

PHED COMMITTEE #5
April 20, 2016

MEMORANDUM

April 18, 2016

TO: Planning, Housing and Economic Development Committee
FROM: Jean C. Arthur, ^{JCA} Legislative Analyst
SUBJECT: **FY17 Operating Budget: 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
Jennifer Nordin, OMB

Budget Summary:

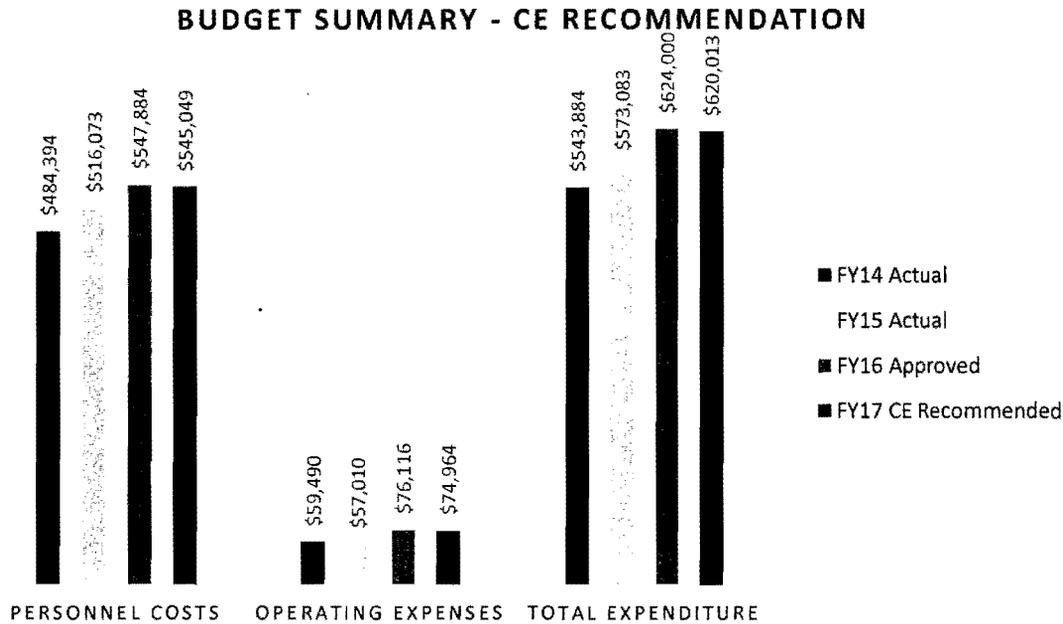
- The County Executive recommends a “same services” budget for this office for FY17. Council staff believes that the recommended amount does not reflect the actual expenditures of the office.

Council Staff Recommendations for the Reconciliation List:

- **Add \$47,000 to increase the Hearing Examiner position from .75 FTE to full-time**
- **Add \$19,000 to operating expenses for contract hearing examiner services**
- **Add \$10,000 to operating expenses for transcripts**

Overview

For FY17, the County Executive recommends a total of \$620,013, a decrease of \$3,987 or -0.64 percent from the FY16 approved budget of \$624,000. Personnel costs are 88 percent of this budget. The Office has three full-time positions and one part-time position for 3.75 FTEs.



Summary of County Executive FY17 Recommendation

	<i>FY15 Actual</i>	<i>FY16 Approved</i>	<i>FY17 Recommended</i>	<i>% Change FY16 - FY17</i>
<i>Expenditures by fund</i>				
General Fund	\$573,083	\$624,000	\$620,013	-0.6%
Other Fund	N/A	N/A	N/A	
<i>Expenditures by type</i>				
Personnel Cost	\$516,073	\$547,884	\$545,049	-0.5%
Operating Expenses	\$57,010	\$76,116	\$74,964	-1.5%
<i>Total Expenditures</i>	\$573,083	\$624,000	\$620,013	-0.6%
<i>Positions</i>				
Full-Time	3	3	3	-
Part-Time	1	1	1	-
<i>FTEs</i>	3.75	3.75	3.75	-

Revenues

The Office of Zoning and Administrative Hearings (OZAH) collected \$46,650 in fees in FY15 and has collected \$69,872 in FY16 as of March 31, 2016.

FY17 Expenditure Issues

Staffing

- A. Hearing Examiner Position. Council staff recommends that the committee add \$47,000 to the FY17 budget (personnel) to upgrade the hearing examiner position to full-time and for the associated benefits.¹ The position is now .75 FTE.

OZAH's workload is increasing. In recent months, an agent for Verizon Wireless has submitted dozens of small cell applications to the Towers Committee and is expected to submit dozens more in the coming weeks; those will make their way to OZAH for hearings in FY 2017.

The Transmission Facilities Coordinating Group, or Towers Group (TFCG), has informed OZAH that it expects to receive about 140 cell tower applications in the coming months with about 120 needing conditional use hearings.

Under County law, the Applicant has ninety days after TFCG approval to apply for a conditional use. The Department of Permitting Services has indicated that unless the telecommunications facility is to be placed on an existing structure, a conditional use approval will be required before DPS will issue a permit. These conditional use hearings are expected to be hotly contested by nearby homeowners.

Further, Federal Communications Commission regulations allow only 150 days for a FINAL decision on a small cell application. The clock starts when the application is submitted to TFCG. TFCG has 30 days for its review. Park and Planning's technical staff has 60 days for its review and then it goes to OZAH for a public hearing. OZAH holds its public hearing on approximately day 101 and closes its record on or about day 111, leaving it 20 days to complete its report and decision on or about day 131. The remaining days are reserved for potential oral arguments before the Board of Appeals.

With its current staffing complement, OZAH cannot meet the FCC rules for timely hearings. Having a full-time hearing examiner in addition to the director is essential.

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.

Further, as mentioned earlier, all new conditional use applications filed after October 29, 2014 are filed with OZAH, rather than the Board of Appeals, and there will be a significant increase in the rate of conditional use applications with the expected filing of 120 cell tower conditional use applications. 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.

- B. Contracts – Hearing Examiner. Council staff recommends that the committee add \$19,000 (operating expenses) to restore funding for contract hearing examiners to the FY12 level of \$54,000.

Council had reduced the amount budgeted for contract services in recent years, at the request of the OZAH Director, because a reduction in cell tower cases during that period reduced OZAH's need for that help at that time. The current budgeted amount is \$35,115. With the burden of pending small cell tower applications, OZAH will need more staff to meet the deadlines set by the FCC and thus will need a restoration of contract hearing examiner funds to FY 2012 levels.

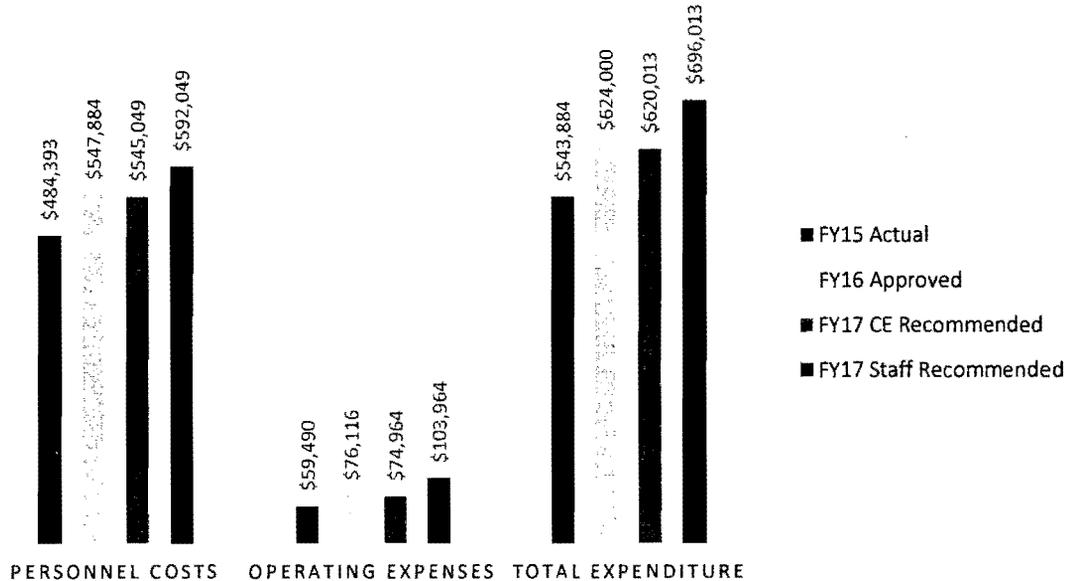
Transcripts

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

Several factors have converged that will increase OZAH's requirement for transcript services:

1. Changes in the Zoning Ordinance on October 30, 2014 have moved the jurisdiction of conditional use (special exception) cases from the Board of Appeals to OZAH. OZAH now is responsible for the cost of transcribing hearings on these cases.
2. The dramatic increase in expected cell tower cases will necessitate many more hearings and thus significantly increased transcript costs.

SUMMARY - STAFF RECOMMENDATION



	<i>FY16 Approved</i>	<i>FY17 CE Recommended</i>	<i>FY17 Staff Recommendation</i>
<i>Expenditures by fund</i>			
General Fund	\$624,000	\$620,013	\$696,013
Other Fund	N/A	N/A	N/A
<i>Expenditures by type</i>			
Personnel Cost	\$547,884	\$545,049	\$592,049
Operating Expenses	\$76,116	\$74,964	\$103,964
<i>Total Expenditures</i>	\$624,000	\$620,013	\$696,013
<i>Positions</i>			
Full-Time	3	3	4
Part-Time	1	1	0
<i>FTEs</i>	3.75	3.75	4

For the reasons stated above, Council staff recommends the following additions to the Reconciliation List for the Office of Zoning and Administrative Hearings.

- Add \$47,000 to increase the Hearing Examiner position from .75 FTE to full-time
- Add \$ 19,000 to operating expenses for contract hearing examiner services
- Add \$10,000 to operating expenses for transcripts



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 FY17 Operating Budget for the Office of Zoning and Administrative Hearings is \$620,013, a decrease of \$3,987 or 0.64 percent from the FY16 Approved Budget of \$624,000. Personnel Costs comprise 87.91 percent of the budget for three full-time position(s) and one part-time position(s), 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 12.09 percent of the FY17 budget.

Linkage to County Result Areas

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

◆ A Responsive, Accountable County Government

Department Performance Measures

Performance measures for this department are included below (where applicable). The FY16 estimates reflect funding based on the FY16 approved budget. The FY17 and FY18 figures are performance targets based on the FY17 recommended budget and funding for comparable service levels in FY18.

Measure	Actual FY14	Actual FY15	Estimated FY16	Target FY17	Target FY18
Program Measures					
Average time from filing a case until the first hearing date is scheduled (months) ¹	4.5	4.0	4.0	4.0	4.0
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
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	100	100	100	100	100
Total cases completed ³	28	29	29	40	40

¹ The timing of hearings in rezoning and conditional use cases will continue to be dictated by applicant's continuance requests and by the time needed by M-NCPPC Technical Staff and the Planning Board to complete their reviews.

² The District Council and the Board of Appeals accepted all the hearing examiner's recommendations in the cases submitted in FY15. One decision in an accessory apartment objection case was partially affirmed and partially remanded for further proceedings by the Circuit Court in FY15. In FY16, the Circuit Court affirmed the hearing examiner's FY15 decision in the Costco case.

³ The total number of cases is expected to rise in FY17 and FY18 because a large number of telecommunication cell tower conditional use cases will be referred to OZAH for hearing and resolution.

Program Contacts

Contact Martin Grossman of the Office of Zoning and Administrative Hearings at 240.777.6667 or Jennifer Nordin of the Office of Management and Budget at 240.777.2779 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 FY15	Budget FY16	Estimate FY16	REC FY17	%Chg Bud/Rec
COUNTY GENERAL FUND					
EXPENDITURES					
Salaries and Wages	415,586	444,146	459,186	440,966	-0.7 %
Employee Benefits	100,487	103,738	101,876	104,083	0.3 %
County General Fund Personnel Costs	516,073	547,884	561,062	545,049	-0.5 %
Operating Expenses	57,010	76,116	63,635	74,964	-1.5 %
County General Fund Expenditures	573,083	624,000	624,697	620,013	-0.6 %
PERSONNEL					
Full-Time	3	3	3	3	—
Part-Time	1	1	1	1	—
FTEs	3.75	3.75	3.75	3.75	—
REVENUES					
Other Charges/Fees	1,800	0	0	0	—
Zoning Fees	29,263	65,000	65,000	65,000	—
County General Fund Revenues	31,063	65,000	65,000	65,000	—

FY17 Recommended Changes

	Expenditures	FTEs
COUNTY GENERAL FUND		
FY16 ORIGINAL APPROPRIATION	624,000	3.75
<u>Other Adjustments (with no service impacts)</u>		
Increase Cost: FY17 Compensation Adjustment	10,387	0.00
Increase Cost: Group Insurance Adjustment	2,500	0.00
Increase Cost: Printing and Mail	48	0.00
Shift: Telecommunications to the Telecommunications Non-Departmental Account	(1,200)	0.00
Decrease Cost: Retirement Adjustment	(3,647)	0.00
Decrease Cost: Annualization of FY16 Personnel Costs	(12,075)	0.00
FY17 RECOMMENDED	620,013	3.75

Future Fiscal Impacts

Title	CE RECOMMENDED (\$000s)					
	FY17	FY18	FY19	FY20	FY21	FY22
COUNTY GENERAL FUND						

Title	CE RECOMMENDED (\$000s)					
	FY17	FY18	FY19	FY20	FY21	FY22
EXPENDITURES						
FY17 Recommended	620	620	620	620	620	620
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 other negotiated items.						
Subtotal Expenditures	620	625	625	625	625	625