

# BOARD OF APPEALS ANNUAL REPORT



FY 2016

# MISSION

The Board of Appeals is a quasi-judicial body that was first created by the San Francisco Charter of 1932. It provides the public with final administrative review of appeals relating to a wide range of City determinations, including the granting, denial, suspension, revocation and modification of permits, licenses, and other use entitlements by various departments, Commissions and other entities of the City & County of San Francisco.

As it 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.

# BOARD MEETINGS & MEMBERSHIP

Board meetings are held on Wednesdays starting at 5:00 p.m. in City Hall and are open to the public and broadcast on SFGovTV, the City’s government television station.<sup>1</sup> Meetings are conducted in accordance with the Rules of the Board of Appeals. Closed captioning is provided. The Board’s meeting agendas, minutes, and the briefs and other materials associated with the cases heard are posted on the web ([www.sfgov.org/boa](http://www.sfgov.org/boa)).



FY16 Board Activity

The five-member Board is comprised of three members appointed by the Mayor and two by the President of the Board of Supervisors. All appointments are to staggered four-year terms and require approval by the Board of Supervisors. In July 2016, President Honda and Vice President Fung were reappointed by Mayor Edwin Lee and Commissioner Swig was reappointed by Board of Supervisors President London Breed.

<b>Commissioner</b>	<b>Appointing Authority</b>	<b>Appointment Date</b>	<b>Term Expires</b>
<i>Darryl Honda President</i>	Mayor	December 4, 2012	July 1, 2020
<i>Frank Fung<sup>2</sup> Vice President</i>	Mayor	October 19, 2004	July 1, 2020
<i>Ann Lazarus</i>	Mayor	July 25, 2012	July 1, 2018
<i>Rick Swig</i>	Board of Supervisors	April 2, 2015	July 1, 2020
<i>Bobbie Wilson</i>	Board of Supervisors	September 30, 2014	July 1, 2018

<sup>1</sup> [http://sanfrancisco.granicus.com/ViewPublisher.php?view\\_id=6](http://sanfrancisco.granicus.com/ViewPublisher.php?view_id=6) and cable television channels 26 and 78. Board meetings also may be streamed on-demand.

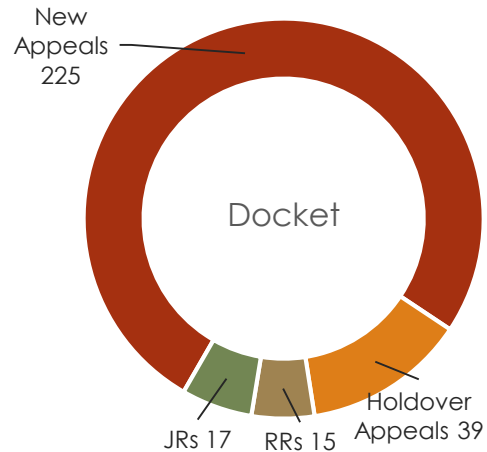
<sup>2</sup> Commissioner Fung also served on the Board from January 1986 to June 1988.

# APPEAL EXPERIENCE

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There were 296 matters on the Board's docket during the year:

- 257 new matters filed
  - 225 appeals
  - 17 jurisdiction requests (JRs)
  - 15 rehearing requests (RRs)
- 39 pending or continued appeals carried forward from prior years

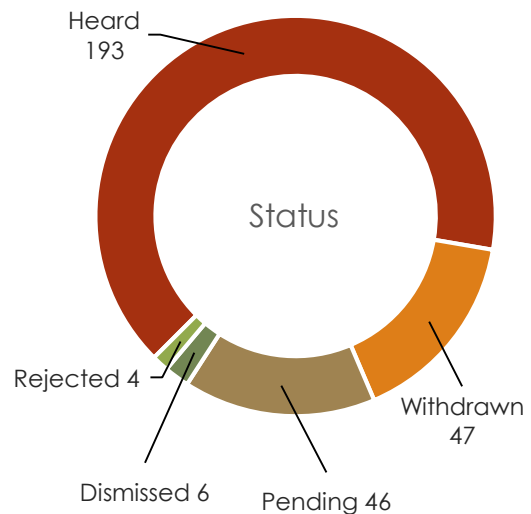


The Board heard 193 (65%) of the matters on the docket:

- 168 appeals
- 13 rehearing requests
- 12 jurisdiction requests

Of the 103 (35%) matters not heard:

- 47 were withdrawn
- 46 were pending, having been filed late in the year such that they will be heard in the next year
- 6 were dismissed when the underlying permit was canceled
- 4 were rejected due to a lack of subject matter jurisdiction<sup>3</sup>



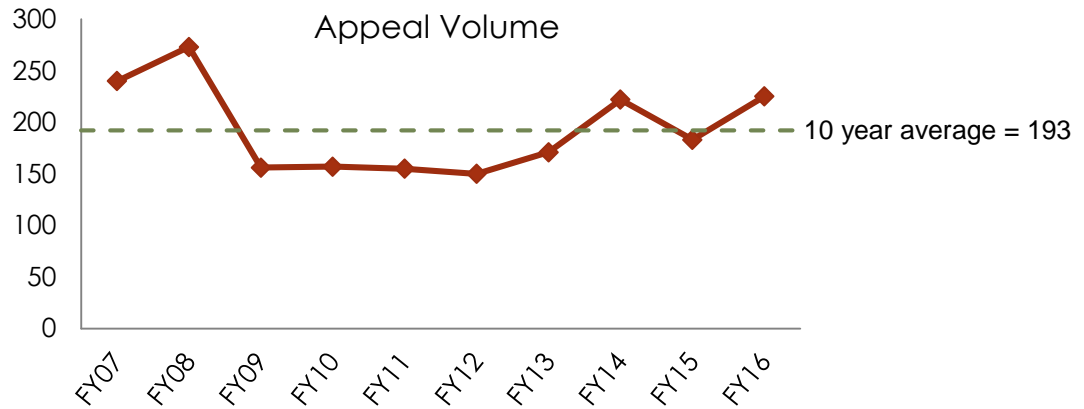
An overview of the Board's jurisdiction, the standard of review applied to various appeal types, and a description of the appeal process is available in Appendix B.

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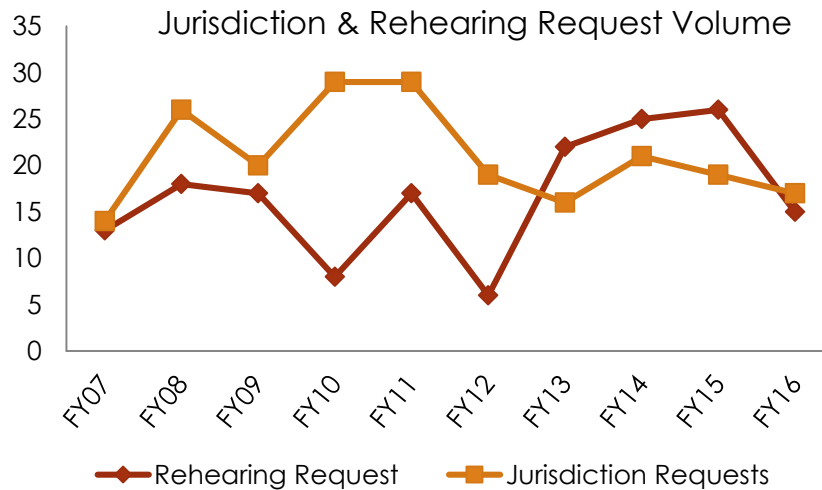
<sup>3</sup> For example, the Board lacks subject matter jurisdiction over building permits related to projects that have been given conditional use authorization. (See, San Francisco Charter Section 4.106(b).)

## Volume

The 225 new appeals filed during the year is 16.5% above the ten-year average of 193 appeals, and 23% above last year's volume. Annual appeal volume fluctuates for a variety of reasons: the health of the City's economy; new permitting legislation or business trends that trigger a spike in a particular appeal type; and specific enforcement efforts by the City that result in appealable penalties. This year, 29% of new appeals were from two clusters of appeals filed in response to City-initiated enforcement actions.<sup>4</sup>



As depicted below, the number of rehearing requests and jurisdiction requests has remained relatively low each year.

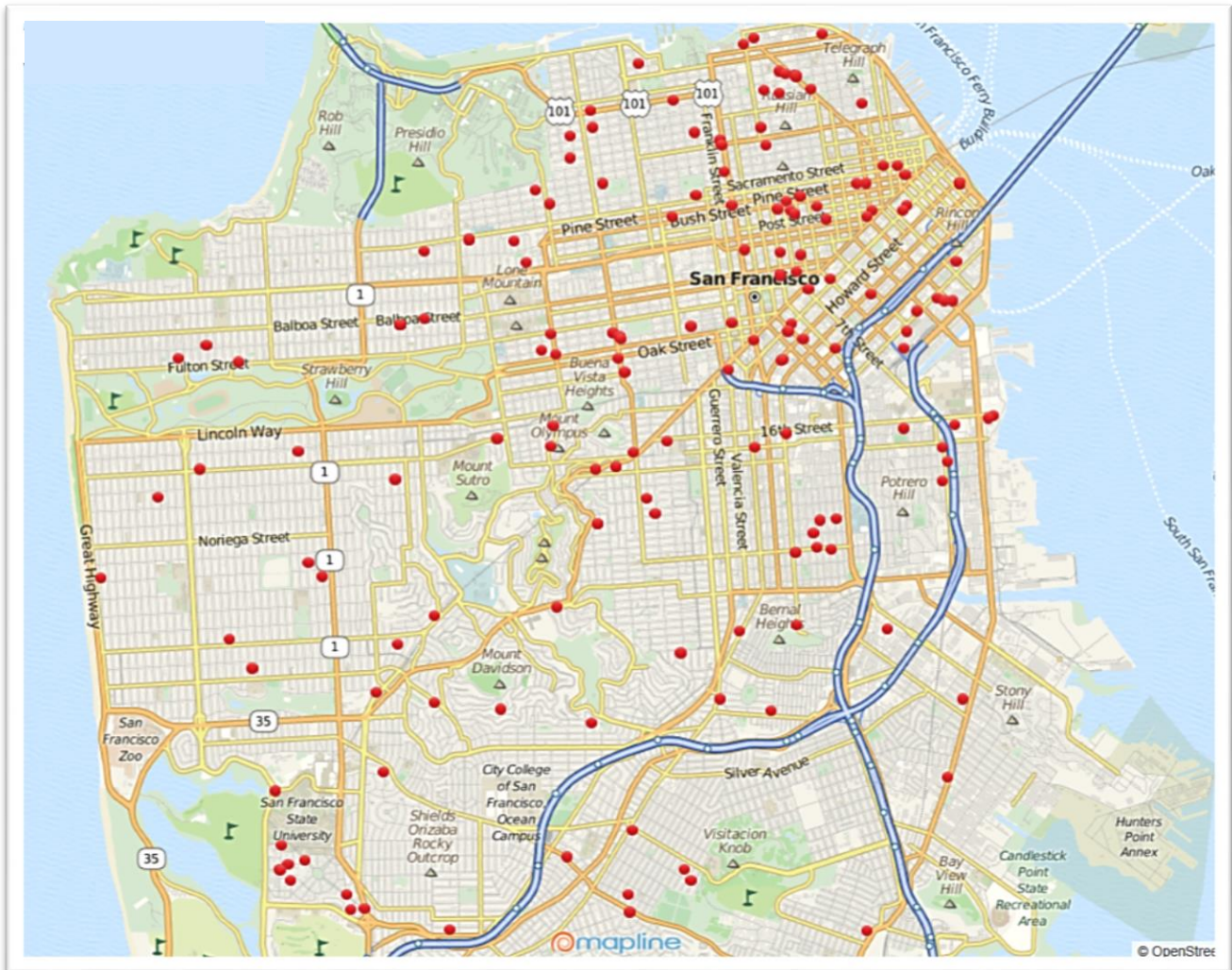


<sup>4</sup> Thirty-five appeals were filed protesting the denial of sign permits resulting from an enforcement effort to bring a sign company into compliance with the Planning Code; 22 appeals were filed by the Academy of Art University protesting Notices of Violation and Penalty issued by the Zoning Administrator.

## Geographic Distribution

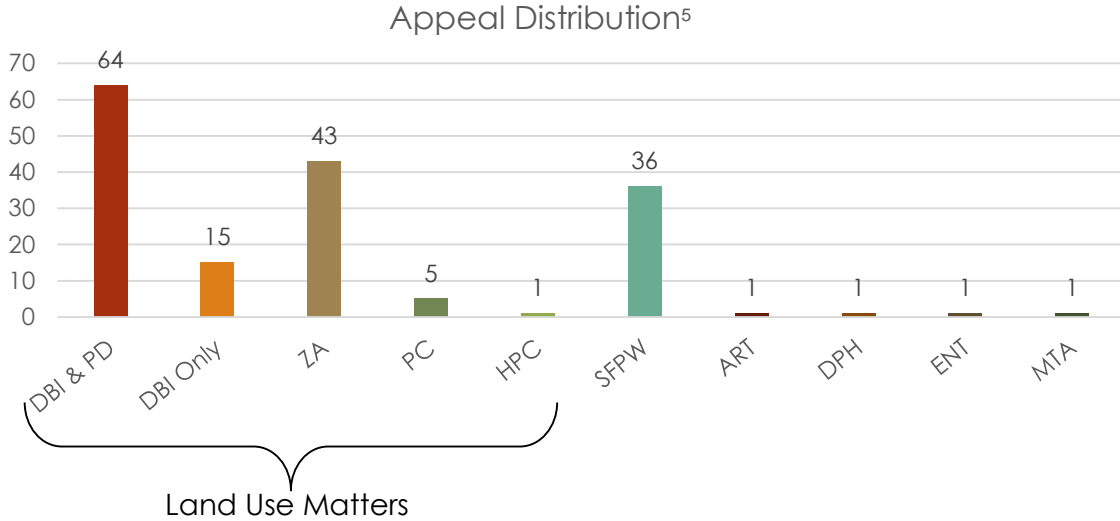
The properties subject to appeals heard by the Board during the year were dispersed throughout San Francisco. The highest concentration is seen in the City's northeast quadrant, which is typical for the Board.

Geographic Distribution of Appeals Heard



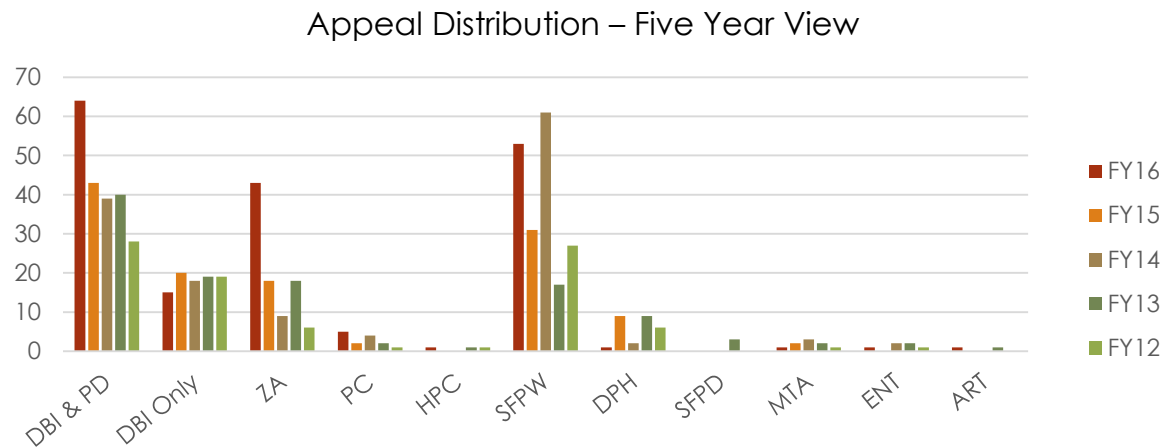
## Subject Matter

Of the 168 appeals heard by the Board, 76% were related to land-use determinations made by the Department of Building Inspection, the Planning Department, Planning Commission, Zoning Administrator or Historic Preservation Commission.



The Board continued to experience an increased number of appeals related to the removal of residential units, primarily units that were unpermitted, with 17 such appeals heard during the year. Detailed information on all of the appeals heard by the Board during the year is available in Appendix A.

A five-year view of appeal volume by source illustrates fluctuations from year-to-year, with a consistent emphasis on land use matters.

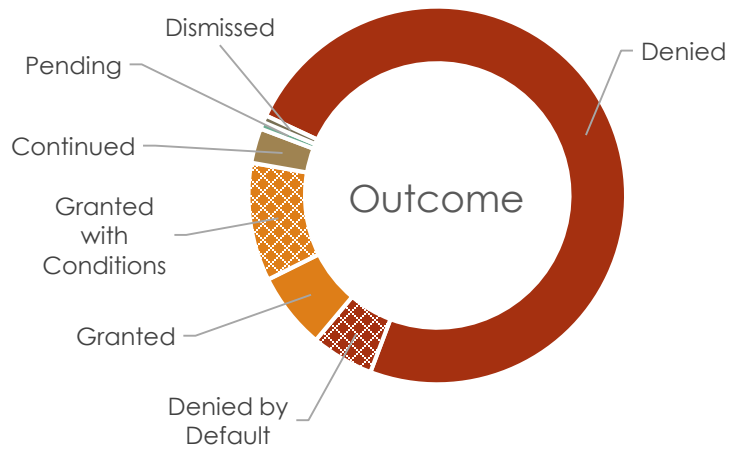


<sup>5</sup> DBI = Department of Building Inspection; PD = Planning Department; ZA = Zoning Administrator; PC = Planning Commission; HPC = Historic Preservation Commission; SFPW = Public Works; AC = Arts Commission; DPH = Public Health; EC = Entertainment Commission; MTA = Municipal Transportation Agency.

## Appeal Outcome

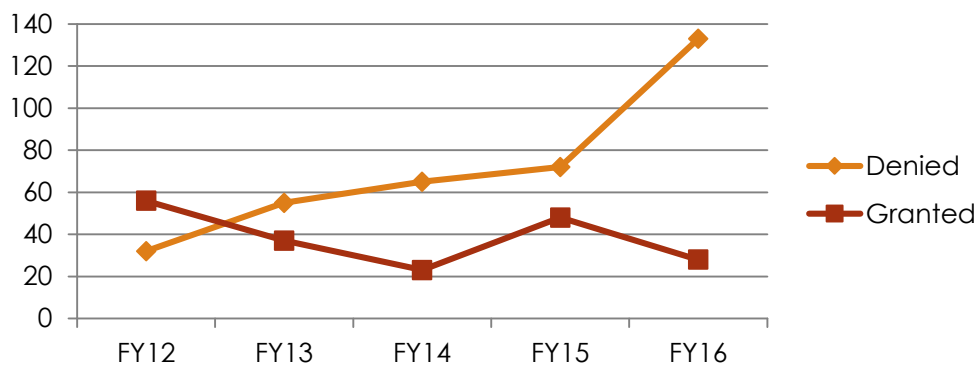
Of the 168 appeals heard during the year:

- In 124 cases (74%), the Board voted to deny the appeal and uphold the underlying departmental decision
- In 9 cases (5%), the appeal was denied by default because the Board was unable to muster sufficient votes to grant or deny the appeal
- In 11 cases (6%), the Board granted the appeal and completely overturned the underlying departmental decision
- In 17 cases (10%), the Board granted the appeal on the condition that the underlying determination be modified in some way
- Of the remaining 7 cases (5%):
  - 5 cases were continued by the Board after hearing
  - 1 case was pending at the close of the year awaiting a hearing on a rehearing request
  - 1 case was dismissed when the permit was canceled after the initial hearing but before a decision was rendered



Appeal outcome can fluctuate significantly from year to year. In some years, there is a clear reason for the trend. For example, the spike in denied appeals this year was due, in part, to the Board denying two clusters of nearly identical appeals: 35 appeals of sign permit denials, and 22 appeals of Notices of Violation issued to one entity.

Outcome - Over Time



## Rehearing Requests & Jurisdiction Requests

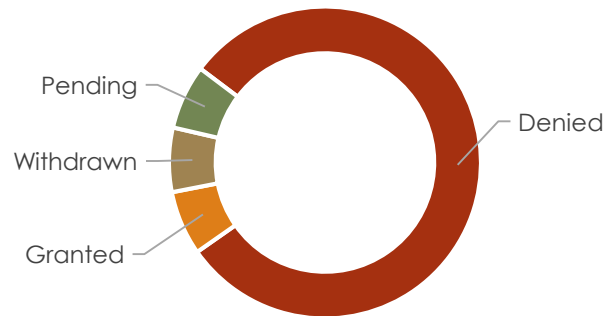
In addition to appeals, the Board routinely considers rehearing requests and jurisdiction requests.

### Rehearing Requests

Once an appeal is 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>6</sup> To be granted a rehearing request, the moving party must persuade at least four Board members that a rehearing is needed to prevent manifest injustice or because there is new evidence that may affect the outcome of the original hearing.<sup>7</sup>

There were 15 rehearing requests on the Board's docket during the year:

- 12 denied
- 1 granted
- 1 withdrawn
- 1 pending at the close of the year

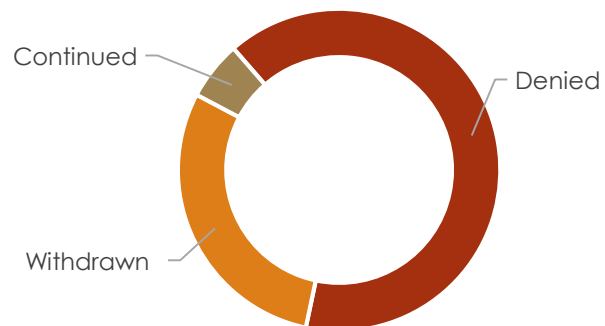


### Jurisdiction Requests

The Board may allow an appeal to be filed after the relevant appeal period has expired based upon a showing that some error on the part of the City caused the failure to file on time.<sup>8</sup> For example, City error may occur where neighborhood notification of a construction project is required under the Planning Code and this notice failed to properly describe the scope of work, or where such notice wasn't sent to all of the required addresses. A supermajority of votes is needed for such a request to be granted.

There were 17 jurisdiction requests before the Board during the year:

- 11 denied
- 5 withdrawn
- 1 continued to the Call of the Chair calendar
- No jurisdiction requests were granted



<sup>6</sup> See San Francisco Business and Tax Regulations Code, Article 1, §16; and Rules of the Board of Appeals, Article V, §9.

<sup>7</sup> Rules of the Board of Appeals, Article V, §9(b).

<sup>8</sup> See Franklin v. Steele, 131 Cal. App. 3d 558 (1982); Rules of the Board of Appeals, Article V, §10.



# LITIGATION

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Parties dissatisfied with a Board determination may seek further review and relief in court. During the year, five new lawsuits were filed in which the Board of Appeals was named as a party and seven lawsuits were resolved. Five of the resolved cases were in favor of the City and two decisions were settled. A description of pending lawsuits and their status is provided in Appendix C.

# BUDGET

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The robust numbers of permit applications filed with the City and new appeals filed with the Board during the year produced revenue that exceeded projections. The Board closed the year with a surplus of \$287,718, derived from surplus revenue and expenditure savings.

## Revenue Detail

The Board's revenue budget is derived from two sources:

- 95% from surcharges placed on permit applications for the types of permits that have a recent history of being appealed to the Board<sup>9</sup>
- 5% from fees paid by individuals, community groups and businesses at the time a new appeal is filed

Each year, the Controller's Office analyzes whether the surcharge rates will provide sufficient revenue to cover the Board's projected operating expenses. Any needed adjustment beyond the rate of inflation requires legislative action, as does any change to filing fees.<sup>10</sup> No adjustments were made for FY16, based on a decreased expenditure budget (discussed below) and the Controller's projection that the existing rates would generate sufficient revenue. In fact, \$1,149,199 total revenue was generated, exceeding projections by 24%.

### Projected v. Actual Revenue

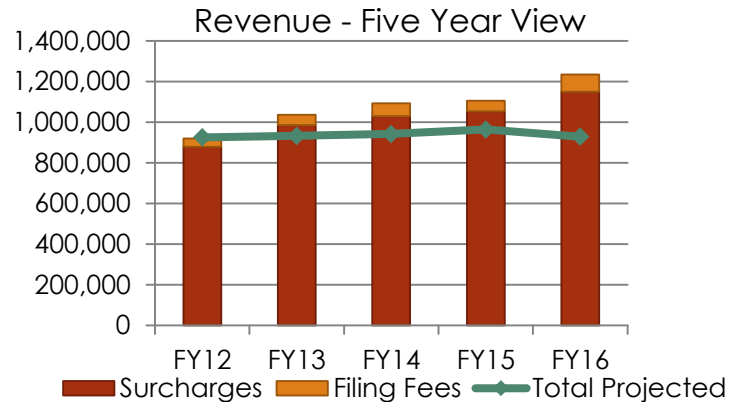
	Projected	Actual	Surplus (\$)	Surplus (%)
Surcharge Revenue	\$882,567	\$1,063,449	\$180,882	20%
Filing Fee Revenue	\$46,037	\$85,750	\$39,713	86%
Total Revenue	\$928,604	\$1,149,199	\$220,595	24%

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<sup>9</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 expenditure 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>10</sup> See San Francisco Administrative Code Chapter 10G and San Francisco Business and Tax Regulations Code Article 1, §8.

Board surcharge revenue, derived from permit applications filed with other City departments, fluctuates with the health of the City's economy. With the City's recent strong economic years, the Board's surcharge revenue has grown. Filing fee revenue grew this year as well, due to an increase in appeal volume and the fact that a larger portion of new appeals were of the type associated with higher filing fees. This year, the Board exceeded revenue projections in both budget streams for the fourth year in a row.



## Expenditure Detail

The Board's expenditure budget<sup>11</sup> is based on an estimate of the number of appeals that will be processed each year and the attendant costs. The Board went into the year with a smaller expenditure budget as compared to the prior year, due to a reduction in rent and in fringe benefit rates associated with retiree expenses. The Board's actual expenditures were 8.6% (\$81,209) below projections due to savings in several areas this year.

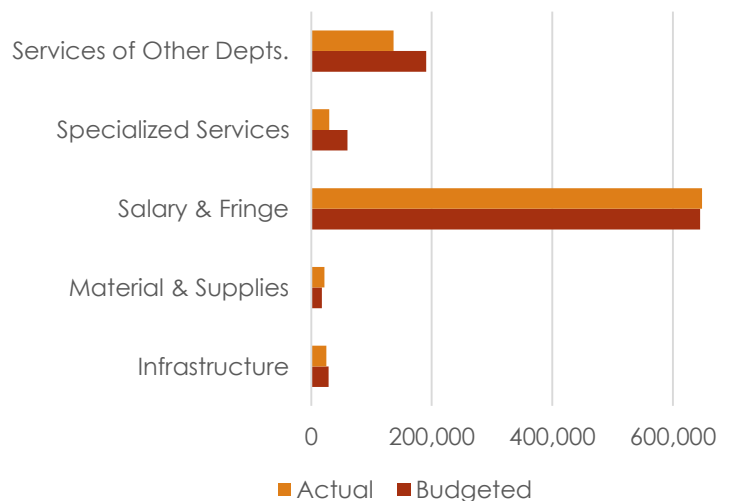
Costs were lower than projected for:

- City Attorney services
- SFGovTV broadcasting
- Interpreters
- Neighborhood notification data
- Copier/scanner rental

Costs were higher than projected for:

- Certain fringe benefits
- Postage, due to several very large neighborhood notification mailings

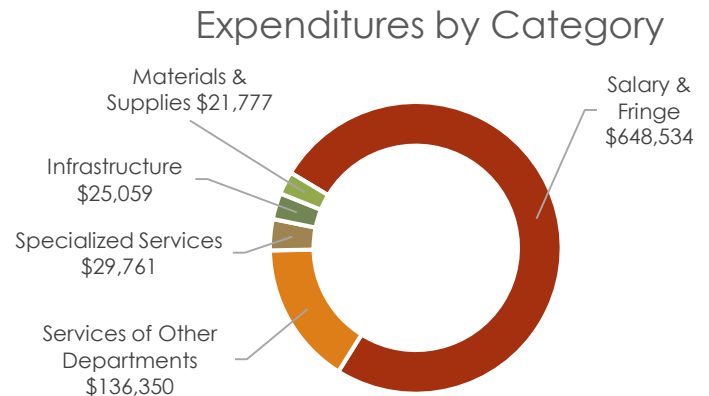
Actual v. Budgeted Expenditures by Type



<sup>11</sup> The Board's projected revenue and expenditure budgets are not always balanced at the start of the fiscal year, and were not balanced this year. This discrepancy is caused when expenditure changes are made close to the end of the City's budget process, such as for fringe benefit rates. Since the revenue budget and surcharge rates have been set by that point in the process, and the expenditure changes are typically small, the Controller's Office assumes there will be sufficient revenue to cover expenses, or that funds can be allocated from the Board's rainy day fund. This year, the disparity was \$14,086.

The \$861,481 expended by the Board during the year was apportioned as follows:

- 75% for staff salaries and fringe benefits
- 16% for the services of other City departments, such as the City Attorney and Department of Technology
- 3.5% for specialized services such as the firm that researches neighborhood notification addresses and interpreters who assist limited English speakers at Board meetings
- 3% for infrastructure costs such as office rent, photocopier and telephones
- 2.5% for materials and supplies, including postage for neighborhood notification mailings

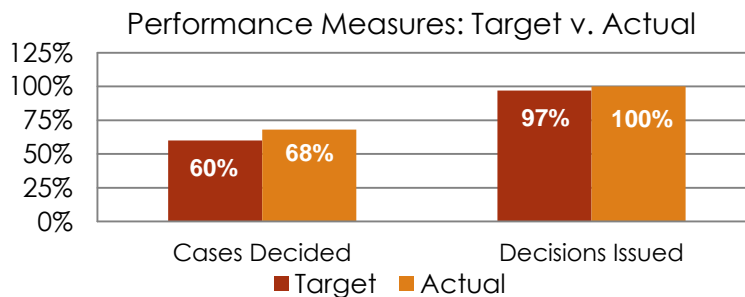


The Board’s total year-end surplus of \$287,718<sup>12</sup> was added to the ‘rainy day’ fund (deferred credit account) that was established to allow the Board to save the extra dollars generated in strong economic times for use in years when there is a revenue deficit. This allows the Board to be self-sufficient and avoid relying on General Fund dollars in lean revenue years.

## PERFORMANCE MEASURES

All City departments are required to report on specific statistical measures as a way of assessing and documenting performance. The two measures unique to the Board look at how long it takes for the Board to decide cases and how quickly written decisions are issued.

- Measure 1: how often cases are decided within 75 days of filing
  - delays may occur when continuances are requested by the parties seeking time for settlement negotiations or further case preparation
- Measure 2: how many decisions are issued within 15 days of final Board action
  - delays may occur when two or more appeals are filed on one determination but a request for rehearing is filed on only one of the appeals; the Board’s decision is held until the final outcome is known for all connected appeals



<sup>12</sup> This figure reflects the \$14,086 disparity between the Board’s revenue and expenditure budgets described in footnote 11.

# APPENDIX A – APPEAL DETAIL

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A description of the cases heard by the Board during the year is set out below.

## Department of Building Inspection and Planning Department

Of the 64 appeals stemming from determinations made by the Department of Building Inspection (DBI) that also involved Planning Department review:

- 35 protested the denial of sign permits applications submitted by Contest Promotions, a company seeking to legalize signs placed throughout the City
- 29 protested the issuance of building permits, typically filed by individuals or groups of neighbors concerned that proposed construction will negatively impact their property or neighborhood
  - Appeals often focus on how a home expansion or new deck may create sightlines into a neighbor's windows or restrict access to light and air
  - 8 of these protest appeals were by tenants protesting the removal of residential units

The Board denied 83% (53) of these appeals and granted 15.5% (10), placing conditions on the underlying permits in 9 of the appeals granted. One case (1.5%) was dismissed when the permit was canceled after the Board heard the case but before it was decided.

## Department of Building Inspection Only

Of the 15 appeals stemming from determinations made solely by the Department of Building Inspection:

- 13 protested the issuance of a building, electrical or plumbing permit
  - Of these, 9 were appeals filed by tenants protesting the removal of residential units
- 1 protested a penalty imposed by DBI for work performed without a permit
- 1 protested the Development Impact Fee Report issued by DBI on a proposed 12-story office building

The Board denied 67% (10) of these appeals and granted 27% (4), imposing conditions in one of the appeals granted. The remaining 6% (one case) was continued by the Board to allow time for structural plans to be reviewed by DBI, which would settle the matter.

## Zoning Administrator

The Board heard 43 appeals of Zoning Administrator (ZA) determinations:

- 24 protested Notices of Violation and Penalty (NOVP)
  - 22 of the NOVP appeals were filed by Academy of Art University
- 13 protested the granting or denial of variances
- 4 protested Letters of Determination (LOD)

- An LOD interprets certain Planning Code provisions or how the Code applies to a particular factual situation at a given address; for example, what the legal use is of a property, whether decks are considered in rear yard averaging, or if alcohol may be sold in a particular zoning district
- 1 protested the ZA's request to release a suspension on a permit
- 1 protested the ZA's request to rescind the revocation of a permit

The Board denied 93% (40) of the appeals of Zoning Administrator determinations, granted 2% (1), and continued 5% (2).

### San Francisco Public Works

Thirty-six of the appeals heard relate to determinations made by the San Francisco Public Works (SFPW):

- 19 were related to tree removal permits; 16 protesting the issuance of such a permit and 3 protesting a permit denial
- 11 protested the issuance of wireless box permits for the installation of cell phone equipment in the public right-of-way
- 3 were of mobile food facility permits; 2 protesting the issuance of these permits and 1 appealing a permit denial
- 3 were of permits to allow tables and chairs on the sidewalk in front of a business or restaurant; 2 protesting permit issuance and 1 protesting conditions placed on such a permit

The Board denied 55.5% (20) of the SFPW-related appeals and granted 36% (13), imposing conditions in 7 of the granted appeals. Two cases (5.5%) were continued and one (3%) was denied.

### Planning Commission

There were five appeals of Planning Commission decisions heard by the Board during the year, all of which were denied.

- 3 protested exceptions granted under Planning Code Section 309 for a mixed-use development on Hyde Street
- 1 protested an Office Allocation under Planning Code Section 321 for the Golden State Warriors Arena and Event Center project
- 1 protested the Large Project Authorization granted under Planning Code Section 329 for a residential development on Arkansas Street

### Additional Appeals

- Arts Commission
  - The Board upheld the denial of a street artist certificate that was appealed by the permit applicant

- Department of Public Health
  - The Board upheld the denial of a tobacco sales establishment permit that was appealed by the permit applicant
- Entertainment Commission
  - The Board denied an appeal protesting the issuance of a Place of Entertainment Permit for the Golden State Warriors Arena and Event Center
- Historic Preservation Commission
  - The Board denied an appeal protesting the issuance of a Certificate of Appropriateness authorizing work associated with the Van Ness Bus Rapid Transit Project in the Civic Center Historic District
- Municipal Transportation Agency – Division of Taxis and Accessible Services
  - The Board denied an appeal of the revocation of a Color Scheme Permit

## APPENDIX B – APPEAL OVERVIEW

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### Jurisdiction

The majority of appeals decided by the Board are filed pursuant to the authority granted to the Board in the San Francisco Charter. Charter Section 4.106(b) reads:

The Board shall hear and determine appeals with respect to any person who has been denied a permit or license, or whose permit or license has been suspended, revoked or withdrawn, or who believes that his or her interest or the public interest will be adversely affected by the grant, denial, suspension or revocation of a license or permit....

The Charter excludes from the Board’s jurisdiction appeals of building and demolition permits for projects that have been granted a conditional use authorization by the Planning Commission<sup>13</sup> and determinations made by the Recreation and Park Commission or Department, or by the Port Commission.<sup>14</sup>

Other City laws also give the Board authority to hear specific types of appeals. Examples include:

- Certain Planning Commission determinations, such as Large Project Authorizations (Planning Code (P.C.) §329), exceptions granted under P.C. §309, and decisions about office developments under P.C. §322
- Certificates of Appropriateness issued by the Historic Preservation Commission
- Project Development Fees assessed by the Department of Building Inspection<sup>15</sup>

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<sup>13</sup> Appeals of the underlying conditional use authorization may be made to the Board of Supervisors.

<sup>14</sup> San Francisco Charter §4.106(b).

<sup>15</sup> Planning Code §1006.7 and Building Code §107A.13.9.2.

The Board also hears appeals pursuant to memoranda of understanding (MOU) entered into with other City departments or entities. For example, the Board and the Port Commission agreed to have appeals of Port-related entertainment permits heard by the Board.

## Standard of Review

Most appeals are heard by the Board *de novo*, without giving deference to the legal conclusions or assumptions made by the underlying decision-maker such as a departmental hearing officer or Commission. The Charter specifies, however, that in order to overturn certain decisions of the Zoning Administrator, the Board must find either an error in the Zoning Administrator's interpretation of the Planning Code or an abuse of discretion. This 'error or abuse of discretion' standard also applies to the Board's review of some Planning Commission decisions, where required by Code.

## Appeal Process

The San Francisco Business and Tax Regulations Code<sup>16</sup> establishes many of the parameters of how appeals are handled by the Board. This includes the cost to file an appeal, the Board's obligation to notify neighboring property owners and occupants when an appeal is filed, when determinations that have been appealed should be suspended pending the outcome of the Board process, and other procedural matters. Additional requirements governing the appeal process are set out in the Rules of the Board of Appeals. Among other things, these Rules are designed to ensure the process is fair to all involved, and include guidelines on how parties and members of the public may communicate with Board members.

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 issued by the Zoning Administrator must be appealed within ten days, and the public has thirty days to file an appeal of a Certificate of Appropriateness issued by the Historic Preservation Commission. In limited situations, the Board may allow an appeal to be filed late. Pursuant to the Board's Rules, late appeals are allowed when a City error caused a would-be appellant to miss the appeal period.<sup>17</sup>

The parties to each appeal, including the City department that issued the determination being appealed, are encouraged to submit written arguments and other evidence for the Board's consideration. When an appeal is filed, a schedule is established for these submittals. The Board's Rules set out other requirements, such as length and formatting.<sup>18</sup> Members of the public who are not affiliated with a party to the appeal also may submit briefs, letters and other evidence in support of their position on an appeal.

After reviewing the written file, Board members conduct a public hearing at which they consider the testimony of the parties and comments from interested neighbors and other members of the public. After deliberation, the Board may vote to grant or deny the appeal.

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<sup>16</sup> Article 1, §8, *et seq.*

<sup>17</sup> Rules of the Board of Appeals, Article V, §10.

<sup>18</sup> Rules of the Board of Appeals, Article V, §4.

A denied appeal upholds the underlying departmental determination. When an appeal is granted, the underlying departmental determination is either completely overruled or modified in some way.

Modifications that may be imposed by the Board are wide-ranging. They include:

- Changing building plans, for example:
  - Setting back a portion of an addition, deck or other structure so it is further from a protesting neighbor's property line
  - Adding a privacy screen such as lattice or plantings to a new deck to limit sightlines into neighboring windows
  - 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
- Changing the length of a suspension imposed on a tobacco sales, massage establishment or taxi driving permit, or imposing a suspension instead of permit revocation
- Limiting the items that may be sold by a food truck, or modifying hours of operation
- Modifying the financial penalties imposed for construction work performed without a permit
- Altering the number or size of replacement trees when allowing trees to be removed

In addition, the Board may adopt revised construction plans or other permit modifications that have been agreed to by the parties as part of a settlement.

On occasion, the Board will decide to continue a matter, 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 making a determination.

The Charter<sup>19</sup> requires the vote of a supermajority of Board members in order for an appeal to be granted and the underlying department decision to be overturned or modified.<sup>20</sup> When the Board is fully seated, four out of five votes are required; when there is a vacancy, three votes are needed. A supermajority of votes is also needed in order for the Board to grant a rehearing request or jurisdiction request. For some appeals heard by the Board under the authority of City Code and not the Charter, a simple majority is sufficient.

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<sup>19</sup> See San Francisco Charter §4.106(d).

<sup>20</sup> Some Planning Commission determinations that are under the Board's jurisdiction pursuant to City Code and not the Charter may be modified or overturned based on the vote of a simple majority.



# APPENDIX C – LITIGATION DETAIL

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Set out below is a description of the lawsuits in which the Board is named as a party, that were filed, pending or resolved during the year.

## **AIDS Healthcare Foundation, Inc. (AHF) v. City & County of San Francisco, et al.**

**PENDING.** A federal lawsuit was filed challenging (1) the City's implementation of interim zoning controls applying formula retail restrictions to the commercial district where AIDS Healthcare Foundation (AHF) seeks to open a pharmacy; and (2) the Board's August 21, 2014 dismissal of an appeal protesting the release of a suspension on AHF's building permit. The Board dismissed the appeal as moot based on a finding that the interim controls require AHF to obtain a conditional use authorization from the Planning Commission before the permit suspension may be lifted. In January 2015, the District Court granted the City's motion to dismiss AHF's petition, with leave to amend. After AHF amended its petition, the City filed another motion to dismiss, at which time AHF asked for a stay of the litigation while AHF applied for a conditional use authorization for its pharmacy. The City agreed. The conditional use application was denied in January 2016 and AHF failed to timely file a separate lawsuit challenging the Planning Commission's denial. A renewed motion to dismiss is pending.

## **Contest Promotions, LLC v. City & County of San Francisco, et al.**

**NEW.** This lawsuit arises out of a dispute over the constitutionality of Planning Code provisions regulating onsite business signs. The petitioner seeks to maintain currently posted signs that the City contends do not conform to Planning Code requirements, including a requirement that at least two-thirds of each sign display a message related to the primary business on the premises. On January 20, 2016, the Board upheld the Planning Department's denial of 35 sign permit applications. In July 2016, this case was consolidated with a related lawsuit. Briefing and hearing is pending.

## **Angela Cross v. San Francisco Board of Appeals**

**DISMISSED.** A tenant at 57 Eureka Street challenged the Board's July 1, 2015 decision to deny two appeals protesting the issuance of electrical and plumbing permits that would remove the unpermitted dwelling unit in which she was living. This case was dismissed without prejudice on March 28, 2016, after the petitioner failed to name an indispensable party (the property owner) in her complaint and was unable to cure the defect in the pleading.

## **Robert E. Gonzales v. San Francisco Board of Appeals**

**PENDING.** A lawsuit was filed in Superior Court by an adjacent property owner challenging the Board's August 26, 2015 decision to uphold a permit to erect a building at 333 Pennsylvania Avenue. On January 6, 2016, the Court denied the petitioner's motion for immediate relief, stating it failed to establish that the Planning Code or Residential Design Guidelines were violated. At that time, the petitioner requested a deferment of any further proceedings while he negotiated a settlement with the project sponsor. The negotiation process is ongoing.

**Tu Lam v. San Francisco Municipal Transportation Agency, et al.**

**PENDING.** A challenge was filed to 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 underlying writ petition has not yet been scheduled. Since the revocation of the permit and medallion were never stayed, the City is leaving the burden of prosecuting the case with the plaintiff.

**Mission Bay Alliance, et al. v. Office of Community Investment and Infrastructure, et al.**

**ON APPEAL.** Two lawsuits were filed seeking to set aside project approvals associated with the construction of the Golden State Warriors Arena and Event Center in the City's Mission Bay neighborhood. One suit focuses on environmental approvals and the other challenges various project entitlements, including a Place of Entertainment Permit and Office Space Allocation, both of which were appealed to and approved by the Board. In July 2016, a Superior Court judgment was entered denying both writ petitions. In August 2016, these judgments were appealed, though the office allocation argument was abandoned. A hearing on the appeal is scheduled for mid-November and a decision is expected in early 2017.

**1049 Market Street, LLC v. City & County of San Francisco, et al. (Federal Court)**

**1049 Market Street, LLC v. Aaron Miller, et al., and City & County of San Francisco, et al. (S.F. Superior Court)**

**PENDING.** Two lawsuits were filed, one in federal court and the other in state court, by the owner of a six-story building challenging, among other things, the Board's April 8, 2015 decision to grant an appeal filed by residential tenants protesting the Zoning Administrator's (ZA) Release of Suspension Request on a permit to convert live-work units to commercial space. The state case asserts claims under CEQA, a vested rights theory and several constitutional claims. The federal case focuses on federal constitutional claims. Because both suits challenge the same conduct and seek the same damages, the federal court agreed to let the state court resolve issues of local land use law before it determines whether any federal constitutional issues remain. On this basis, the federal lawsuit was stayed pending the outcome in state court.

In April 2016, the City won the state court case on all issues except the jurisdictional issue relating to whether the Board had properly considered the validity of the permit. The court remanded the matter to the Board for reconsideration of whether the ZA erred or abused his discretion in determining that the property's principally permitted use as an office had not been abandoned, but left the Board the option to apply recently adopted legislation requiring a Conditional Use Authorization when deciding the issues presented. The case is currently on appeal and the plaintiff has filed two additional lawsuits in state court. The first is for damages (for claims of unconstitutional taking and violation of vested rights) both of which were directly rejected by the trial court in the first case. The second suit challenges the City's adoption of legislation requiring a Conditional Use Authorization for the removal of residential units on CEQA grounds.

**Oswald & Seley v. City & County of San Francisco, et al.**

**DECIDED.** The neighbors of a project at 312 Green Street challenged the Board's February 11, 2015 decision (by default) to uphold a Rear Yard Variance to construct a 3rd and 4th floor addition to a two-story single-family residential building. On January 21, 2016, the Superior Court denied the writ, finding that the Zoning Administrator had not abused his discretion. The matter was appealed but the petitioners subsequently dismissed the appeal and the case is now closed.

**Mica I. Ringel v. City & County of San Francisco, et al.**

**STAYED.** This lawsuit challenges, among other things, the Board's August 14, 2013 decision to deny a request to file a late appeal of a Zoning Administrator Letter of Legitimization. The Letter legitimizes an existing "Internet Services Exchange" use in a building located on Potrero Avenue. Since the lawsuit was filed, the property was sold and the new owner has indicated no intent to develop the parcel as an "Internet Services Exchange." The matter was stayed with an expectation that it would become moot.

**San Francisco Coalition for Children's Outdoor Play, Education and the Environment v. City and County of San Francisco, et al.**

**DECIDED.** This lawsuit challenged the environmental determination associated with a coastal zone permit upheld by the Board on September 13, 2012. The permit was issued in conjunction with the proposed renovation of the athletic fields at the western end of Golden Gate Park. The Superior Court dismissed the lawsuit upholding the environmental determination and all City approvals in December 2013. In September 2015 the Court of Appeal affirmed and in January 2016 the California Supreme Court denied a request for publication of the Appellant Court decision and closed the case.

**765 Market St. Residential Owners Assoc., et al. v. City & County of San Francisco, et al.**

**SETTLED.** This case challenged the City's decision to approve the 706 Mission Street – Mexican Museum Project to construct a high rise residential building in the Yerba Buena Neighborhood. Among the claims was a challenge to a Board decision on July 31, 2013 to reject a request that it hear an appeal of a Planning Commission Motion made under Planning Code Section 295 dealing with shadows on public land. Also challenged was the Board's upholding of a Planning Commission determination granting exceptions under Planning Code Section 309. Petitioners lost at the trial court and appealed. A settlement was reached and the appeal was dismissed on March 10, 2016.

**Andrei Urazov & Philip Brady v. City & County of San Francisco, et al.**

**DECIDED.** A lawsuit was filed by adjacent property owners challenging the Board's June 3, 2015 decision to uphold the issuance of a permit for the construction of a horizontal and vertical addition at 2809-2811 Polk Street. On May 26, 2016, the Court denied the writ petition, finding no abuse of discretion by the Board in its upholding of the disputed permit. The petitioner waived any right to appeal this Order and the judgment is now final.

**Taffi Vasquez and Jimmy Zafur v. San Francisco Board of Appeals, et al.**

**OFF CALENDAR.** Tenants at 2691 20<sup>th</sup> Avenue challenged the Board's decision on August 5, 2015, to deny a request to file a late appeal made by tenants seeking to protest the issuance of a permit to remove the unpermitted dwelling unit in which they were living. This case was removed from the Court's calendar on March 3, 2016 based on a lack of evidence that it had been served or the administrative record submitted. A related unlawful detainer action between petitioners and their landlord has been settled and dismissed.