

**CITY AND COUNTY OF  
SAN FRANCISCO**

# **BOARD OF APPEALS**



## **ANNUAL REPORT**

**July 1, 2009 – June 30, 2010**



## Highlights of Fiscal Year 2009-10

### CASES HEARD

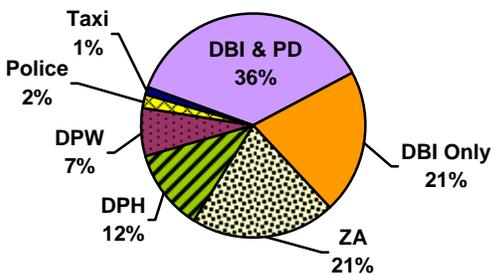
The Board held 28 regular meetings at which 134 matters were heard:

- 101 Appeals
- 28 Jurisdiction Requests
- 5 Rehearing Requests

### ORIGINATING DEPARTMENTS

Over three-quarters (78%) of the appeals heard by the Board stemmed from determinations made by the Departments of Building Inspection (DBI) and Planning Department (PD) (including the Zoning Administrator). The Board also heard appeals from determinations made by the Department of Public Health, Department of Public Works, the Police Department and the Taxi Division of the Municipal Transportation Authority.

The breakdown by the entity issuing the underlying determination was:



Appeals Heard by Issuing Entity

### BOARD ACTION

In Fiscal Year 2009-10, the Board upheld just over half (52%) of the cases heard, overturned or modified over one-third (37%), and the rest were either dismissed (8%) due to a lack of jurisdiction or continued (3%).

### APPEAL VOLUME

The Board continued to experience suppressed appeal volume, down 35% when compared to the average for the past ten years.

### BUDGET

Though challenged by the City's ongoing economic struggles, the Board was able to end the year with a small surplus. At the outset of the year, the Board's surcharge rates were adjusted upward to address continued projections of suppressed City-wide permit application volume. Filing fees also were increased, the majority for the first time in over 16 years. While filing fees generated revenue in excess of projections, that surplus didn't outpace the shortfall in surcharge revenue. To keep the budget balanced, expenditures were cut – primarily in personnel and contracting costs – allowing the Board to end the year with a surplus of just under \$4,000.

### ELECTION OF OFFICERS

Commissioner Frank Fung served as President and Commissioner Tanya Peterson as Vice President for the first half of the fiscal year. In January 2010, Vice President Peterson was elected President and Commissioner Kendall Goh was elected Vice President.

### COMMISSIONER APPOINTMENTS

Commissioner Rafael Mandelman resigned on May 5, 2010 and on May 12, 2010, Board of Supervisors President David Chiu appointed Chris Hwang to fill that seat.



## REPORT DETAIL

### MISSION

Originally created under the Charter of 1932, the Board of Appeals is a quasi-judicial body that provides the public with a final administrative review process for a wide range of City determinations. These determinations involve the granting, denial, suspension, revocation or modification of permits, licenses, and other use entitlements by various departments and other entities of the City & County of San Francisco.

As it processes, hears and decides cases, the Board of Appeals strives to provide an efficient, fair and expeditious public hearing and decision-making process before an impartial panel as a last step in the City's permit issuance process.

### JURISDICTION

The Board's jurisdiction is derived from San Francisco Charter Section 4.106, provisions in Article 1 of the San Francisco Business and Tax Regulations Code, and other City ordinances. Specific rights of appeal to the Board are also set forth in the Planning, Building, Plumbing, Electrical, Public Works, Police and Health Codes, among others.

The most common types of appeals heard by the Board involve:

- Building permits issued or denied by the Department of Building Inspection (DBI), including many that are subject to Planning Department review or result from discretionary review decisions of the Planning Commission
- Actions by the Zoning Administrator (ZA), including variance decisions, Letters of Determination, and Stop Work Order Requests
- Taxi-related permits issued by the Municipal Transportation Authority
- Tree planting and removal permits issued by the Department of Public Works (DPW)
- Tobacco sales permits issued by the Department of Public Health (DPH)

Less common but routinely heard by the Board are:

- DPH-issued permits for massage establishments
- DPW-issued permits for street space occupancy or minor sidewalk encroachment
- DBI-issued electrical permits for the installation of solar modules

In addition, recently enacted legislation<sup>1</sup> now gives the Board jurisdiction over appeals of "Project Development Fee Reports" issued by a newly formed DBI Development Fee Collection Unit. This DBI Unit is required to produce a Project Development Fee Report that specifies the amount of the development impact fees<sup>2</sup> owed on a given project. Disputes over the accuracy of the Report may be appealed to the Board. The Board's jurisdiction also was recently expanded to include appeals of some decisions made by the Historic

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<sup>1</sup> See Building Code Section 107A.13.9.2.

<sup>2</sup> Development impact fees are imposed as a condition of project approval and vary depending upon the project's site and scope. Fees may be associated with special use districts, with transit, affordable housing, street trees, wastewater, schools, etc.

Preservation Commission relating to Certificates of Appropriateness.<sup>3</sup> A Certificate of Appropriateness is the authorization by the Historic Preservation Commission to perform specific scopes of work on designated City landmarks and buildings within historic districts.

The Charter excludes from the Board of Appeals' jurisdiction permits issued by the Port Commission or the Recreation and Park Department or Commission, and appeals of building or demolition permits issued pursuant to a Conditional Use Authorization granted by the Planning Commission.<sup>4</sup> The Board does not make amendments to the Planning Code or the Zoning Map and also has no jurisdiction over appeals of criminal or domestic relations matters, or other areas regulated by the State or federal law.

### **BOARD MEMBERSHIP**

The Board of Appeals is comprised of five members appointed to staggered four-year terms. Three members are appointed by the Mayor and two by the President of the Board of Supervisors. All appointments are subject to the approval of the full Board of Supervisors. Board officers are elected for one-year terms at the first regular Board meeting held after January 15 each year.<sup>5</sup> This year, the Board had a 95% attendance record, with one member missing at only seven of the Board's 28 meetings. In May 2010, Supervisorial appointee Rafael Mandelman resigned, and Board of Supervisors President David Chiu appointed Chris Hwang to fill that seat.

Current Board membership is as follows:

<b>Commissioner</b>	<b>Appointing Authority</b>	<b>Dates of Service</b>
<b>Tanya Peterson</b> President, January 2010 - Present Vice President, January 2009 – January 2010	Mayor	February 26, 2008 to July 1, 2012
<b>Kendall Goh</b> Vice President, January 2010 - Present	President, Board of Supervisors	June 10, 2008 to July 1, 2012
<b>Frank Fung</b> President, January 2009 – January 2010 Vice President, March 2008 – January 2009	Mayor	October 19, 2004 to July 1, 2012  January 30, 1986 to June 8, 1988
<b>Michael Garcia</b> President, January 2008 – January 2009 Vice President, January 2007 – January 2008	Mayor	March 22, 2005 to July 1, 2014
<b>Chris Hwang</b>	President, Board of Supervisors	May 12, 2010 to July 1, 2014

<sup>3</sup> See Planning Code Section 1006.8(b).

<sup>4</sup> Appeals of the underlying Conditional Use Authorization may be made to the Board of Supervisors but the building or demolition permit may not be appealed to any City government body.

<sup>5</sup> Rules of the Board of Appeals, Article II, Section 1.

## **MEETINGS OF THE BOARD**

Over the course of 28 meetings, the Board of Appeals met for a total of 114 hours during fiscal year 2009-2010. Regular Board meetings are held on Wednesday nights, starting at 5:00 p.m. in City Hall. An annual meeting schedule is developed prior to the start of the calendar year and is available in the Board's offices and on the internet.<sup>6</sup> Special meetings may be called by the Board President, by a majority vote, or upon the written request of two Commissioners.

In addition to the appeals heard at each meeting, the Board also:

- Elected officers (January 20, 2009)
- Adopted the Board's fiscal year 2009-2010 budget (February 10, 2009)
- Heard the following informational presentations:
  - Laurence Kornfield, Deputy Director of the Department of Building Inspection provided the Board with an overview of how to read construction plans (July 1, 2010)
  - Dr. Johnson Ojo and Alyonik Hrushow from the Department of Public Health presented on the City's tobacco sales establishment permit program (March 17, 2010)

All meetings of the Commission are open to the public except as otherwise legally authorized. Commission meetings are conducted in accordance with the Rules of the Board of Appeals, which set out the order of presentation for the different types of cases heard. Board meetings are broadcast live on SFGTV, San Francisco cable television channels 26 and 78, and may also be viewed by computer, both live and on-demand at: [http://sanfrancisco.granicus.com/ViewPublisher.php?view\\_id=6](http://sanfrancisco.granicus.com/ViewPublisher.php?view_id=6). Closed captioning is provided for these broadcasts and in the City Hall hearing room during Board meetings. Meeting agenda and minutes are posted on the Board's website at: [www.sfgov.org/boa](http://www.sfgov.org/boa).

## **APPEAL PROCESS**

Appeals must be filed within the legally prescribed appeal period, which varies depending upon the underlying determination being appealed. For most matters, the appeal period is fifteen days from the date the determination is issued, but other appeal periods may apply (for example, variance decisions must be appealed within ten days, and appeals of Certificates of Appropriateness must be filed within thirty days). On occasion, and based on the vote of a supermajority of Board members, when a City error causes a would-be appellant to miss the appeal period, an appeal may be filed late.

When an appeal is filed, a briefing schedule is established, allowing the parties to submit written arguments and other evidence for the Board's consideration. Members of the public also may submit briefs, letters and other evidence, voicing their support for, or opposition to an appeal. Pursuant to the requirements of San Francisco Business and Tax Regulations Code (Article 1, Section 12), the Board provides notice that an appeal has been filed to all property owners and occupants within a 150 foot radius of any property that is the subject of an appeal.

After reviewing the written file, Board members conduct a public hearing on the appeal, listening to arguments and testimony from the appellant(s), permit/decision holder(s), Department representative(s), and from interested neighbors and other members of the

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<sup>6</sup> See: <http://www.sfgov3.org/index.aspx?page=775>.

public. After deliberation, the Board may vote to uphold or overrule the underlying departmental determination, or may impose conditions on the determination.<sup>7</sup>

Conditions imposed by the Board are wide-ranging, and most typically include:

- Modifications to building plans, for example:
  - Setting back a deck or other structure so it is further from a protesting neighbor's property line
  - Obscuring glass in neighbor-facing windows
  - Establishing 'good neighbor' policies such as limiting when construction may take place and how construction-related complaints will be handled
- Qualifications made to Zoning Administrator determinations, for example:
  - Requiring the filing of a Notice of Special Restrictions, such as to specify the number of dwelling units at a property
  - Limiting the type, location or hours of operation of a commercial use
- Changes to the length of a suspension, for example, of taxi driving or tobacco sales permits
- Reductions in penalties imposed for performing work without a permit
- Specifying the number or size of replacement trees when permitting a tree removal

The Charter<sup>8</sup> requires that in order to overturn or place conditions on a department's decision, a supermajority of Board members must agree. When fully seated, this requires four out of five votes. (Three votes are needed if there is a vacancy on the Board.) A supermajority also is needed to grant a rehearing request or a request for late jurisdiction.

### **APPEALS EXPERIENCE**

During the year, 194 new matters were filed with the Board, comprised of 157 appeals, 29 requests for late jurisdiction, and 8 requests for rehearing. The Board heard 134 of these matters during the year,<sup>9</sup> as follows:

- 18 appeals filed before the fiscal year began
- 83 appeals filed during this fiscal year
- 28 requests for late jurisdiction
- 5 rehearing requests

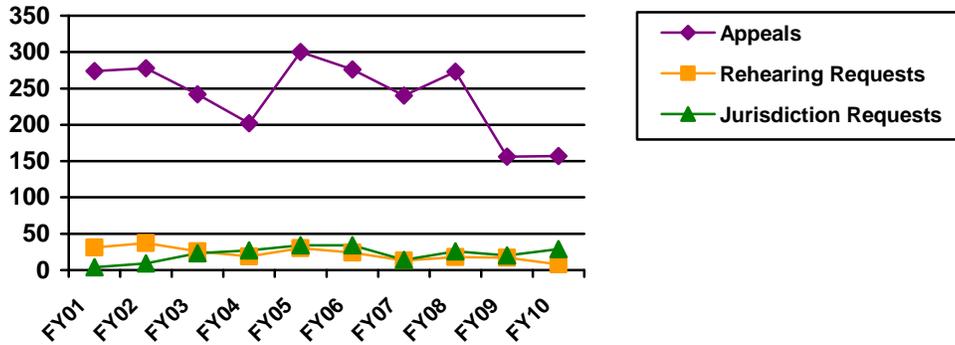
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<sup>7</sup> On occasion, a matter will be continued, typically to allow additional information to be prepared and submitted to the Board, or to give the parties time to negotiate a resolution. In rare instances a matter may be continued indefinitely (to the Board's "Call of the Chair" calendar) because an unknown amount of time is needed before the Board may move forward with a determination, for instance, to await the outcome of litigation affecting the subject matter of an appeal.

<sup>8</sup> See San Francisco Charter Section 4.106(d).

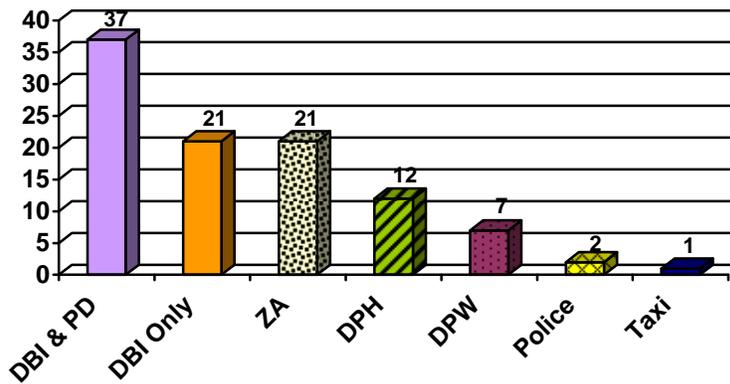
<sup>9</sup> The fifty-nine matters filed but not heard during the year were either withdrawn or rescheduled at the request of the parties, dismissed due to a lack of Board jurisdiction, or filed late enough in the year that they were heard the following year.

Over the past ten years, an average of 237 appeals was filed annually with the Board. While the number of rehearing and jurisdiction requests has remained relatively constant, the 157 appeals filed this year represent a 34% decline from the norm. The following graph depicts the number of cases filed in each of the past ten years.



**Number of Cases Filed Over Time**

Over three-quarters (78%) of the appeals heard during fiscal year 2009-10 were of land use determinations made by the Planning Department, Zoning Administrator and/or the Department of Building Inspection. Department of Public Health determinations comprise the next largest group of appeals (12%), followed by the Department of Public Works (7%), the Police Department (2%) and Taxi-related determinations made by the Municipal Transportation Authority (1%). The following chart illustrates the number appeals heard by the Board, identified by the department, Commission or other entity<sup>10</sup> issuing the underlying determination:



**Number of Appeals Heard by Issuing Entity**

Department of Building Inspection and Planning Department

Over one-third (37) of the 101 appeals heard during the year stemmed from determinations made by the Department of Building Inspection (DBI) that also involved

<sup>10</sup> DBI = Department of Building Inspection; PD = Planning Department; ZA = Zoning Administrator; DPH = Department of Public Health; DPW = Department of Public Works; Taxi = Municipal Transportation Authority Division of Taxis and Accessible Services.

Planning Department review. These appeals focused on both Planning Code and Building Code issues, and include:

- 27 appeals protesting the issuance of a permit
  - Protest appeals are often filed by neighbors concerned that proposed construction will infringe on the enjoyment of their property. For instance, when a new deck may create sightlines into a neighbor's windows, adding height to a building may reduce sunlight on neighboring solar panels, or a rear yard addition might infringe into the mid-block open space.
- 10 appeals of denied permits
  - Property owners appeal permit denials to obtain permission for a project that has been disapproved by DBI and/or Planning. These disapprovals are often made by DBI at the request of the Planning Department, based on a determination that the proposed project is inconsistent with provisions of the Planning Code or Residential Design Standards.<sup>11</sup>

The Board upheld 51% (19) of these determinations and overruled 35% (13). Of the overruled matters, the Board placed conditions on the underlying permits in nine cases. Of the remaining 14% (5), three were still pending at the close of the year and two had been withdrawn.

#### Department of Building Inspection Only

Twenty-one appeals were heard of determinations made solely by the Department of Building Inspection. These include:

- 8 appeals protesting the issuance of a permit
- 1 appeal of a denied permit
- 12 appeals protesting the imposition of penalties
  - Penalty appeals typically are filed by homeowners who have been assessed fines for allegedly performing work without a permit or exceeding the scope of a permit. In some cases, the Board reduces penalties where it finds that the homeowner bought the property after the unpermitted work was performed or upon other exigent circumstances.

The Board upheld 38% (8) of the DBI determinations and overruled 62% (13), imposing conditions on twelve of the overruled matters. Eleven of the cases upon which conditions were placed involved the reduction of penalties.

#### Zoning Administrator

There were twenty-one (21) appeals heard of Zoning Administrator (ZA) determinations. These include:

- 8 appeals protesting Letters of Determination (LOD)
  - LODs are written interpretations of how certain sections of the Planning Code should be applied to specific factual situations. These eight appeals addressed a wide array of issues including:

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<sup>11</sup> The Residential Design Standards (formerly known as the Residential Design Guidelines) promote residential building design that protects neighborhood character, preserves historic resources and promotes the goal of environmental sustainability.

- Possible changes in the use of an events venue (the Masonic Center)
  - Parameters for the use of a commercial space as a restaurant on Folsom Street
  - Whether summer programs could be held at a private girls' school in the City's Sea Cliff neighborhood
  - Whether parking requirements would continue at a commercial property in the City's Fisherman's Wharf area
  - Requirements for establishing a Medical Cannabis Dispensary at a property on Divisadero Street
  - The appropriate dwelling unit count at a property in Noe Valley
- 8 appeals of Variance Decisions, six protesting variances that were granted and two appealing variances that were denied
  - 2 appeals of Notices of Violation and Penalties, both of which were based on allegations of unauthorized commercial use of a property
  - 3 additional appeals, as follows:
    - 1 Stop Work Order Request
      - alleging discrepancies between the approved plans and what was constructed
    - 1 Request for Revocation
      - alleging permits to construct and erect a sign did not comply with the Planning Code and were approved by the Planning Department in error
    - 1 Request for Suspension
      - alleging that a permit was issued "over the counter" without the necessary Planning Department review

The Board upheld the determination of the Zoning Administrator in thirteen cases (62%), overruled the Zoning Administrator five times (24%) and sent one case to the Board's Call of the Chair calendar. The two remaining cases were withdrawn prior to Board decision. Conditions were placed on all five of the overruled determinations.

#### Department of Public Health

Twelve (12) appeals were of determinations made by the Department of Public Health (DPH), all but one of which related to the suspension of tobacco sales permits where the permit holder was charged with selling tobacco to a minor. These suspensions resulted from a sting operation conducted by DPH in conjunction with the San Francisco Police Department, using underage decoys attempting to buy cigarettes. The DPH-imposed length of the suspension was upheld in eight cases and reduced in three. In one of these cases, the Board maintained the length of the suspension imposed by DPH but ruled that the suspension could not begin until after the year-end holiday season. The one remaining DPH-related appeal was of the denial of a permit to operate a Medical Cannabis Dispensary. That matter was withdrawn prior to a Board decision.

#### Department of Public Works

Seven (7) appeals were heard relating to determinations made by the Department of Public Works (DPW). Five related to tree removal permits and two were appeals of minor sidewalk encroachment permits (one dealt with planter boxes on the sidewalk

along a steep driveway and the other with the excavation of undeveloped open space for foundation work and other requirements associated with new construction). The DPW determination was upheld in five cases and overruled in two, with conditions imposed in one of the overruled cases.

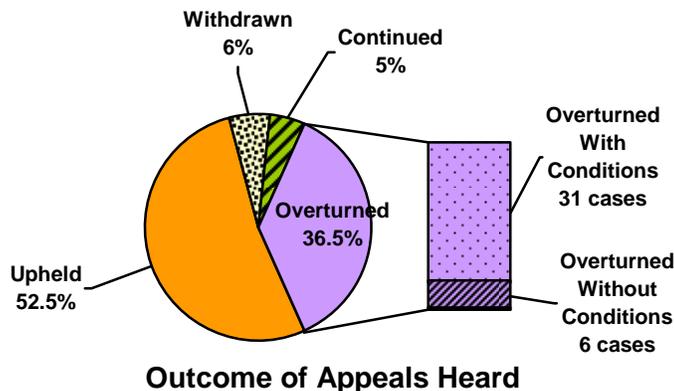
### Police Department

There were two appeals of Police Department determinations; one of the denial of a tow firm permit, which the Board upheld, and the other of the denial of an auto wrecker permit, which was withdrawn after the parties settled the matter.

### Municipal Transportation Authority – Division of Taxis and Accessible Services

The Board heard one taxi-related appeal, of the Municipal Transportation Authority's decision to remove from the taxi medallion waiting list the name of a disabled driver who was struggling to meet the applicable full-time driving requirements. This case was sent to the Board's Call of the Chair calendar.

Overall, the Board upheld the underlying departmental decision in 53 of the appeals heard (52.5%) and overruled the department in 37 cases (36.5%). Of the 37 cases overruled, conditions were imposed by the Board in 31 cases (84%). Six cases (6%) were withdrawn and the remaining five cases (5%) were continued.



### Other Matters Heard

- Rehearing Requests  
Once an appeal is heard and decided by the Board, the parties associated with the case have ten days within which they may request that the Board reconsider its decision.<sup>12</sup> Pursuant to the Board's Rules, in order to grant a motion for rehearing, the Board must find that "new or different material facts or circumstances" have arisen since the Board's consideration of the matter that, if known, "could have affected the outcome of the original hearing."<sup>13</sup> The Board considered five rehearing requests during the fiscal year; one was granted and the remaining four were denied.

<sup>12</sup> See, S. F. Business and Tax Regulations Code, Art. 1, Sec. 16; and Rules of the Board of Appeals, Art. V, Sec. 6.

<sup>13</sup> Rules of the Board of Appeals, Art. V, Sec. 6.

- **Jurisdiction Requests**  
The Board may allow an appeal to be filed after the relevant appeal period has expired where the reason for the failure to file on time is due to some error on the part of the City.<sup>14</sup> For example, if the City failed to issue the required notice to neighbors of a building permit application, or the notice did not accurately describe the proposed construction project, allowing late jurisdiction might be considered. Of the twenty-eight Jurisdiction Requests heard during the year, eighteen (64%) were denied by the Board and ten (36%) were granted. By granting a Jurisdiction Request, the Board provides the requestor with a new appeal period within which to file an appeal.

### **LITIGATION**

Parties dissatisfied with a Board determination may seek further review and relief in Superior Court. During this year, the following appeals were the subject of court proceedings:

- **Marianne Beck, et al. v. City & County of San Francisco, et al.**, challenging the Board's decision on December 17, 2008 to uphold the issuance of a permit to remove the back decks and fire escape on a residential building located at 1960 Golden Gate Avenue. Action was brought by the Tenderloin Housing Clinic on behalf of tenants residing at the property.
  - **CASE RESOLVED:** This case has been dismissed with no liability to the City.
- **Clear Channel Outdoor, Inc. v. City & County of San Francisco**, challenging the issuance of a permit to reconstruct a sign located at 2283-2297 Market Street. Clear Channel filed a permit application to remove a billboard. The permit was issued, and the property owner appealed. On October 28, 2008, the Board granted the appeal, confirmed the property owner's right to reinstall a billboard on the property and authorized a revision of the building permit. The City won this case on demurrer at the trial court, and the decision was appealed. Appeal briefs have been filed and the parties are waiting for a date to be set for oral argument.
- **Clear Channel Outdoor v. San Francisco Board of Appeals**, challenging the Board's decision on March 19, 2008 to overturn a permit obtained by Clear Channel to take down a sign installed on private property located at 1801 Turk Street. The property owner appealed the issuance of the permit to the Board, contending that she didn't give her authorization for a permit to perform work on her property. While pending at the Board, Clear Channel sent a letter to the Planning Department and the Board withdrawing the permit saying it no longer intended to proceed with the project. The Board then overturned the permit, based on the reasoning that the property owner should've been consulted about the sign removal. Clear Channel filed suit in superior court challenging the Board's decision to revoke the permit. The City filed a "Motion for Judgment on the Pleadings," arguing that the City is entitled to judgment in its favor because Clear Channel lacks standing and the case is moot.
  - **CASE RESOLVED:** In a separate Federal Court decision interpreting the lease at issue in this case (upon which the Board did not rule), the Court

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<sup>14</sup> See, Franklin v. Steele, 131 Cal. App. 3d 558 (1982).

held that the landlord could not prevent Clear Channel from removing the sign. The City issued a new permit for sign removal and the parties stipulated that the Board would vacate as moot its March 19, 2008 decision. No determination of was made on the validity of the Board's action. On June 6, 2010, the Board mooted its prior decision.

- **Robert Michael Friedman v. San Francisco Taxi Commission, et al.**, challenging the Board's decision on July 23, 2008 to uphold the Taxi Commission's revocation of a taxi driver permit and taxi medallion. A hearing in Superior Court has not yet been scheduled.
- **Wes Hollis v. San Francisco Municipal Transportation Authority, et. al.**, challenging the Board's decision on August 18, 2010 to revoke Mr. Hollis' color scheme permit and to suspend his taxi medallion for one year. On October 8, 2010, the Court granted Mr. Hollis' request to stay the Board's decision while his legal claims are pending. The underlying writ petition has not yet been briefed or heard.
- **Nob Hill Association, et. al., v. City & County of San Francisco, et. al.**, challenging the Board's decision on January 13, 2010 to affirm a Letter of Determination issued by the Zoning Administrator stating that the existing entertainment-related use of the California Masonic Memorial Temple is a lawful non-conforming use and that the operators of the Temple may apply for a conditional use authorization which could intensify the entertainment-related use of the property. A hearing in Superior Court has not yet been scheduled.
- **Sayed Bashir Rahimi v. San Francisco Taxi Commission, et al.**, challenging the Board's decision on January 14, 2009 to uphold the Taxi Commission's revocation of Mr. Rahimi's taxi driver permit and taxi medallion.
  - **CASE RESOLVED:** On August 5, 2010, the Court denied the petitioner's motion for a writ of mandate.
- **Regan Carroll, Regan Carroll Trust – various cases.** Plaintiff Regan Carroll filed multiple lawsuits against the City relating to his project at 1179-1189 Tennessee Street. This included a challenge to the Board's decision on June 14, 2006 to uphold a Zoning Administrator's Letter of Determination requiring that permits related to the property be routed to the Planning Department for review. The property owner sought a building permit for a residential/mixed use project in the Dogpatch Neighborhood. After the building permit application was filed but before the permit was issued, it was determined that the project was subject to review under Article 10 of the Planning Code because of its location in a neighborhood that was designated as historic.
  - **CASE RESOLVED:** The City won several of these cases on motions, and all but one of the remaining matters were dismissed by the petitioner, who agreed to seek the Certificate of Appropriateness required by the Planning Department. The one remaining matter is likely to be dismissed shortly, pending ongoing project modification discussions taking place with the Planning Department.
- **San Francisco Architectural Heritage v. City & County of San Francisco, et. al.**, challenging the Board's decision on April 15, 2010 to uphold the issuance of permits that allow the demolition of the building located at 1450 Franklin Street

and the construction of a new 13-story mixed-use project at that site. This project was part of a Redevelopment Agency Plan that expired shortly before the Board heard this appeal. The City is planning to join the property developer's motion to demurrer, arguing that the petitioner failed to timely serve the complaint and therefore, that the case is time-barred. Briefing and a hearing on this motion are pending.

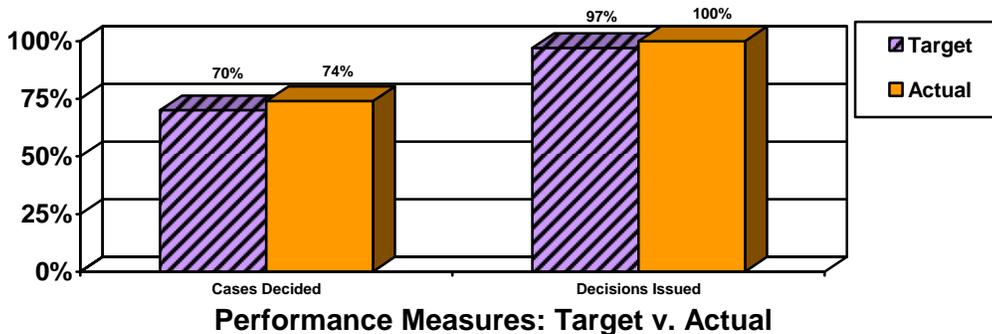
- **350 Beach LLC v. City & County of San Francisco, et. al.**, challenging the Board's decision on March 3, 2010 to uphold a Zoning Administrator's Letter of Determination regarding a Notice of Special Restrictions recorded against the petitioner's property that requires the provision of parking for the benefit of a neighboring property. A hearing in Superior Court has not yet been scheduled.
- **Tu Lam v. San Francisco Municipal Transportation Authority, et. al.**, challenging the Board's decision on May 29, 2009 to revoke Mr. Lam's taxi driving permit and taxi medallion. On December 7, 2009, the Court denied the petitioner's request for a stay of the revocation of his driving permit and medallion while his legal claims are pending. A hearing on the merits of the underlying writ petition has not yet been scheduled.

**PERFORMANCE MEASURES**

All City departments are required to report on specific statistical measures as a way of assessing and reporting on performance. The two measures unique to the work of the Board of Appeals look at how quickly the Board decides cases and the timeliness with which staff issues written decisions.

The speed at which the Board decides cases is measured by looking at how often cases are decided within 75 days of filing. Before the start of the year, a seventy percent target was set for this measure, which the Board exceeded by four percent. This performance measure is inherently volatile and in many ways is outside the Board's control. Most of the time, when cases are decided beyond the 75 day window, it is because of continuances requested by the parties to allow time for settlement negotiations or further case preparation, or when the Board requests additional evidence be submitted.

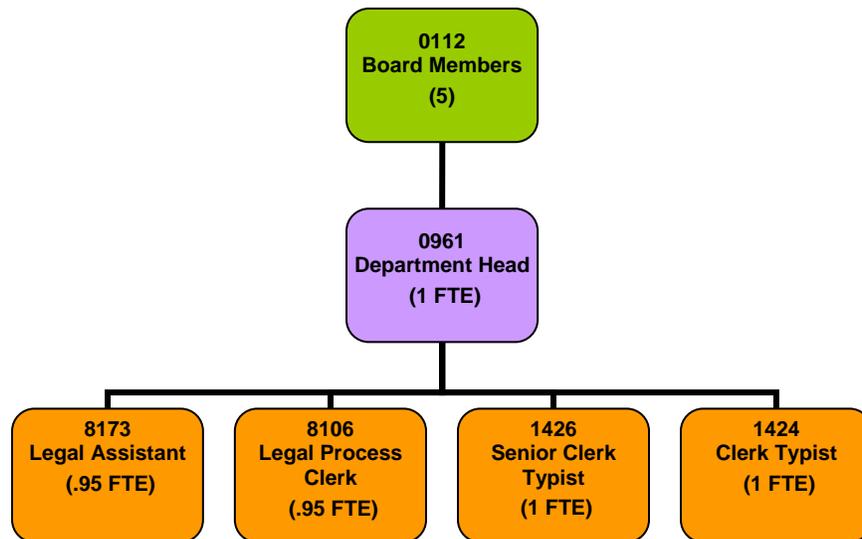
The second measure looks at how often written decisions are released within 15 days of final Board action. A 97% target was set for this measure, which the Board exceeded by 3%, issuing all decisions within the 15 day timeframe.



## BOARD STAFF

The five staff members supporting the work of the Board include an Executive Director, Legal Assistant and three Clerks. During the year, a large number of layoffs occurred in other City departments, displacing two members of the Board's staff. This, coupled with concerns over projected revenue shortfalls, led the Board to reduce its staffing during the fiscal year. One Clerk Typist position was at first reduced to part-time, and then left vacant for several months. At the end of the fiscal year, this clerk position was reclassified as a Legal Process Clerk, with the goal of filling it with a candidate who would have experience more tailored to the work of the Board. This position was filled early in fiscal year 2010-11, and the Board's current organization structure is as follows:

### Organizational Chart



## BUDGET

As was true throughout the City and the nation, fiscal year 2009-10 presented the Board with ongoing budgetary challenges. The Board's budget is derived from two sources: ninety-five percent (95%) from surcharges placed on permit applications<sup>15</sup> and five percent (5%) from appeal filing fees.<sup>16</sup> Legislation allows for the adjustment of the surcharge rates each year, if necessary to provide sufficient income to cover the Board's actual operating expenses.<sup>17</sup> Going into this year, the surcharge rates were adjusted slightly upward, taking into account that revenues in 2008-09 came in below projections, and the expectation that the number of new permit applications would continue to be below the norm. Filing fees also were adjusted, the majority for the first time in over 16 years, by applying the rate of inflation in order to bring the fees up to current values.<sup>18</sup>

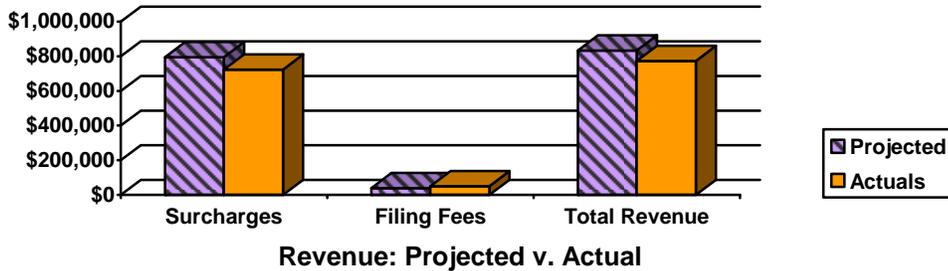
<sup>15</sup> Surcharges are calculated by (1) determining the number of appeals filed in the prior fiscal year that originated with actions taken by each funding department, (2) applying the percentage of appeals for each department to the Board's budget to determine the dollar amount each funding department should contribute, and (3) dividing this dollar amount by the anticipated number of appealable permits issued by each funding department.

<sup>16</sup> The Board's fees are found in S.F. Business and Tax Regulations Code Article 1, Section 8.

<sup>17</sup> San Francisco Administrative Code Chapter 10G.

These efforts, in conjunction with expenditure reductions described below, allowed the Board to end the year with a small surplus.

The Board's total budget of \$834,412 was based on projected surcharge revenue of \$795,712 and filing fee revenue of \$38,700. The Board ended the year having realized \$773,598 in total revenue (93% of projected); with \$723,907 from surcharges (reflecting a \$71,805 shortfall) and \$49,691 from filing fees (reflecting a \$10,991 surplus). On balance, this left the Board with a 7.3% deficit of \$60,814. While this is still a significant shortfall, the adjusted surcharge and filing fee rates helped cut in half the deficit experienced in the prior fiscal year, which fell 16% (\$125,949) below projected.



Aware that revenue was likely to be lower than originally anticipated, the Board took action throughout the year to reduce its expenses. When a large number of layoffs occurred in other City departments toward the end of 2009, causing two of the Board's clerks to be displaced, the Board took the opportunity to reduce staffing to save on personnel expenses for the remainder of the fiscal year. The savings in salary and fringe benefits totaled \$27,031 for the year.

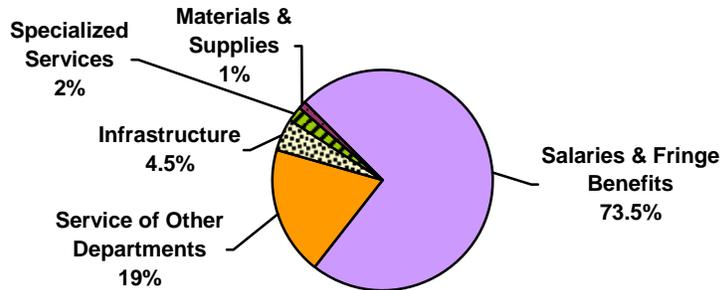
Since appeal volume continued to be lower than average, the Board's need for neighborhood notification services and other appeal processing costs was reduced. This allowed the Board to reduce spending on non-personnel expenses, including those associated with services provided by other City departments. In total, the Board saved \$37,692 in non-personnel expenses.

Overall, expenses were reduced by 7.7% (\$64,723), and the Board ended the year \$3,908 under budget.

As the chart below reflects, nearly three-quarters (73.5% or \$562,442) of the Board's total expenditures of \$769,689 were used to pay for the salaries and fringe benefits of its employees. Nineteen percent (\$145,733) paid for services provided by other City departments, including advice and assistance provided by the City Attorney, the broadcasting and closed captioning of Board meetings by the Department of Technology's SFGTV services, and support provided by the Department of Technology for the Board's computer systems, website and the construction of a database to track and report on Board cases. The expenditures for infrastructure costs such as rent, phones and the rental of a photocopier, represented 4.5% (\$34,997) of the Board's total expenditures. Two percent (\$17,853) paid for specialized services such as interpreters at Board meetings for limited-English speaking parties, the services of a contractor who

<sup>18</sup> For instance, the \$100 fee charged to appellants requesting late jurisdiction or a rehearing was set in 1992. Applying the Consumer Price Index to \$100 in 1992 translates to \$151.41 in 2008. Rounded, the new rate for such filings is \$150.

researches and prepares the neighborhood notification labels, and couriers delivering meeting materials to Board members. Materials and supplies represented one percent (\$8,664) of the Board's expenditures, paying for commodities such as postage, paper and other office supplies.



Board of Appeals Expenditures by Category

### **TECHNOLOGY & INFRASTRUCTURE**

The Board's fiscal year 2009-2010 budget included system development funds to help launch an automated case filing and tracking system. The Board entered into an agreement with the Department of Technology for the development of this system, which will streamline the process for filing appeals, improve the Board's ability to track and report on its cases, and provide a platform for conveying case-related information to other City departments. In particular, the Board seeks the ability to share information with the Planning Department and the Department of Building Inspection so that Board determinations affecting particular parcels – which in effect create special zoning on a property – can be more readily tracked and enforced. Due to staffing reductions at the Department of Technology, this project was not completed during the year, but it is well underway currently and is expected to be implemented in fiscal year 2010-11.

Other enhancements were implemented during the year, including improvements to the look and accessibility of the Board's website, the creation of multi-lingual speaker cards for use at Board meetings, better signage for finding the Board's offices, and conveying both current and historical Notices of Decision in an electronic, searchable format for inclusion in the Planning Department's Parcel Information Database.

### **LOOKING AHEAD**

In the coming year, the Board will continue to make operational and programmatic improvements to enhance the Board's ability to provide the public with an efficient, fair and expeditious appeal review process. Among other activities, the Board will:

- Analyze and consider revisions to the Rules of the Board of Appeals, to evaluate new opportunities for maximizing efficiencies, clarify and streamline the appeal process, and bring written protocols further in line with Board practices.
- Continue to review and update resource materials, forms and website content to maximize value and ensure that the public is given accurate and accessible information about the appeal process and Board procedures.
- Expand the availability of services and resources in languages other than English.
- Administer annual performance evaluations for all staff.