

Worksession

MEMORANDUM

April 23, 2014

TO: Planning, Housing and Economic Development Committee
FROM: Jean C. Arthur, ^{JCA} Legislative Analyst
SUBJECT: **Worksession: FY15 Operating Budget
Office of Zoning and Administrative Hearings**

At this meeting the Committee will review the Executive's recommendation for the FY15 Operating Budget for the Office of Zoning and Administrative Hearings. Relevant pages from the FY15 Recommended Operating Budget are attached at ©1-3.

The following persons are expected at this worksession:

Martin Grossman, Director, Office of Zoning and Administrative Hearings
Sara Behanna-Mosely, Office of Zoning and Administrative Hearings
Crystal Brockington Sallee, OMB

OVERVIEW

For FY15, the County Executive is recommending a total of \$587,415, a decrease of \$24,364 or 4 percent from the FY14 approved budget of \$611,779. Personnel costs are 87 percent of this budget. The Office has three full-time positions and one part-time position for 3.75 FTEs. The decrease in this budget is due to a personnel change.

	FY13 Approved	FY14 Approved	FY15 Recommended	% Change
EXPENDITURES				
General Fund				
• <i>Personnel</i>	\$516,083	\$535,489	\$511,001	-4.6%
• <i>Operating</i>	\$76,105	\$76,290	\$76,414	0.2%
Total Expenditures	\$592,188	\$611,779	\$587,415	-4.0%
PERSONNEL				
Full-time	3	3	3	0
Part-time	1	1	1	0
FTEs	3.75	3.75	3.75	0
REVENUE				
General Fund Revenue	\$10,667	\$65,000	\$65,000	0

Discussion

Caseload. The Office of Zoning and Administrative Hearings conducts hearings on matters from the Board of Appeals, Human Rights Commission, and Commission on Common Ownership Communities as well as zoning matters on which it has primary jurisdiction.

In FY13, the last year for which we have complete data, OZAH heard fifty-two cases, including many hearings involving a gas station at the Wheaton Costco and referrals from HRC and CCOC. Of those cases, eight were rezoning cases in which the District Council has the final decision.

The FY13 cases breakdown as follows:

Cases decided by the District Council	8
Special exceptions decided by the Hearing Examiner	3
Cases decided by the Board of Appeals	37
Referrals from the Human Rights Commission	1
Referrals from the Commission on Common Ownership	3
Total	52

To date in FY14, OZAH has seen received filings at a slower pace than FY13. However, OZAH expects that to change for the last quarter of the fiscal year now that the Council has adopted the Zoning Ordinance revisions.

FY14 Filings

FY14 Cumulative Filings to date	
Cases decided by the District Council	6
Special exceptions decided by the Hearing Examiner	3
Cases decided by the Board of Appeals	4
Referrals from the Human Rights Commission	3
Referrals from the Commission on Common Ownership	1
Total	17

Attached at ©5-7 is OZAH's FY13 Annual Report with more detailed information about its cases and other activity.

Budget Changes. Except for a recommended increase of \$124.00 in expenditures for printing and mailing, the changes in this budget are all due to adjustments in personnel costs.

Revenue. OZAH has collected \$59,110 to date in FY14.

Staff Recommendation: Approve as submitted by the County Executive.

Zoning and Administrative Hearings

MISSION STATEMENT

The mission of the Office of Zoning and Administrative Hearings 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 FY15 Operating Budget for the Office of Zoning and Administrative Hearings is \$587,415, a decrease of \$24,364 or 4.0 percent from the FY14 Approved Budget of \$611,779. Personnel Costs comprise 87.0 percent of the budget for three full-time positions and one part-time position, and a total of 3.75 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 13.0 percent of the FY15 budget.

The County Council approved the Zoning Ordinance rewrite on February 25, 2014. Since the Council's approval, the Office of Zoning and Administrative Hearings will pay the costs of all special exception transcripts, which the Board of Appeals now pays, thereby increasing the department's operating expenses.

LINKAGE TO COUNTY RESULT AREAS

While this program area supports all eight of the County Result Areas, the following are emphasized:

- ❖ **A Responsive, Accountable County Government**

DEPARTMENT PERFORMANCE MEASURES

Performance measures for this department are included below. The FY14 estimates reflect funding based on the FY14 approved budget. The FY15 and FY16 figures are performance targets based on the FY15 recommended budget and funding for comparable service levels in FY16.

Measure	Actual FY12	Actual FY13	Estimated FY14	Target FY15	Target FY16
Program Measures					
Number of Hearing Examiner decisions overturned on appeal ¹	1	0	0	0	0
Total cases completed ²	43	52	28	30	30
Average time from filing a case until hearing is held (months) ³	4.5	4.5	4	4	4
Percentage of Hearing Examiner recommendations accepted by County Council, the Human Rights Commission and the CCOC, and the percentage of Hearing Examiner decisions upheld by the Board of Appeals	98	100	100	100	100
Percentage of all legal deadlines and requirements met	100	100	100	100	100

¹ The District Council accepted the Hearing Examiners' recommendations in the six cases in which Hearing Examiner reports and recommendations were submitted in FY 2013. The Board of Appeals accepted the Hearing Examiners' recommendations in all of the special exceptions it decided in FY 2013.

² The decline in the number of cases completed thus far in FY14 does not accurately reflect OZAH's FY14 workload. OZAH processed some very time-consuming matters in FY14, including DPA 13-02, which required 8 days of hearings, and S-2863, in which 28 days of hearings have been held to date. There has also been a recent influx of time-consuming HRC cases.

³ The scheduling of hearings in rezoning and special exception cases will continue to be dictated by the time needed by M-NCPPC Technical Staff and the Planning Board to complete their reviews.

ACCOMPLISHMENTS AND INITIATIVES

- ❖ **OZAH has actively participated in the project to re-write the County's Zoning Ordinance and the project to streamline the process for handling zoning and permitting applications.**



PROGRAM CONTACTS

Contact Martin Grossman of the Office of Zoning and Administrative Hearings at 240.777.6667 or Crystal B. Sallee of the Office of Management and Budget at 240.777.2778 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; 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; maintains administrative records for public inspection; collects zoning application fees; responds to public inquiries on zoning cases and certain special exception cases; and works with other County agencies in the preparation, revision, and review of procedural rules, fee schedules, and zoning text amendments. Administrative support involves preparing legal advertising and other forms of notice; providing court reporter services for hearings before the Hearing Examiners; coordinating the public hearing calendar; preparation of the Office's annual budget; printing and mailing; and general office services.

BUDGET SUMMARY

	Actual FY13	Budget FY14	Estimated FY14	Recommended FY15	% Chg Bud/Rec
COUNTY GENERAL FUND					
EXPENDITURES					
Salaries and Wages	359,392	439,860	377,531	411,359	-6.5%
Employee Benefits	78,091	95,629	88,507	99,642	4.2%
County General Fund Personnel Costs	437,483	535,489	466,038	511,001	-4.6%
Operating Expenses	77,586	76,290	76,226	76,414	0.2%
Capital Outlay	0	0	0	0	—
County General Fund Expenditures	515,069	611,779	542,264	587,415	-4.0%
PERSONNEL					
Full-Time	3	3	3	3	—
Part-Time	1	1	1	1	—
FTEs	3.75	3.75	3.75	3.75	—
REVENUES					
Board of Appeals Fees	1,100	0	0	0	—
Zoning Fees	11,717	65,000	65,000	65,000	—
Other Charges/Fees	-2,150	0	0	0	—
County General Fund Revenues	10,667	65,000	65,000	65,000	—

FY15 RECOMMENDED CHANGES

	Expenditures	FTEs
COUNTY GENERAL FUND		
FY14 ORIGINAL APPROPRIATION	611,779	3.75
Other Adjustments (with no service impacts)		
Increase Cost: FY15 Compensation Adjustment	25,120	0.00
Increase Cost: Group Insurance Adjustment	760	0.00
Increase Cost: Retirement Adjustment	684	0.00
Increase Cost: Printing and Mail	124	0.00
Decrease Cost: Annualization of FY14 Personnel Costs	-51,052	0.00
FY15 RECOMMENDED:	587,415	3.75

FUTURE FISCAL IMPACTS

Title	CE REC.					
	FY15	FY16	FY17	(\$000's)		
	FY18	FY19	FY20			
This table is intended to present significant future fiscal impacts of the department's programs.						
COUNTY GENERAL FUND						
Expenditures						
FY15 Recommended	587	587	587	587	587	587
No inflation or compensation change is included in outyear projections.						
Labor Contracts	0	8	8	8	8	8
These figures represent the estimated annualized cost of general wage adjustments, service increments, and associated benefits.						
Subtotal Expenditures	587	595	595	595	595	595



MONTGOMERY COUNTY, MARYLAND

MEMORANDUM

August 8, 2013

TO: Nancy Navarro, President
Montgomery County Council
FROM: Martin L. Grossman, Director
Office of Zoning and Administrative Hearings
SUBJECT: Annual report for FY 2013

The Office of Zoning and Administrative Hearings (OZAH) completed a total of 52 cases during Fiscal Year 2013, as follows:

Table with 2 columns: Case Category and Count. Categories include District Council (8), Hearing Examiner (3), Board of Appeals (37), HRC (1), and CCOC (3). Total is 52.

In addition to the 40 special exception cases (37 BOA cases and 3 OZAH cases) closed in Fiscal Year 2013, OZAH handled a series of very complicated and time-consuming matters in FY 2013. These included five hotly contested rezoning cases (G-881, G-908, G-909, G-910 and G-954); one uncontested rezoning case (G-913); a hard-fought schematic development plan amendment case (SDPA 12-1) linked with a special exception case (S-2830); the scientifically complex and ongoing battle over the proposed Costco gas station at Wheaton Plaza, which has already resulted in eight hearing days, with eleven more scheduled (S-2863); three time-consuming cases referred to OZAH by the Commission on Common Ownership Communities (CCOC); three new Human Rights Commission referrals; and many other matters. A complete list of the cases OZAH completed in FY 2013 is attached.

During FY 13, the Council also amended the procedures for handling accessory apartment applications (ZTA 12-11 and Bill 31-12), converting most of them into licensing applications before

1 The total number of BOA cases completed by OZAH in FY 2013 is 37, not 36 as reflected in the last quarterly report. This discrepancy results from the fact that one of the cases returned to the Board of Appeals by OZAH in FY 2013 (S-2794, the first Costco special exception application, which was withdrawn by the Applicant) was inadvertently not counted in the second quarter statistics, resulting in an understatement in the quarterly reports of one BOA case completed by OZAH during the fiscal year, and an understatement of the total of all cases completed in the fiscal year. Of the 37 completed BOA cases, OZAH held hearings and filed reports in 28 cases. The other 9 were withdrawn.

2 This figure is one higher than the corresponding figure in the quarterly reports for the reason set forth in footnote 1 above.

the Department of Housing and Community Affairs (DHCA), with Objections from DHCA's rulings to be filed directly with OZAH and with special exception applications to be filed directly with OZAH when the proposed accessory apartment does not meet parking and/or setback requirements. OZAH has worked with DHCA to establish a consistent procedure for implementing this new program.

All of this has been occurring against the backdrop of the ongoing Zoning Ordinance re-write process and the "streamlining" project spearheaded by the Department of Permitting Services. OZAH has participated consistently in both of these efforts, and we have made a number of suggestions which would reduce the time for reviews and final decisions on special exceptions. OZAH also reviews and comments, where appropriate, on proposed Zoning Text Amendments.

The new fiscal year (FY 2013) also brought significant changes in our administrative staff and many new challenges. Our Administrative Specialist II left in November of 2012, and her permanent replacement was not in place until January 25, 2013, after a careful hiring process. Since the AS-II represents half of our administrative staff, it was important to get the right person to fill the post. We are fortunate to have Sara Behanna-Moseley now in that position.

OZAH continues to enjoy a high rate of acceptance of its reports and recommendations by the District Council, the Board of Appeals, the Human Rights Commission and the Commission on Common Ownership Communities (CCOC).

The District Council accepted the hearing examiners' recommendations in the six cases in which hearing examiner reports and recommendations were submitted in FY 2013 (G-881, G-908, G-909, G-910, G-913 and SDPA 12-1).³

The Board of Appeals accepted the hearing examiners' recommendations in all of the special exceptions it decided in FY 2013 (28 cases).⁴ In addition, nine special exception cases were withdrawn by the applicants, most of them because of the change in the accessory apartment law during the fiscal year. A listing of all the special exception cases handled by OZAH during the fiscal year is attached, including the three child care cases in which OZAH itself was the deciding body (SE 12-02, SE 12-03 and SE 12-04).

One Human Rights Commission case (HRC No. E-03541, *Angela Martin v. Media Cybernetics*) was closed by OZAH in FY 2013. No hearing was held by OZAH because it turned out that the case had been settled prior to the HRC referring it to OZAH. Another HRC case (*Gadol v. Westat Research Corporation*, HRC No. E-03173) was completed by OZAH in FY 2012, and the Human Rights Commission adopted the hearing examiner's recommendation of dismissal on June 24, 2013 (although it elected not to impose sanctions recommended by the Hearing Examiner). There are three Human Rights Commission cases remaining with OZAH.

Recently, the Commission on Common Ownership Communities (CCOC) has begun to refer cases to OZAH for hearings, as they are permitted to do under Code §10B-12(d). In FY 2013, the CCOC referred three cases to OZAH (C16-12, *Taylor v. Heritage*; C14-12, *Rosner v. Heritage*; and C51-11, *Brown v. Americana*).⁵ Hearings were held by OZAH in these cases and reports and recommendations were forwarded to the CCOC in Fiscal Year 2013. The CCOC adopted the hearing

³ One case (DPA 12-02) was forwarded for Council action without findings or a recommendation by the hearing examiner per Zoning Ordinance §59-D-1.74 because there was no opposition and the Planning Board did not request an OZAH hearing.

⁴ In a few cases, the BOA revised a condition recommended by the Hearing Examiner, and in one of those cases (S-2842), the BOA remanded the matter for an additional hearing, after which it approved the hearing examiner's recommendation.

⁵ The referral of the *Brown* case on January 2, 2013 was not picked up on OZAH's 3rd Quarter statistics, as it should have been. Counting it in, OZAH received a total of 31 new cases in FY 2013, and closed 52. There are 25 cases still pending. A corrected chart of "Work in Progress" for the 4th Quarter of FY 2013 is attached to reflect corrections of the minor statistical omissions from the quarterly reports discussed in this annual review.

examiner's recommendations in all three cases, although it disagreed with the hearing examiner's recommendation regarding a subsidiary issue as to the availability of some records in the *Brown* case.

A chart of workload indicators for the past five years is depicted below.

	FY 09	FY 10	FY 11	FY 12	FY 13
Staffing	1.75 HE + Contractors				
Completed Cases	41	38	54	43	52 ⁶
Expenditures	\$484,754	\$487,624	\$549,190	\$572,500	\$592,188
Cost per case	\$11,823	\$12,832	\$10,170	\$13,314	\$11,388

The table below summarizes cases pending as of the close of FY 2012 and the close of FY 2013.

	As of 6-30-12	As of 6-30-13
Cases to be decided by the District Council	9	4
Referrals: Board of Appeals	33	15
Human Rights Commission	1	3
CCOC	0	0
Special exceptions to be decided by Hearing Examiner	3	3
Total	46	25

We noted an decrease in new rezoning filings, down from four in FY 2012 (LMAs G-908, G-909, G-910 and G-912) to two in FY 2013 (LMAs G-913 and G-954). There were also two DPA applications filed in FY 2013, DPA 13-01 (which is connected with LMA G-954) and DPA 13-02. The referral of new accessory apartment cases from the Board of Appeals has been eliminated by the Council legislation discussed above, and it is too early to tell what volume of Objections from DHCA actions will be filed with OZAH and how many new accessory apartment special exceptions will be filed directly with OZAH, but we would expect that number to be relatively small. The level of new CCOC cases also cannot be predicted at this point.

The office collected \$29,325 in fees for FY 2013. This figure is consistent with the amount collected in FY 2011, but substantially less than the \$71,055 collected in FY 2012. The decrease in revenue this year is the result of a decrease in the number of LMA applications filed (from four to two), as mentioned above, as well as the amount of acreage involved.

Revenues from Fees

FY 13	\$ 29,325
FY 12	\$ 71,055
FY 11	\$ 28,650
FY 10	\$ 50,700
FY 09	\$178,690

In sum, OZAH continues to successfully manage its workload and expects to be able to do so in the current fiscal year. Should you have any questions, please do not hesitate to contact me.

MLG

⁶ This figure is one higher than the corresponding figure in the quarterly reports for the reason set forth in footnote 1 above.

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cc: Stephen Farber, Council Administrator
Lynn Robeson, Hearing Examiner
Jeff Zyontz, Legislative Attorney
Crystal Brockington Sallee, Office of Management & Budget
Jean Arthur, Legislative Analyst