



King County

JULY–DECEMBER 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
February 28, 2014

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SEMI-ANNUAL REPORT OFFICE OF THE KING COUNTY HEARING EXAMINER

JULY – DECEMBER 2013

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 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 July through December, 2013. 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.

Our case filings generally continued their uptick, significantly so for preliminary plat applications (often our most complex cases), and our time spent in hearings increased, yet we continued to meet our case-processing deadlines. Our most ambitious, case-specific, objective for 2013 was reducing the number of cases carried over from previous reporting periods, mostly cases “continued on-call” (matters where the parties jointly requested that we postpone action). As detailed below, we were successful, working through the entire list so that by the end of 2013 we carried into 2014 approximately sixty percent fewer cases than we carried into 2013. Beyond the case-specific, we continued working with others in Council to overhaul the Examiner Code (K.C.C. 20.24) and related provisions in other codes that directly impact Examiner operations, continued devoting significant effort to advancing Equity and Social Justice (internally within the Examiner’s Office itself, and externally), and we employed, trained, and mentored a military veteran through the HERO Internship program.

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.

20.24.320 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.

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 unfair employment practices (K.C.C. 12.18). But the Examiner’s caseload mainly consists of a handful of 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

KCC 20.18.050 Site-specific land use map and shoreline master program map amendments initiation

A. Site-specific land use map and shoreline master program map amendments are legislative actions that may only be initiated by property owner application, by council motion or by executive proposal. All site-specific land use map and shoreline master program map amendments must be evaluated by the hearing examiner before adoption by the council in accordance with this chapter.

...

G. Following the submittal of the information required by subsections D., E. or F. of this section, the department of permitting and environmental review shall submit a report including an executive recommendation on the proposed amendment to the hearing examiner within one hundred twenty days. The department permitting and environmental review shall provide notice of a public hearing and notice of threshold determination in accordance with K.C.C. 20.20.060.F., G., and H. The hearing will be conducted by the hearing examiner in accordance with K.C.C. 20.24.400. Following the public hearing, the hearing examiner shall prepare a report and recommendation on the proposed amendment in accordance with K.C.C. 20.24.400. A compilation of all completed reports will be considered by the council in accordance with K.C.C. 20.18.070.

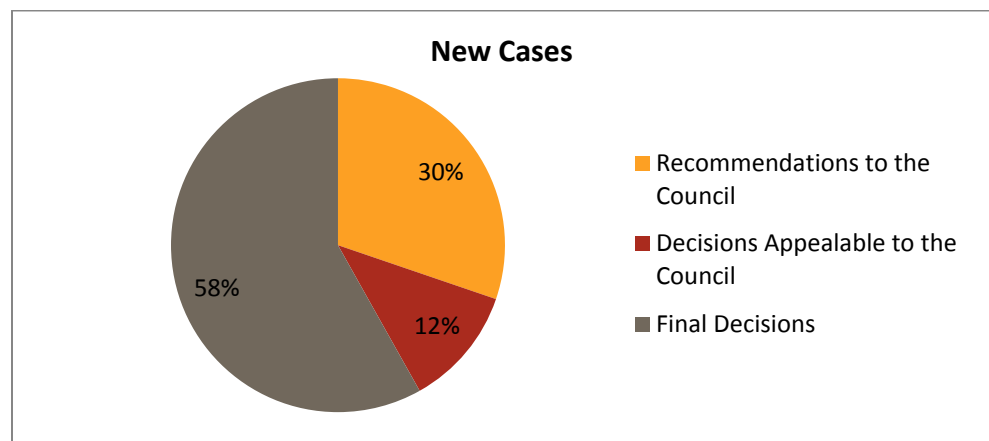
CASE WORKLOAD

NEW CASES

Proposed site-specific land use map amendments are not cases that often reach the Examiner, but when they do they are typically interesting, challenging, and time-consuming. During this reporting period, we conducted one such hearing, involving the “Four-to-One” program by which one acre of rural land may – if certain requirements are met – be added to the urban growth area in exchange for creating four acres of open space. The proposal would add twenty percent of a seventy-plus acre parcel to Maple Valley’s urban growth area (UGA) and dedicate to King County the remaining eighty percent for public open space. We moved deliberately to complete a thorough review and transmit a recommendation (denial, but with suggestions for how the proposal could be made compliant) to Council in time for inclusion in Council’s 2014 Comprehensive Plan update process.

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

NEW CASES	JULY – DECEMBER 2013	Number of Cases
RECOMMENDATIONS TO THE COUNCIL		
	Open space and Timber lands	13
DECISIONS APPEALABLE TO THE COUNCIL		
	Preliminary plats	5
FINAL DECISIONS		
	Code enforcement	23
	Land use	2
	TOTAL	43



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

A. ... 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:

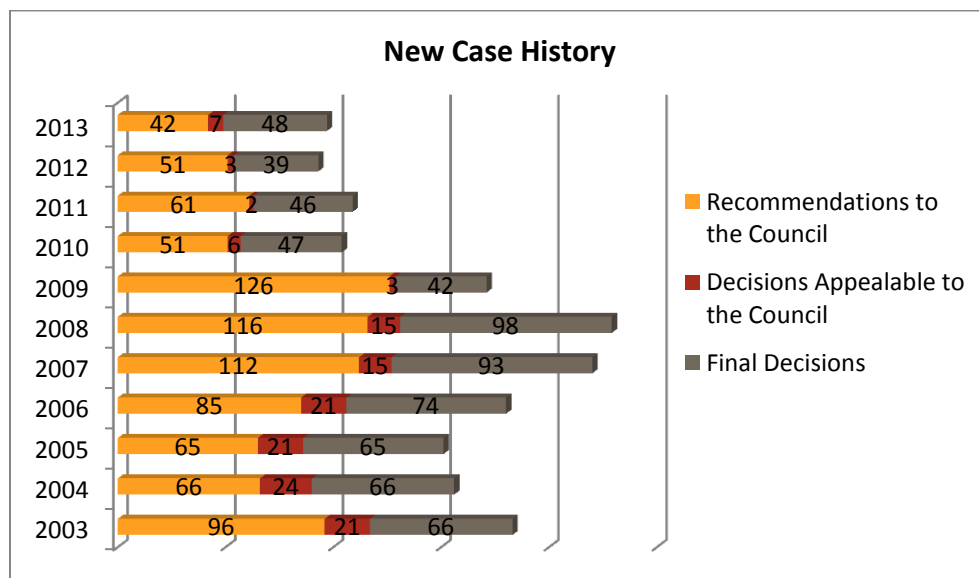
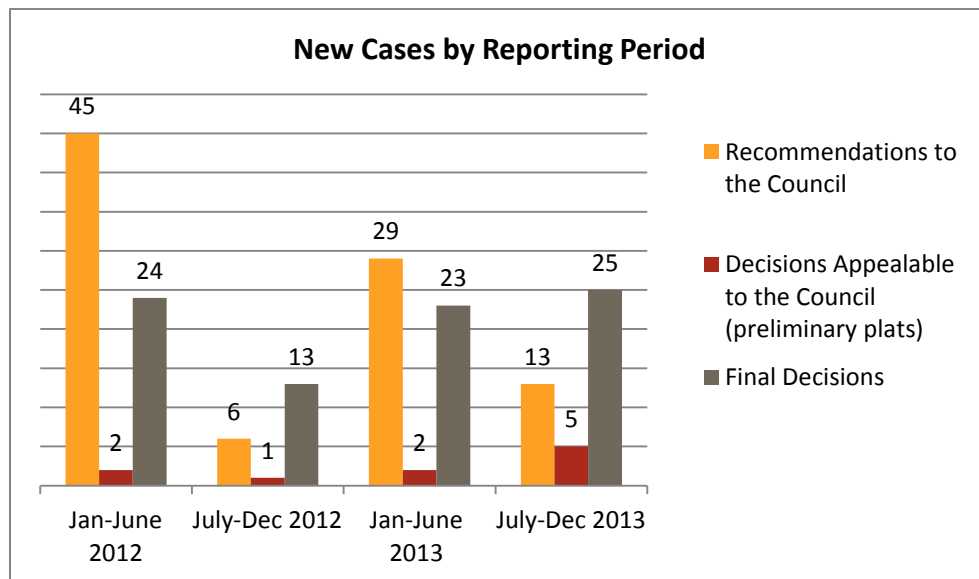
1. A procedural SEPA appeal to the hearing examiner is authorized only for an action classified as a Type 2, 3 or 4 land use decision in KCC 20.20.020 or as provided for by public rule adopted under KCC 20.44.075...

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.

The second half of 2013’s totals are down from the first half’s. As described in previous reports, this occurs each annual cycle, as a significant percentage of new cases in any given year are “current use” taxation, and most such applications come in the first half of any calendar year. But our case filings generally continued their uptick, as charted below. In all categories, new case filings for the second half of 2013 significantly increased from the second half of 2012. And non-“current use” taxation cases for the second half of 2013 increased slightly from the first half of 2013. Most importantly, new preliminary plat applications – often the most time-consuming cases to process, with extensive files to review beforehand, lengthy hearings to hold, and detailed reports to write – increased significantly, matching the cumulative total from the previous three reporting periods.



23.01.010 Code Compliance

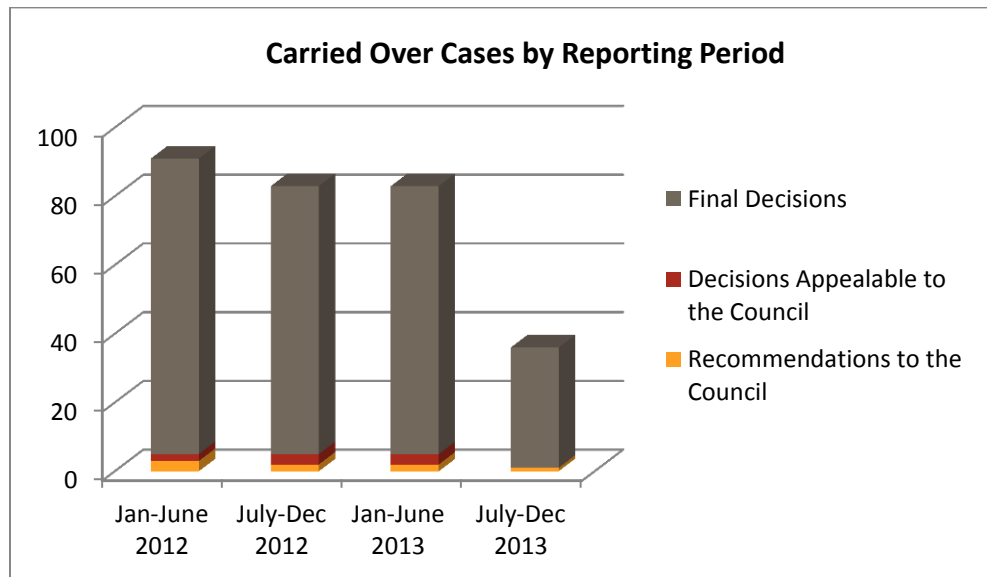
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CASES CARRIED OVER FROM PREVIOUS YEARS

One of our goals for 2013 was reducing the number of cases carried over from previous years. As of January 1, 2013, we had eighty-four such carry-overs, some from as far back as 2002. Of those, seventy-three were “continued on-call” — matters where the parties jointly requested that we postpone action. Many had been continued on-call for several years without any recent Examiner activity. Our 2013 objective was to work through the entire list of on-call cases so that, by 2013’s end, we would have closed those cases that should be closed, scheduled hearings in those cases that needed hearings, or freshly determined the appropriateness of keeping each case on-call. We succeeded, advancing through the entire list and finishing the year with only thirty-six open cases to carry into 2014, as opposed to the eighty-four open cases we carried into 2013.

CASES CARRIED OVER INTO 2014	2005	2006	2007	2008	2009	2010	2011	2012
RECOMMENDATIONS TO THE COUNCIL								
						1		
DECISIONS APPEALABLE TO THE COUNCIL								
FINAL DECISIONS								
	1	2	2	9	6	4	4	6
TOTAL= 36	1	2	2	9	6	5	4	6



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

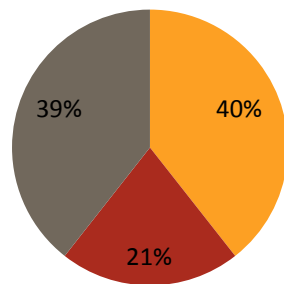
A pre-hearing conference may be called by the examiner pursuant to this chapter upon the request of a party, or on the examiner’s own motion. A pre-hearing conference shall be held in every appeal brought pursuant to this chapter if timely requested by any party.

PROCEEDINGS

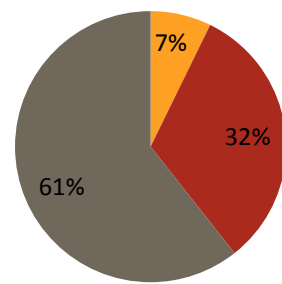
We attempt to extend a high level of service to all our cases. After all, even where a matter raises no novel legal issue or has little impact beyond the parties, it is still crucially important to the parties. But not all types of cases require the same level of Examiner involvement. For example, we held slightly fewer hearings for code enforcement (eleven) than for open space and timber lands (twelve), but the cumulative hearing duration for the code enforcement cases was almost a dozen times that of open space and timber lands.

Number of Hearings	July – December 2013	Number of hearings	Cumulative length of time
RECOMMENDATIONS TO THE COUNCIL			
	Open space and Timber lands	12	1:13
	Site-specific land use amendment	1	2:00
DECISIONS APPEALABLE TO THE COUNCIL			
	Preliminary plats	7	14:14
FINAL DECISIONS			
	Code enforcement	11	22:50
	Land use	2	4:00
	TOTAL	33	44:17

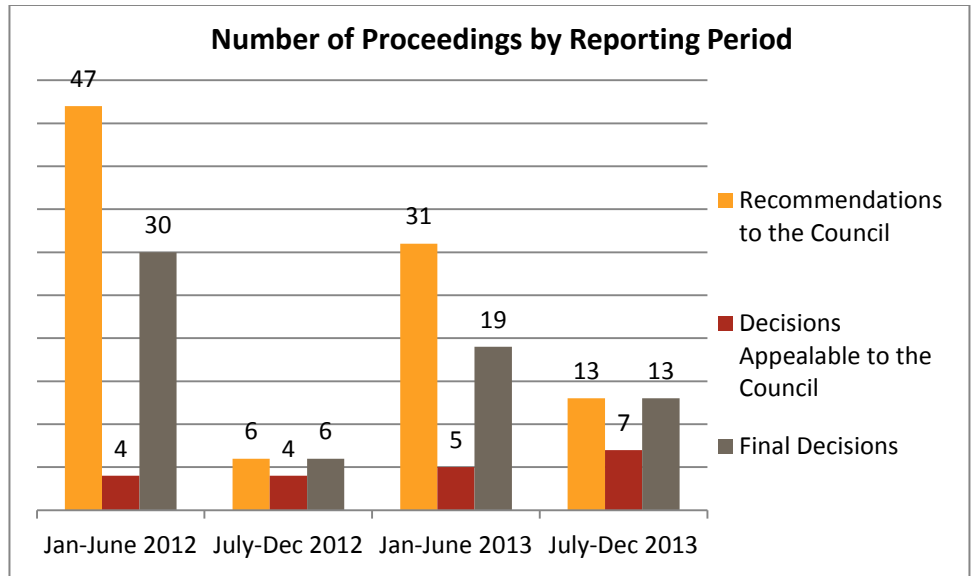
Number of hearings



Time spent in hearings



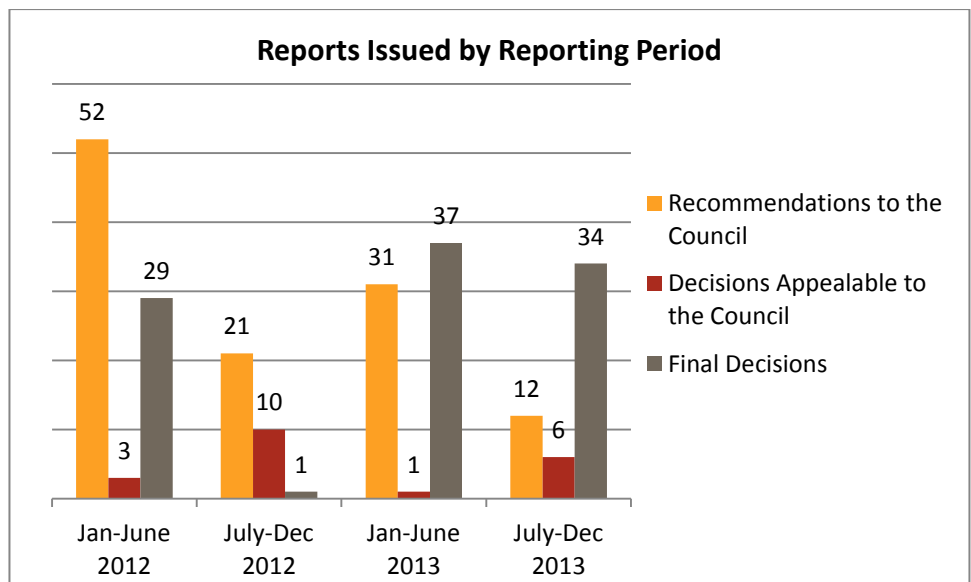
■ Recommendations to the Council
■ Decisions appealable to the Council
■ Final Decisions



In addition, for “on-call” matters (where the Examiner grants the parties’ joint request to continue a case to allow the parties time to reach a resolution short of a hearing), we instituted a protocol change to schedule periodic status conferences for each case. This ensures that we stay on top of cases and keep parties’ feet to the fire. It also means that we spend more time in conferences (23.5 hours this reporting period) than the office typically spent under former practices.

REPORTS ISSUED

From July through December, 2013, the Examiner issued fifty-two reports. The following figure illustrates recommendations and decisions issued during the last four reporting periods:



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.

We issued fewer reports in the second half of 2013 than in the first half. As described above in “New Cases,” that is the typical annual cycle. A significant percentage of our hearings are “current use” taxation cases, and we decide most such cases in the first half of any calendar year. However, our non-current use reports increased slightly for the second half of 2013 as opposed to the first half, and our preliminary plat reports (often our most time-consuming cases) ballooned from one to six.

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 either deadline for up to thirty days. We strive to keep Examiner-initiated extensions to a minimum. During this reporting period, only one case discussed below involved an Examiner-initiated deadline extension.

DEADLINE ONE—21 DAYS FROM APPLICATION HEARING OPEN TO REPORT

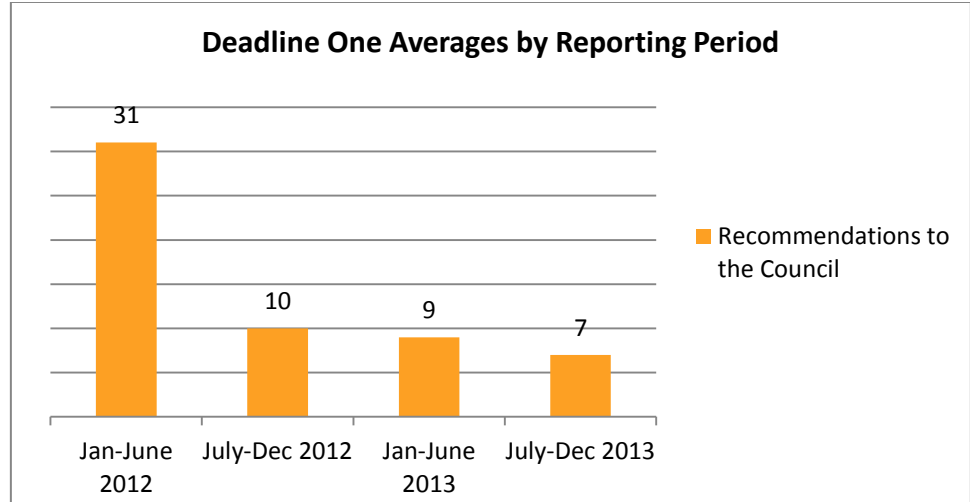
For Examiner recommendations to the Council on an application (such as “open space” taxation cases), the deadline for issuing Examiner reports is twenty-one days after a hearing opens. We were compliant in every instance, averaging seven days.

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	7	100%
TOTAL	7	100%

In addition to compliance with the twenty-one days from hearing open to final Examiner recommendation deadline, we continued reducing our average time from hearing open to final report, as charted on the next page.

20.24.210 Written recommendation or decision

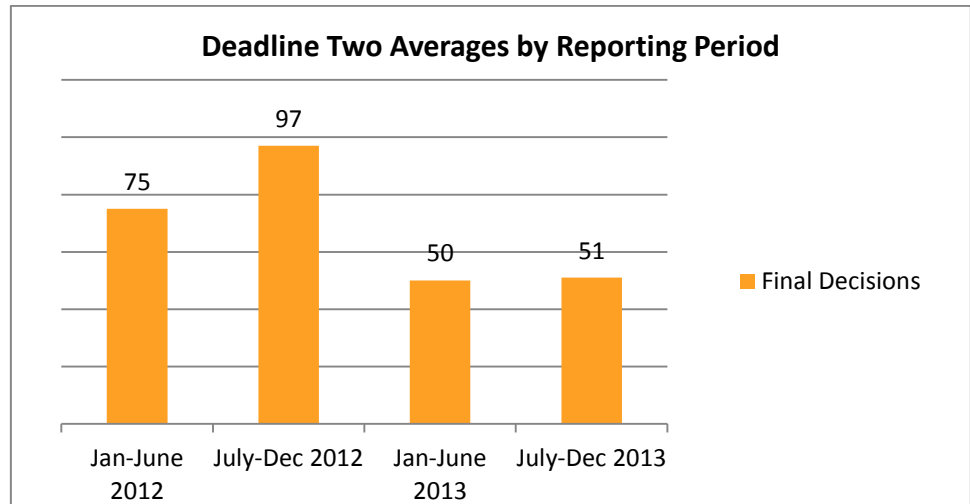
A. Within ten days of the conclusion of a hearing or rehearing, the examiner shall render a written recommendation or decision and shall transmit a copy thereof to all persons of record. The examiner's decision shall identify the applicant and/or the owner by name and address.



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 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-one days from appeal receipt to final decision.

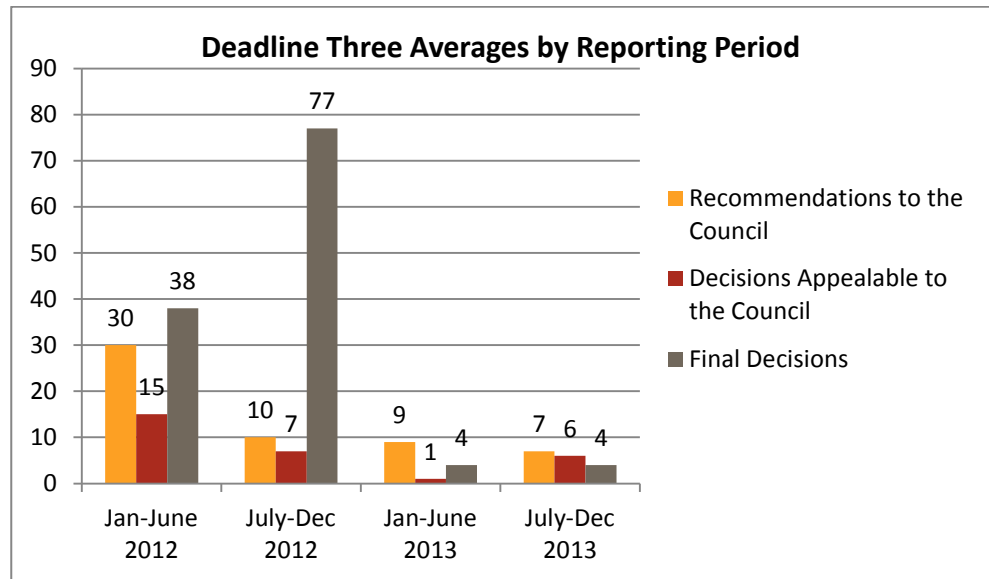
REPORT DEADLINE 2—90 DAYS FROM CASE OPEN TO REPORT: AVERAGES AND COMPLIANCE	Average days	Percent Compliant
FINAL DECISIONS		
Code enforcement	41	100%
Land use	31	100%
Other	81	100%
TOTAL	51	100%



DEADLINE THREE—10 DAYS FROM HEARING CLOSE TO REPORT

The third deadline relates to all hearings of any stripe, and requires the Examiner to issue findings and conclusions no later than ten calendar days following a hearing’s conclusion. We met this deadline in all categories but one, where we were ninety-two percent compliant.

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	7	100%
DECISIONS APPEALABLE TO THE COUNCIL		
Preliminary plats	6	100%
FINAL DECISIONS		
Code enforcement	6	92%
Land use	3	100%
Other	2	100%
TOTAL	6	94%



OFFICE INITIATIVES

CODE UPDATE

We devoted considerable time and effort throughout 2013 to working with a Council-branch team to overhaul the Examiner Code (K.C.C. 20.24) and related provisions in other codes that directly impact Examiner operations. Although we had anticipated that the project would be closer to completion by now, through dozens of meetings (and much code revision work between those meetings), we

are confident that the draft that is emerging represents a significant improvement on the current code. We carry on this work into 2014.

EQUITY AND SOCIAL JUSTICE

Our office continued promoting leadership and emphasis on Equity and Social Justice (ESJ). We accomplished this internally (through recruitment actions, supervision of employees, and in considering the full impacts of administrative rule changes), and externally through Council’s ESJ team. Our support to Council involved organizing three brown bag programs (Women in the Media, People of the Inside (Duwamish tribe), and the MLK Birthday Celebration), and we helped implement a brown bag planning group by instituting and organizing monthly meetings, reaching out to key staff, and laying the foundation for group consensus decision-making.

HERO INTERN

We employed a military veteran through the county’s HERO Internship program. We did so to help us understand the applicable skills and abilities returning veterans offer to the government workforce, provide a veteran the opportunity to develop on-the-job experience and training, and honor the service of our veterans. As we committed to when signing on, we provided training, guidance, and support for our intern based on her personal objectives, monitored her support needs, and problem-solved as necessary. We tailored a robust and challenging training regimen that included our own internal programs as well as a number of professionally-facilitated training classes. We involved her in meetings with a variety of work groups, exposing her to the opportunities and challenges of working in a governmental legislative branch.

CONCLUSION

All in all, 2013 was a busy and productive year. We met our targets and closed the year stronger than we started, both in terms of winnowing down our older, “on-call” caseload and in terms of efforts such as Equity and Social Justice. We look forward to continued hard work and performance in 2014.

Submitted February 28, 2014,



David Spohr, Hearing Examiner