



REQUEST FOR PROPOSAL

HEARING EXAMINER SERVICES

<u>Request for Proposal Information:</u>	<u>Submit Proposal to:</u>
<p>RFP Title: HEARING EXAMINER SERVICES</p> <p>Date Issued: October 9, 2019</p> <p>Contact: Diane Schwartz Jones Council Administrator (410) 313-3111</p> <p>Email Address: dijones@howardcountymd.gov</p> <p>Proposals Due: October 31, 2019</p>	<p>Proposals shall be submitted electronically to the following email address:</p> <p> crespass@howardcountymd.gov</p>

PURPOSE

The Howard County Council for Howard County, Maryland ("County Council") is requesting proposals from individual attorneys with substantial hearing examiner experience to serve as a Board of Appeals Hearing Examiner. A Board of Appeals Hearing Examiner conducts quasi-judicial hearings on complex land use matters and regulatory compliance issues within the jurisdiction of the Howard County Board of Appeals and issues decisions and orders supported by a statement of the facts and grounds for the decision.

QUALIFICATIONS

- A Juris Doctor degree is required and an applicant must be a member in good standing of the Bar of the Maryland Court of Appeals. At the time of appointment, the applicant



must have knowledge of administrative law, zoning and land development law, and related practices and procedures.

Experience: Five (5) years of experience in land use, zoning and administrative law, practice and procedure and preferably at least one (1) of which has been as a land use hearing examiner for a local government in the State of Maryland or as a land use attorney representing clients before administrative decision makers such as hearing examiners, city/county councils, and/or planning boards in the State of Maryland.

1. TERM AND REPRESENTATION

The duration of the Agreement will be for an 8-month term, from approximately November 1, 2019, to June 30, 2020. Subject to appropriation and encumbrance of funds for FY2021 and successive fiscal years, at the option of the County Council, the contract may be extended for additional terms of 12 months commencing on July 1 of a fiscal year and expiring on June 30 of the fiscal year.

The Hearing Examiner position is deemed to be the provision of legal services to the County Council. All services must be provided with the highest degree of adherence to the Code of Professional Conduct and ethical considerations governing attorney conduct in the State of Maryland.

A Hearing Examiner may not represent any client before a Hearing Examiner, the Board of Appeals, or Zoning Board of Howard County during the Agreement and for one year after termination or expiration of the Agreement.

2. GENERAL STATEMENT OF SCOPE OF SERVICES

The individual(s) with whom the County Council contracts shall perform the duties of the Hearing Examiner for the Board of Appeals as set forth in the Howard County Charter Section 502 and as further described in Howard County Code sections 16.302 *et seq.* and the Hearing Examiner's Rules of Procedure. See, <https://cc.howardcountymd.gov/LinkClick.aspx?fileticket=Zz9lL8qk1ME%3d&portalid=0>.

The Hearing Examiner, appointed by the County Council, may hear any cases falling within the authority of the Board of Appeals. The Hearing Examiner hears and decides appeals of administrative decisions and certain zoning matters, including variances from the zoning



regulations, and may hear appeals where a party alleges an error was made, and may authorize land uses provided by the Zoning Regulations. Decisions of the Hearing Examiner may be appealed to the Board of Appeals. See, Howard County Charter Section 502 and Howard County Code section 16.304

The Hearing Examiner shall perform the duties set forth in Attachment A, Scope of Services, in the *Proposed Agreement for Professional Services for the Howard County Council Board of Appeals Hearing Examiner* that is attached to this RFP and is incorporated into the RFP as if fully set forth herein.

The Hearing Examiner shall perform the following services for matters within the jurisdiction of the Board of Appeals and such other hearing examiners services as may arise from time to time by Council legislation. The duties of this position shall include, but not be limited to the following:

- a. Except as otherwise provided by law, the Hearing Examiner will provide the first hearing for all matters which the Howard County Code or the Zoning Regulations authorize the Board of Appeals to hear and decide. These shall include, but are not limited to:
 - Authorizing variances from the terms of Zoning Regulations as necessary to avoid arbitrariness and to obtain substantial justice within the spirit of the Zoning Regulations, except for governmental uses of land, which may be authorized only by the County Council;
 - Hearing and deciding appeals where it is alleged there is an error in any order, requirement, decision, or determination made by any administrative official in the application, interpretation, or enforcement of the Planning, Zoning and Subdivisions and Land Development Regulations title of the Howard County Code, except that wherever in the Code or Zoning Regulations a person is authorized to appeal a decision made by an administrative agency after an opportunity for a contested case hearing, the appeal will be heard and decided by the Board of Appeals; and
 - Authorizing uses provided by the Zoning Regulations, except for governmental uses of land, which may be authorized only by the County Council.



- b. The Hearing Examiner will require petitioners to comply with the notice and advertising requirements of Section 2.203 of the Howard County Code. Hearing Examiner will schedule all hearings, including preliminary hearings and continuations, on a schedule of the lesser of two hearings each week or the number of petitions filed in each week. Additional hearings may be scheduled with the prior written approval of the Council Administrator or her designee and a current written copy of the hearing schedule must be provided to and maintained with the Council Administrator or her designee. The Hearing Examiner, upon receiving a case, will establish a schedule for the case including the hearing date anticipated dates for issuance of written decisions and orders. The Hearing Examiner will update the schedule if necessary as the case progresses.
- c. The Hearing Examiner will visit each property that is subject to petition, in accordance with the provisions of the Code and rules of procedure.
- d. The Hearing Examiner will record each hearing and arrange with the Council Administrator or her designee for the recorded hearing to be saved digitally on the County Council's network drive and website for public access.
- e. The Hearing Examiner will issue and deliver a written and signed decision and order to the Council Administrator or her designee within forty-five (45) days of the conclusion of each conditional use or departmental appeal case heard. All other written and signed decisions and orders shall be delivered within thirty (30) days of the conclusion of each case unless an extension has been approved by the Council Administrator. Time is of the essence in the delivery of the written and signed decisions and orders.
- f. The Hearing Examiner will adopt, as necessary, amendments to the rules of procedure to govern the conduct of hearings, which rules will be effective upon approval of the County Council by resolution.
- g. Consistent with the provisions of Howard County Zoning Regulations, Section 102, the Hearing Examiner will hold hearings on violations of zoning regulations.
- h. The Hearing Examiner may provide such other services as the County Council and Hearing Examiner may agree upon, consistent with the Howard County Code, Title 16, Subtitle 3. All agreements for work not specifically covered above must be in writing and signed by the Council Administrator.



3. OTHER TERMS

A. ADMINISTRATIVE SUPPORT

The County Council will provide a reasonably equipped hearing room and on-site audio-visual assistance. Scheduling of hearings is generally done in coordination with staff from the County Council. The County Council is responsible for recording the proceedings for records retention.

The Hearing Examiner must properly develop, maintain and track hearing filings, exhibits and submissions which constitute the record of hearing and is responsible to prepare and submit the written decision and order. All documents belong to the County Council.

B. PROHIBITIONS

The Hearing Examiner:

- a. In accordance with Section 16.305(b) of the Howard County Code, may not represent any client in any matter involving land use in Howard County while holding the position of Hearing Examiner;
- b. In accordance with Section 16.306(b) of the Howard County Code, may not represent any client before the Hearing Examiner, Board of Appeals, or Zoning Board for one year after leaving the office of the Hearing Examiner regardless of whether it involves a matter in which the Hearing Examiner significantly participated while holding the office of Hearing Examiner; and
- c. In accordance with Section 22.204(c) of the Howard County Code, may not at any time after termination of service as Hearing Examiner assist or represent any party other than the County for compensation in a case, contract, or other specific matter involving the County if that matter is one in which Hearing Examiner significantly participated while holding the office of Hearing Examiner.

C. GENERAL INFORMATION

These contracted services are intended to begin on or about December 1, 2019, or sooner.



There are generally four to eight hearings a month, but, with the approval of the Council Administrator, there may be more depending on the month. There may also be more in the early months due to any backlog pending the award of an Agreement. Hearings may be held in the Banneker Room or the C. Vernon Gray Room, in the Howard County Council offices unless some other venue is approved by the Council Administrator due to unique circumstances.

D. COMPENSATION

The County Council and any party selected for these services will enter into a professional services agreement which will address compensation. Proposals must clearly set forth the fees or fee structure (e.g., hourly rate) to be charged for the proposed services.

Fees shall be at an hourly rate for services completed. Portions of an hour shall be based on tenths of an hour. The hourly rate is exclusive of travel, and payment shall be based on a properly submitted invoice detailing charges for cases handled under the contract for services, or as may be specially assigned by the Council Administrator. The Hearing Examiner will be reimbursed for travel expenses to required site visits, exclusive of commuting mileage, in accordance with the County-approved allowance for travel and upon submission of appropriate travel logs, receipts and expense forms. No other fees or expenses will be provided, unless specifically authorized by the Council Administrator. Total authorized fees and expenses shall not exceed the amount budgeted and authorized for this purpose in each fiscal year.

Time is of the essence in the issuance of written decisions and orders and a deduction equal to 10% of the compensation outlined above shall be made for each week or part thereof that submission of a decision and order exceeds the deadlines outlined in subsection 2 (e) above unless an extension of time for submission of a decision and order has been authorized in writing by the Council Administrator.

The Hearing Examiner is a contractor and will not be eligible to participate in any of the benefit plans or programs which the County makes available or awards to County employees.

The Hearing Examiner must submit to the Council Administrator invoices for work completed. Each invoice will contain a complete accounting of the case number, names, and types of hearings held, and decisions and orders written and the property location, as provided in this Agreement. Payment of the fees for each case is not due until a written decision and order is delivered to the Council Administrator; provided, however, that payment shall be due for work completed on administrative appeal petitions that are placed on the unscheduled docket after 180 days. Invoices are subject to approval by the Council Administrator. The County Council



agrees to request payment to Hearing Examiner within two weeks of timely receipt of properly submitted invoices.

4. SELECTION PROCESS

All proposals will be reviewed and screened by the Council Administrator. Proposals will be evaluated by considering the Proposer's quality of experience, the strength of the approach described in the proposal, the responses to the questions provided below, and the cost to the County Council.

The Council Administrator will convene the County Council for interviews and finalists will be invited for interviews. Following the interviews, the Council Administrator will make an appointment for County Council confirmation.

INSTRUCTIONS TO REPLY TO THIS REQUEST FOR PROPOSALS

To reply to this RFP, please submit a proposal of no more than five (5) pages stating:

1. **Name and contact information.** Identify and provide a resume or similar description of the educational and professional background for the individual who desires to serve as the Howard County Board of Appeals Hearing Examiner, including the name of that individual's law school and the year of graduation from law school. A certificate of good standing to practice law must be provided from the Maryland Court of Appeals.
2. **Hearing Examiner experience.** Describe relevant experience working for other jurisdictions as a Hearing Examiner, ALJ, or other quasi-judicial official.
3. **Expertise.** Describe your experience with administering and interpreting: land use laws, including planning, zoning and subdivision laws and regulations in the State of Maryland;
4. **Experience.** Describe your experience and familiarity with administering and managing administrative hearing processes and rules of procedure, development of administrative records and decision making based upon a developed administrative record.



5. **Civil violation proceedings.** Describe your experience with code enforcement and other types of administrative appeals, including appeal proceedings outside of the land use context.
6. **Provide a statement describing your view of a Board of Appeals' Hearing Examiner's roles and duties.** Describe your approach to conducting hearings and your perspective about what constitutes a "good result" for hearings over which the Hearing Examiner might preside.
7. **Fee proposal.** Provide a fee proposal of your hourly rate and expected time allocations for a simple variance matter, and more complex conditional uses.
8. **Provide two Hearing Examiner reports.** Provide two Hearing Examiner writing samples (i.e., recommendations, decisions, or orders) for hearings conducted by the Proposer, or similar written reports or documents demonstrating similar experience and analysis, if available. Writing samples are not included in the five-page limit.
9. **Provide professional references.** Provide contact information for three professional references with personal knowledge of the Proposer's work and experiences that demonstrate qualifications and ability to serve as the Board of Appeals' Hearing Examiner.

All materials shall be submitted electronically in one packet to the following email address:
crespass@howardcountymd.gov.

ALL APPLICATION MATERIALS MUST BE SUBMITTED BY 5:00 P.M. ON OCTOBER 31, 2019.

At the County Council's discretion, proposals submitted after the due date and time may be considered. Proposers accept all risks of late delivery of submitted proposals.

PROPOSED AGREEMENT

A proposed Agreement is provided as an attachment with this RFP. It is important that each Proposer review the Agreement prior to submitting a proposal, particularly the Scope of Work.



The County Council will not accept changes to the Agreement's terms and conditions absent extraordinary circumstances. Should the Proposer wish to propose changes to the Agreement's terms and conditions, the desired changes must be identified in the proposal. The County Council is under no obligation to accept such proposed changes and may reject a proposal based on proposed changes unacceptable to the County Council.

The County Council may verify Proposer representations that appear in the proposal. Failure of a Proposer to perform services as represented may result in termination of the Agreement, consistent with the terms of the Agreement.



PROPOSED AGREEMENT

AGREEMENT FOR HEARING EXAMINER SERVICES FOR THE HOWARD COUNTY COUNCIL

THIS AGREEMENT is made as of this _____ day of _____, 2019, between the HOWARD COUNTY COUNCIL ("County Council") and _____, Attorney at Law ("Hearing Examiner").

In consideration of the mutual promises herein contained, the parties agree as follows:

1. Services. The County Council retains the services of Hearing Examiner, an attorney admitted to practice law in the State of Maryland, and in good standing, to provide services as the Hearing Examiner for matters within the jurisdiction of the Board of Appeals. The Hearing Examiner position is deemed to be the provision of legal services to the County Council. The duties of this position include, but are not limited to the following:

- a. Except as otherwise provided by law, the Hearing Examiner will provide the first hearing for all matters which the Howard County Code or the Zoning Regulations authorize the Board of Appeals to hear and decide. These shall include, but not be limited to:
 - Authorizing variances from the terms of Zoning Regulations as necessary to avoid arbitrariness and to obtain substantial justice within the spirit of the Zoning Regulations, except for governmental uses of land, which may be authorized only by the County Council;
 - Hearing and deciding appeals where it is alleged there is an error in any order, requirement, decision, or determination made by any administrative official in the application, interpretation, or enforcement of the Planning, Zoning and Subdivisions and Land Development Regulations title of the Howard County Code, except that wherever in the Code or Zoning Regulations a person is authorized to appeal a decision made by an administrative agency after an opportunity for a contested case hearing, the appeal will be heard and decided by the Board of Appeals; and



- Authorizing uses provided by the Zoning Regulations, except for governmental uses of land, which may be authorized only by the County Council.
- b. The Hearing Examiner will require petitioners to comply with the notice and advertising requirements of Section 2.203 of the Howard County Code and provide evidence of the same. The Hearing Examiner will schedule all hearings, including preliminary hearings and continuations, on a schedule of the lesser of two hearings each week or the number of petitions filed in each week. Additional hearings may be scheduled with the prior written approval of the Council Administrator or her designee and a current written copy of the hearing schedule must be provided to and maintained with the Council Administrator or her designee. The Hearing Examiner, upon receiving each case, will establish a schedule for the case including the hearing date and anticipated date for timely issuance of the written decision and order. The Hearing Examiner will update the schedule if necessary as the case progresses.
- c. The Hearing Examiner will visit each property that is subject to petition, in accordance with the provisions of the Code and rules of procedure.
- d. The Hearing Examiner will record each hearing and arrange with the Council Administrator or her designee for the recorded hearing to be saved digitally on the County Council's network drive and website for public access.
- e. The Hearing Examiner must properly develop, maintain and track hearing filings, exhibits and submissions which constitute the record of hearing and is responsible to prepare, issue and deliver a written and signed decision and order to the Council Administrator or her designee within forty-five (45) days of the conclusion of each conditional use or departmental appeal case heard. All other written and signed decisions and orders shall be delivered within thirty (30) days of the conclusion of each case. Time is of the essence in the delivery of the written and signed decisions and orders.
- f. The Hearing Examiner will adopt, as necessary, amendments to the rules of procedure to govern the conduct of hearings, which rules will be effective upon approval of the County Council by resolution.
- g. Consistent with the provisions of Howard County Zoning Regulations, Section 102, the Hearing Examiner will hold hearings on violations of zoning regulations.



- h. The Hearing Examiner may provide such other services as the County Council and Hearing Examiner may agree upon, consistent with the Howard County Code, Title 16, Subtitle 3. All agreements for work not specifically covered above must be in writing and signed by the Council Administrator.
- 2. Prohibitions. The Hearing Examiner:
 - a. In accordance with Section 16.305(b) of the Howard County Code, may not represent any client in any matter involving land use in Howard County while holding the position of Hearing Examiner;
 - b. In accordance with Section 16.306(b) of the Howard County Code, may not represent any client before the Hearing Examiner, Board of Appeals, or Zoning Board for one year after leaving the office of the Hearing Examiner regardless of whether it involves a matter in which the Hearing Examiner significantly participated while holding the office of Hearing Examiner; and
 - c. In accordance with Section 22.204(c) of the Howard County Code, may not at any time after termination of service as Hearing Examiner assist or represent any party other than the County for compensation in a case, contract, or other specific matter involving the County if that matter is one in which Hearing Examiner significantly participated while holding the office of Hearing Examiner.
- 3. Compensation. The Council agrees to pay Hearing Examiner a fee of \$_____ per hour for services, exclusive of travel. Fees shall be at an hourly rate for services completed. Portions of an hour shall be based on tenths of an hour. The hourly rate is exclusive of travel, and payment shall be based on a properly submitted invoice detailing charges for cases under this agreement. The Hearing Examiner will be reimbursed for travel expenses to required site visits, exclusive of commuting mileage, in accordance with the County-approved allowance for travel and upon submission of appropriate travel logs, receipts and expense forms. No other fees or expenses will be provided, unless specifically authorized by the Council Administrator. Total authorized fees and expenses shall not exceed the amount expressly budgeted for this purpose in each fiscal year.



The Hearing Examiner is a contractor and will not be eligible to participate in any of the benefit plans or programs which the County makes available or awards to County employees.

4. Time is of the essence. Time is of the essence in the issuance of written decisions and orders. Accordingly, a deduction equal to 10% of the compensation outlined above shall be made for each week or part thereof that submission of a decision and order exceeds the deadlines outlined in subsection 1 (e) above unless an extension of time for submission of a decision and order has been authorized in writing by the Council Administrator.
5. Accounting for Services. The Hearing Examiner must submit to the Council Administrator invoices for work completed. Each invoice will contain a complete accounting of the case number, names, and types of hearings held, and decisions and orders written and the property location, as provided in this Agreement. Payment of the fees for each case is not due until a signed written decision and order is delivered to the Council Administrator; provided, however, that payment shall be due for work completed on administrative appeal petitions that are placed on the unscheduled docket after 180 days. Invoices are subject to approval by the Council Administrator. The County Council agrees to request payment to Hearing Examiner within two weeks of timely receipt of properly submitted invoices.
6. Insurance. Hearing Examiner shall be responsible for maintaining professional and other insurance as determined by the Howard County Office of Risk Management.
7. Professional Standards. Hearing Examiner agrees to abide by and perform his/her duties hereunder in accordance with the highest standards of ethics and all federal, State, and County laws, regulations, and ordinances. All services must be provided with the highest degree of adherence to the Code of Professional Conduct and ethical considerations governing attorney conduct in the State of Maryland.
8. Ethics Law; Financial Disclosure. Hearing Examiner is subject to the Howard County Public Ethics Law, Section 22.200 *et seq.* of the Howard County Code and must file financial disclosure statements in accordance with Section 22.206 of the Howard County Code.
9. Other Terms of Service. This Agreement is subject to the following additional terms:



- a. Hearing Examiner will receive no advantage or preference in hiring should s/he seek another position or employment in County government;
- b. Hearing Examiner's tenure or service under this contract will not be credited or counted as employment with the County for the purposes of determining entitlement to any employee benefits should s/he hereafter accept an employment position with the County;
- c. Hearing Examiner will neither earn nor accrue any holiday, vacation, or other paid allowances, except as specifically provided in this contract;
- d. The County Council will make available such work space, equipment, materials and supplies, and assistance as it deems necessary to support the work of the Hearing Examiner including a reasonably equipped hearing room and on-site audio-visual assistance. Scheduling of hearings is generally done in coordination with staff from the County Council. The County Council is responsible for recording the proceedings for the purpose of records retention.
- e. The County Council shall provide for Hearing Examiner a legal defense in any action that alleges damages resulting from tortious acts or omissions committed by Hearing Examiner within the scope of his/her employment with the County Council.

10. Relationship to Parties; Independent Contractor Status. Hearing Examiner shall be considered for all purposes of this Agreement as an independent contractor and County Council shall not withhold any federal, state, or local income, FICA, or other taxes. Hearing Examiner is not an agent of the County and, except as expressly provided in this contract or in law, has no right or authority to enter into any agreements or otherwise bind the County or create any obligation on behalf of the County with other parties whatsoever.

11. Ownership of Work Product. All documents, exhibits, manuals, graphics, and other work product, regardless of format or medium, shall belong solely to the County Council and Hearing Examiner shall have no ownership rights therein. Hearing records shall be provided to the County Council with each written decision and order, or at such other time as may be directed by the Council Administrator or her designee. Hearing Examiner shall surrender all work product to the County Council on request by the County Council. Hearing Examiner shall not disclose any of such work product to other parties except as may be required by law or as permitted by law when authorized in writing by the County Council or the Council Administrator.



12. Term of Agreement. This Agreement shall become effective upon the signature by all parties for a term to begin December 1, 2019 and shall continue through June 30, 2020, subject to the appropriation of funds for the position. Subject to appropriation of funds for FY2021 and successive fiscal years, at the option of the County Council, the contract may be extended for additional terms of 12 months commencing on July 1 of a fiscal year and expiring on June 30 of the fiscal year. Such extension shall be by amendment to this agreement.

13. Termination. Hearing Examiner serves at the pleasure of the County Council who, by a vote of two-thirds of its members, may terminate this contract in whole or in part. Hearing Examiner may terminate this contract by giving written notice at least one hundred and twenty (120) days in advance provided that all cases and matters for which hearings have begun are concluded with the issuance of written decisions and orders. Upon termination by either party, Hearing Examiner shall provide the County Council with a final status report and all work product, documents, data, and other materials provided to or prepared by Hearing Examiner acting as the Hearing Examiner, including final decisions and orders for each case heard while holding the position of Hearing Examiner. The County Council shall be liable only for payment of approved work performed or furnished through the effective date of termination and for which written decisions and orders have been issued.

14. Conflict of Interest Certification. During the course of this Agreement, Hearing Examiner agrees not to undertake to do any expert consultation work for any party whose interests are adverse to the County or to any County employee, agent, or official (as a County employee, agent or official) except with the prior written permission of the Council Administrator, which permission may reasonably be withheld. Hearing Examiner certifies that s/he understands the provisions of Section 901(a) of the Howard County Charter and Section 22.204 of the Howard County Code dealing with conflicts of interest.

15. Contract Manager. The Council Administrator shall manage this contract on behalf of the County Council, ensuring compliance with its terms and having responsibility for oversight and approval of Hearing Examiner's work on behalf of the County Council.

16. Applicable Law. This Agreement shall be construed under the laws of the State of Maryland.

17. Entire Agreement. This writing constitutes the entire agreement between the parties and there are no other understandings or obligations, except as contained in this Agreement. Any



additions or modifications to this Agreement may only be made in writing executed by both parties.

[SIGNATURES ON FOLLOWING PAGE]



WITNESS:

Hearing Examiner:

BY:

ATTEST:

HOWARD COUNTY COUNCIL

Diane Schwartz Jones
Administrator, County Council

BY:

Christiana Mercer Rigby
Chairperson, County Council

APPROVED FOR LEGAL SUFFICIENCY
this ____ day of _____, 2019.

Reviewed by:

Gary W. Kuc
County Solicitor

John Gwynn

Assistant County Solicitor

APPROVED FOR SUFFICIENCY OF FUNDS
this ____ day of _____, 2019.

Janet Irvin
Director, Department of Finance
3430 Court House Drive
Ellicott City, Maryland 21043-4392