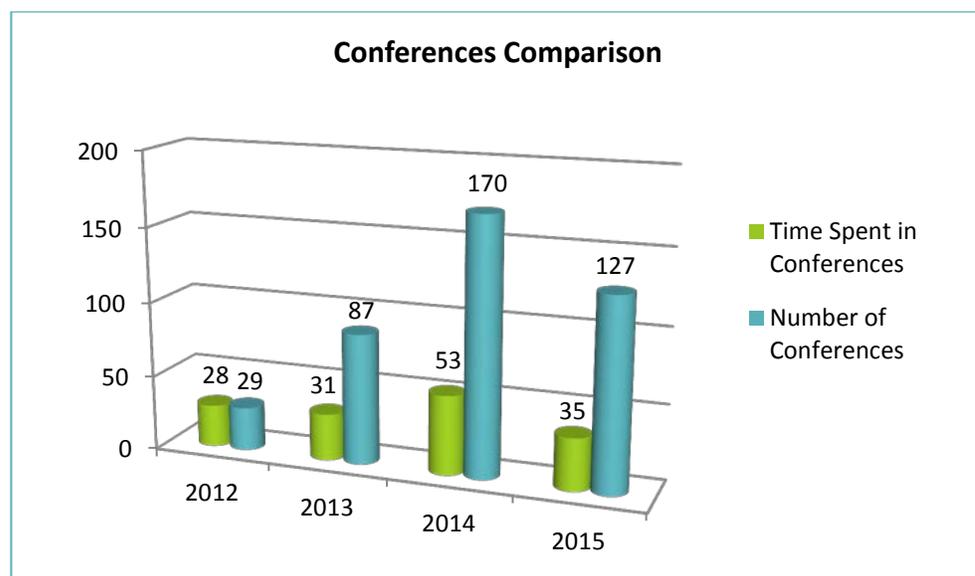
In all matters heard by the examiner, the examiner shall use case management techniques to the extent reasonable including:

- 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.

Compared to 2014, our number of hearings increased from 77 to 83 and our cumulative hours spent in hearings doubled.



As previously discussed, our main policy shift for 2014 was holding periodic status conference calls in every case “continued on-call.” These 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. It means we schedule and hold more conferences than past practice, albeit typically brief ones. After a surge in conferences in 2014, our numbers tapered off in 2015.

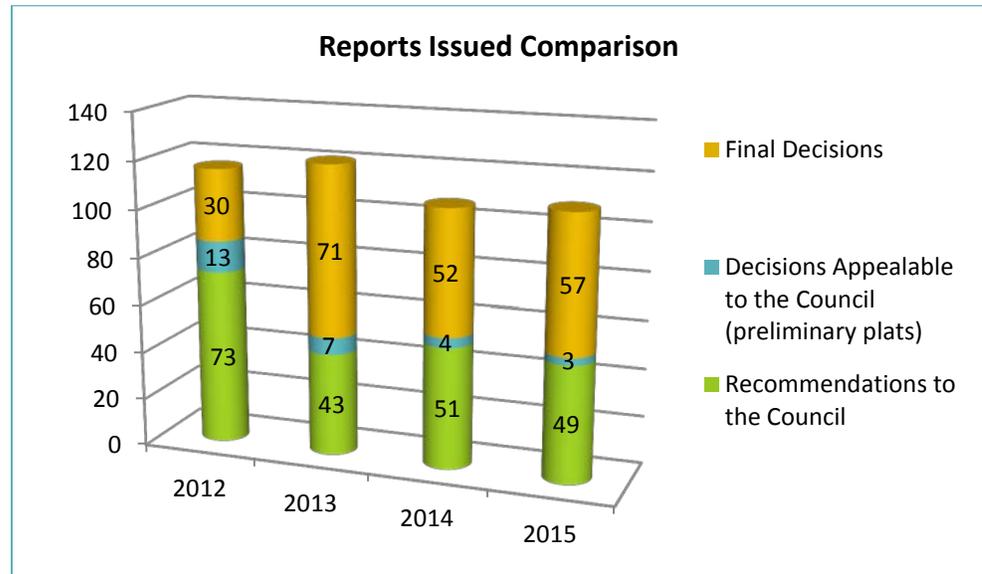


20.24.180 Examiner findings.

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

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) and sometimes final determinations (based on a taking evidence and argument at a hearing and deciding the merits). In 2015, we issued 109 such reports, a slight increase from the 107 we issued in 2014.



Beyond the numbers, among the more interesting reports involved:

- A contentious ordinance to downzone property from Industrial to Rural Area. In the foreground was the owner’s pending commercial site development permit application for a marijuana production and processing facility. After a well-attended public hearing, we recommended that the Council approve the rezone, noting changed conditions since the original zoning (arterial access having since been cut off), the consistency of a rezone with the Comprehensive Plan (especially policies requiring direct arterial access for industrial developments and requiring that most industrial properties in the Rural Area be zoned rural residential), and safety factors (especially adding industrial traffic to a narrow residential street). But we clarified that the owner likely had a vested right to have the agency continue to process its application on the basis of the pre-existing zoning. The owner appealed to Council, which approved the rezone. The Council’s adoption of the examiner’s recommendation was not appealed further.
- An appeal of a denied variance request to site a storage shed in the setback. We needed to explore legal questions unanswered in our state regarding (a) the extent of the “uniqueness” requirement for a property and (b) the severity of an “unnecessary hardship” in the context of an “area” (as opposed to a “use”)

variance. We extensively analyzed treatises and out-of-state appellate decisions and determined that (a) “uniqueness” is not violated because neighboring properties share similar physical characteristics and (b) a “hardship” must be more than simply an “inconvenience,” but a hardship is weighed against the adverse change the variance would produce. We weighed the evidence and concluded that, although the hardship of not allowing the variance here was slight, under the unusual facts of this case (including the neighbors’ support) the slight hardship to the applicant outweighed the even slighter detriment (or perhaps even slight gain) to the community, and that was sufficient to allow the variance.

- A proposal to form a lake management district. We took spirited testimony at a well-attended public hearing held adjacent to the lake, and then allowed for post-hearing submissions. We found that creation of the district is in the public interest (the worsening state of the lake strongly favoring a mechanism for property owners to plan for and fund lake improvement and maintenance activities) and that the financing plan was feasible. As to the main source of contention—how to apportion the bill—we analyzed the original plan, the modified plan, the alternative advanced by one resident, and State Ecology’s concerns. We determined that the modified plan was most consistent with the statutory standard and with the principles that fees must be tied to a development’s direct impacts and that what property owners are required to contribute must be “rough proportionality” to the impact of development. We recommend that the Council send the formation question to would-be-district voters. Council has done so; we await the vote’s outcome.

APPELLATE ACTIVITY

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

There were no appeals of Examiner decisions in the latter half of 2015. (We expect this to change as we begin hearing animal control and licensing cases; despite our best efforts to ensure a transparent process and that parties feel heard and understood, appeals will surely rise.)

In terms of activity on Examiner decisions appealed during earlier reporting periods:

McGinnis—15-2-12798-5 KNT, a code enforcement case involving critical areas was dismissed because the appellant failed to address several items required to invoke the court’s jurisdiction.

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.

In *Lake Washington School District*—15-2-00694-1 SEA, involving allowed uses on a specially-zoned property, the parties reached an amicable resolution that will phase out the use the examiner found exceeded the zoning restrictions.

We reported last period that the court of appeals upheld the examiner’s decision in *Klineberger*—71325-6-1/2, which involved State Ecology’s determination that the County should not approve construction in the floodway. During this period appellant settled with the State.

COMPLIANCE WITH CODE-MANDATED DEADLINES

Statutory requirements impose deadlines for swift and efficient Examiner processing of certain case matters. The code-established deadlines covered below represent our three principal time requirements. We were 100 percent complaint with the first two deadlines and 97.5 percent compliant with the third, meaning we exceeded the 95 percent compliance goal we set for ourselves for compliance with each deadline each reporting period. (With a major influx of new cases, our 95 percent deadline-compliance goal may not quite be realistic for future periods, but we will endeavor to hold the line.)

DEADLINES ONE AND TWO

K.C.C. 20.24.098 establishes two distinct processing deadlines. The Examiner may unilaterally extend either deadline for up to 30 days. We strive to keep Examiner-initiated extensions to a minimum. During this reporting period, the Examiner instituted one, three-day deadline extension.

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 21 days after a hearing opens. We were compliant in each 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	5	100%
Lake management district	10	100%
Rezone	15	100%
Road vacation	9	100%
TOTAL	6	100%

Our average processing time was eight days, consistent with 2014 and 2013 and significantly less than before we came aboard mid-2012.

20.24.097 Expeditious processing.

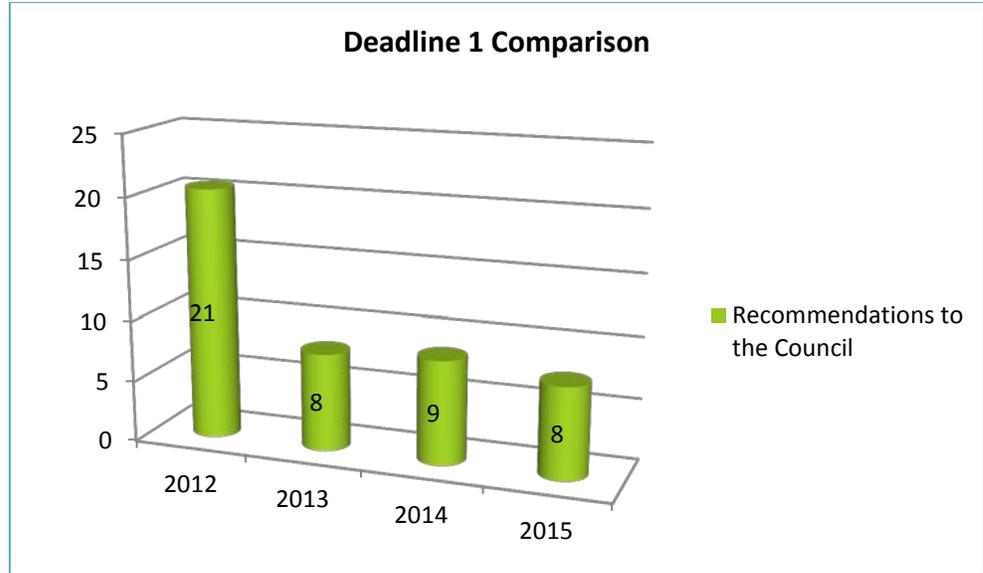
A. Hearings shall be scheduled by the examiner to ensure that final decisions are issued within the time periods provided in K.C.C. 20.20.100....

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.

....

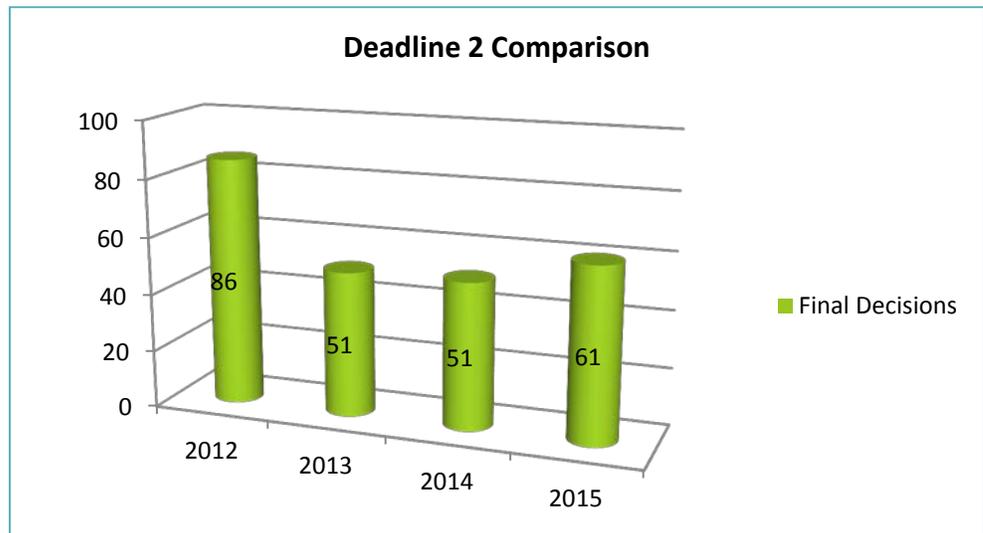


DEADLINE TWO—90 DAYS FROM APPEAL TRANSMITTAL TO REPORT

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 90 days from the date of appeal transmittal. We met the 90-day deadline in every instance.

REPORT DEADLINE 2—90 DAYS FROM CASE OPEN TO REPORT: AVERAGES AND COMPLIANCE	Average days	Percent Compliant
FINAL DECISIONS		
Code enforcement	61	100%
TOTAL	61	100%

This 61-day average processing time represents a 10-day increase from 2014.



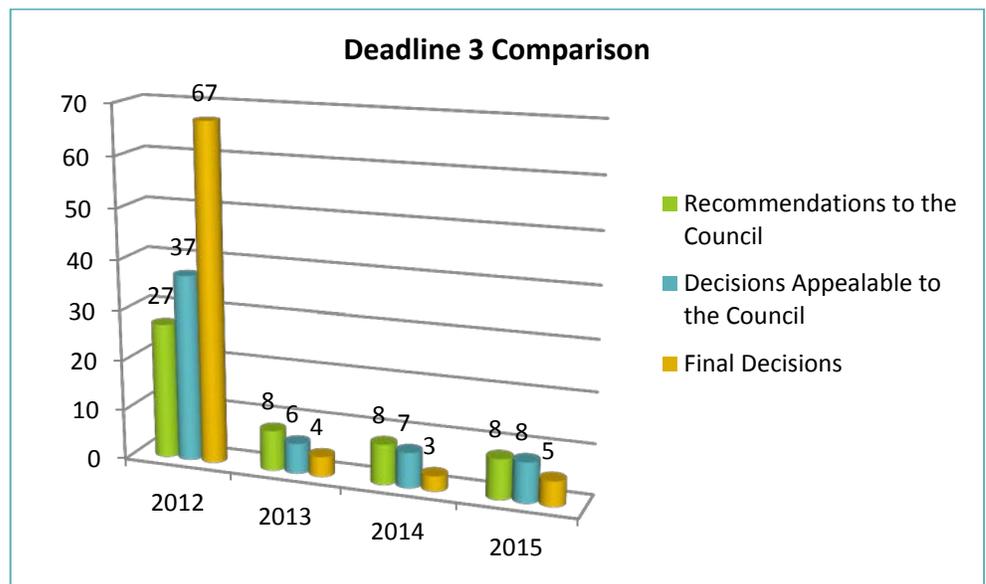
DEADLINE THREE—10 DAYS FROM HEARING CLOSE TO REPORT

The third deadline relates to all types of hearings, requiring the Examiner to issue findings and conclusions no later than ten calendar days after completing a hearing. We were compliant on 97.5 percent of our reports.

*Note, we only had one open-record rezone hearing, involving the complex and hotly contested case discussed on page seven. We issued our determination five days late, our only deadline “miss” of this reporting 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	5	100%
Lake management district	10	100%
Rezone	15	0%*
Road vacation	9	100%
DECISIONS APPEALABLE TO THE COUNCIL		
Preliminary plats	11	100%
FINAL DECISIONS		
Code enforcement	4	100%
Land use	9	100%
Other	1	100%
TOTAL	5	97.5%

As illustrated in the below chart, our hearing-conclusion-to-report time increased slightly from 2014, but still represents a significant decrease from before we assumed examiner duties mid-2012. Our times may increase slightly in future reporting periods, both because of the new influx of cases and because our code has been amended to match the state rule for hearing examiners reports of ten *business* days (as opposed to our previous ten *calendar* days) post hearing close.



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 enlarged to encompass the myriad of other codes that reference or impact Examiner operations. Work continued this reporting period, with an ordinance introduced in the fall. (These efforts came to fruition a few weeks ago when Council passed—and the Executive signed—a lengthy ordinance. Next comes the implementation.)

STAFF HIRING

A growing body of research describes and defines implicit biases as powerful unconscious beliefs influencing our perceptions, behaviors, and decision-making. Research also suggests that we can take actions to reduce the influence of these biases. With this in mind, for our administrative staff opening we developed a hiring process that acknowledged our biases, that these biases will be triggered, and that we can take proactive steps to curb their control over our ultimate hiring decision. We employed a number of strategies:

- Developing a job description clear on qualifications (including skills, behavioral and personality characteristics, and experience).
- Developing a multi-layered review process measuring every candidate on these metrics, using a numerical rating system and skills testing software.
- Post-interview, allowing sufficient time for review, focusing the evaluation on the qualifications we initially set for candidates and delving deeper into “gut” feelings by talking them out and teasing out the underlying feelings and beliefs.

In hindsight, we are pleased with how the process went, as well as the result. As we expected, we initially gravitated to candidates who mirrored our personal style and preferences. But as we dug deeper and reframed the choice as finding the person who best matched the pre-established job specifications, the choice became clearer. We shared with HR the testing software we utilized for this hire; we know it has been used re-used in subsequent hires. We would also be happy to share other impressions and lessons learned upon request.

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.

REGULATORY CHANGE RECOMMENDATION

The code requires our semi-annual reports to identify any needed regulatory clarification. We are exceedingly pleased that within the last month the Council has approved a 227-page code amendment covering all aspects of Examiner operations. In this coming period we will be transmitting to Council a draft revision of our Rules of Procedure; that transmittal will constitute our recommendation.

CONCLUSION

We ended 2015 in a stable position. We look forward to taking on the challenge of learning animal control and business licensing cases, while maintaining our standards for our pre-existing casework. Our semi-annual report for the first half of 2016 will be presented on or before August 1, 2016.

Submitted February 29, 2016,



David Spohr, Hearing Examiner