



**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 31, 2015

JANUARY - JUNE 2015

## TABLE OF CONTENTS

<b>Overview</b> .....	1
<b>Examiner Jurisdiction</b> .....	2
<b>Case Workload</b> .....	3
New Cases .....	3
Cases Carried over from Previous Years .....	4
Proceedings .....	5
Reports Issued .....	7
Appellate Activity.....	8
<b>Compliance with Code-Mandated Deadlines</b> .....	9
Deadline One—21 Days from Application Hearing Open to Report ..	9
Deadline Two—90 days from Appeal Transmittal to Report .....	10
Deadline Three—10 days from Hearing Close to Report .....	11
<b>Office Initiatives</b> .....	12
Examiner Code Re-Write .....	12
Silent Jurisdictions .....	12
Staff Transition.....	12
<b>Code Change Recommendation</b> .....	13
<b>Conclusion</b> .....	13

# SEMI-ANNUAL REPORT OFFICE OF THE KING COUNTY HEARING EXAMINER

JANUARY – JUNE 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 January through June 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 code deadlines. Throughout, we compare the current reporting period to previous periods. We also describe some of our more interesting cases, discuss the few Examiner matters on appeal to the courts, and close by describing our office initiatives.

Case-wise, we received approximately the same number of new cases as in the first half of 2014. Through active case management we persisted in winnowing down the list of “continued” cases. As compared to the first half of 2014, we held a quarter more hearings and more than doubled our total time spent in hearings. We were 100 percent compliant with two of our three code-based deadlines, and 94 percent compliant with the third.

Our largest initiative (described in more detail below) was completing an extensive review of the approximately eighty matters over which the Examiner has authority, focusing on those that rarely if ever make it to our office. We eventually interviewed a few dozen employees who best understood each topic, gaining a far better understanding of what each of those jurisdictions is about, how (and how often) conflicts arise, and the likelihood (or unlikelihood) of Examiner involvement in the future.

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 determination. 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 lobbyist disclosure (K.C.C. 1.07), career service review (K.C.C. 3.12A), and unfair employment practices (K.C.C. 12.18). 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):

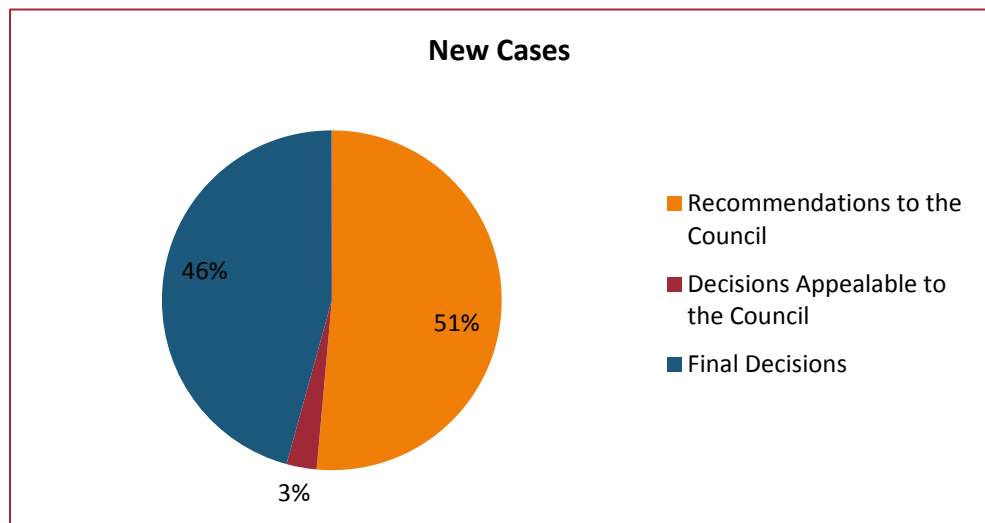
- Permit billing fees
- Fee estimates

NEW CASES

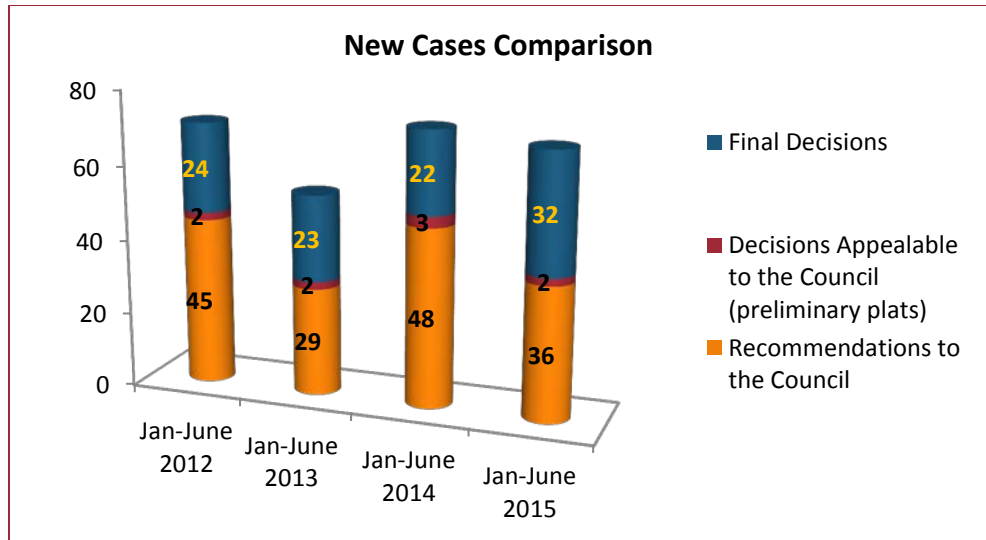
During the first half of 2015, we received 70 new cases, consisting of:

NEW CASES	JANUARY - JUNE 2015	Number of Cases
<b>RECOMMENDATIONS TO THE COUNCIL</b>		
	Open space and Timber lands	35
	Rezone	1
<b>DECISIONS APPEALABLE TO THE COUNCIL</b>		
	Preliminary plats	2
<b>FINAL DECISIONS</b>		
	Code enforcement	24
	Land use	2
	Other	6
	<b>TOTAL</b>	<b>70</b>

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



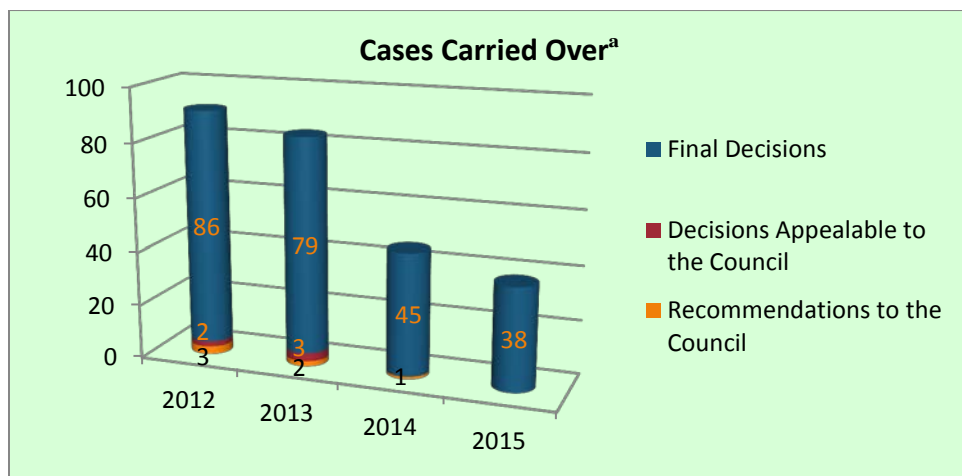
Because of the annual cycle (*i.e.*, more of some classes of cases reach us during specific months of a calendar year) we typically compare not to the immediately previous reporting period (*i.e.*, July–December), but to previous January–June periods. For those, the comparison of new case filings is:



The difference between the 70 cases we received this reporting period versus the 73 we received in the first part of 2014 is explained by significantly fewer open space taxation cases (35 v. 47), offset somewhat by a few more code enforcement cases and several sewer-related cases.

#### 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. We were successful, culling the list to 46 by the end of 2013. We reduced the remainder to 38, heading into 2015.



<sup>a</sup>Note: While writing this report, we discovered that some procedures and definitions that affected data entry, as well as coding shortcomings with our data mining tool, resulted in inaccurate reporting on how many cases were carried over. We have corrected it for this report.

### 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.

...

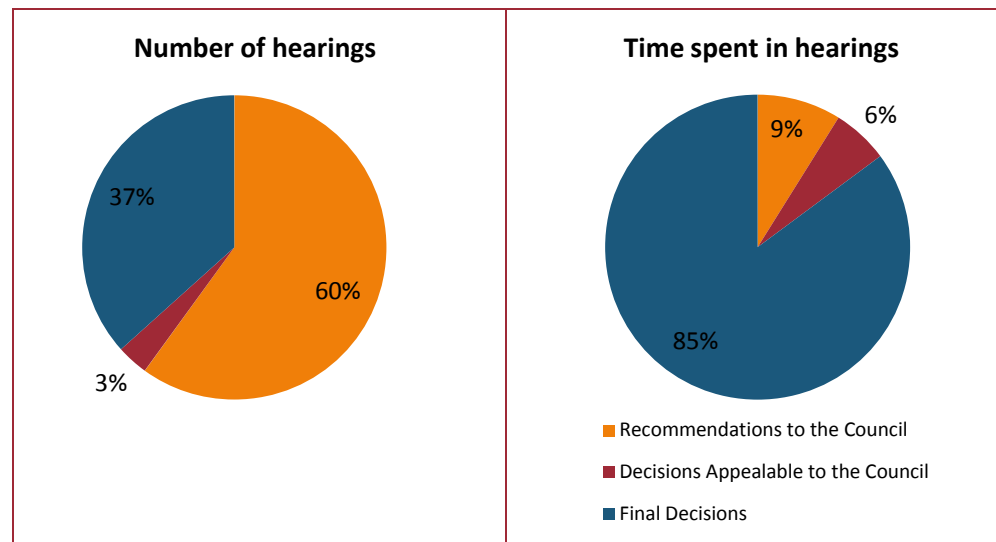
The remnants (via year they came to the Examiner's Office) are:

CASES	2006	2007	2008	2009	2010	2011	2012	2013	2014
<b>FINAL DECISIONS</b>									
Continued on-call	2	1	6	3	3	3	1	6	8
Appealed to Superior Court		1	1				1		2
<b>TOTAL=38</b>									

### PROCEEDINGS

We attempt to extend a high level of service to all our participants. After all, even matters raising no novel legal issues or creating little impact beyond the parties are still crucially important to those parties. But not all types of cases require the same level of Examiner involvement. For example, the cumulative length of our two preliminary plat hearings was longer than the cumulative length of our thirty-five current use taxation cases.

Number of Hearings	January – June 2015	Number of hearings	Cumulative length of time
<b>RECOMMENDATIONS TO THE COUNCIL</b>			
	Open space and Timber lands taxation	35	3:34
	Rezone	1	1:39
<b>DECISIONS APPEALABLE TO THE COUNCIL</b>			
	Preliminary plats	2	4:30
<b>FINAL DECISIONS</b>			
	Code enforcement	14	20:24
	Land use	8	29:36
	<b>TOTAL</b>	<b>60</b>	<b>59:43</b>

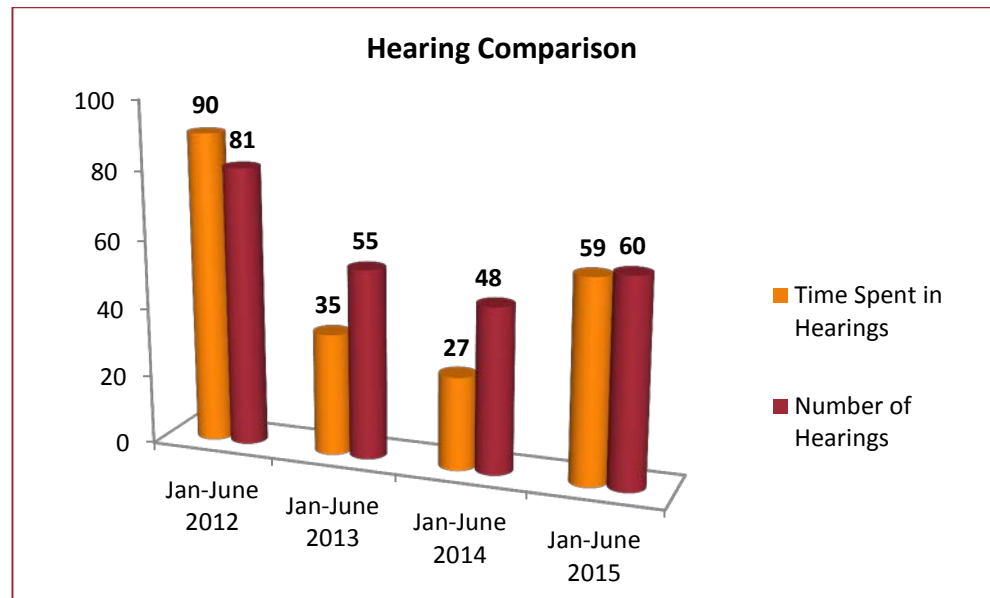


**20.24.175 Case management techniques.**

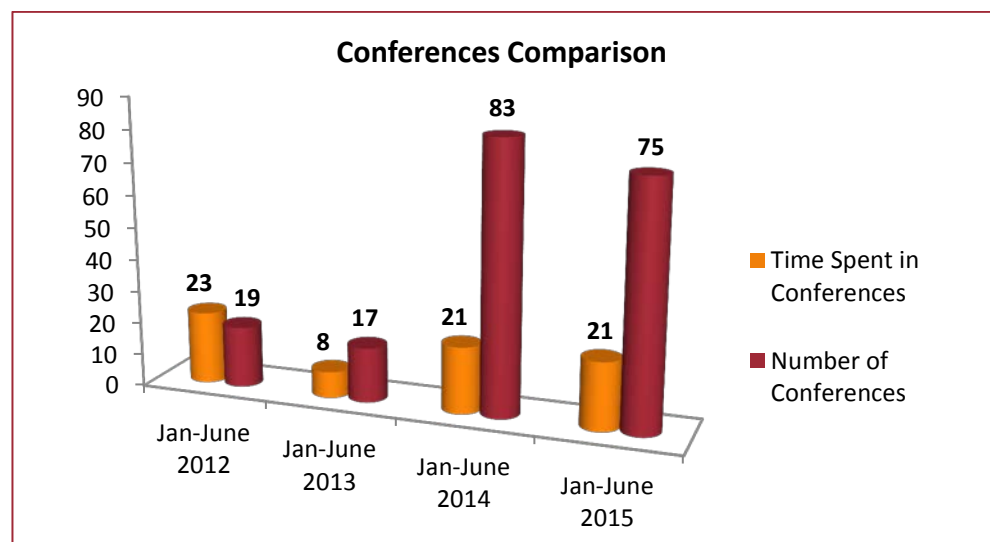
In all matters heard by the examiner, the examiner shall use case management techniques to the extent reasonable including:

- 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 the first half of 2014, our number of hearings increased 25 percent and our cumulative time spent in hearings increased 118 percent.



As previously discussed, one of our main policy shifts for 2014 was 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. Our working hypothesis is that having periodic conferences will help us more speedily resolve cases, either through the parties’ amicable resolution or (where the parties appear at loggerheads) by biting the bullet, 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.



Our conferences dipped slightly from the first half of 2014. This is likely traceable to (as explained above) our having slightly winnowed down the number of cases



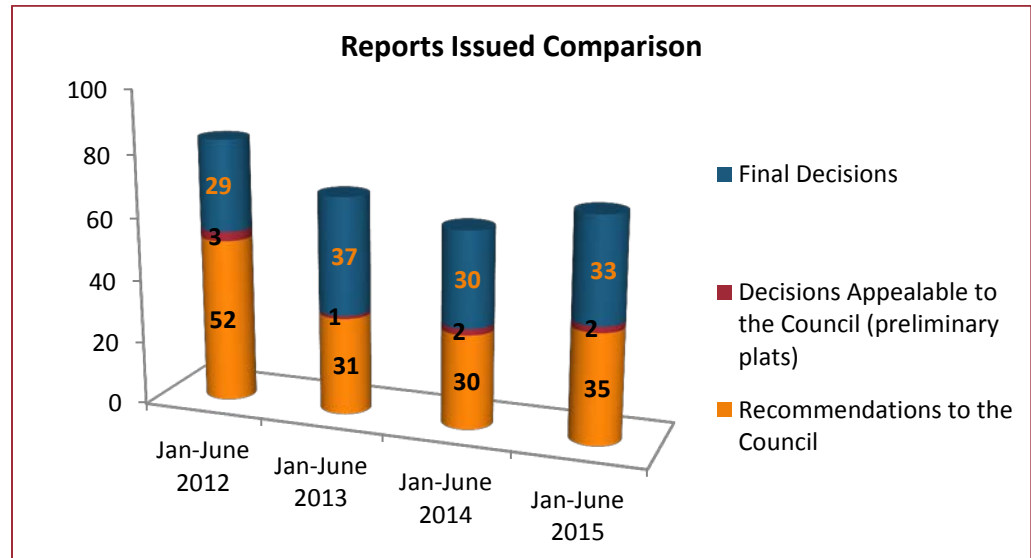
### 20.24.180 Examiner findings.

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.

we carried over into 2015 (as opposed to those we had carried into 2014), meaning we had fewer total cases in which to conduct conferences.

### REPORTS ISSUED

We issued 70 recommendations and decisions this period, an increase of eight from the first half of 2014, and one more than the first half of 2013.



Beyond the numbers, among the more interesting reports involved:

- A permit recipient’s challenge to a well-radius restriction that had been part of the department’s earlier “mitigated determination of non-significance” under SEPA. (That is, the project would create a significant adverse environmental impact unless the well-radius was protected.) The applicant did not respond during the SEPA appeal window, but later tried to challenge the well-radius restriction during the permit appeal window. The issue was one of first impression: did the failure to appeal the SEPA determination preclude later challenging the same well-radius condition as part of the permit appeal? A 1987 judicial decision indicated that it did not. We analyzed the post-1987 RCW and WAC amendments and determined that it now did. Under the present law, once the SEPA appeal period ended, the well-restriction became valid and immune to later challenge.
- An application for “current use” tax status involving a property with a native growth retention covenant that already limited development. The question was whether to award tax credit, dependent on the owner removing the covenant. While we often recommend an award dependent on a property owner taking some future, environment-improving step (such as completing a forest stewardship plan), we saw this scenario as different. We reasoned that while the

Code reflects a policy choice that protecting fully developable land is worth the tradeoff of either foregoing tax revenue or requiring other property owners to bear a larger tax burden, that tradeoff did not extend to covenant-protected land. We recommended (and the Council later agreed) that an award was not warranted.

- An enforcement appeal interpreting the code provision that allows an examiner to waive strict compliance with permit requirements to “avoid doing substantial injustice” to an innocent owner. Here the owner purchased a property with an illegally-constructed gazebo of a size and location that would require a shoreline variance. After describing why a variance application would fail, the gazebo’s location parallel to significantly more substantial structures on adjacent properties, and the lack of detrimental impact on the shoreline in the two decades since its construction, we decided that although the owners must apply for a shoreline exemption, they need not apply for a shoreline variance, and also allowed DPER to require appropriate mitigation. Wary of authorizing something in the shoreline without first providing State Ecology with an opportunity to comment (given Ecology’s role in shoreline matters), we sent notices to Ecology and provided avenues for Ecology to weigh in pre-hearing, at the hearing, or after the hearing. We received no comment.

#### APPELLATE ACTIVITY

---

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

One Examiner decision (*McGinnis—15-2-12798-5 KNT*) was appealed in the first half of 2015. We will discuss it in a later report, once a court weighs in.

In terms of activity on cases appealed during earlier reporting periods:

In *McGinnis—14-2-27238-3 SEA* (same McGinnis, different property and issues), the County and McGinnis stipulated to a dismissal of the pending superior court appeal.

In *Mishkov—14-2-31701-8 KNT*, the superior court dismissed an appeal because Mishkov had not actually served anyone in the County with his appeal; the court did not discuss or reach the merits.

In *Cook—71213-6-1/9*, the examiner affirmed code enforcement violations for building or occupying various structures, within environmentally critical areas but without the required permits. Cook appealed. After the trial court affirmed, Cook again appealed. In a sharply worded opinion, the appeals court came close

## 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.

to dismissing Cook's appeal due to inadequate briefing, but then reached the merits and affirmed the examiner.

*Klineburger*—71325-6-1/2, involved property within the federally-mapped floodway and on which the owner sought to build a home. The examiner ruled that the County had no authority to overturn State Ecology's determination that the County should not approve the construction. On appeal, the trial court agreed that the examiner had no such authority, but concluded that the court did, and it ordered the County to process Klineburger's permit application despite Ecology's rejection. The County, Ecology, and even Klineburger appealed. The court of appeals reversed and reinstated the examiner's decision, explicitly adopting the examiner's analysis.

### **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 94 percent compliant with the third, meaning we fell just shy of the 95 percent compliance goal we set for ourselves for compliance with each deadline each reporting period.

#### **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 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 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
<b>RECOMMENDATIONS TO THE COUNCIL</b>		
Open space and Timber lands	9	100%
Rezone	11	100%
<b>TOTAL</b>	9	100%

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

**20.24.097 Expeditious processing.**

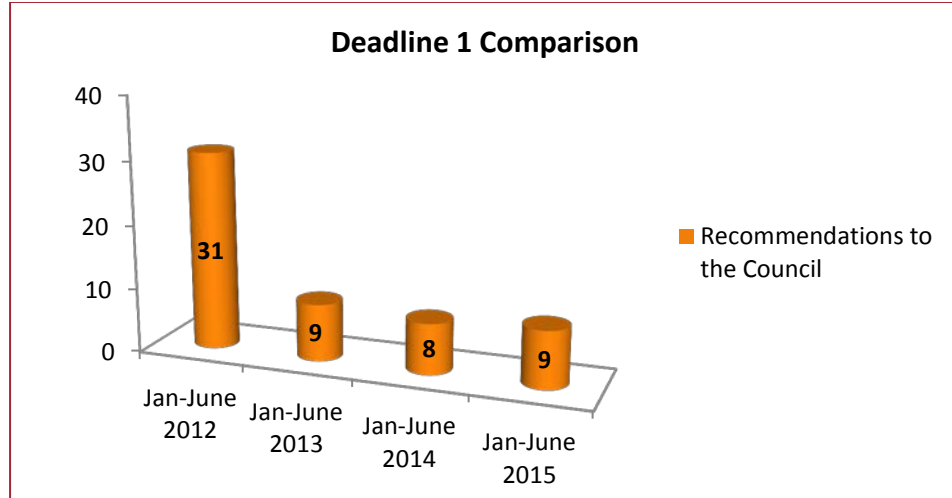
A. Hearings shall be scheduled by the examiner to ensure that final decisions are issued within the time periods provided in K.C.C. 20.20.100....

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.

....

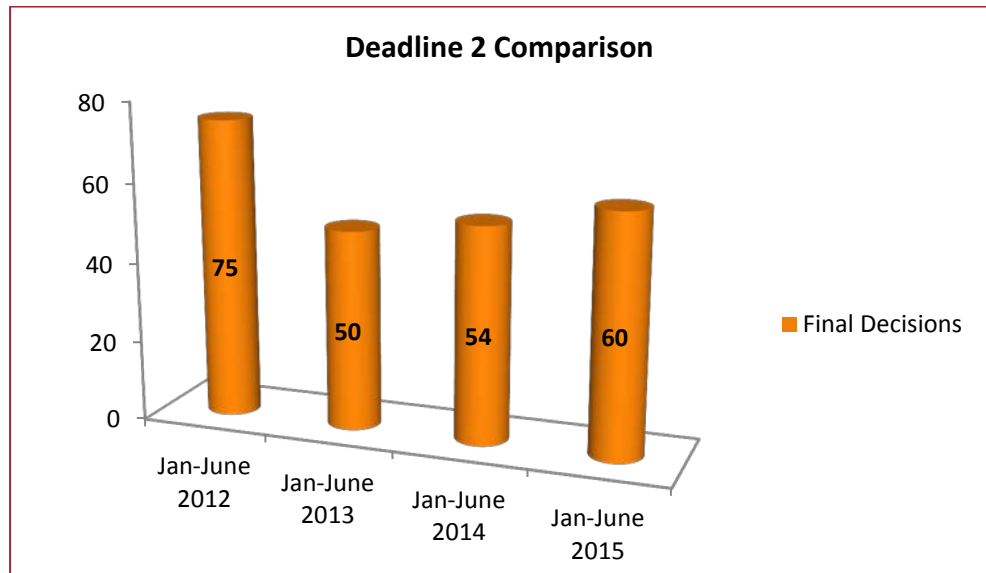


**DEADLINE TWO—90 DAYS FROM APPEAL TRANSMITTAL TO REPORT**

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
<b>FINAL DECISIONS</b>		
Code enforcement	61	100%
Other	58	100%
<b>TOTAL</b>	<b>60</b>	<b>100%</b>

A 60-day average processing time represents a six-day increase from early 2014.

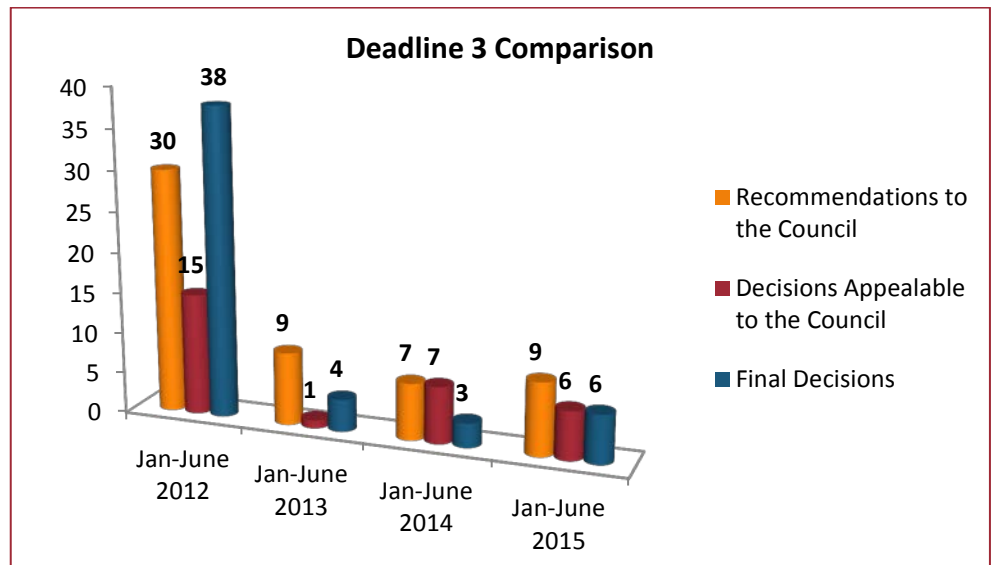


**DEADLINE THREE—10 DAYS FROM HEARING CLOSE TO REPORT**

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 with 94 percent of our reports.

REPORT DEADLINE 3—10 DAYS FROM HEARING CLOSE TO REPORT: AVERAGES AND COMPLIANCE	Average days	Percent compliant
<b>RECOMMENDATIONS TO THE COUNCIL</b>		
Open space and Timber lands	9	97%
Rezone	11	100%
<b>DECISIONS APPEALABLE TO THE COUNCIL</b>		
Preliminary plats	6	100%
<b>FINAL DECISIONS</b>		
Code enforcement	6	100%
Land use	14	50%
Other	1	100%
<b>TOTAL</b>	<b>9</b>	<b>94%</b>

As illustrated in the below chart, our hearing conclusion-to-report time increased slightly (from early 2014) in two of the three categories, and decreased in the third. Our current times still represented a significant decrease from early 2012.



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 to encompass the myriad of other codes that reference or impact Examiner operations. This work continued this reporting period. Council staff's expectation is for an ordinance to be introduced in September or October.

SILENT JURISDICTIONS

---

The county code contains close to eighty matters over which the Examiner has authority. Many of those rarely if ever make it to our office. In 2014 we began (and during this reporting period completed) a fairly ambitious project both to catalogue all our jurisdictions (so that an updated K.C.C. 20.24 will contain a complete list, instead of the current, very incomplete version) and more importantly to learn the lay of the land of each and every obscure jurisdiction. After receiving permission from the various agency heads, we interviewed the employee most knowledgeable about each given topic, eventually speaking with close to thirty individuals. In a few instances, we discovered that the agency was unaware that a particular decision was appealable or was not including appeal language in its decisions (to let a potentially aggrieved party know she could appeal). But mostly it was a valuable learning experience for us; we now have a far better understanding of what each of those jurisdictions is about, how (and how often) conflicts arise at the agency level, and the likelihood (or unlikelihood) of Examiner involvement in the future.

STAFF TRANSITION

---

Near the close of the reporting period, Ginger Ohrmundt, a long-time administrative staff member who provided over a decade of reliable service, began a sabbatical preceding her actual retirement in September. Her familiarity with office protocols and procedures, not to mention her dedication, made her an invaluable employee. As a proactive measure, we brought on a temporary employee to cross-train with Ginger for a few weeks prior to her departure. This went a long way towards minimizing disruptions related to losing such a valuable member of the team.

### 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.

## *CODE CHANGE RECOMMENDATION*

---

The code requires our semi-annual reports to identify any needed regulatory clarification. Our recommendation this period involves the public benefit rating system, the Department of Natural Resources and Parks (DNRP) program through which property owners can “enroll” land and obtain a tax break by undertaking publically-beneficial activities that protect open space resources.

KCC Chapter 20.36 provides detailed direction for when to award points for dozens of resource categories and how increasing point levels translate into lower taxes. Yet the code is largely silent on whether or when points earned in one category should apply to the entire enrolled acreage or only to the discrete portion with that resource. So, for example, if six of the ten acres qualifying for enrollment will be “forest stewardship land,” do those stewardship points apply only to the six forest acres or to the entire ten acres?

For several years, DNRP and the Examiner have been recommending awarding such points for the entire acreage, but not if there is something like a road or physical barrier between qualifying portions of a given property. It may be wisest to codify that approach. Or, to the extent the administrative costs of trying to value enrolled acreage in pieces outweigh the benefits, it may be wisest to make points earned for one portion of land *always* applicable to the entire enrolled acreage. Or (and conversely) it may be wisest to increase the categories or situations where points apply only to a discrete portion of a larger, enrolled area.

We take no policy position on the above question. We only identify and describe it so the Council has some context whenever it turns to updating Chapter 20.36.

## *CONCLUSION*

---

We began 2015 in better position than for 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 2015 will be presented on or before March 1, 2016.

Submitted August 31, 2015,



---

David Spohr, Hearing Examiner