

The recommendation of the Comprehensive Plan is routinely noted in Staff reports. We examined these reports for the reasons that Staff felt were sufficient to approve a petition that did not fit the Comprehensive Plan. These reasons are listed below:

- No reason given (15)
- Unlikely to develop per Comprehensive Plan (7)
- Would be compatible with some abutting densities (2)
- New Comprehensive Plan does fit (2)
- Consistent with abutting uses (2)
- Adjacent to commercial
- Will mix up the uses and that's good
- Would be compatible with abutting uses
- Not too different
- Might be developed per Comprehensive Plan in the future
- Minor shift
- Legally establish existing businesses
- Small deviation
- Interchangeable with other Comprehensive Plan category
- Because close to canal
- Industrial portion under water therefore okay to zone for residential
- Because it expands use on next parcel
- Existing zoning higher density than Comprehensive Plan
- Consistent with area
- Legally establishes a business, allows business to expand
- Current development pattern doesn't fit with Plan
- Similar uses in the area
- Use would fit with road
- Compatible with Comprehensive Plan on part of land
- Acceptable deviation
- Similar to previous zoning
- Legally establish existing business
- Compatible with abutting uses
- More appropriate than Comprehensive Plan
- Minor deviation

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Who Agreed With The Public in 2004?

The Public approved 99 (63%) and denied 36 (23%) of the 157 petitions that either fit or did not fit the Comprehensive Plan. We could not find definitive information on the position of the Public in 22 cases. These cases are not part of the information presented here.

Figure 13 shows the agreement the Public received from the other decision-making groups. This figure has two rows of three pie charts. The top row represents the petitions that the Public approved (represented by blue) and what the Staff, HE, and MDC positions were on this set of petitions. The bottom row represents the petitions that the Public denied (represented by salmon color) and what the positions of the other groups were.

When the Public approved petitions, it was met with overwhelming agreement by all three of the other groups. The HE was most likely to disagree with the Public in these cases but only 6% of the time. The Staff disagreed with the Public 4 times (4%), while the MDC never disagreed with this decision by the Public.

On the other hand, when the Public denied petitions, agreement was hard to find. The Staff disagreed with the Public's decision to deny 67% of the time. The HE and the MDC disagreed with that position 80% and 77% of the time, respectively.

The bottom line for the Public in 2004 was, like Staff, if they wanted to prevail in their position on a petition, they needed to approve the petition. Unlike Staff, who argue for or against a petition during a hearing, the Public is most likely to appear at a hearing only when it opposes a petition. This gives the erroneous impression that the Public opposes nearly every petition, which is far from the truth. When the public does appear at a hearing in opposition, it prevailed less than a quarter of the time.

Figure 14 shows two pie charts. The one on the left represents the petitions that the Public approved and what percentage fit the Comprehensive Plan. The chart on the right represents the petitions that the Public denied and what percentage of those petitions fit the Comprehensive Plan.

During our study time frame, 60% of the petitions that the Public approved fit the Comprehensive Plan, while 69% of the petitions that the Public denied did not fit the Comprehensive Plan. This pattern is exactly what one would expect if a group were using the Comprehensive Plan as the most important criterion of a set of criteria.

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Who Agreed With the Public's Recommendations?

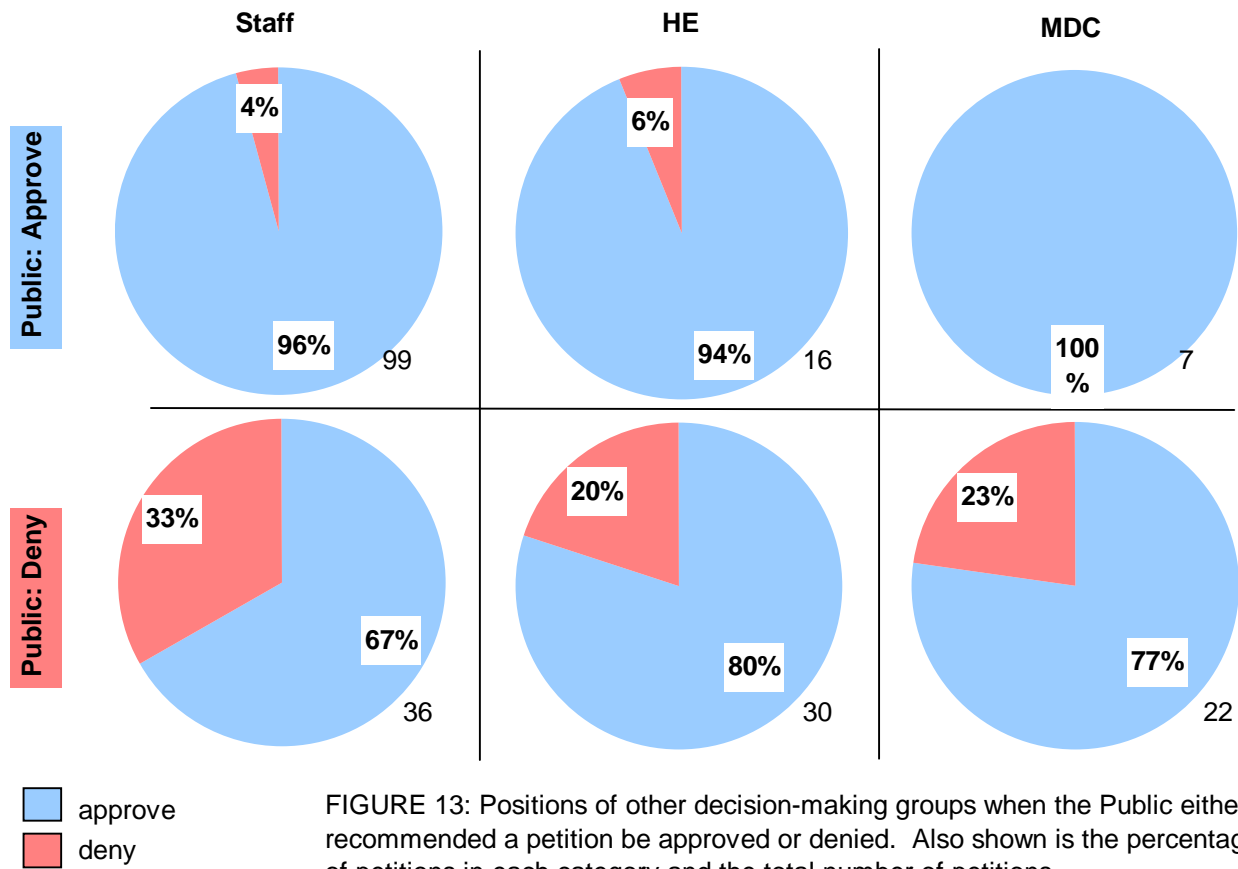


FIGURE 13: Positions of other decision-making groups when the Public either recommended a petition be approved or denied. Also shown is the percentage of petitions in each category and the total number of petitions.

Did the Public Comply with Comprehensive Plan?

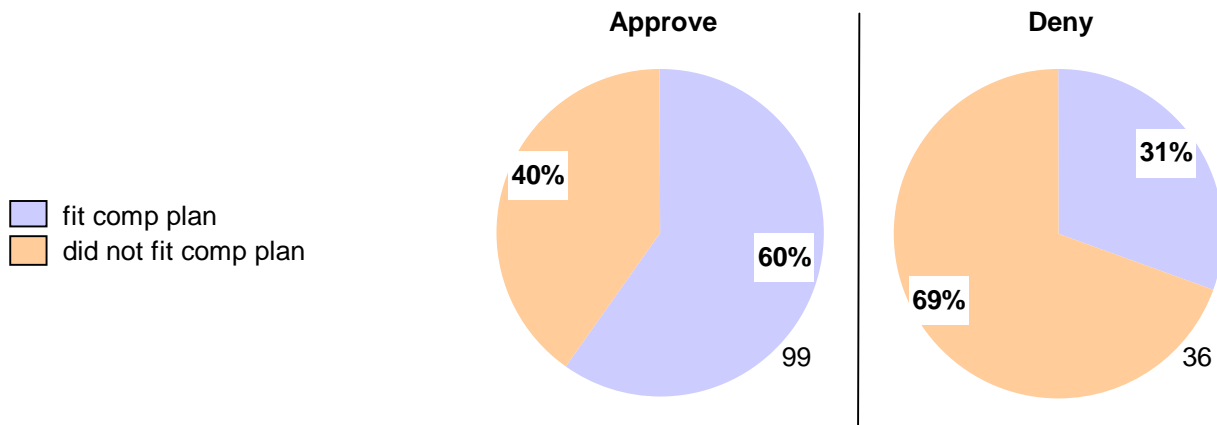


FIGURE 14: Compliance of Petitions with the Comprehensive Plan, depending upon the Public's recommendation. For reference, the proportion of the Public's recommended actions is shown. Also shown is the percentage of petitions in each category and the total number of petitions.

Who Agreed With The Hearing Examiner in 2004?

The HE approved 58 (89%) and denied 7 (11%) of the 65 petitions that either fit or did not fit the Comprehensive Plan. This does not include the 2 petitions that were subsequently withdrawn, which would increase the denial rate to 13%. Figure 15 shows the agreement the HE received from the other decision-making groups. This figure has two rows of three pie charts. The top row represents the petitions that the HE approved (represented by blue) and what the Staff, the Public, and MDC positions were on this set of petitions. Again, the “?” category of the Public’s decision represents petitions for which we could not find definitive information regarding the Public’s stand. The bottom row represents the petitions that the HE denied (represented by salmon color) and the positions of the other groups.

When the HE approved petitions, that decision was met with agreement by Staff (76%) and the MDC (73%). The Public was most likely to disagree with the HE in these cases and did disagree between 41 and 74% of the time.

In the 7 instances when the HE denied petitions, both the Staff and the Public agreed – 71% and 86%, respectively. The MDC, however, disagreed with the HE decision to deny 67% of the time, overturning 4 of 6 of the HE decisions to deny petitions.

The bottom line for the HE in 2004 was, like Staff and the Public, if she wanted to prevail in her position on a petition, she needed to approve the petition.

Figure 16 shows two pie charts. The one on the left represents the petitions that the HE approved and what percentage fit the Comprehensive Plan. The chart on the right represents the petitions that the HE denied and what percentage of those petitions fit the Comprehensive Plan.

During our study time frame, 55% of the petitions that the HE approved fit the Comprehensive Plan, while only 14% of the petitions that the HE denied fit the Comprehensive Plan. The latter figure drops to 11% if the two petitions that were withdrawn after the HE denied them. In either case, the HE finds compliance with the Comprehensive Plan sufficient to approve a petition. But, if a petition does not fit the Comprehensive Plan, the HE requires substantially more reason to deny the petition. Of the 38 petitions that did not fit the Comprehensive Plan, the HE denied only 6. (or 8 denied of 40 if you include the two withdrawn petitions)

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Who Agreed With the Hearing Examiner's Decision?

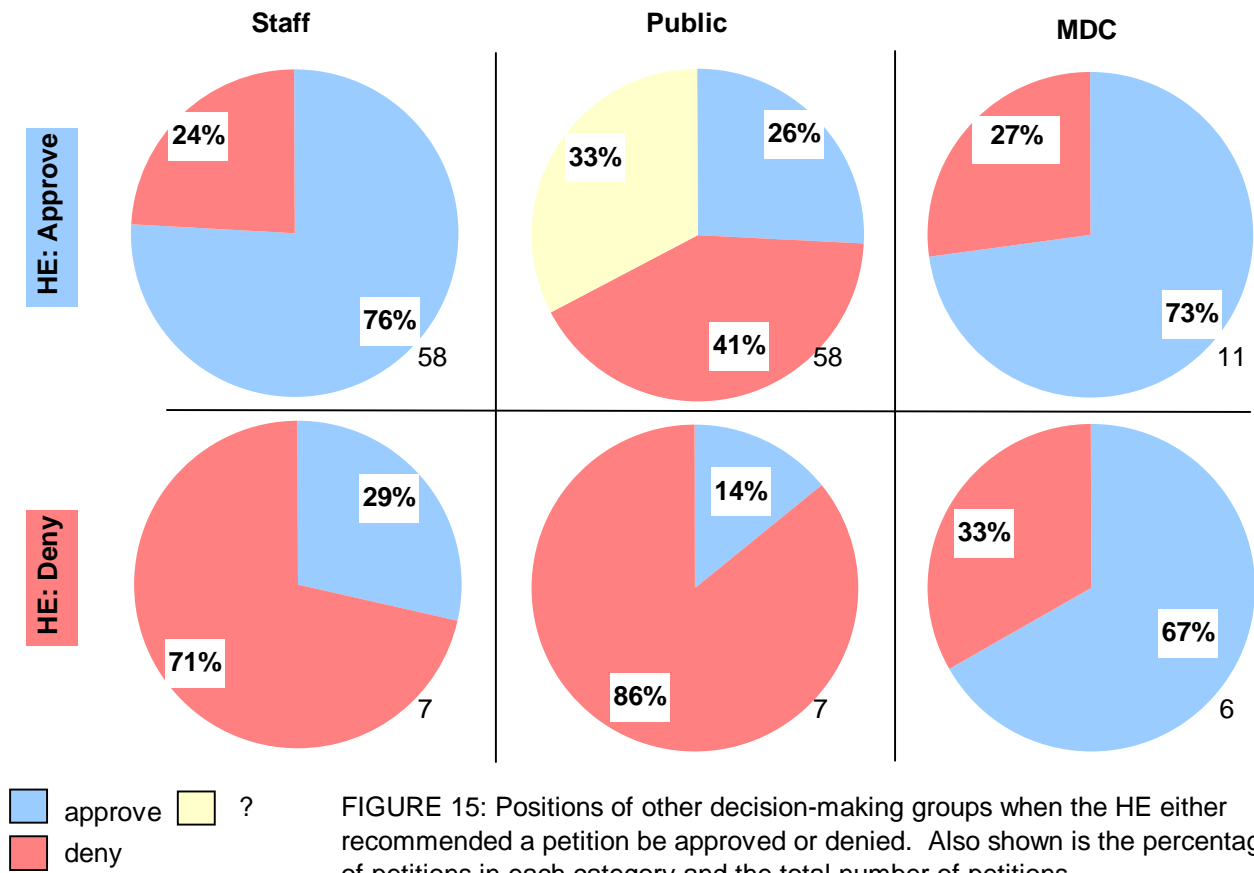


FIGURE 15: Positions of other decision-making groups when the HE either recommended a petition be approved or denied. Also shown is the percentage of petitions in each category and the total number of petitions.

Did the Hearing Examiner Comply with Comprehensive Plan?

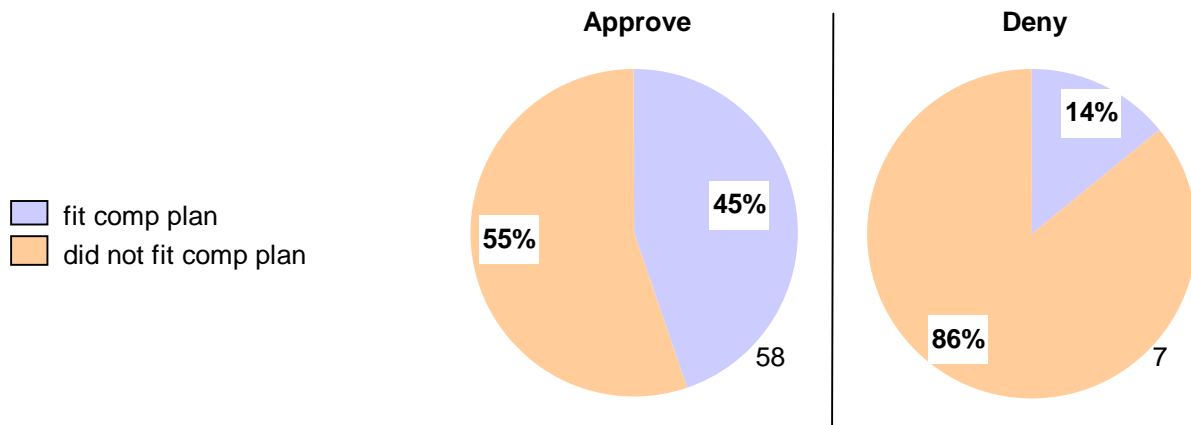


FIGURE 16: Compliance of Petitions with the Comprehensive Plan, depending upon the HE's recommendation. For reference, the proportion of the HE's decisions is show. Also shown is the percentage of petitions in each category and the total number of petitions.

When a decision of the HE is appealed to the MDC for re-hearing, the HE must write a report delineating the reasons for her decision. We examined these reports for the reasons that the HE felt were sufficient to approve a petition that did not fit the Comprehensive Plan. These reasons are listed below:

- Minor deviation (3)
- Non-conventional use that happens to be a business
- Non-intrusive nature of the business
- Concerns of the neighborhood organization and staff were deliberately addressed by the petitioner

The data has shown that the HE denies few petitions. A contributing factor might be if Staff and the Public took different positions during the hearings. To examine this possibility we looked at the HE decisions in cases where these two groups agreed. Table 3 shows those data. Staff and the Public agreed in at least 27 of 74 cases.

HE Decision:	Approve	Deny
Staff & Public both approve	14	0
<i>Staff & Public both deny</i>	7	6
Total	21	6

TABLE 3: The decision of the HE when Staff and the Public agree on a petition.

As can be seen from Table 3, the HE approved all 14 petitions where Staff and the Public both approved of the petition, not surprisingly. Ordinarily these would have been expedited and not even heard by the HE. When Staff and the Public both agreed that the petition should be denied, the HE chose to deny about half of the time. There are 19 cases where we do not know the position of the Public and thus cannot analyze this information any further.

What happens to the petitions after the HE hearing and decision? Table 4 shows that when the HE approved a petition, it was seldom appealed to the MDC (19% of the time). But, when the HE denied a petition, it was frequently appealed (67% of the time).

	HE approved	HE denied
Total	58	9
Appealed to MDC	11	6
Withdrawn	0	2

TABLE 4: How often the HE decision is appealed to the MDC for re-hearing.

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Who Agreed With The Metropolitan Development Commission in 2004?

The MDC approved 25 (81%) and denied 6 (19%) of the 31 petitions that either fit or did not fit the Comprehensive Plan. Figure 17 shows the agreement they received from the other decision-making groups. This figure has two rows of three pie charts. The top row represents the petitions that the MDC approved (represented by blue) and what the Staff, the Public, and HE positions were on this set of petitions. Again, the “?” category of the Public’s decision represents petitions for which we could not find definitive information regarding the Public’s stand. The bottom row represents the petitions that the MDC denied (represented by salmon color) and the positions of the other groups.

When the MDC approved petitions, it was met with agreement with the Staff and the HE, 72% and 67%, respectively. The MDC overturned 4 HE decisions to deny a petition. The appeal of the HE decision by the petitioner had a high rate of reversal by the MDC. The Public disagreed with the MDC decisions to approve petitions 68 to 72% of the time.

The 6 times when the MDC denied petitions, the Public was most likely to agree, doing so in at least 5 of the 6 decisions. Staff agreed half the time and the HE disagreed 3 out of 5 times. The MDC overturned 3 of the 11 petitions that the HE approved and which were appealed.

As was the case with the HE, the Public appeared before the MDC primarily to oppose petitions, doing so at least 25 times out of 35 cases heard. This again might easily lead to the erroneous impression that the Public opposes petitions as a matter of routine, which is definitely not true. The Staff, on the other hand, supported most petitions that were heard by the MDC in 2004, doing so 24 times out of the 35 rezoning cases heard.

Figure 18 shows two pie charts. The one on the left represents the petitions that the MDC approved and what percentage fit the Comprehensive Plan. The chart on the right represents the petitions that the MDC denied and what percentage of those petitions fit the Comprehensive Plan.

During our study time frame, 24% of the petitions that the MDC approved fit the Comprehensive Plan, while 50% of the petitions that the MDC denied fit the Comprehensive Plan. Of these 31 petitions, only 9 fit the Comprehensive Plan. Again, the MDC denied a greater percentage of petitions that fit the Comprehensive Plan than those that did not fit the Comprehensive Plan. It is difficult to see that the Comprehensive Plan is large part of the criteria applied by the MDC to the decisions it makes.

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