

PHED COMMITTEE #3
April 13, 2015

MEMORANDUM

April 9, 2015

TO: Planning, Housing and Economic Development Committee
FROM: ^{JCA} Jean C. Arthur, Legislative Analyst
SUBJECT: **FY16 Operating Budget: Office of Zoning and Administrative Hearings**

Those expected to attend this worksession include:
Martin Grossman, Director, Office of Zoning and Administrative Hearings
Sara Behanna-Moseley, Office of Zoning and Administrative Hearings
Crystal Brockington Sallee, OMB

Budget Summary:

- The County Executive recommends a “same services” budget for this office for FY16. Council staff believes that the recommended amount does not reflect the actual expenditures of the office.

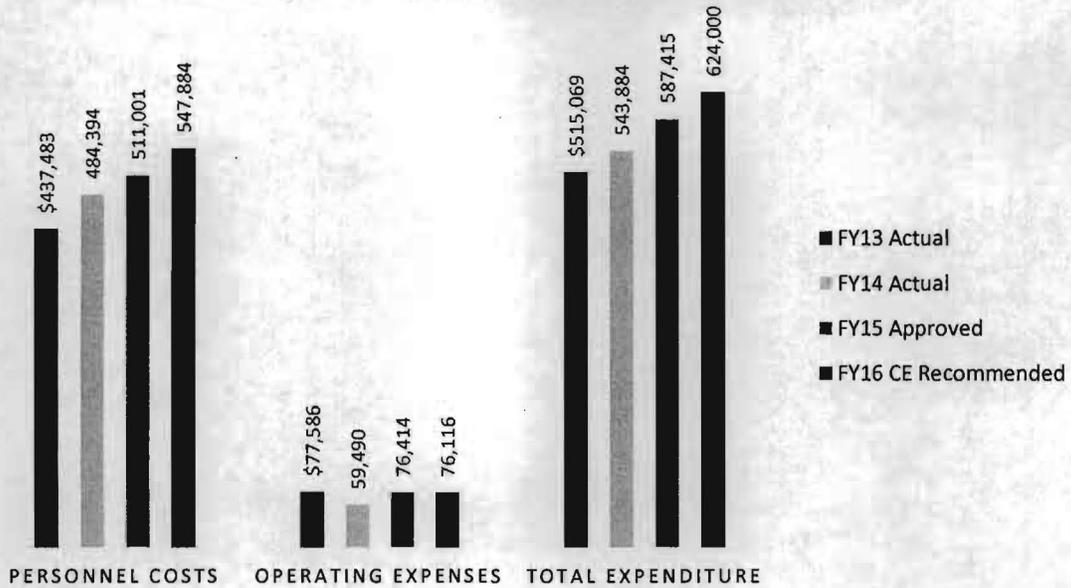
Council Staff Recommendations for the Reconciliation List:

- Add \$10,000 to operating expenses for transcripts
- Add \$46,542 to increase the Hearing Examiner position from .75 FTE to full-time

Overview

For FY16, the County Executive recommends a total of \$624,000, an increase of \$36,585 or 6.2 percent from the FY15 approved budget of \$587,415. Personnel costs are 87 percent of this budget. The Office has three full-time positions and one part-time position for 3.75 FTEs.

BUDGET SUMMARY - CE RECOMMENDATION



Summary of County Executive FY16 Recommendation

| | <i>FY14 Actual</i> | <i>FY15 Approved</i> | <i>FY16 Recommended</i> | <i>% Change FY15 - FY16</i> |
|-----------------------------|--------------------|----------------------|-------------------------|-----------------------------|
| Expenditures by fund | | | | |
| General Fund | \$543,884 | \$587,415 | \$624,000 | 6.2% |
| Other Fund | N/A | N/A | N/A | N/A |
| Expenditures by type | | | | |
| Personnel Cost | \$484,394 | \$511,001 | \$547,884 | 7.2% |
| Operating Expenses | \$59,490 | \$76,414 | \$76,116 | -0.4% |
| Total Expenditures | \$543,884 | \$587,415 | \$624,000 | 6.2% |
| Positions | | | | |
| Full-Time | 3 | 3 | 3 | |
| Part-Time | 1 | 1 | 1 | |
| FTEs | 3.75 | 3.75 | 3.75 | |

Revenues

The Office of Zoning and Administrative Hearings collected \$51,282 in fees in FY14 and has collected \$58,095 as of this writing in FY15.

FY16 Expenditure Issues

Transcripts

Council staff recommends an addition of \$10,000 for increased transcript costs.

Changes in the Zoning Ordinance on October 30, 2014 have moved the receipt of conditional use cases from the Board of Appeals to OZAH. One consequence of that move was to make OZAH responsible for the cost of transcribing hearings on conditional use (special exception) cases. Before that date, the Board of Appeals paid for the transcripts. OZAH already pays for hearing transcripts for local map amendment, development plan amendment, accessory apartment and floating zone plan amendment cases as is required by law, and it has some funding in its budget for those transcripts. Over the past three fiscal years, OZAH has spent on average \$10,552 on those transcripts.

Below is a chart showing the Board of Appeals actual costs for the past three fiscal years for transcripts that will now be covered in the OZAH budget. OZAH's budget for transcripts in the current year is \$15,000. The County Executive's recommended budget does not include an increase for FY16.

Based on OZAH's current expenses and what the Board of Appeals has spent on transcripts for special exception and accessory apartment hearings, the \$15,000 in OMB's proposal for OZAH's transcript budget likely will not cover the costs. These numbers show that transcript costs would have been over \$19,000 in FY12 and over \$17,000 in FY13. FY14 would have been under \$15,000. These numbers assume no mega case such as the *Costco* filing.

A *Costco*-type of case, with multiple hearings, will bring the costs significantly over \$15,000, as can be seen on the chart. With the new Zoning Ordinance, it is certainly possible that there will be applications for complex re-zonings or conditional use cases, requiring multiple days of hearings.

The two tables below demonstrate that the budget of \$15,000 will not cover the transcript costs, when adding what OZAH spent on transcripts in FY12-FY14 to what the Board of Appeals spent on transcripts for the cases that OZAH has taken over.

ACTUAL TRANSCRIPT COSTS – BOA FY12 – FY14

| Fiscal Year | SE Transcripts | Accessory Apt Transcripts | Costco Transcripts | Total for FY | Total w/out Costco |
|-------------|----------------|---------------------------|--------------------|--------------|--------------------|
| 2012 | \$5,949 | \$3,204 | N/A | \$9,153 | \$9,153 |
| 2013 | \$4,082 | \$2,780 | \$24,463 | \$31,325 | \$6,862 |
| 2014 | \$1,554 | N/A | \$16,171 | \$17,725 | \$1,554 |

OZAH TRANSCRIPT COSTS FOR FY12 - FY14

| Fiscal Year | Budgeted for Transcripts | Spent on Transcripts | Balance |
|--------------------|---------------------------------|-----------------------------|----------------|
| 2012 | \$15,000 | \$8,499 | \$6,501 |
| 2013 | \$15,000 | \$12,071.50 | \$2,928.50 |
| 2014 | \$15,000 | \$11,086 | \$3,914 |

Based on the filings of conditional use applications in the first three months of 2015, an increase in the budget for transcripts is merited.

In FY14, OZAH received a total of nine special exception applications. In the first three months of 2015, it has received seven applications for conditional use. The County’s Child Resource and Referral Center has alerted OZAH that an additional five conditional use applications for child care will soon be filed.

Hearing Examiner position

Add \$46,542 to the FY16 budget to upgrade the hearing examiner position to full-time.¹ The position is now .75 FTE.

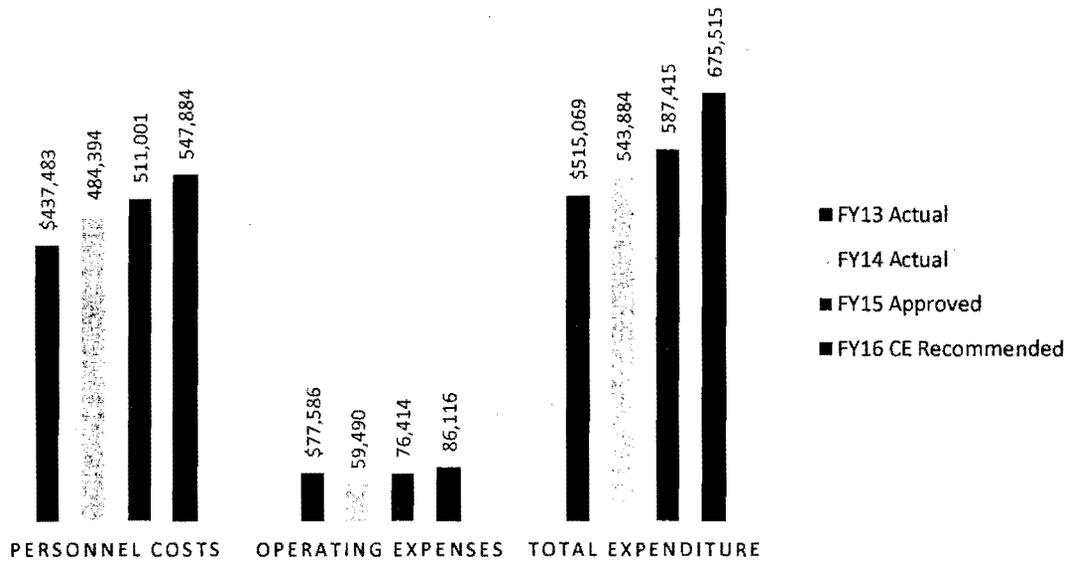
As mentioned above, all new conditional use applications filed after October 29, 2014 are filed with OZAH rather than the Board of Appeals, and there has been a significant increase in the rate of conditional use applications since the beginning of 2015. Each of those new cases will require not only the usual hearing process (with some of them requiring multi-day hearings), but also future attention by OZAH to act on modification requests, complaints and abandonments in those cases, a function performed by the Board of Appeals for the cases filed before October 30, 2014. In addition, with the improving economy, OZAH expects to see an increase in filings for rezoning and conditional use applications. Converting the hearing examiner position from ¾ time to full-time will help the office keep up with this additional workload.

The Council previously approved a salary increase for the Hearing Examiner, which brought the Hearing Examiner’s .75 FTE salary to \$113,274 in FY15. OMB has projected the Hearing Examiner’s salary (.75 FTE) for FY16 at \$118,303. Based on OMB’s numbers, the annualized, salary for the full-time position would be approximately \$157,737 without benefits.

Staff recommends that \$46,542 be added to the budget to cover upgrading the position to full time and the associated benefits.

¹The Office of Zoning and Administrative Hearings has two hearing examiners; the one that is currently a full-time position is officially designated as Director, OZAH.

SUMMARY - STAFF RECOMMENDATION



| | <i>FY14 Actual</i> | <i>FY15 Approved</i> | <i>FY16 Recommended</i> | <i>% Change FY15 - FY16</i> |
|------------------------------------|--------------------|----------------------|-------------------------|-----------------------------|
| <i>Expenditures by fund</i> | | | | |
| General Fund | \$543,884 | \$587,415 | \$675,515 | 6.2% |
| Other Fund | N/A | N/A | N/A | N/A |
| <i>Expenditures by type</i> | | | | |
| Personnel Cost | \$484,394 | \$511,001 | \$589,397 | 7.2% |
| Operating Expenses | \$59,490 | \$76,414 | \$86,116 | -0.4% |
| <i>Total Expenditures</i> | | | | |
| <i>Positions</i> | | | | |
| Full-Time | 3 | 3 | 4 | 25% |
| Part-Time | 1 | 1 | 0 | -100% |
| <i>FTEs</i> | 3.75 | 3.75 | 4 | 6.25% |

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 FY16 Operating Budget for the Office of Zoning and Administrative Hearings is \$624,000, an increase of \$36,585 or 6.2 percent from the FY15 Approved Budget of \$587,415. Personnel Costs comprise 87.8 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 12.2 percent of the FY16 budget.

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 FY15 estimates reflect funding based on the FY15 approved budget. The FY16 and FY17 figures are performance targets based on the FY16 recommended budget and funding for comparable service levels in FY17.

| Measure | Actual FY13 | Actual FY14 | Estimated FY15 | Target FY16 | Target FY17 |
|---|-------------|-------------|----------------|-------------|-------------|
| Program Measures | | | | | |
| Average time from filing a case until the first hearing date is scheduled (months) ¹ | 4.5 | 4.5 | 4.0 | 4.0 | 4.0 |
| Number of Hearing Examiner decisions overturned on appeal | 0 | 0 | 0 | 0 | 0 |
| Percentage of all legal deadlines and requirements met | 100 | 100 | 100 | 100 | 100 |
| 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 ² | 100 | 100 | 100 | 100 | 100 |
| Total cases completed ³ | 52 | 28 | 28 | 28 | 28 |

¹ One outlier case was excluded from the average because its hearing was long delayed by the applicant's request. The timing of hearings in rezoning and conditional use cases will continue to be dictated by applicants' continuance requests and by the time needed by M-NCPPC Technical Staff and the Planning Board to complete their reviews.

² The District Council accepted the hearing examiners' recommendations in the four cases in which hearing examiner reports and recommendations were submitted in FY 2014. The Board of Appeals accepted the hearing examiners' recommendations in all of the special exceptions it decided in FY 2014.

³ The decline in the number of cases completed 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 37 days of hearings were held.

ACCOMPLISHMENTS AND INITIATIVES

- ❖ **OZAH 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. Since the new Zoning Ordinance was adopted, effective October 30, 2014, OZAH has begun to accept all new conditional use applications, in addition to its continuing function to accept all other land use applications. To ensure full compliance with practices modified by the new Zoning Ordinance, OZAH completely rewrote its Rules of Procedure, and those new Rules were adopted by the Council in Resolution Nos. 17-1210 and 17-1249. OZAH also produced a new fee schedule for rezonings, development plan amendments, floating zone plan amendments and conditional use applications, which was approved by the Council in Resolution No.17-1168. To assist the public in applying the new Zoning Ordinance, OZAH published checklists and new forms on its website applicable to filing of rezonings, development plan amendments, floating zone plan amendments and conditional use 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; 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 FY14 | Budget FY15 | Estimated FY15 | Recommended FY16 | % Chg Bud/Rec |
|--|----------------|----------------|-------------------|---------------------|------------------|
| COUNTY GENERAL FUND | | | | | |
| EXPENDITURES | | | | | |
| Salaries and Wages | 389,628 | 411,359 | 415,787 | 444,146 | 8.0% |
| Employee Benefits | 94,766 | 99,642 | 94,439 | 103,738 | 4.1% |
| County General Fund Personnel Costs | 484,394 | 511,001 | 510,226 | 547,884 | 7.2% |
| Operating Expenses | 59,490 | 76,414 | 76,415 | 76,116 | -0.4% |
| Capital Outlay | 0 | 0 | 0 | 0 | — |
| County General Fund Expenditures | 543,884 | 587,415 | 586,641 | 624,000 | 6.2% |
| PERSONNEL | | | | | |
| Full-Time | 3 | 3 | 3 | 3 | — |
| Part-Time | 1 | 1 | 1 | 1 | — |
| FTEs | 3.75 | 3.75 | 3.75 | 3.75 | — |
| REVENUES | | | | | |
| Zoning Fees | 54,032 | 65,000 | 65,000 | 65,000 | — |
| Other Charges/Fees | -2,750 | 0 | 0 | 0 | — |
| County General Fund Revenues | 51,282 | 65,000 | 65,000 | 65,000 | — |

FY16 RECOMMENDED CHANGES

| | Expenditures | FTEs |
|--|----------------|-------------|
| COUNTY GENERAL FUND | | |
| FY15 ORIGINAL APPROPRIATION | 587,415 | 3.75 |
| Other Adjustments (with no service impacts) | | |
| Increase Cost: FY16 Compensation Adjustment | 21,797 | 0.00 |
| Increase Cost: Hearing Examiners' Salary Increase | 21,036 | 0.00 |
| Increase Cost: Group Insurance Adjustment | 1,164 | 0.00 |
| Decrease Cost: Printing and Mail | -298 | 0.00 |
| Decrease Cost: Retirement Adjustment | -673 | 0.00 |
| Decrease Cost: Annualization of FY15 Personnel Costs | -6,441 | 0.00 |
| FY16 RECOMMENDED: | 624,000 | 3.75 |

FUTURE FISCAL IMPACTS

| Title | CE REC. FY16 | FY17 | FY18 | (5000's) FY19 | FY20 | FY21 |
|---|-----------------|------------|------------|------------------|------------|------------|
| This table is intended to present significant future fiscal impacts of the department's programs. | | | | | | |
| COUNTY GENERAL FUND | | | | | | |
| Expenditures | | | | | | |
| FY16 Recommended | 624 | 624 | 624 | 624 | 624 | 624 |
| No inflation or compensation change is included in outyear projections. | | | | | | |
| Labor Contracts | 0 | 5 | 5 | 5 | 5 | 5 |
| These figures represent the estimated annualized cost of general wage adjustments, service increments, and associated benefits. | | | | | | |
| Subtotal Expenditures | 624 | 629 | 629 | 629 | 629 | 629 |