

PHED COMMITTEE #2
April 11, 2019

Worksession

MEMORANDUM

April 9, 2019

TO: Planning, Housing and Economic Development
FROM: ^{JCA} Jean C Arthur, Legislative Analyst
SUBJECT: **Worksession: FY20 Operating Budget**
Office of Zoning and Administrative Hearings
PURPOSE: Make recommendations on the FY20 Operating Budget for the Office of Zoning and Administrative Hearings

Those expected to attend this worksession include:

Martin L. Grossman, Director, Office of Zoning and Administrative Hearings
Sara Behanna, Office of Zoning and Administrative Hearings
Phil Weeda, Office of Management and Budget (OMB)

Relevant pages from the FY20 Recommended Operating Budget are attached on ©1-4.

Background

The principal responsibility of the Office of Zoning and Administrative Hearings (OZAH) is to conduct due process administrative hearings on land use and other matters. OZAH conducts hearings on all rezoning applications for the District Council, as well as on applications for development plan amendments and floating plan amendments requiring a public hearing; all conditional use applications; and occasional variances and administrative appeals for the Board of Appeals.

The office has a secondary role in providing advice to Council staff and other offices on land use matters. In this respect, the Director routinely reviews and comments on proposed zoning text amendments. The office also prepares and distributes information about the County's land use process and responds to frequent public inquiries related to specific zoning cases and to planning and zoning in general.

OZAH presides over civil rights matters referred for hearing by the Human Rights Commission and the Commission on Common Ownership Communities. The office is responsible for conducting hearings in any matter referred by a County agency that is authorized to request an OZAH hearing. This includes site plan enforcement cases referred by the Planning Board and personnel matters referred by the Merit System Protection Board.

Summary

The Executive’s recommended budget for the Office of Zoning and Administrative Hearings shows a decrease of 2.6 percent. That reduction is in operating expenses.

Council Staff Recommendation: Approve as submitted by the Executive.

Overview

For FY20, the County Executive recommends a total of \$686,084, a decrease of \$17,975 or 2.6 percent from the FY19 Approved Budget of \$704,059. The recommended budget funds four full-time positions and a total of 4.00 FTEs.

	<i>FY18 Actual</i>	<i>FY19 Approved</i>	<i>FY20 Recommended</i>	<i>% Change FY19 – FY20</i>
<i>Expenditures by fund</i>				
General Fund	\$666,079	\$704,059	\$686,084	-2.6%
<i>Expenditures by type</i>				
Personnel Cost	\$589,776	\$606,191	\$626,109	3.3%
Operating Expenses	\$76,303	\$97,868	\$59,975	-38.7%
<i>Total Expenditures</i>	\$666,079	\$704,059	\$686,084	-2.6%
<i>Positions</i>				
Full-Time	4	4	4	-
Part-Time	0	0	0	-
<i>FTEs</i>	4	4	4	-

Operating Expenses

The FY20 recommended budget shows a 38.7 percent reduction in operating expenses for the Office of Zoning and Administrative Hearings.

During the FY19 budget process, the Council appropriated \$10,000 in operating expenses to the OZAH budget to contribute to refurbishing of the hearing room and library it shares with the Board of Appeals. The Executive is recommending that this one-time amount be removed from the OZAH budget plus additional reductions, leaving the office with less (-\$16,328) operating expenses dollars than it spent in FY18.

The Office of Zoning and Administrative Hearings uses operating expenses to fund transcript costs, contract hearing examiner services and normal office expenses. Under normal circumstances, the proposed budget for OZAH, even as reduced by OMB, may cover OZAH's expenses for FY 2020; however, in FY 2020, as in the past couple of years, the open question is whether OZAH will be faced with hundreds of small cell tower conditional use cases.

The uncertain outcomes of Zoning Text Amendments (ZTAs) relating to cell towers that may be considered by the new Council, and the effects of the latest FCC Rulings, make it impossible to accurately estimate how many new cell tower conditional use applications OZAH may face in FY 2020.

Under the current (FY19) budget cuts required by the County Executive, OZAH lost \$14,069 from Consultant Services and \$4,824 from Legal/Attorney fees. Those funds are used to pay for contract hearing examiners, upon whom OZAH must rely more heavily if it receives a significant number of new cell tower applications. The Office also lost \$8,000 from transcript costs, a cut which will reduce its ability to speed up report writing by getting expedited transcripts.

The Office of Zoning and Administrative Hearings consists of four positions, two hearing officers and two support staff. Personnel costs makes up over 91 percent of its budget.

While OZAH's caseload is always somewhat difficult to predict, the cell tower controversy adds a wildcard. In an ordinary year, OZAH might receive 25 to 35 new cases. The Transmission Facility Coordinating Group (the "TFCG" or "Tower Committee") reports that many hundreds of applications for small cell towers are pending. Depending on the Council's final decisions on related ZTA proposals and on how the state and federal governments act on these issues, the applications before the TFCG could result in hundreds of new conditional use applications filed with OZAH, or a substantial portion of them could end up being approvable without ever coming through OZAH.

The Executive's recommended 38.7 percent reduction in operating funds is manageable if OZAH is not hit with a barrage of new cell tower conditional use applications in FY20. If many new cell tower applications are filed in FY 2020, OZAH will need additional funding to pay for contract Hearing Examiner fees and related hearing expenses.



Zoning and Administrative Hearings

RECOMMENDED FY20 BUDGET
\$686,084

FULL TIME EQUIVALENTS
4.00

MARTIN GROSSMAN, DIRECTOR

MISSION STATEMENT

The mission of the Office of Zoning and Administrative Hearings (OZAH) is to conduct due process hearings in land use and other administrative matters in a manner that protects the rights of the participants, provides a complete record in each case, results in a thorough and balanced report or decision and serves the public interest.

BUDGET OVERVIEW

The total recommended FY20 Operating Budget for the Office of Zoning and Administrative Hearings is \$686,084, a decrease of \$17,975 or 2.55 percent from the FY19 Approved Budget of \$704,059. Personnel Costs comprise 91.26 percent of the budget for four full-time position(s) and no part-time position(s), and a total of 4.00 FTEs. Total FTEs may include seasonal or temporary positions and may also reflect workforce charged to or from other departments or funds. Operating Expenses account for the remaining 8.74 percent of the FY20 budget.

COUNTY PRIORITY OUTCOMES

While this program area supports all seven of the County Executive's Priority Outcomes, the following is emphasized:

Effective, Sustainable Government

DEPARTMENT PERFORMANCE MEASURES

Performance measures for this department are included below (where applicable). The FY19 estimates reflect funding based on the FY19 Approved Budget. The FY20 and FY21 figures are performance targets based on the FY20 Recommended Budget and funding for comparable service levels in FY21.

Measure	Actual FY17	Actual FY18	Estimated FY19	Target FY20	Target FY21
Program Measures					
Average time from filing a case until the first hearing date is scheduled (months) ¹	4	4	4	4	4
Number of Hearing Examiner decisions overturned on appeal ²	0	0	0	0	0
Percentage of all legal deadlines and requirements met	100	100	100	100	100



Measure	Actual FY17	Actual FY18	Estimated FY19	Target FY20	Target FY21
Percentage of Hearing Examiner recommendations accepted by County Council, the Human Rights Commission, the CAO, and the Board of Registration and the percentage of Hearing Examiner decisions upheld by the Board of Appeals	100	100	100	100	100
Total cases completed ³	32	25	25	25	25

¹ Hearings in land-use cases are initially scheduled within 4 months of filing. When the hearings are delayed, it is almost always at the request of the applicant to accomplish changes in the applicant's plans required by the Planning Department.

² At this time, no OZAH cases are pending in the courts. The Maryland Court of Special Appeals upheld the findings of OZAH Hearing Examiners in three cases in FY18. One of the cases is a human rights matter (*Erik Belfiore v. Merchant Link, LLC*, 236 Md. App. 32, 180 A.3d 230 (2018)). Two are land use cases (*Brandywine Senior Living at Potomac LLC, et al. v. Ronald A. Paul.*, 237 Md.App. 195, 184 A.3d 48 (2018); and *Costco Wholesale Corp. v. Montgomery County, Maryland, et al.*, Ct of Special Appeals No. 2450, OZAH Case No. S-2863).

³ The number of new cases filed in FY18 (25) was a decrease from FY17 (33), but slightly greater than the number of cases filed in FY16 (24). The current projections for new cases for future fiscal years is estimated to be 25 per year.

PROGRAM CONTACTS

Contact Martin Grossman of the Office of Zoning and Administrative Hearings at 240.777.6667 or Naeem M. Mia of the Office of Management and Budget at 240.777.2786 for more information regarding this department's operating budget.

PROGRAM DESCRIPTIONS

☼ Zoning and Administrative Hearings

The Hearing Examiner receives applications for certain zoning matters decided by the County Council; schedules and conducts public hearings; prepares and issues reports and recommendations for County Council action; receives applications, hears and decides special exception and conditional use cases; schedules and conducts referral hearings from other departments, such as the Commission on Human Rights and the Commission on Common Ownership Communities; adjudicates objections from findings of the Department of Housing and Community Affairs regarding accessory apartment applications; maintains administrative records for public inspection; collects zoning application fees; responds to public inquiries on zoning, special exception, and conditional use cases; and works with other County agencies in the preparation, revision, and review of procedural rules, fee schedules, and zoning text amendments.

BUDGET SUMMARY

	Actual FY18	Budget FY19	Estimate FY19	Recommended FY20	%Chg Bud/Rec
COUNTY GENERAL FUND					
EXPENDITURES					
Salaries and Wages	486,261	496,191	513,109	507,478	2.3 %
Employee Benefits	103,515	110,000	102,172	118,631	7.9 %
County General Fund Personnel Costs	589,776	606,191	615,281	626,109	3.3 %
Operating Expenses	76,303	97,868	5,804	59,975	-38.7 %
County General Fund Expenditures	666,079	704,059	621,085	686,084	-2.6 %
PERSONNEL					

BUDGET SUMMARY

	Actual FY18	Budget FY19	Estimate FY19	Recommended FY20	%Chg Bud/Rec
Full-Time	4	4	4	4	—
Part-Time	0	0	0	0	—
FTEs	4.00	4.00	4.00	4.00	—
REVENUES					
Other Charges/Fees	5,000	0	0	0	—
Zoning Fees	48,886	65,000	65,000	65,000	—
County General Fund Revenues	53,886	65,000	65,000	65,000	—

FY20 RECOMMENDED CHANGES

		Expenditures	FTEs
COUNTY GENERAL FUND			
	FY19 ORIGINAL APPROPRIATION	704,059	4.00
<u>Other Adjustments (with no service impacts)</u>			
Increase Cost: FY20 Compensation Adjustment		13,728	0.00
Increase Cost: Annualization of FY19 Personnel Costs		3,275	0.00
Increase Cost: Retirement Adjustment		2,915	0.00
Decrease Cost: Temporary Clerical Services [Zoning and Administrative Hearings]		(1,000)	0.00
Decrease Cost: Contract Hearing Examiners [Zoning and Administrative Hearings]		(4,824)	0.00
Decrease Cost: Transcription Services [Zoning and Administrative Hearings]		(8,000)	0.00
Decrease Cost: Elimination of One-Time Items Approved in FY19		(10,000)	0.00
Decrease Cost: Consultant Services [Zoning and Administrative Hearings]		(14,069)	0.00
	FY20 RECOMMENDED	686,084	4.00

FUTURE FISCAL IMPACTS

CE RECOMMENDED (\$000S)

Title	FY20	FY21	FY22	FY23	FY24	FY25
COUNTY GENERAL FUND						
EXPENDITURES						
FY20 Recommended	686	686	686	686	686	686
No inflation or compensation change is included in outyear projections.						
Labor Contracts	0	2	2	2	2	2
These figures represent the estimated annualized cost of general wage adjustments, service increments, and other negotiated items.						
Subtotal Expenditures	686	688	688	688	688	688

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