

Testimony of  
Rick Meyer  
Montgomery County Coalition for the Control of Cell Towers  
Regarding  
Additions to the Office of Zoning and Administrative Hearings (OZAH)  
Comprehensive Fee Schedule

January 18, 2022

**Summary:**

Good afternoon. I am Rick Meyer representing the Montgomery County Coalition for the Control of Cell Towers. Speaking in opposition to proposed fee schedule additions which are neither equitable nor accurate. Rather, we ask the Council to focus on four numbers in your deliberations:

First, an OZAH budget analysis provided to Council's PHED Committee in 2021 by Director Robeson Hannan estimated that a staggeringly disproportionate **87%** of OZAH's \$650,000 annual budget was subsidized by residents and taxpayers - or only about 13% of OZAHs costs are actually covered by application fees. 87% subsidization.

The second number is average OZAH per case costs.

Back in 2018 The Council President at that time asked OZAH for estimates of fee revisions based on expected substantial “modifications” to rules of procedures for Telecommunications Towers conditional use cases. All those modifications **and more** were eventually passed as ZTA 19-07.

In his response in 2018, OZAH Director Grossman estimated that average OZAH costs PER CASE (using FY16 data) were about \$27,000. That data is now 6 years old, so must be adjusted UPWARDS for inflation but we can use this for purposes of quick, back of envelope financial impact.

The third number is actual costs for example of a contested telecommunications tower conditional use

proceeding (Case #CT-T-17-01.) Mr. Grossman chose this specific case and tried to dissect OZAH costs but omitted more than half of ultimate expenses.

However, based on invoices obtained through MPIA request we were able to tabulate **actual costs** which **exceeded \$56,000** for this case. (This is still not high enough as the total does not include Planning Board expenses.) Telecom towers cases are notoriously complex, and residents do aggressively contest them.

So, the *proposed* \$2600 fee for a contested “small cell” conditional use case is roughly 10% of average OZAH per case costs and just 5% of costs of the sample case profiled by Mr. Grossman. 5%.

Now, the fourth number. In 2018 when the Council President requested these OZAH fee reduction

calculations, he estimated that “hundreds” of these cases were expected. **Hundreds.**

Accordingly, we ask the Council to **please do the math**. Hundreds of these cases with grossly inadequate fees is nothing less than a massive, inequitable incentivization and subsidization of wireless providers BY RESIDENTS.

#Full text continues below#

Council President Alborno and Councilmembers:

We are strongly opposed to the fee schedule amendments and very concerned that the cost estimates for the proposed fees are both inadequate and inaccurate. Rather, we ask the Council to carefully examine financial impact of these fees.<sup>1</sup> We present several important financial measures that have **not** been included in the staff briefing packet to aid your deliberations.

As background, in 2018 when Council was considering ZTA 18-11, the Council President suggested substantial modifications to OZAH rules of procedures for certain conditional use cases.<sup>2</sup> Those modifications and more –were eventually part of ZTA 19-07 and included limiting protections for residents by constricting pre-hearing testimony, making it easier for *applicants* to force the consolidation of cases and, the throttling of residents voices by only allowing a limited number of specifically designated witnesses.

The Council President in 2018 explained that these procedural modifications were necessary:

- *"In order to efficiently manage"* telecommunications towers (meaning wireless facilities) conditional use cases.<sup>3</sup>

---

<sup>1</sup>We know that the County Council views financial accountability as a pillar of good governance as evidenced by the unanimous vote to pass landmark Bill 10-19 which requires Financial Impact Statements for all legislation. Unfortunately Bill 10-19 does not apply to zoning fees. *"Bill 10-19 is an important step in reaffirming the Council's commitment to evaluating all factors that may impact our economic future, not just on the County's budget but on the budget of County businesses and taxpayers."* -Councilmember Friedson, prime sponsor of Bill 10-19 as quoted in [New Law Bolsters Economic Impact Analysis for Montgomery County Bills](#), Kevin Kinnally, Conduit Street, Maryland Association of Counties, August 5, 2019

<sup>2</sup> Councilmember Reimer was Council President in 2018, and the chief sponsor of ZTA 18-11 which FAILED to pass the Council. ZTA 18-11 was, however, immediately resurrected as ZTA 19-07 which was passed more than a year **after** the public hearing (and during the midst of the COVID 19 pandemic.) ZTA 19-07 was far worse than ZTA 18-11 and further loaded with additional amendments favoring the wireless industry including specially "modifications" to OZAH conditional use hearing procedures.

<sup>3</sup> See October 10, 2018, Memorandum from Hans Reimer, Council President, Montgomery County Council to Martin L. Grossman.)

- And, to accommodate “**hundreds**” of expected wireless facility conditional use cases and “*avoid running afoul of FCC regulations.*”<sup>4</sup>

Martin Grossman, who was then the Director of OZAH, began his response in 2018 (perhaps with a little embarrassment) with a very important clarification:

“Application fees are **intended to cover OZAH’s costs in processing the applications**, but a comparison of OZAH’s actual costs with those fees demonstrates that, in general, the fees **cover only a portion of OZAH’s costs.**”<sup>5</sup> (Italics, bold and underlining added.)

(By the way all the memos referred to attached to my testimony.)

In fact, Mr. Grossman was a master of bureaucratic understatement. He went on to explain in his calculations that residents/taxpayers were already funding **more than 70%** of OZAH’s case costs **on behalf** of the various parties seeking conditional use decisions. That was in 2018.

More recent OZAH budget analysis provided to Council’s PHED Committee in 2021 by Director Robeson Hannan shows that a staggering disproportionality of application fee subsidization has now climbed to almost **87%** of OZAH’s \$650,000 annual budget. That 87% subsidization is **all funded out of resident/ taxpayer pockets** and **NOT** from fees charged applicants that are supposedly “*intended to cover*” OZAH’s costs.<sup>6</sup>

<sup>4</sup> Mr. Riemer’s October 10, 2018, estimate of expected cases was possibly based upon the required annual reports that wireless providers must submit to the County’s “Tower Committee” under COMCOR 2.58E. (But those reports are **NOT** released to the public.) Mr. Riemer did **not** elaborate on where the caseload estimate came from or to which specific FCC regulations he was referring.

<sup>5</sup> Mr. Grossman’s undated memo, which appears to have been written in early 2018 is entitled “THE BASIS FOR OZAH’S FEES, IN GENERAL, AND SPECIFICALLY FOR TELECOMMUNICATIONS TOWER CONDITIONAL USE APPLICATIONS; AND ANALYSIS OF THE POSSIBILITY OF REDUCED FEES FOR CONSOLIDATED APPLICATIONS SEEKING CONDITIONAL USES FOR DAS SMALL CELL TOWERS” was subsequently provided to resident advocates by Director Robeson Hannan in Jan 2022 to fulfil MPIA request.

<sup>6</sup> In the February 20, 2021, County Council PHED Committee meeting, during discussion of a Zoning Ordinance text amendment to the Section on Telecommunication Towers, OZAH Director Robeson Hannan mentioned that

So, in effect, the discounts to applicants that the Council President was searching for in 2018 have long been “baked in” to OZAH fee formulas. But Director Grossman apparently understood that the Council President wanted even more potential **fee** cost reductions to reflect results of “modified procedures” that deny rights to residents.<sup>7</sup>

In his search for further potential discounts, Mr. Grossman offered two very critical numbers that the Council should carefully consider:

First, he estimated that average OZAH costs (using FY16 data) were about \$27,000 per conditional use case. Mind you that was 6 years ago.<sup>8</sup>

And secondly Mr. Grossman tried to dissect the actual costs of the one (and only) applicable contested wireless facility conditional use proceeding that has occurred to date.<sup>9</sup> (Case #CT-T-17-01.) Unfortunately, an analysis of actual invoices (obtained through MPIA request) shows that Mr. Grossman omitted more than half of the known expenses for that case.

---

approximately \$90K (~13%) of OZAH’s \$650K budgeted operating expenses are supported through Council-approved filing fees. Our presumption is that the remainder of OZAH’s operating expense gap is covered by Montgomery County residents/taxpayers and NOT via application fees.

<sup>7</sup> A careful reading of Director Grossman’s memo shows that the only additional discounting he was prepared to suggest was via batching. His specific example was lumping together 5 conditional use applications together at one time to get average case costs to about \$5000. However, Mr. Grossman’s suggested calculation of application fees for DAS (small cell towers) presume that ALWAYS there would be 5 batched applications. And Mr. Grossman takes no note of the number of potential number of sites and alternative sites PER application, which affects the administrative cost to OZAH on notice, and certainly would likely affect participants involved in the case(s). This simultaneous batching of five applications – was a big presumption and a scary one. Because to achieve these cost efficiencies meant wholesale installation of onerous infrastructure INSIDE of 30 feet setbacks directly next to residences and doing so five towers at a time. Let me repeat – five towers at a time inside of 30 feet.

<sup>8</sup> Mr. Grossman in his undated memo candidly admitted that that average case cost for Telecommunications Tower as defined under §3.5.2.C.2.c is well above the current fee of \$16,390 for a wireless facility conditional use application.

<sup>9</sup> That is Cellco Case # CT-T-17-01 which was completed under the 2014 Zoning Amendment. The application was **denied** by OZAH.

Actual costs exceeded \$56,000 (and this total is still probably not high enough.)<sup>10</sup>

But, for the purposes of quick financial impact analysis, it is safe to say that somewhere between (unadjusted for inflation) the average OZAH case cost of \$27,000 and actual example case cost \$56,000 is a valid working estimate of what it will cost OZAH to process a telecommunications tower conditional use case. Again, keeping front of mind that taxpayers are already subsidizing 87% of the OZAH budget on behalf of various applicants.

In fact, the resolution before you today applies a further massive credit that drops the floor out of **wireless applicant's** OZAH fees small cell tower conditional use case (or objection case) to just \$2,600.<sup>11</sup> In other words, residents for the privilege of having their rights reduced will further subsidize the profits of wireless industry applicants -- as if residents weren't paying enough already!<sup>12</sup>

And let's not forget, the Council President in 2018 was predicting a tsunami of **hundreds** of these cases.

Please, do the math.

-30-

---

<sup>10</sup> The BOA refused to hear Cellco's appeal. But it had to expend resources to consider the applicant's appeal and the opponents' motions to deny the appeal, and then rule during its work session to uphold OZAH's denial. The Board of Appeals, shaves off a portion of every OZAH application fee. Board of Appeals costs are unknown and not included in this total.

<sup>11</sup> For a Telecommunications Tower under §3.5.2.C.2. which reads in part "In the Agricultural, Rural Residential, and Residential zones, where a Telecommunications Tower is proposed to be less than 30 feet from any building intended for human occupation, excluding any setback encroachments allowed under Section 4.1.7.B.5, it may be permitted by the Hearing Examiner as a conditional use without regard to Section 7.3.1..."

<sup>12</sup> Wireless Telecom Industry Gross Margins are 56.66% don't need any more subsidization. In fact, these gross margins are higher than all these industries: Alcoholic Beverage (47.99%) Hotel/Gaming (55.45%) and Precious Metals (52.43%). By contrast General/Diversified Real Estate Development which represents large number of conditional use applications is also very high at 47.80%. [Margins by Sector \(US\)](http://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/margin.html) as of January 2022. [http://pages.stern.nyu.edu/~adamodar/New\\_Home\\_Page/datafile/margin.html](http://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/margin.html)