

MEMORANDUM

March 31, 2009

TO: Planning, Housing, and Economic Development Committee
FROM: Shondell H. Foster, Research Associate *SHF*
SUBJECT: **Worksession: FY10 Operating Budget**
Office of Zoning and Administrative Hearings

Those expected for this worksession:

- Francoise Carrier, Hearing Examiner
- Helen Vallone, Office of Management and Budget

The Executive's recommendation for the Office of Zoning and Administrative Hearings (OZAH) is attached at ©1-2.

Overview

For FY10, the Executive recommends total expenditures of \$524,440 for OZAH, a 5.0% decrease from the FY09 approved budget of \$551,910.

(in \$000's)	FY08 Actual	FY09 Approved	FY10 CE Recommended	% Change FY08-FY09
Expenditures:				
General Fund	\$478,042	\$551,910	\$524,440	-5.0%
Grant Fund	\$0	\$0	\$0	0.0%
TOTAL Expenditures	\$478,042	\$551,910	\$524,440	-5.0%
Positions:				
Full-time	3	3	3	0.0%
Part-time	1	1	1	0.0%
TOTAL Positions	4	4	4	0.0%
WORKYEARS	3.8	3.8	3.8	0.0%

The Executive is not recommending a change in the number of full-time or part-time positions.

The FY10 Executive recommendation is a decrease of \$27,470 from the FY09 approved budget from the following identified same services adjustments:

Identified Same Services Adjustments:	
General Wage and Service Increment Adjustments	\$10,560
Group Insurance Adjustments	\$720
Printing and Mail Cost Adjustments	\$210
Legal/Attorney Services	-\$2,260
Personnel Cost Adjustment	-\$4,130
Annualization of FY09 Personnel Costs	-\$7,570
Decrease operating expenses	-\$25,000
NET SAME SERVICES ADJUSTMENT TOTAL	-\$27,470

FY10 Expenditure Issues

OZAH has expressed concern about the Executive’s recommended \$2,260 reduction in legal/attorney services, a 6.1 percent reduction from the \$36,500 previously budgeted for this service. The FY10 crosswalk lists this reduction as having no service impact; however, OZAH believes that this reduction could delay hearings in some cases.

Public Hearing Testimony

The public hearings for the FY10 Operating Budget will occur on April 13-16. The Council has not received any written testimony regarding OZAH.

FY10 Revenue Issues

OZAH collects revenues for three types of applications: (1) local map amendments; (2) development plan amendments; and (3) certain special exceptions. The Office also conducts hearings on special exceptions filed with the Board of Appeals and referrals from the Human Rights Commission but does not receive revenue from those agencies. OZAH’s filing fees were last increased on June 19, 2007.

The Executive’s recommended budget projects that OZAH will collect \$100,000 in hearing fees in FY10. Fees have decreased sharply in FY09 due to a lower number of applications being filed compared to recent years. Fees vary widely depending on how many cases are filed in a given year, what zones the applicant seeks, and how much land is involved. The percentage of OZAH expenditures covered by fees in FY08 was 16.9 percent. As a result of the decrease in filings, OZAH collected \$80,926 in fees for FY08. This is down 45.2 percent from FY07, when OZAH collected \$147,925 in fees. See ©5.

Hearing Postponements

During the last few budget worksessions, the Committee discussed why hearings are sometimes delayed. In the FY08 annual report, attached at ©3-5, OZAH notes that there continue to be a significant number of hearing postponements. OZAH consults with Park and Planning when setting hearing dates for zoning cases and continues to schedule special exception hearings 4.5 months after the date of filing, at the request of Park and Planning. However, OZAH notes that the general timing of an original hearing date for a zoning case occurs at least five months after the original filing.

In an attempt to reduce the delay or postponement of hearings, the Development Review Division of Park and Planning submitted to the Planning Board a Zoning Text Amendment (ZTA) that would modify the filing requirements for special exceptions. Some proposed changes would require traffic studies be submitted with the application and that all special exception applicants that provide a pre-filing certification process at Park and Planning to ensure applications are complete. These requirements must be met by the applicants prior to filing a special exception application. The Planning Board has taken no action on this ZTA.

In the FY08 annual report, OZAH notes a decrease in number of cases decided from 17 in FY07 to 14 in FY08, which continues the downward trend of applications for the previous year filings from 16 in FY07 to 11 in FY08. OZAH suggests this decline may be a reflection of the weakness in the local real estate market (©3).

Council Staff Recommendation

There are few opportunities for reductions in the OZAH budget. Therefore, Council staff recommends approval of the FY10 budget as submitted by the Executive.

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Recommended FY10 Operating Budget	1
FY08 Annual Report	3

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Zoning and Administrative Hearings

MISSION STATEMENT

The mission of the Office of Zoning and Administrative Hearings is to provide a hearing process for land use and other administrative matters that protects the due process rights of the participants as well as the public interest.

BUDGET OVERVIEW

The total recommended FY10 Operating Budget for the Office of Zoning and Administrative Hearings is \$524,440, a decrease of \$27,470 or 5.0 percent from the FY09 Approved Budget of \$551,910. Personnel Costs comprise 87.0 percent of the budget for three full-time positions and one part-time position for 3.8 workyears. Operating Expenses account for the remaining 13.0 percent of the FY10 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

This table presents the department's headline measures or submeasures including projections from FY09 through FY11. These estimates reflect funding based on the FY09 savings plan, the FY10 budget, and funding for comparable service levels in FY11.

Measure	Actual FY07	Actual FY08	Estimated FY09	Projected FY10	Projected FY11
Program Measures					
Average time from filing a case until hearing is held (months)	4.5	4.5	4.5	4.5	4.5
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, Board of Appeals, and Human Rights Commission	96	96	96	96	96
Total cases completed	49	50	50	50	50

PROGRAM CONTACTS

Contact Francoise Carrier of the Office of Zoning and Administrative Hearings at 240.777.6660 or Helen Vallone of the Office of Management and Budget at 240.777.2755 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 certain special exception cases; schedules and conducts referral hearings from other departments; maintains administrative records for public inspection; collects fees; responds to public inquiries; 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 advertising and other forms of notice; providing court reporter services; printing and mailing; and general office services.

BUDGET SUMMARY

	Actual FY08	Budget FY09	Estimated FY09	Recommended FY10	% Chg Bud/Rec
COUNTY GENERAL FUND					
EXPENDITURES					
Salaries and Wages	355,672	376,740	381,170	385,650	2.4%
Employee Benefits	57,322	79,730	56,850	70,400	-11.7%
County General Fund Personnel Costs	412,994	456,470	438,020	456,050	-0.1%
Operating Expenses	65,048	95,440	90,850	68,390	-28.3%
Capital Outlay	0	0	0	0	—
County General Fund Expenditures	478,042	551,910	528,870	524,440	-5.0%
PERSONNEL					
Full-Time	3	3	3	3	—
Part-Time	1	1	1	1	—
Workyears	3.8	3.8	3.8	3.8	—
REVENUES					
Zoning and Administrative Hearing Fees - MNCPPC	0	0	-25,000	-25,000	—
Zoning and Administrative Hearing Fees	80,926	100,000	100,000	100,000	—
County General Fund Revenues	80,926	100,000	75,000	75,000	-25.0%

FY10 RECOMMENDED CHANGES

	Expenditures	WYs
COUNTY GENERAL FUND		
FY09 ORIGINAL APPROPRIATION	551,910	3.8
Other Adjustments (with no service impacts)		
Increase Cost: Salary increases for Hearing Examiners	6,460	0.0
Increase Cost: Service Increment	4,100	0.0
Increase Cost: Group Insurance Adjustment	720	0.0
Increase Cost: Printing and Mail Adjustments	210	0.0
Decrease Cost: Legal/Attorney Services	-2,260	0.0
Decrease Cost: Personnel cost adjustment	-4,130	0.0
Increase Cost: Annualization of FY09 Personnel Costs	-7,570	0.0
Decrease Cost: Decrease operating expenses	-25,000	0.0
FY10 RECOMMENDED:	524,440	3.8

FUTURE FISCAL IMPACTS

Title	CE REC. FY10	FY11	FY12	(5000's) FY13	FY14	FY15
This table is intended to present significant future fiscal impacts of the department's programs.						
COUNTY GENERAL FUND						
Expenditures						
FY10 Recommended	524	524	524	524	524	524
No inflation or compensation change is included in outyear projections.						
Labor Contracts	0	2	2	2	2	2
These figures represent the estimated cost of service increments and associated benefits.						
Subtotal Expenditures	524	526	526	526	526	526

ANNUAL
REPORT



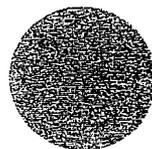
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MONTGOMERY COUNTY, MARYLAND

MEMORANDUM

September 11, 2008



TO: Michael Knapp, President
Montgomery County Council

FROM: Françoise M. Carrier, Director
Office of Zoning and Administrative Hearings

SUBJECT: Annual report for FY 08 ended June 30, 2008

The Office of Zoning and Administrative Hearings (OZAH) completed a total of 56 cases during Fiscal 2008, as follows:

- Cases decided by the District Council: 14
- Special exceptions decided by the Hearing Examiner: 14¹
- Board of Appeals cases: 28
- Referrals from the Human Rights Commission: 0

The number of cases decided by the District Council decreased in the last year, from 17 cases in FY07 to 14 in FY08. This is consistent with a 30 percent decline in the number of applications, down from 16 in FY07 to 11 in FY08, which may reflect the general weakness in the local real estate market. OZAH completed 28 Board of Appeals ("BOA") special exceptions in FY 08, a decrease from 37 in FY07. The number of special exceptions filed at the BOA increase slightly from 31 in FY07 to 35 in FY08, but several pending cases have been postponed indefinitely due to significant issues discovered during the review of the applications by Technical Staff at the Maryland-National Capital Park & Planning Commission ("MNCPPC"). Thus, a number of FY08 cases have been pushed into FY09. No Human Rights Commission cases were completed during FY08. A hearing was begun in one such referral predating FY08, but the hearing was not completed in a single day, and a second hearing date was postponed indefinitely by a bankruptcy filing.

We continue to experience a significant number of hearing postponements. Inevitably, some cases are postponed at the request of applicants who are not ready to go forward, and some at the request of opposition parties who need more time to prepare for a hearing. Some cases are postponed because Technical Staff determines that the application materials submitted are not adequate, and revisions cannot be made in time to complete review of the case before the hearing date. We continue to schedule special exception hearings no sooner than 4 ½ months after their filing date (3 ½ months for accessory apartments), per Park & Planning's request. Hearing dates for zoning cases are set after consultation with Park & Planning. We find that Park & Planning generally requires no less than five months between filing and the original hearing date for a zoning case.

¹ Including two renewals and nine revocations, all of which were handled administratively without a hearing.

The Development Review Division (which is responsible for reports on all of OZAH's cases) has submitted to the Planning Board and solicited public comment on a zoning text amendment ("ZTA") that would establish a new procedure for the filing of special exception applications. The ZTA would modify the filing requirements for special exceptions in several respects, including requiring traffic studies to be submitted with the application. It would also require all special exception applicants to complete a pre-filing certification process at Park & Planning before filing a special exception application. These changes would ensure that applications are complete and ready for review before they are filed. This ZTA has been the subject of discussion among Park & Planning, OZAH and the Board of Appeals for several years, and I had the opportunity for input during its preparation. The pre-certification procedure may result in applicants taking more time to get their applications ready for filing, but it has the potential to reduce the length of the process overall by cutting back sharply on the number of postponements. I and my fellow hearing examiner therefore support this initiative.

OZAH continues to enjoy a high rate of recommendations accepted by the District Council and BOA. The District Council accepted the hearing examiner's recommendation in all 14 cases where a hearing examiner recommendation was made and final Council action was taken in FY 08. The BOA accepted the hearing examiner's recommendation in all of the special exceptions decided in FY 08, although in some cases the BOA revised some of the conditions recommended by the hearing examiner.

A chart of workload indicators for the past five years is depicted below. We spent only 25% of our budgeted amount for contract hearing examiners, finding that we were able to handle most of the caseload internally.

	FY 04	FY 05	FY 06	FY 07	FY 08
Staffing	0.75 HE + Contractors	1.75 HE + Contractors			
Completed Cases	101 ²	69	54	73	56
Expenditures	\$420,000	\$404,700	\$452,702	\$442,145	\$478,042
Cost per case	\$4,827	\$5,865	\$8,383	\$6,056	\$8,536

As an indicator of ongoing workload levels, the table below summarizes cases pending as of the close of FY 2007 and FY 2008.

	As of 6-30-07	As of 6-30-08
Cases decided by the District Council	21	18
Special exceptions decided by Hearing Examiner	0	1
Referrals: Board of Appeals	19	26
Human Rights Commission	1	2
Total	41	45

Despite the drop in the number of cases completed in Fiscal 2008, the Hearing Examiners have been fully occupied with a series of very complicated cases. These included a modification for Suburban Hospital that attracted a very high level of opposition; a very large zoning case in Glenmont that required multiple days of hearing and generated a voluminous record; a new special exception application for Washington Adventist Hospital that had an extensive record; a series

² The large number of cases completed in FY04 is attributable principally to an unusually large number of special exception abandonments that were processed that year (more than 30 cases).

of complex, contentious zoning cases in Bethesda; a hotly contested zoning case involving Montgomery College property; and a gas station case that involved significant opposition and several unusual legal issues.

The hearing examiner staff was unchanged in FY07, consisting of myself (three-quarter time), Martin Grossman (full time) and two contractors: Phil Tierney and Lutz Prager. Contracts with Messrs. Tierney and Prager are being renewed, and both continue to provide services to OZAH. Our administrative staffing is unchanged, and we are fortunate to have extremely competent, hard-working individuals in both positions.

The office collected \$80,926 in fees for FY08. This represents a substantial decrease compared to recent years, reflecting the 30 percent drop in filings and the smaller size of most of the areas for which rezoning was sought in the last fiscal year. We are seeing a lot of infill development applications, which are often contested and complicated, but generate fairly low fees because of the small land areas involved. The fees collected in fiscal 2008 are similar to the levels that were common in the early years of this decade, before a series of very large cases boosted our filing fees for several years in a row.

Revenues from Fees

FY 08	\$ 80,926
FY 07	\$147,925
FY 06	\$110,965
FY 05	\$127,445
FY 04	\$131,550

In sum, OZAH continues to successfully manage its workload with the current funding, 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.

cc: Martin Grossman
Jeff Zyontz, Legislative Attorney
Helen Vallone, Office of Management & Budget
Shondell Foster, Legislative Analyst

M E M O R A N D U M

April 2, 2009

TO: Planning, Housing, and Economic Development Committee
FROM: Shondell H. Foster, Research Associate 
SUBJECT: **Worksession: FY10 Operating Budget**
Office of Zoning and Administrative Hearings

Those expected for this worksession:

- Francoise Carrier, Hearing Examiner
- Helen Vallone, Office of Management and Budget

This addendum highlights an important and significant reduction to the Office of Zoning and Administrative Hearing. Although the County Executive recommends a \$2,260 reduction in legal/attorney services, a 6.1 percent reduction from the \$36,500 previously budgeted for this service, the Office notes that a further reduction of \$19,250 is incorporated into the Executive's \$25,000 proposed decrease in operating expenses (detailed on © 1).

The FY10 crosswalk lists this reduction as having no service impact; however, OZAH believes that this reduction could delay hearings in some cases.

Council Staff Recommendation

This reduction may cause significant delays and as such, the Office may need to come back to the Council for a supplemental appropriation for Attorney/Legal services if delays extend beyond a point acceptable by the Council.

There are few opportunities for reductions in the OZAH budget. Therefore, Council staff recommends approval of the FY10 budget as submitted by the Executive. Council staff also recommends that the Council consider whether the Office should report back on when hearing postponements are increasing at a rate of concern which may indicate a need for additional funding in the legal/attorney services category.

This packet contains
Description of Justification of Changes

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DESCRIPTION/JUSTIFICATION OF CHANGES

FY10 Additional Reductions

Zoning & Administrative Hearings
General Fund

ALL DIVISIONS

Title: Decrease Cost: Decrease operating expenses as much as possible		Ref ID: D1
Most Important Results Area: A Responsive, Accountable County Government		
Dept Priority: 0	Personnel Costs: 0	FT Positions: 0
IT Review:	Operating Expenses: -25,000	PT Positions: 0
	Capital Outlay: 0	Workyears: 0.0
	Total Expenditure: -25,000	Revenues: 0

Department Submission

Impact:

OZAH is a very small department. We have four personnel: myself, director and hearing examiner, working a 75 percent schedule; another attorney working full-time as a hearing examiner; and two full-time administrative staff. We fully appreciate that current fiscal circumstances present a very difficult budget year for the County and will continue our efforts to keep expenses to a minimum, but it is very challenging for such a small department to reduce its budget by ten percent in a single fiscal year. OZAH met the MARC that was originally assigned for FY2010, which was three percent lower than FY2009. OZAH also met the three-percent savings plan goal for FY2009. Meeting the additional seven-percent reduction request for FY2010 -- \$38,400 -- would require us to eliminate an important element of our operating budget, a \$34,000 budget category for contract attorney services. This budget category allows us to supplement our 1.75-hearing-examiner personnel complement by hiring attorneys to serve as hearing examiners on a case-by-case basis. The flexibility to assign cases to contract attorneys when the workload in a given month is particularly high helps us keep the time frame between the date an application is filed and the hearings date to four to five months, most of the time. Without that flexibility, we would be forced to lengthen the time from filing to hearing during busy periods of the year, or to postpone hearings due to hearing examiner availability. Our original FY2010 budget request for contract attorney services was already lower than the amount in the FY2009 budget, due to the reduced FY2010 MARC. We are prepared to reduce the budget for contract hearing examiners further, to help the County meet its budgetary goals, but would very much like to retain \$15,000 in that budget item, for use if needed. We have also identified some smaller budget items that can be reduced.

OZAH is prepared to reduce its budget request by the following amounts:

Legal/attorney services	\$19,250
Books/reference materials	1,000
Local conferences	750
Non-metro travel	4,000
Total	\$25,000

This reduction represents approximately 65 percent of the seven-percent reduction that was requested. Hopefully, conditions will improve in the next few months and this reduction will not be necessary. OZAH is prepared to make the \$25,000 reduction outlined above if necessary, in hopes that the full amounts will be restored in a future budget.

Review Item Partners / Collaboration:

Expenditure Breakout: