



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
March 2, 2015

JULY-DECEMBER 2014

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SEMI-ANNUAL REPORT OFFICE OF THE KING COUNTY HEARING EXAMINER

JULY – DECEMBER 2014

DAVID SPOHR
KING COUNTY HEARING EXAMINER

OVERVIEW

The King County Hearing Examiner is appointed by the [Metropolitan King County Council](#) to provide a fair, efficient, and citizen-accessible public hearing process. We hear land use applications and appeals of many county administrative decisions, issue formal decisions, and make recommendations to the Council.

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

We received more new cases in 2014 than we did in 2013, which in turn was more than in 2012. We continued our high rate (98% this reporting period) of compliance with our case processing deadlines. And we achieved this compliance without once using the Examiner’s code-based allowance to unilaterally extend a deadline.

In addition, for those cases continued at the joint request of the parties, our more active case management appears to be paying off. After significantly decreasing the number of continued cases we carried over into 2014, we closed 2014 by decreasing that number still further. And that active management appears responsible for a slight decrease in the percentage of cases requiring an adversarial hearing (instead of consensual resolution) and the time required per hearing.

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 from a party not satisfied by an agency action. Elsewhere, the Examiner has “original jurisdiction,” holding a public hearing on a matter regardless of whether anyone objects to the agency’s recommended course of action. Depending on the case type, at the end of a hearing the Examiner may issue a recommendation to the Council, a decision appealable to the Council, or the County’s final decision. As to subject matter, the Examiner has jurisdiction over eighty distinct matters, in as disparate arenas as electric vehicle recharging station penalties (K.C.C. 4A.700), discrimination and equal employment opportunity in employment (K.C.C. 12.16), and open housing (K.C.C. 12.20). But the Examiner’s caseload mainly consists of a several common land use types. A non-exhaustive list, categorized by decision-making process, follows.

EXAMINER RECOMMENDATIONS TO THE COUNCIL (K.C.C. 20.24.070)

Applications for public benefit rating system, assessed valuation on open space land, and current use assessment on timber lands (K.C.C. 20.36.010)

Road vacation applications and appeals of denials (K.C.C. 14.40.015)

Type 4 land use decisions (K.C.C. 20.20.020(A)(4)):

- Zone reclassifications
- Plat vacations

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

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

- Preliminary plat
- Plat alterations

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

Code compliance enforcement (Title 23):

- Land Use
- Public Health

Threshold SEPA Determinations (K.C.C. 20.44.120)

Type 2 land use decisions (K.C.C. 20.20.020(A)(2)):

- Conditional use permits
- Short plats, short plat revision/alterations
- Preliminary determinations
- Temporary use permits
- Reasonable use exceptions
- Zoning variances
- Shoreline substantial development permits

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

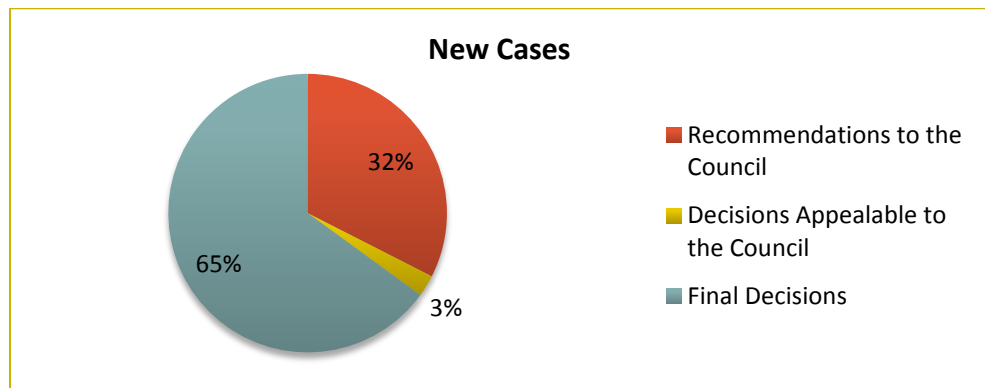
- Permit billing fees
- Fee estimates

NEW CASES

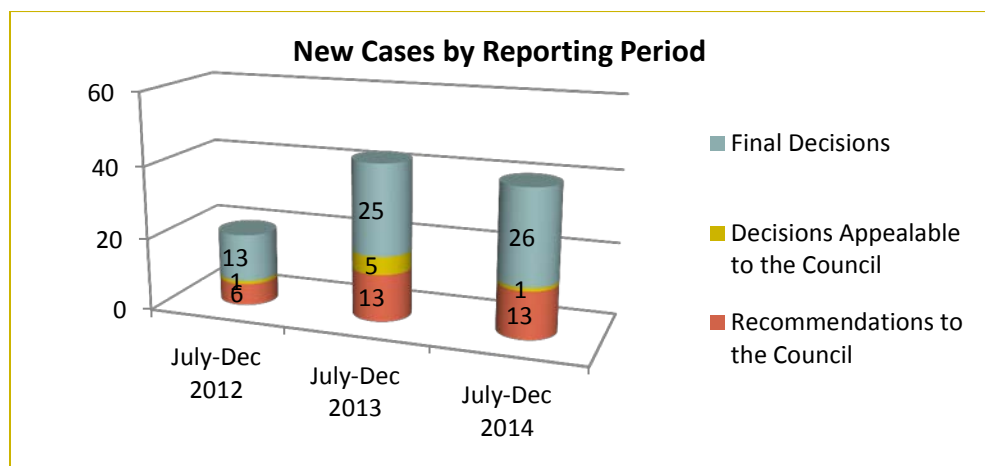
During the second half of 2014, we received 40 new cases, consisting of:

NEW CASES JULY – DECEMBER 2014	Number of Cases
RECOMMENDATIONS TO THE COUNCIL	
Open space and Timber lands	13
DECISIONS APPEALABLE TO THE COUNCIL	
Preliminary plats	1
FINAL DECISIONS	
Code enforcement	19
Land use	3
Other	4
TOTAL	40

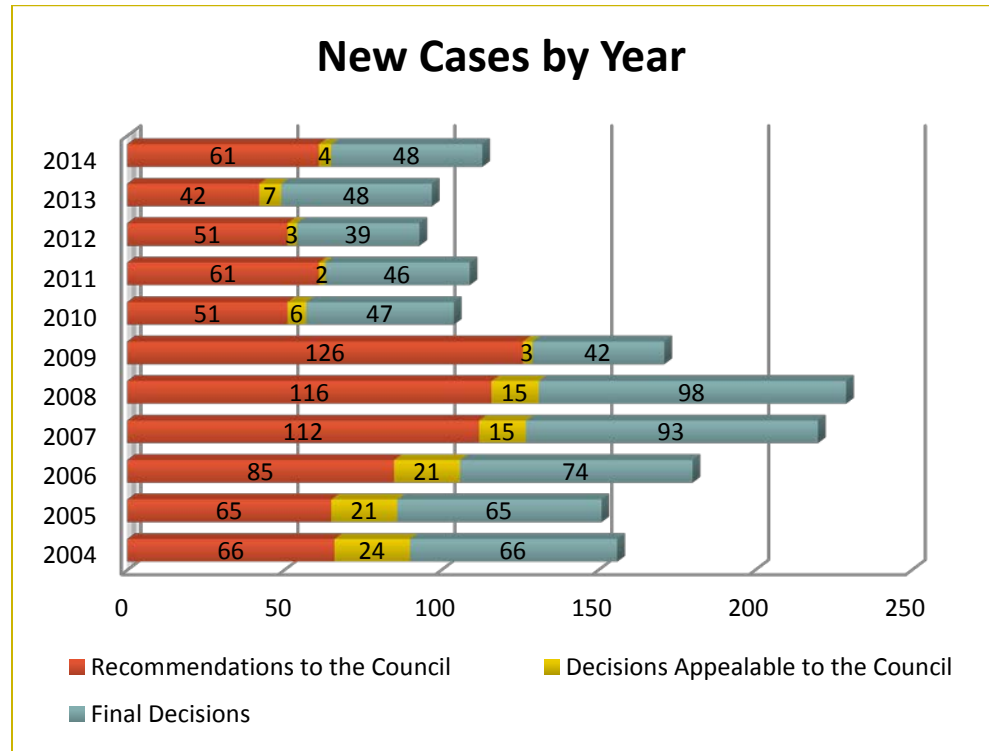
More generally, our new case filings, broken down into class, were:



This represented a significant increase from the second half of 2012, but a slight decrease from the second half of 2013.



Overall, in terms of new cases filed per calendar year, we continue nudging upwards from our nadir of 2012. We experienced a 16% increase in 2014 case filings as opposed to the corresponding 2013 number.



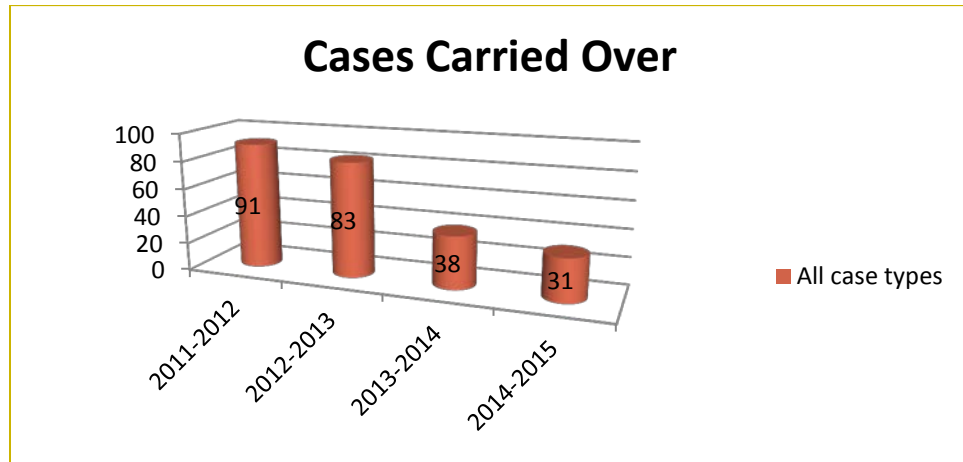
CASES CARRIED OVER FROM PREVIOUS YEARS

At the end of each calendar year the Examiner carries over a certain number of stayed or continued case into the next calendar year. A tiny percentage of these are cases currently on appeal, where the case is stayed as we await a court decision. The far larger number are cases we continued at the joint request of the parties, postponing a hearing to give the parties time to attempt to reach an amicable resolution. One of our main policy shifts since assuming the Examiner role has been to more actively manage our docket and to schedule periodic status conference calls in every case we continue. Although most conferences are brief, they ensure we stay on top of cases and keep parties’ feet to the fire. In theory, this should help us more speedily resolve cases, either through the parties’ amicable resolution or, where the parties appear at loggerheads, biting the bullet, ending the continuance, going to an adversarial hearing, and writing a decision. And the data bears out the theory: after instituting that policy in 2013, we dramatically decreased the number of cases we carried over into 2014, from 83 to 38. We decreased that number still lower (to 31) heading into 2015.

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.

CARRIED INTO 2015	2006	2007	2008	2009	2010	2011	2012	2013	2014
FINAL DECISIONS									
Continued on-call	2	1	4	3	1	3	1	6	9
Appealed to Superior Court							1		1
TOTAL=31									



PROCEEDINGS

We attempt to extend a high level of service to all our participants. After all, even where a matter raises no novel legal issue or has little impact beyond the parties, it is still crucially important to those parties. But not all types of cases require the same level of Examiner involvement. For example, Open space and Timber lands taxation cases were 66% of our hearings but consumed only 13% of our total hearing time.

Number of Hearings	July – December 2014	Number of hearings	Cumulative length of time
RECOMMENDATIONS TO THE COUNCIL			
	Open space and Timber lands taxation	19	1:33
DECISIONS APPEALABLE TO THE COUNCIL			
	Preliminary plats	3	5:00
FINAL DECISIONS			
	Code enforcement	6	5:14
	Land Use	1	1:02
	TOTAL	29	12:49

20.24.145 Pre-hearing conference

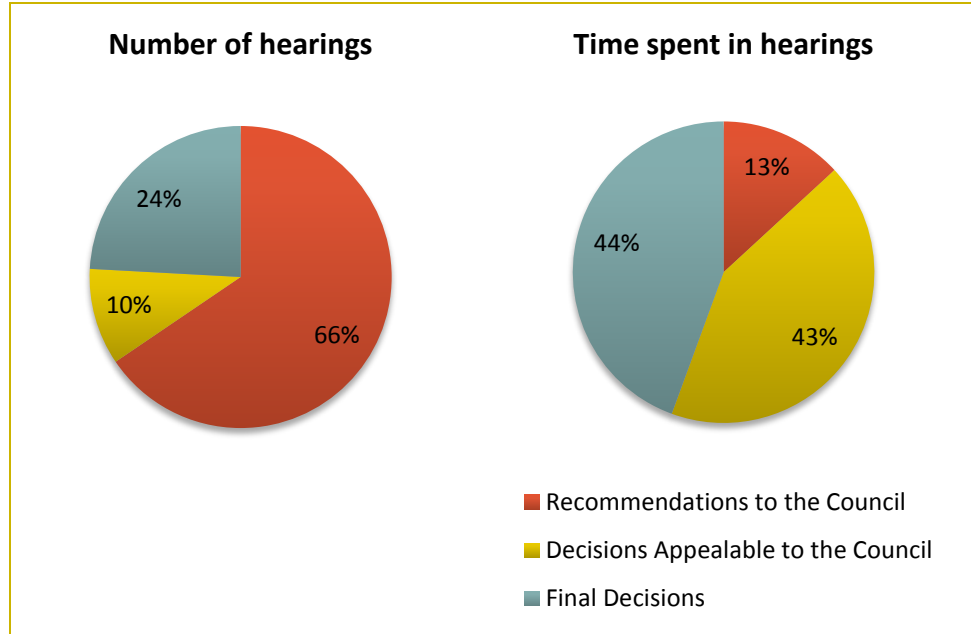
A pre-hearing conference may be called by the examiner pursuant to this chapter upon the request of a party, or on the examiner's own motion. A pre-hearing conference shall be held in every appeal brought pursuant to this chapter if timely requested by any party.

...

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.



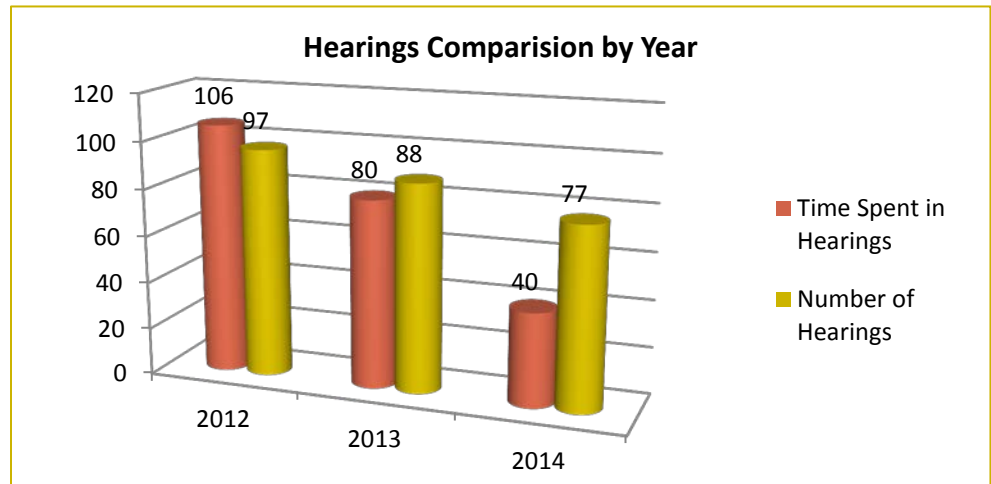
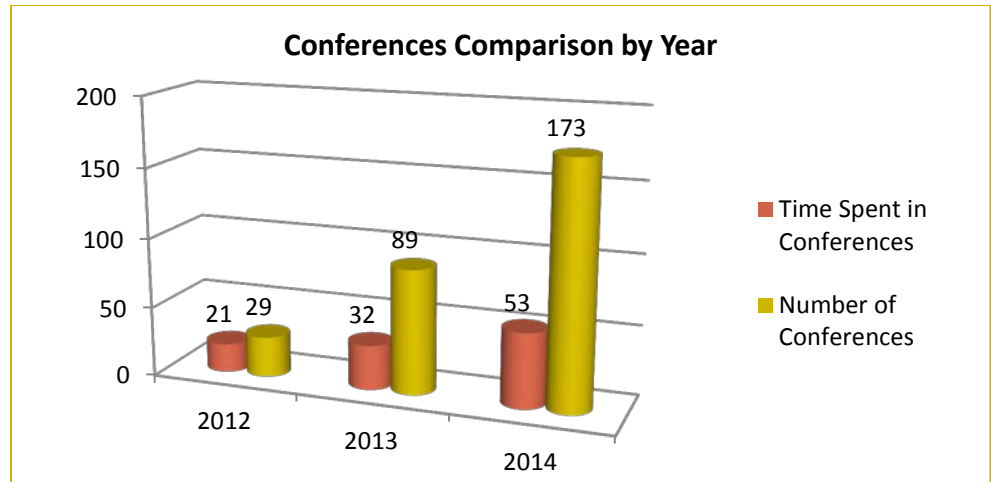
The Examiner conducts three types of proceedings, from the least formal (status conferences), to the intermediary (pre-hearing conferences at which may hear and rule on motions and set issues and deadlines) to the most formal (hearings, where we swear in witnesses, take testimony, evidence, and argument, and thereafter render a final determination).

As discussed above, parties often jointly request that we continue a case (*i.e.*, refrain from scheduling a hearing) while they attempt to resolve their dispute, and our recent protocol change has been scheduling periodic status conference calls in every case we continue. Our working hypothesis is that having periodic conferences not only quickens our resolution of cases through either consensual resolution or an Examiner ruling, but also may reduce the number of cases that eventually require an adversarial hearing. That is, we may be able to informally address (at a status conference) conflicts before party discussions breakdown to the point that one party requests a formal hearing and we decide the issue through the adversarial process. In addition, even if some issue in a case may need a hearing, we may have been able to narrow or crystalize the disputed issues, streamlining the actual hearing.

The numbers thus far bear out the supposition. In addition to reducing the list of continued cases (for example, from 83 carryovers into 2013 to 38 carryovers into 2014), the number of hearings (and the time spent in those hearings) has decreased, even as our new case filings increased from 2012 to 2013, and from 2013 to 2014.

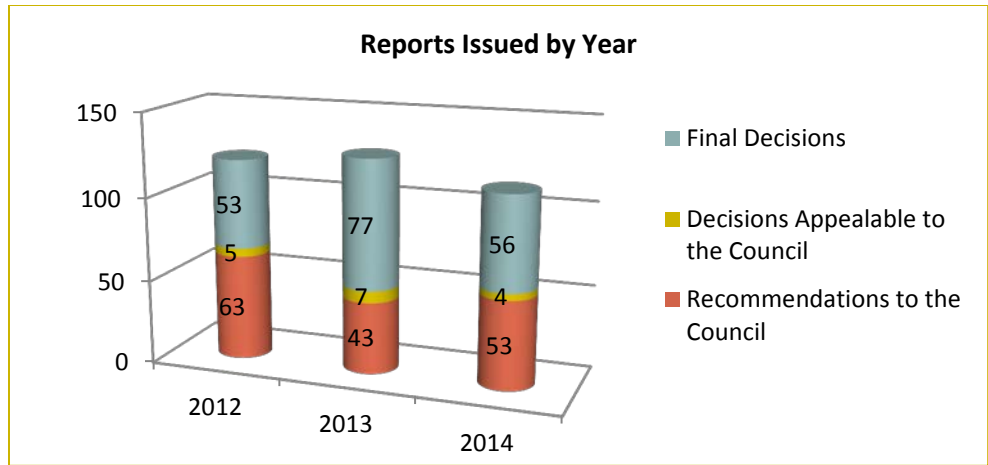
20.24.180 Examiner findings.

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

In 2014, the Examiner issued 112 determinations (*i.e.* a final decision appealable to superior court, a decision appealable to Council, or a recommendation to Council). That is slightly less than in either of the previous two years. As discussed above, that is consistent with our postulate that having periodic conferences should reduce the number of appeals that eventually require an adversarial hearing (and thus require the Examiner to issue an appealable decision). So while our new case filings increased from 2012 to 2013, and from 2013 to 2014, our need to issue reports dropped slightly.



APPELLATE ACTIVITY

At the request of a Councilmember, we have added a new section to our semi-annual report format to discuss appellate activity.

Two of our decisions issued during this reporting period were appealed to superior court; we will discuss those in a later report, once a court answers the appeal. In addition, courts decided two previously-appealed cases during this period.

In *Race Track, LLC v. King County*, 70553-9-1 (Wn. App. Sept. 2, 2014), the court “substantially affirmed” the Examiner, rejecting appellants’ claims involving the impact of racing, the import of ambient noise levels, the existence of substantial evidence, the applicability of equitable estoppel, the validity of a laches defense, the soundness of a due process/fundamental fairness challenge, and the appropriate use of a kart track. The court remanded one item, requiring the Examiner to change the wording on the scope of a prohibition. On remand, the Examiner was able to quickly resolve the issue.

In *McMilian v. King County*, 70515-6-1, (Wn. App. Nov. 3, 2014), the court completely affirmed the Examiner, rejecting appellant’s claims that auto wrecking yard use existed on a property prior to the zoning code’s adoption. The court affirmed the Examiner against assertions regarding substantial evidence, the scope of the Examiner’s procedure, witness credibility determinations, use of a pro tem examiner, delay, and due process. The court’s decision ended the matter.

COMPLIANCE WITH CODE-MANDATED DEADLINES

Statutory requirements impose deadlines for swift and efficient Examiner case processing. The code-established deadlines covered below represent our principal time requirements. We were 98% complaint with our deadlines.

20.24.098 Time limits

In all matters where the examiner holds a hearing on applications under K.C.C. 20.24.070, the hearing shall be completed and the examiner’s written report and recommendations issued within twenty-one days from the date the hearing opens, excluding any time required by the applicant or the department to obtain and provide additional information requested by the hearing examiner and necessary for final action on the application consistent with applicable laws and regulations.

In every appeal heard by the examiner pursuant to K.C.C. 20.24.080, the appeal process, including a written decision, shall be completed within ninety days from the date the examiner’s office is notified of the filing of a notice of appeal pursuant to K.C.C. 20.24.090.

When reasonably required to enable the attendance of all necessary parties at the hearing, or the production of evidence, or to otherwise assure that due process is afforded and the objectives of this chapter are met, these time periods may be extended by the examiner at the examiner’s discretion for an additional thirty days. With the consent of all parties, the time periods may be extended indefinitely. In all such cases, the reason for such deferral shall be stated in the examiner’s recommendation or decision. Failure to complete the hearing process within the stated time shall not terminate the jurisdiction of the examiner.

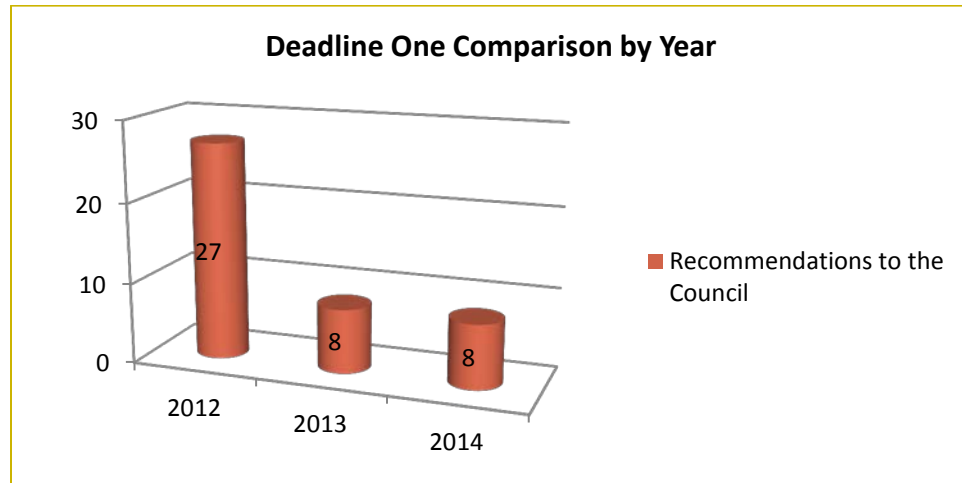
DEADLINES ONE AND TWO

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

DEADLINE ONE—21 DAYS FROM APPLICATION HEARING OPEN TO REPORT

For Examiner recommendations to the Council on an application (such as for “open space” taxation cases), the deadline for issuing Examiner reports is twenty-one days after a hearing opens. We were compliant in each instance. After reducing our average time from 27 days in 2012 to 8 days, we held steady at 8 days for 2014.

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%
TOTAL	9	100%



DEADLINE TWO—90 DAYS FROM APPEAL TRANSMITTAL TO REPORT

The second deadline relates to all matters on which the Examiner acts as the County’s 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 this deadline in every instance, averaging 52 days from receipt to decision. That represents a 7 day increase from 2013 but a 34 day decrease from 2012.

20.24.097 Expeditious processing.

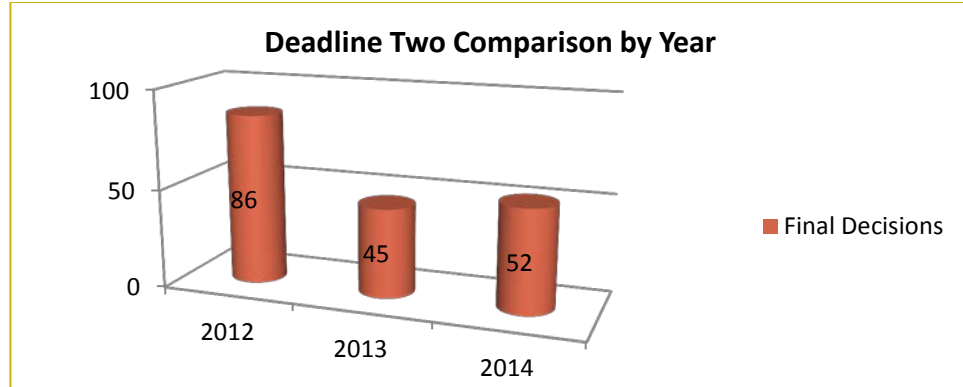
A. Hearings shall be scheduled by the examiner to ensure that final decisions are issued within the time periods provided in K.C.C. 20.20.100....

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.

....

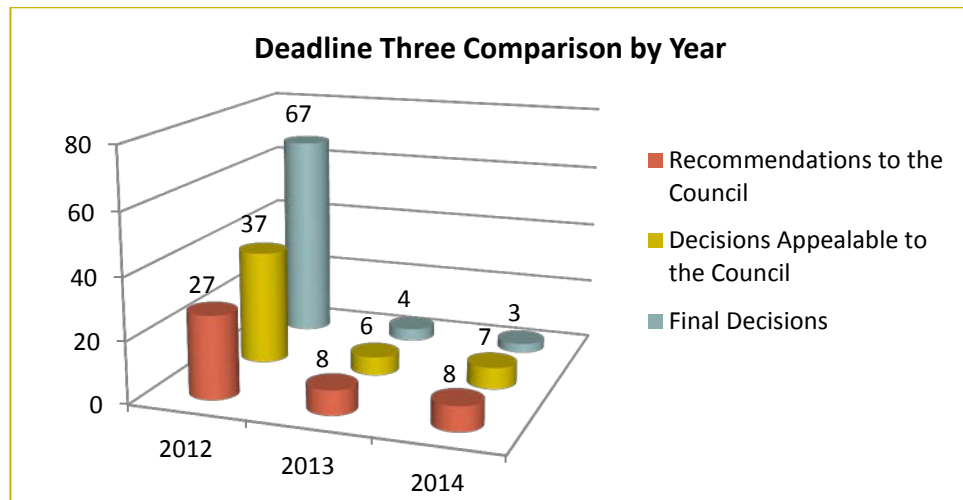


DEADLINE THREE—10 DAYS FROM HEARING CLOSE TO REPORT

The third deadline relates to all classes of cases, requiring the Examiner to issue findings and conclusions no later than ten calendar days following a hearing’s conclusion. We were 96% compliant with that deadline. And our two “misses” were by a single day each.

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	90%
DECISIONS APPEALABLE TO THE COUNCIL		
Preliminary plats	7	100%
FINAL DECISIONS		
Code enforcement	2	100%
Other	1	100%
OVERALL	6	96%

After dramatically decreasing our averages from 2012 to 2013, we stayed steady from 2013 to 2014.



INVESTING IN LEADERSHIP DEVELOPMENT

Having experienced significant changes in our office leadership structure and staffing over the last few years, and given our active involvement with the Council’s Equity and Social Justice Legislative Team, we decided to invest in training to assist in developing our leadership skills. We sent our office manager to a weeklong course, “Foundations of Strategic Management,” sponsored by the Evans School of Public Affairs, Cascade Executive Program. The extensive course covered topics such as strategic alignment, building organizational culture, leading effective teams, improving public value, leadership styles and strategy, and more. We are deliberately integrating the skills learned in our ongoing efforts to improve the services we provide to all of our stakeholders, as well as to our interactions with colleagues.

STREAMLINING ELECTRONIC OPERATIONS

Examiner cases involve significant paperwork. Some paperwork is necessary; for example there are requirements that notices of hearings be mailed. But we have attempted to streamline things. On the front end, we have encouraged agencies to electronically transmit the documents that trigger Examiner involvement. In the middle, we have increased electronic exchange between parties (in scenarios where all parties have access to technology and there are no equity concerns). And on the back end, we digitize files, thereby facilitating long-term storage of the case files electronically, rather than boxes of paper that have to be searched by-hand and that require resources to route to pertinent storage facilities and physical storage space.

CODE SUGGESTIONS

Our final semi-annual report requirement is to identify any needed regulatory clarifications. While our work on a comprehensive overhaul of Examiner-related codes continued this period, we also identified one section in need of minor clarification.

KCC 23.32.110 states that:

The burden is on the appellant to demonstrate by a preponderance of the evidence that civil penalties were assessed after achieving compliance or that the penalties are otherwise erroneous or excessive under the circumstances. If the hearing examiner grants the appeal, the examiner shall modify the assessment of civil penalties accordingly. ***If the hearing examiner denies the appeal in whole or in part, the assessed civil***

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.

penalties shall be reinstated in full. The hearing examiner’s decision is final.

That highlighted sentence cannot really mean what it says. Take the example of an agency issuing penalties in a case involving two violations. If an examiner grants the appeal as to violation one and denies the appeal as to violation two, she would be “den[ying] the appeal in ... part.” Yet in good conscience she would only reinstate the penalties associated with the second violation. One way to clarify the language would be:

The burden is on the appellant to demonstrate by a preponderance of the evidence that civil penalties were assessed after achieving compliance or that the penalties are otherwise erroneous or excessive under the circumstances. If the hearing examiner grants the appeal, in whole or in part, the examiner shall modify the assessment of civil penalties accordingly. If the hearing examiner denies the appeal in full (~~whole or in part~~), the assessed civil penalties shall be reinstated in full. The hearing examiner’s decision is final.

We have shared the above language with Council’s central staff, and we understand it will be addressed the next time Title 23 is updated.

CONCLUSION

We began 2014 in a better position than we occupied in 2013, and we ended 2014 in a better position than we started it. We welcome any questions about 2014 or any suggestions for how to improve further in 2015. We will present our next semi-annual report on or before September 1, 2015.

Submitted March 2, 2015,



David Spohr, Hearing Examiner