

MEMORANDUM

March 31, 2009

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

Those expected for this worksession:

- Catherine Titus, Chair, Board of Appeals
- Katherine Freeman, Executive Director, Board of Appeals
- Helen Vallone, Office of Management and Budget

The Executive's recommendation for the Board of Appeals is attached at ©1-2.

Overview

For FY10, the Executive recommends total expenditures of \$617,520 for the Board of Appeals, a -0.3% decrease from the FY09 approved budget of \$619,300.

(in \$000's)	FY08 Actual	FY09 Approved	FY10 CE Recommended	% Change FY09-FY10
Expenditures:				
General Fund	\$564,385	\$619,300	\$617,520	-0.3%
Grant Fund	\$0	\$0	\$0	0.0%
TOTAL Expenditures	\$564,385	\$619,300	\$617,520	-0.3%
Positions:				
Full-time	4	4	4	0.0%
Part-time	0	0	0	0.0%
TOTAL Positions	4	4	4	0.0%
WORKYEARS	4.7	4.7	4.7	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 \$1,780 from the following identified same services adjustments:

Identified Same Services Adjustments:	
Annualization of FY09 Personnel Costs	\$17,830
Retirement Adjustment	\$1,980
Service Increment	\$1,070
Group Insurance Adjustment	\$970
Printing and Mail Adjustments	\$40
NET SAME SERVICES ADJUSTMENT TOTAL	\$21,890
Identified Adjustments with Service Impacts:	
Decrease Operating Funds	-\$23,670
NET ADJUSTMENT TOTAL	-\$1,780

FY10 Expenditure Issues

The Executive's budget recommends a reduction of \$23,670 in operating expenses. Included in this reduction is \$15,000 in operating funds which is carried over from the FY09 Savings Plan. The Board staff indicates that this reduction in operating funds would eliminate all discretionary funding in the budget.

Operating expenses in this office fluctuate depending on how many applications are filed. It is difficult to predict with certainty exactly what the costs will be for services associated with these applications because cases are filed on a walk-in basis. Service costs include transcripts associated with public hearings, signs required to be posted in association with cases, and postage that is paid for issuance of statutorily required notices and opinions of cases.

While it is possible that the reduction in operating expenses could result in the Board's inability to pay the balance due to the transcript company, currently, filing of applications is down and the Board does not anticipate an increase in applications for the upcoming or current fiscal year that would result in their inability to pay for all services the Board uses.

Public Hearing Testimony

The Council's public hearings on the FY10 Operating Budget will be April 13-16. The Council has not received any written testimony regarding the Board.

FY10 Revenue Issues

The Board collects revenues for special exception administration fees, filings fees, and sign deposits. The Board's filing fees were last increased on June 19, 2007. Special exception holders currently pay an annual administration fee of \$100, which is collected by the Department of Permitting Services and remitted to the General Fund/Board of Appeals revenue account. The

fee is adjusted automatically each year based on the annual average increase in the Consumer Price Index.

The Board received \$361,838 in revenues for FY08. The Executive’s recommended budget projects that the Board will collect \$270,000 in revenues in FY09. The percentage of Board expenditures covered by fees in FY08 was 64.1 percent. The percentage of Board expenditures covered by fees in FY09 is projected to be 43.6 percent.

Issuance of Opinions

During the past few budget cycles, the Committee has discussed with the Board the time the Board takes to issue a written opinion of a Board decision. Rule 9.1 of the Board’s Rules of Procedures requires the Board to mail an opinion in special exception and variance cases no later than 30 days after the record is closed. Section 2A-10 of the County Code and Rule 9.1 of the Board’s Rules of Procedures require the Board to mail an administrative appeal opinion no later than 45 days following the close of record. Rule 9.2 allows the Board to extend the time for issuing a written opinion provided that all parties receive written notice. The table below summarizes the average number of days it has taken the Board to issue written opinions as presented in the recommended budget.

	FY07 Actual	FY08 Actual	Estmiated FY09	Projected FY10
Special Exception (30 day requirement)	29	28	28	28
Variance (30 day requirement)	77	35	45	35
Administrative Appeal (45 day requirement)	110	48	48	48

The Board continues to submit quarterly reports detailing budget information and operations. The first quarter FY09 report (©4-5) shows that the Board issued 4 variance opinions in an average of 41 days, 4 special exception opinions in an average of 25 days, and 2 administrative appeal opinions in an average of 96 days. The second quarter FY09 report (©6-8) shows that the Board issued 6 variance opinions in an average of 45 days, 2 special exception opinions in an average of 52 days, and 2 administrative appeal opinions in an average of 92 days. **In the first two quarters of FY09, the Board issued opinions in timeframes that exceeded the statutory time requirements.**

The Board’s ability to meet the statutory deadlines for issuing opinions is an ongoing challenge. The Board has a small staff, and every demand on their time has a direct impact on the issuance of opinions. Once the current backlog is eliminated, the Board believes that it will be closer to uniform compliance with the statutory deadlines.

Council Staff Recommendation

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

<u>This packet contains</u>	<u>Circle</u>
Recommended FY10 Budget	1
1st Quarter FY10 Report	4
2nd Quarter FY10 Report	6

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Board of Appeals

MISSION STATEMENT

The mission of the Board of Appeals is to implement the flexibility provided in the Zoning Ordinance as approved by the County Council and to assist County residents in understanding and participating in the special exception, variance, and administrative appeal process.

BUDGET OVERVIEW

The total recommended FY10 Operating Budget for the Board of Appeals is \$617,520, a decrease of \$1,780 or 0.3 percent from the FY09 Approved Budget of \$619,300. Personnel Costs comprise 91.7 percent of the budget for four full-time positions for 4.7 workyears. Operating Expenses account for the remaining 8.3 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
Average days to Administrative Appeals hearing ¹	102	130	148	148	148
Average days to issue Notices of Administrative Appeals hearings	14	15	16	16	16
Average days to issue Notices of Special Exception hearings ²	23	20	17	17	17
Average days to issue Notices of Variances hearings	14	21	19	19	19
Average days to issue written administrative appeals ³	110	48	48	48	48
Average days to issue written Special Exceptions ⁴	29	28	28	28	28
Average days to issue written variances ⁵	77	35	45	35	35
Average days to Special Exceptions hearing ⁶	93	144	127	127	127
Average days to Variances hearing	64	89	114	114	114
Number of administrative actions taken	353	318	300	300	300
Number of administrative appeals decided	16	16	15	15	15
Number of administrative appeals filed	32	16	18	18	18
Number of administrative appeals heard	27	22	22	22	22
Number of special exceptions decided	21	23	15	15	15
Number of special exceptions filed	26	29	26	26	26
Number of special exceptions heard	22	28	24	24	24
Number of telephone inquiries answered	NA	2,412	2,075	2,075	2,074
Number of variances decided	38	20	18	18	18
Number of variances filed	35	21	18	18	18
Number of variances heard	37	18	16	16	16
Number of walk-in clients assisted	NA	503	550	550	550
Number of work sessions held	31	27	26	26	26

¹ County Code requires that the hearing on an administrative appeal be held not fewer than 30 days following the issuance of the written notice of the hearing.

² County Code requires mailing of written notices of hearings within 7 days after the filing of any appeal, petition for special exception, request for a variance, or other matter within the Board's jurisdiction.

³ Board of Appeals Rule 9.1 requires issuance of administrative appeal opinions within 45 days of close of record.

⁴ Board of Appeals Rule 9.1 requires issuance of special exception opinions within 30 days of close of record.

⁵ Board of Appeals Rule 9.1 requires issuance of variance opinions within 30 days of close of record.

⁶ County Code requires that the hearings for special exceptions be held not fewer than 60 days following the issuance of the written notice of hearing, and that the hearing on any other matter within the Board's jurisdiction be held not fewer than 30 days.

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PROGRAM CONTACTS

Contact Katherine Freeman of the Board of Appeals at 240.777.6600 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 Related Hearings and Administrative Appeals

The Board of Appeals hears requests for special exceptions and variances as provided in the Zoning Ordinance. The Zoning Ordinance requires that requests for certain uses (special exceptions) be considered for approval by the Board. Development standards for each zone are also set by the Zoning Ordinance. Variances from these standards require approval by the Board. The Board of Appeals also holds hearings and rules on appeals from administrative actions of certain governmental departments and agencies, as provided in the County Code.

BUDGET SUMMARY

	Actual FY08	Budget FY09	Estimated FY09	Recommended FY10	% Chg Bud/Rec
COUNTY GENERAL FUND					
EXPENDITURES					
Salaries and Wages	418,197	433,640	436,460	449,930	3.8%
Employee Benefits	99,262	110,910	105,640	116,470	5.0%
County General Fund Personnel Costs	517,459	544,550	542,100	566,400	4.0%
Operating Expenses	46,926	74,750	59,130	51,120	-31.6%
Capital Outlay	0	0	0	0	—
County General Fund Expenditures	564,385	619,300	601,230	617,520	-0.3%
PERSONNEL					
Full-Time	4	4	4	4	—
Part-Time	0	0	0	0	—
Workyears	4.7	4.7	4.7	4.7	—
REVENUES					
Board of Appeals Fees - MNCPPC	0	0	-90,000	-75,000	—
Board of Appeals Fees	361,838	270,000	360,000	300,000	11.1%
County General Fund Revenues	361,838	270,000	270,000	225,000	-16.7%

FY10 RECOMMENDED CHANGES

	Expenditures	WYs
COUNTY GENERAL FUND		
FY09 ORIGINAL APPROPRIATION	619,300	4.7
Changes (with service impacts)		
Reduce: Decrease Operating Funds	-23,670	0.0
Other Adjustments (with no service impacts)		
Increase Cost: Annualization of FY09 Personnel Costs	17,830	0.0
Increase Cost: Retirement Adjustment	1,980	0.0
Increase Cost: Service Increment	1,070	0.0
Increase Cost: Group Insurance Adjustment	970	0.0
Increase Cost: Printing and Mail Adjustments	40	0.0
FY10 RECOMMENDED:	617,520	4.7

FUTURE FISCAL IMPACTS

Title	CE REC. FY10	FY11	FY12	(\$000'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	618	618	618	618	618	618
No inflation or compensation change is included in outyear projections.						
Labor Contracts	0	1	1	1	1	1
These figures represent the estimated cost of service increments and associated benefits.						
Subtotal Expenditures	618	618	618	618	618	618

BOARD OF APPEALS QUARTERLY REPORT
July 1, 2008 through September 30, 2008

APPLICATIONS FILED

Variance	7
Special Exception	9
Administrative Appeal	8
Administrative Actions	72

NOTICES

<u>TYPE OF CASE</u>	<u>STATUTORY LIMIT*</u>	<u># ISSUED</u>	<u>AVERAGE TIME</u>
Variance	7/30	7	20/89
Special Exception	7/60	9	19/108
Administrative Appeal	7/30	8	15/220

* Section 59-A-4.46 Notice of filing

Except as provided in Section 59-A-4.41(b)(2) [pertaining to registered home occupations or home health practitioners found to be in violation], within **7 days** after the filing of an appeal, petition for a special exception, request for a variance...or other matter within the Board's jurisdiction, the Board...must forward notice of the filing...

Section 59-A-4.41(b)(1) Scheduling

The hearing in the case of any petition for grant of special exception must be held **not sooner than 60 days** following the mailing of the notice of the filing of the petition. In the case of any other matter within the Board's purview such hearing may be held **not sooner than 30 days**.

OPINIONS ISSUED

<u>TYPE OF CASE</u>	<u>STATUTORY LIMIT**</u>	<u># ISSUED</u>	<u>DAYS TO ISSUE</u>	<u>AVERAGE</u>
Variance	30	4	3/42/70/49	41
Special Exception	30	4	27/48/15/8	25
Administrative Appeal	45	2	75/117	96
Worksession Resolutions		26		87

OPINIONS PENDING

<u>TYPE OF CASE</u>	<u>STATUTORY LIMIT**</u>	<u># PENDING</u>
Variance	30	0
Special Exception	30	0
Administrative Appeal	45	0
Worksession Resolutions		5

BOARD OF APPEALS QUARTERLY REPORT
October 1, 2008 through December 31, 2008

EXPENDITURES

PERSONNEL COSTS

<u>Approved 08 Budget</u>	<u>Year to-date Exp.</u>	<u>Remaining Balance</u>
\$544,550	\$191,233	

OPERATING COSTS

<u>Approved 08 Budget</u>	<u>Year to-date Exp.</u>	<u>Transcript Costs to date</u>	<u>Remaining Balance</u>
\$74,750	\$15,934	N/A	\$43,192**

**further reduction of \$15,480 made in FY09 Savings Plan reduction

APPLICATIONS FILED

Variance	4
Special Exception	5
Administrative Appeal	4
Administrative Actions	52

NOTICES

<u>TYPE OF CASE</u>	<u>STATUTORY LIMIT*</u>	<u># ISSUED</u>	<u>AVERAGE TIME</u>
Variance	7/30	4	19/74
Special Exception	7/60	5	11/117
Administrative Appeal	7/30	4	13/115

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OPINIONS ISSUED

<u>TYPE OF CASE</u>	<u>STATUTORY LIMIT**</u>	<u># ISSUED</u>	<u>DAYS TO ISSUE</u>	<u>AVERAGE</u>
Variance	30	6	37/37/37/50/64	45
Special Exception	30	2	57/47	52
Administrative Appeal	45	2	107/77	92

Worksession Resolutions

OPINIONS PENDING

<u>TYPE OF CASE</u>	<u>STATUTORY LIMIT**</u>	<u># PENDING</u>
Variance	30	0
Special Exception	30	0
Administrative Appeal	45	0
Worksession Resolutions		38