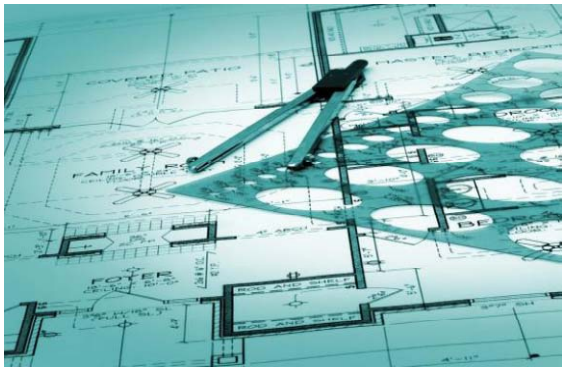
CITY AND COUNTY OF SAN FRANCISCO

BOARD OF APPEALS



ANNUAL REPORT

July 1, 2011 – June 30, 2012

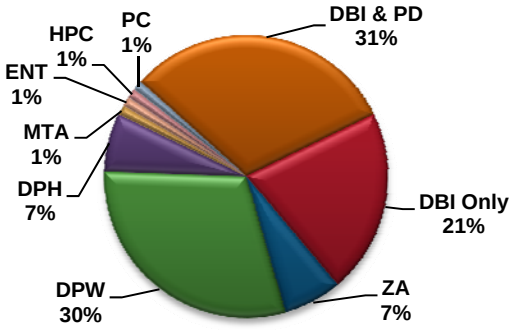
HIGHLIGHTS OF FISCAL YEAR 2011-12

CASES HEARD
The Board held 25 regular meetings at which 114 matters were heard:

- 90 Appeals
- 15 Jurisdiction Requests
- 9 Rehearing Requests

CASE ORIGINATION
Nearly two-thirds (61%) of the appeals heard by the Board were land use related. These appeals stemmed from decisions made by the Department of Building Inspection (DBI), Planning Department (PD), Zoning Administrator (ZA), Planning Commission (PC) and Historic Preservation Commission (HPC). During the year, the Board also heard appeals of determinations made by the Department of Public Works (DPW), Department of Public Health (DPH), the Taxi Division of the Municipal Transportation Agency (MTA) and the Entertainment Commission (ENT).

The follow chart shows the percentage breakdown by the entity issuing the underlying determination being appealed:



Heard Appeals by Issuing Entity

BOARD ACTION
During the year, the Board overturned or modified 56 percent of the appeals heard and upheld 32 percent. Eight percent (8%) of the remaining appeals were pending at the close of the year and four percent (4%) were withdrawn.

APPEAL VOLUME
For the fourth year in a row, the Board's appeal volume was lower than the norm, down 30% when compared to the average number of appeals filed annually over the past ten years.

APPEAL TRENDS
In the wake of new food truck permitting legislation, the Board saw a marked increase in the number of appeals protesting Mobile Food Facility permits filed by restaurants and property owners located near the proposed truck stop.

BUDGET
For the first time since the nation's economic downturn began in 2008, the Board experienced a relatively stable budget year. Revenue came in close to projected levels (99%) despite the fact that no increases were made to the surcharge rates or filing fees. Filing fee collection was off by eleven percent, but given the small portion (5%) of the budget represented by these fees, this shortfall did not materially impact the Board's overall budget picture. In light of historic revenue challenges, reductions were made in expenditures. As a result, the Board ended the year with a surplus of over $180,000.

ELECTION OF OFFICERS
Commissioner Kendall Goh served as President and Commissioner Michael Garcia as Vice President for the first half of the fiscal year. In January 2012, Commissioner Goh left the Board, Commissioner Garcia was elected President and Commissioner Chris Hwang elected Vice President. In May 2012, after Commissioner Garcia left the Board, Commissioner Hwang was elected President and Commissioner Frank Fung elected Vice President.

MISSION

Created under the San Francisco 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 the last step in the City's review process.

JURISDICTION

The Board's jurisdiction is derived from San Francisco Charter Section 4.106, portions of the San Francisco Business and Tax Regulations Code[1] 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, Stop Work Order Requests and Notices of Violation and Penalty
- Mobile food facility permits, wireless site permits and tree planting and removal permits issued by the Department of Public Works (DPW)
- Suspensions of Tobacco sales permits issued by the Department of Public Health (DPH)

Less common but routinely heard by the Board are appeals related to:

- DPH-issued permits for restaurants and massage, tattoo and body piercing establishments
- Taxi driving and medallion permits issued by the Municipal Transportation Agency
- DPW-issued permits for minor sidewalk encroachments
- DBI-issued electrical or plumbing permits
- Certificates of Appropriateness issued by the Historic Preservation Commission

Pursuant to the Charter, the jurisdiction of the Board of Appeals excludes permits issued by the Port Commission or the Recreation and Park Department or Commission, as well as appeals of building or demolition permits issued pursuant to a Conditional Use Authorization granted by the Planning Commission.[2] The Board has no authority to make amendments to the Planning Code or the Zoning Map and also does not hear appeals of criminal matters, or permits and licenses regulated by State or federal agencies.

[1] See Article 1, Section 8, et seq.

[2] 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.

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 (by majority vote) of the full Board of Supervisors. Officers are elected for one-year terms at the first regular meeting held after January 15 each year.[3] This year the Board experienced more turnover in membership than usual. Board members Kendall Goh and Michael Garcia resigned to pursue other interests and Mayoral appointee Rich Hillis' stay on the Board was shortened when he was selected by the Mayor to fill a vacant seat on the Planning Commission.

Current Board membership is as follows:

Commissioner	Appointing Authority	Dates of Service
Chris Hwang **President**, May 2012 – Present Vice President, January 2012 – May 2012	Board of Supervisors	May 12, 2010 to July 1, 2014
Frank Fung **Vice President**, May 2012 – Present President, January 2009 – January 2010 Vice President, March 2008 – January 2009	Mayor	October 19, 2004 to July 1, 2016 January 30,1986 to June 8, 1988
Arcelia Hurtado	Board of Supervisors	September 12, 2012 to July 1, 2016 February 23, 2012 to July 1, 2012
Ann Lazarus	Mayor	July 25, 2012 to July 1, 2014
Vacant	Mayor	

MEETINGS OF THE BOARD

During the fiscal year, the Board held 25 meetings for a total of 78 hours. One member was absent at eight of the meetings, giving the Board a 94% attendance record. In addition, there were eight meetings held at different times throughout the year when a seat on the Board was vacant.

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

- Elected officers (January 18, 2012 and May 30, 2012)
- Adopted the Board's first two-year budget, covering fiscal years 2012-13 and 2013-14 (February 15, 2012)
- Heard a presentation by the Department on the Status of Women and Police Department on the City's role in addressing human trafficking and the regulation of massage establishment permits (January 11, 2012)

[3] Rules of the Board of Appeals, Article I, Section 1.

Regular meetings of the Board are held on Wednesday nights, starting at 5:00 p.m. in City Hall.[4] Meetings of the Board are open to the public except as otherwise legally authorized and are conducted in accordance with the Rules of the Board of Appeals. Typically, the appellant will address the Board first, then the permit holder, the respondent department(s) and members of the public. An opportunity for rebuttal is given to the parties. Board meetings are broadcast live on San Francisco's government television station (SFGovTV), cable television channels 26 and 78, and may also be viewed by computer, live and on-demand at: http://sanfrancisco.granicus.com/ViewPublisher.php?view_id=6. Closed captioning is provided for these broadcasts as well as in the City Hall hearing room during Board meetings. Meeting agenda and approved minutes are posted on the Board's website at: 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, the Board may allow an appeal to be filed late. Most typically, late appeals are allowed when a City error has caused a would-be appellant to miss the appeal period.

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 in support of their position on an appeal. As a way of notifying the public about pending appeals, the Board mails out postcards to all property owners and occupants within a 150 feet radius of any property that is the subject of an appeal.[5]

After reviewing the written file, Board members conduct a public hearing on the appeal at which they consider the testimony of the parties (including the issuing department) and from interested neighbors and other members of the public. After deliberation, the Board may vote to uphold or overrule the underlying departmental determination, or may impose conditions on the determination.[6]

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

- Modifications to building plans, for example:
    - Adding a privacy screen such as lattice to a new deck to limit sightlines into neighboring windows

[4] An annual meeting schedule is developed prior to the start of each calendar year and is available at the Board office and on the web at: http://www.sfgov3.org/index.aspx?page=775.

[5] See San Francisco Business and Tax Regulations Code Article 1, §12.

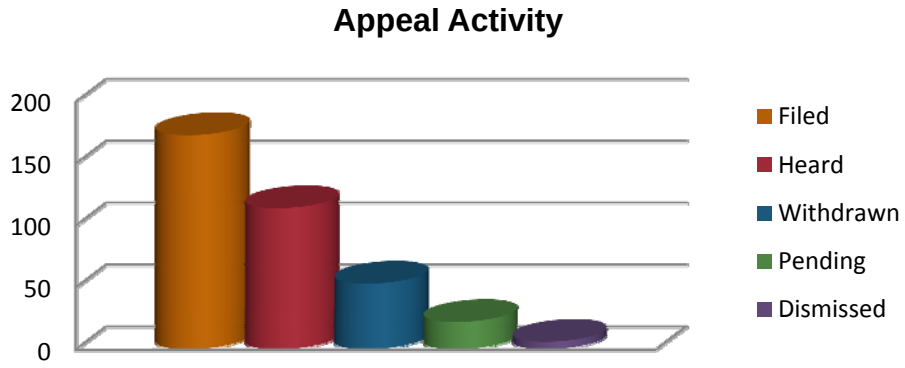
[6] On occasion, the Board will decide to continue a matter, typically to allow additional information to be prepared and submitted to the Board, or to give the parties time to negotiate a resolution. In rare instances a matter may be continued indefinitely (to the Board's "Call of the Chair" calendar)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

    - Setting back a portion of an addition 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, in order to specify a limit on the number of dwelling units at a property
    - Limiting the type, location or hours of operation of a commercial use
- Changing the length of a suspension imposed on taxi driving or tobacco sales permits
- Limiting the items that may be sold by a food truck to avoid competition to neighboring restaurants
- Reducing penalties imposed for construction work performing without a permit
- Specifying the number or size of replacement trees when permitting trees to be removed

The Charter[7] requires that a supermajority of Board members must agree in order to overturn or place conditions on a department's decision. When fully seated, this means four out of five votes are needed. If there is a vacancy on the Board, three votes are needed. A supermajority also is needed to grant a rehearing request or a request for late jurisdiction.

APPEAL EXPERIENCE

During the year, 173 new matters were filed with the Board: 148 appeals, 6 rehearing requests and 19 requests for late jurisdiction. The Board heard 114 matters: 90 appeals, 15 requests for late jurisdiction and 9 rehearing requests. Of the 114 matters heard, 92 were filed during the year and the remaining 22 had been filed previously. The eighty-one matters that were filed during the year but not heard were either withdrawn by the appellant (53), rejected by the Board[8] (6) or were filed late enough in the year that they will be heard in the subsequent year (22).



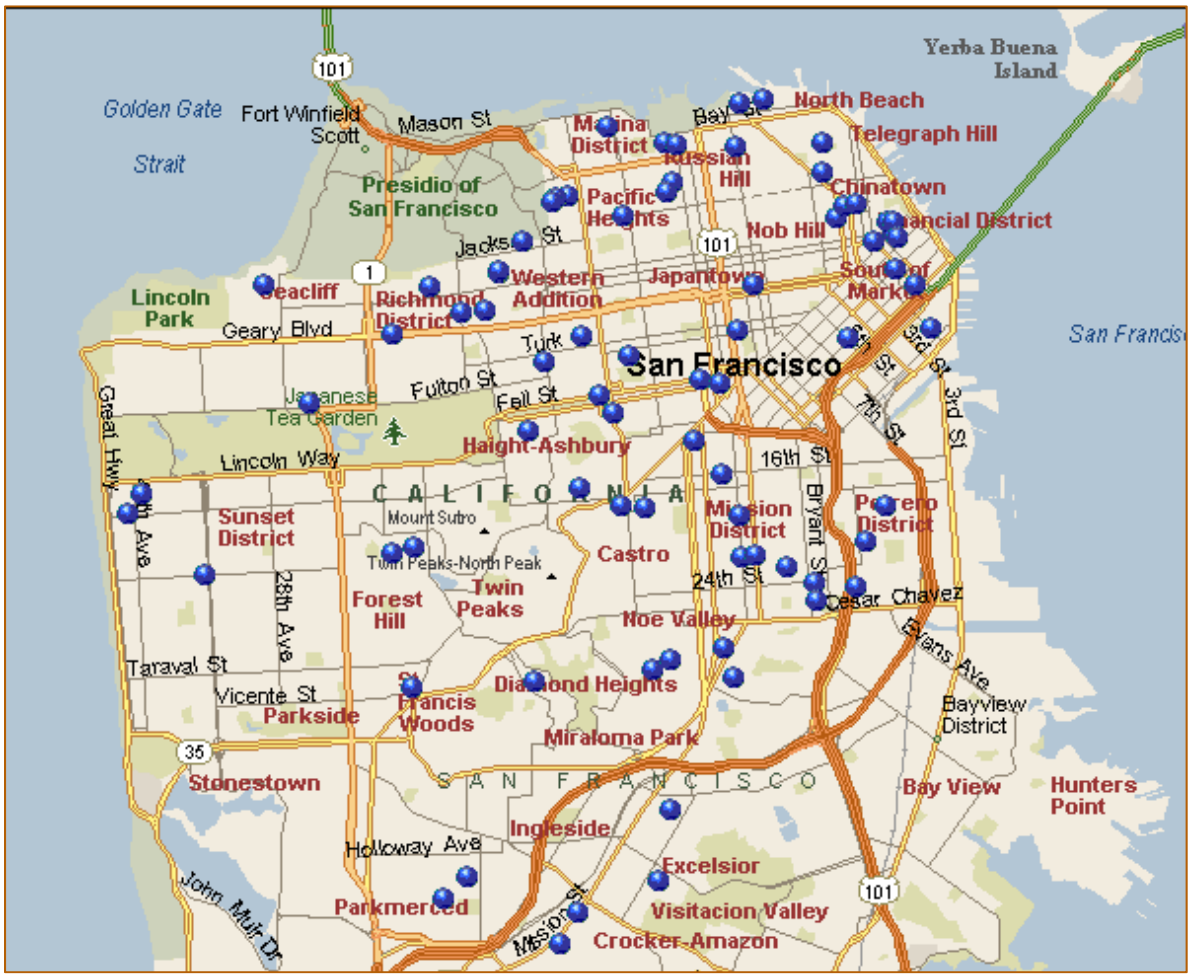
[7] See San Francisco Charter Section 4.106(d).

[8] Cases may be rejected after filing when further research determines that the Board lacks jurisdiction over the subject matter being appealed, for instance, where a Conditional Use Authorization was issued for a project related to a permit.

Geographic Distribution

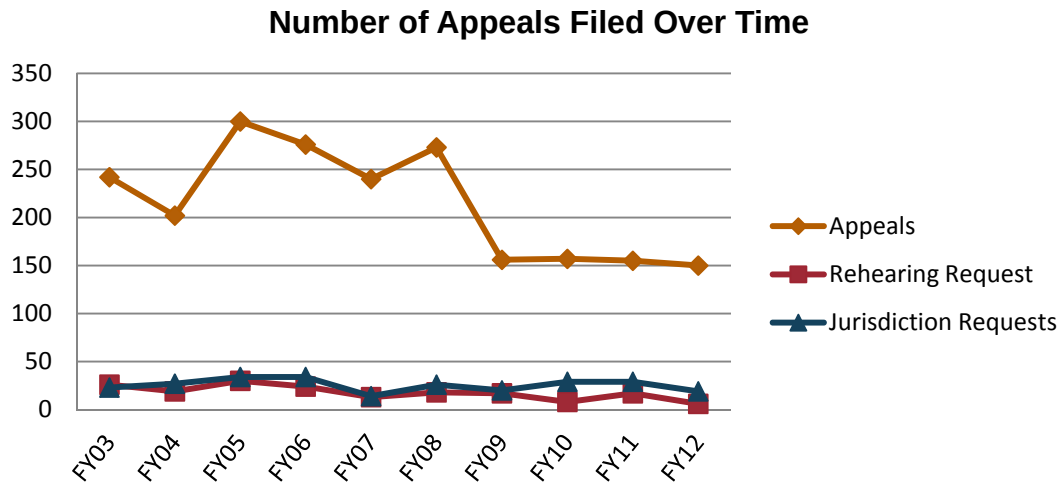
As depicted on the map below, the Board heard appeals concerning properties located in a wide range of City neighborhoods. Properties in the Southern and Western portions of the City generated the fewest appeals, with the Northeast quadrant seeing the highest concentration of appeals heard.

Location of Appeals Heard



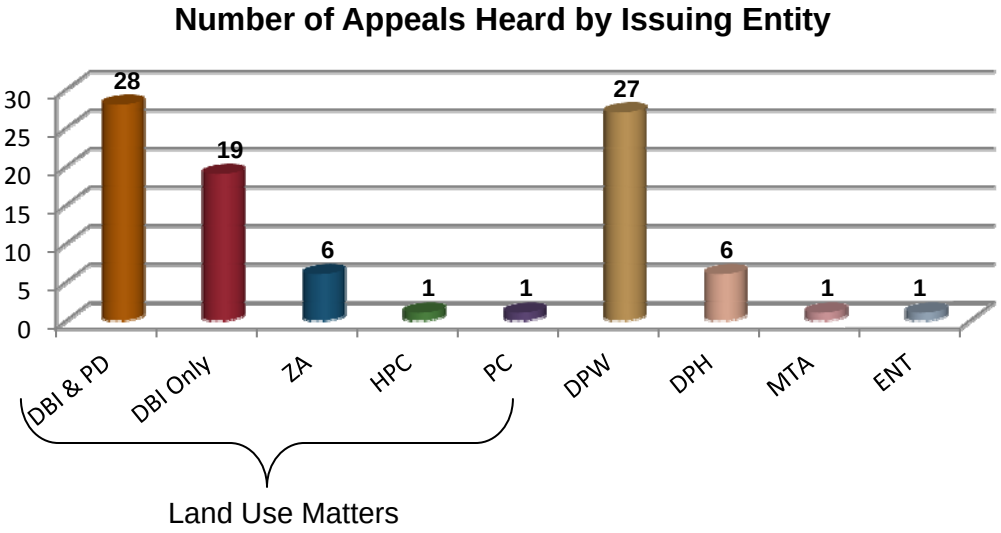
Volume

Appeal volume dropped significantly starting in 2008, corresponding with the onset of the nation's economic downturn. As seen in the graph below, while the ten year average is 215 new appeals filed per year, in the past four years the rate of new appeals has hovered near 150, representing a 30% decline from the norm. The number of rehearing and jurisdiction requests, however, has remained relatively constant.



Subject Matter

Sixty-one percent of the appeals heard during fiscal year 2011-12 were of land use determinations. These determinations were made by the Planning Department, Department of Building Inspection, Zoning Administrator, Planning Commission and Historic Preservation Commission. The Department of Public Works determinations comprise the next largest group of appeals (30%) and had the largest increase in appeal volume from the prior year, rising thirteen percent. Appeals from determinations of the Department of Public Health comprised just over six percent of total appeals heard (6.6%) and one appeal each was filed on determinations made by the Municipal Transportation Agency and the Entertainment Commission. The chart below illustrates the ninety appeals heard by the Board, identified by the department, Commission or other entity[9] issuing the underlying determination.



[9] DBI = Department of Building Inspection; PD = Planning Department; ZA = Zoning Administrator; DPH = Department of Public Health; DPW = Department of Public Works; MTA = Municipal Transportation Agency Division of Taxis and Accessible Services; HPC = Historic Preservation Commission; PC = Planning Commission.

Department of Building Inspection and Planning Department

Just under one-third (31%) of the 90 appeals heard during the year stemmed from determinations made by the Department of Building Inspection (DBI) that also involved Planning Department review. These 28 appeals focused on both Planning Code and Building Code issues, and include:

- Twenty-six appeals protesting the issuance of a building permit
  - Protest appeals are often filed by neighbors concerned that proposed construction will infringe upon the enjoyment of their property. For instance, when a new deck may create sightlines into a neighbor's windows, or when a rear yard addition may obstruct the mid-block open space.
- Two appeals of denied building permits
  - Property owners appeal permit denials seeking 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.[10]

The Board upheld 21% (6) of these determinations and overruled 61% (17), placing conditions on the underlying permits in all of these cases. Of the remaining 18% (five cases) three appeals were pending at the close of the year, and two were withdrawn.

Department of Building Inspection Only

Nineteen appeals were heard of determinations made solely by the Department of Building Inspection:

- Eleven appeals protesting the issuance of a building, plumbing or electrical permit
- Six appeals protesting the imposition of penalties
  - Penalty appeals typically are filed by property owners who have been assessed fines for performing work without a permit or for exceeding the scope of a permit. In some cases, the Board reduces penalties where it finds that the property was purchased after the unpermitted work was performed or based on other extenuating circumstances.
- One appeal protesting the denial of a building permit
- One appeal protesting the suspension of a building permit

The Board upheld 26% (5) of the DBI determinations and overruled 63% (12), imposing conditions on ten of the overruled matters, six of which involved the reduction of penalties. The two remaining cases (11%) were pending at the close of the year.

[10] The Residential Design Standards (formerly called the Residential Design Guidelines) promote residential building design that protects neighborhood character, preserves historic resources and promotes the goal of environmental sustainability.

Zoning Administrator

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

- Two appeals of Requests for Release of Suspension, protesting the lifting of suspensions placed on building permits where the Zoning Administrator determined the reasons for suspension had been satisfied

- Two 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 at a specific property

- One appeal protesting the granting of a Variance involving a proposal to split a standard-sized lot into two lots

- One appeal of a Notice of Violation and Penalties, dealing with a project sponsor's failure to comply with the affordable housing requirements placed on a 54-unit residential development project

The Board upheld the determination of the Zoning Administrator in four cases (66%), overruled the ZA once (17%) (placing conditions on a Request for Release of Suspension) and the remaining case (17%) was pending at the close of the year.

Department of Public Works

Twenty-seven appeals were heard relating to determinations made by the Department of Public Works (DPW):

- Seventeen were of mobile food facility permits
    - Many of these appeals were filed by 'brick and mortar' restaurants and commercial property owners expressing concern about added competition for customers.

- Five were of tree removal permits

- Three were of wireless site permits

- Two were of a minor sidewalk encroachment permit

The Board upheld the DPW determination in six (22%) of these cases, and overruled 19 (70%), with conditions imposed in all but two of the overruled cases. Of the two remaining cases, one was withdrawn and the other was pending at the close of the fiscal year.

Department of Public Health

Six appeals were filed on determinations made by the Department of Public Health (DPH):

- One appeal was of the revocation of a permit to operate a restaurant, which the Board upheld

- The remaining five appeals were related to tobacco sales permits
    - Three of these were appealing a permit suspension resulting from the sale of tobacco to a minor that occurred as part of a joint DPH and San

Francisco Police Department operation that uses underage decoys attempting to buy cigarettes. The Board upheld the suspensions in these cases.

- The two other tobacco sales permit appeals were filed by a hookah lounge that had its tobacco sales permit suspended and later revoked for allowing smoking in an enclosed area. The Board upheld the suspension and the permit holder withdrew its appeal of the revocation.

Municipal Transportation Agency – Division of Taxis and Accessible Services

The Board heard one taxi-related appeal:

- The denial of a taxi medallion
  - The Board granted this appeal and overturned the MTA, awarding the taxi medallion to the appellant.

Historic Preservation Commission

The Board decided its first appeal of a decision by the Historic Preservation Commission during the year:

- The denial of a Certificate of Appropriateness sought for the reconstruction of a landmarked carriage house located behind a landmarked home originally constructed in 1885
  - The HPC's denial was based on an assessment that the proposal would not appropriately reflect the historicism of the main house. The case was initially heard in the prior fiscal year but continued to allow the parties more time to work with Planning Department staff to come up with a mutually agreeable design. When no compromised was reached, the Board decided the case, upholding the HPC determination.

Planning Commission

There was one Planning Commission decision appealed to the Board:

- A Planning Commission Motion that revoked the office space allocation previously granted to a downtown office building development project
  - The entitlement was originally granted in 1989 but the project was never developed. The Board upheld the Planning Commission's decision.

Entertainment Commission

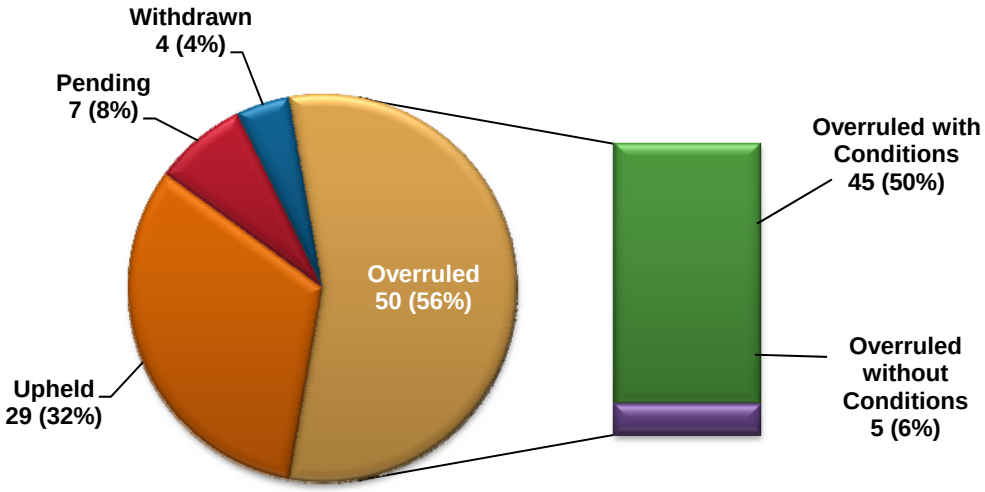
The Board heard one appeal of an Entertainment Commission determination:

- An extended hours permit allowing a fast food restaurant to stay open until 4:00 a.m.
  - The appeal was filed by neighborhood associations concerned about late night disruptions. The Board upheld the permit and in its decision, encouraged the Entertainment Commission to conduct a public hearing after six months to review the operation of the permit and the permit holder's compliance with the permit's security conditions.

Action Taken

Of the ninety appeals heard, the Board upheld the underlying departmental decision in 29 cases and overruled the department in 50 cases. Conditions were imposed by the Board in 45 of the departmental determinations it overruled. Four cases were withdrawn, and one was dismissed due to lack of jurisdiction. The remaining seven cases were pending at the close of the fiscal year.

Outcome of Appeals Heard



Other Matters Heard

In addition to appeals, the Board routinely considers Rehearing Requests and Jurisdiction Requests.

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.[11] Pursuant to the Board's Rules, upon the vote of a supermajority of Board members, a motion for rehearing may be granted based on a showing that "new or different material facts or circumstances have arisen" since the Board's consideration of the matter that, if known at the time, "could have affected the outcome of the original hearing."[12] The Board considered nine rehearing requests during the fiscal year; one (11%) was granted, six (67%) were denied and the remaining two (22%) were pending at the close of the year.

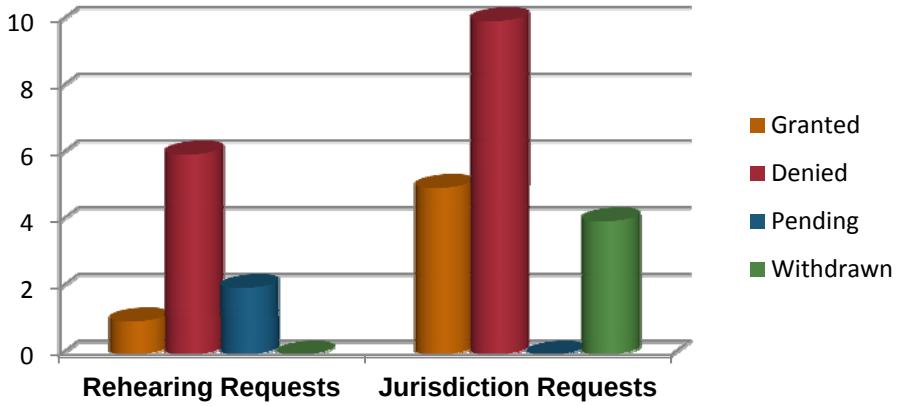
Jurisdiction Requests

The Board may allow an appeal to be filed after the relevant appeal period has expired where the reason for the failure to file on time is due to some error on the part of the

[11] See, S. F. Business and Tax Regulations Code, Article 1, §16; and Rules of the Board of Appeals, Article V.9.

[12] Rules of the Board of Appeals, Article V.9(b).

City.[13] For example, allowing late jurisdiction might be considered where the City failed to issue notice to neighbors of a permit application or issuance where that notice is required by the Building or Planning Code, or where notice was issued but did not accurately describe what is being permitted. By granting a Jurisdiction Request, the Board provides the requestor with a new five-day appeal period within which to file an appeal. Again, a supermajority of votes is needed for such a request to be granted. Nineteen jurisdiction requests were filed with the board during the year. Board considered fifteen of these requests; five (26%) of which were granted and ten (53%) were denied. The remaining four (21%) requests were withdrawn prior to hearing.



Call of the Chair

During the year, the Board continued its effort to reduce the number of matters pending on its Call of the Chair calendar. The Call of the Chair calendar is used to place cases on hold because some factor suggests that the matter is best decided at a later time. Typical reasons include allowing related litigation to resolve, providing time for the parties to seek other necessary approvals or review from the City, and when the parties ask for an extended stay of the proceedings in order to attempt a negotiated resolution of the underlying dispute.

Eight of the 28 cases sitting on the Board's Call of the Chair calendar at the start of the fiscal year have since been resolved. The remaining 20 cases include twelve that are pending due to ongoing litigation, six awaiting action by the appellant (e.g., to decide what changes to make to a project) and two awaiting changed circumstances (e.g., for a tenant to move out of a unit or for a temporarily disabled taxi medallion applicant to be able to drive more hours).[14]

LITIGATION

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

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[13] See, Franklin v. Steele, 131 Cal. App. 3d 558 (1982); Rules of the Board of Appeals, Article V.10.
[14] Two new cases were sent by the Board to its Call of the Chair calendar since the fiscal year ended, bringing the number of pending matters to 22.

- ***Clear Channel Outdoor, Inc. v. Board of Appeals of the City & County of San Francisco***
  - **PENDING.** A challenge was filed to 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, revoked Clear Channel's permit and authorized a revision of the building permit to allow the property owner to reinstall a billboard. The City won this case on demurrer at the trial court. On February 25, 2011, the Court of Appeal reversed the trial court, in part, concluding that Clear Channel had standing to challenge the Board's decision to overturn its permit, but not its decision to grant the property owners the right to reinstall and maintain a sign on their property. Clear Channel has not yet indicated whether it intends to pursue this ruling further.

- ***50 Beale Street LLC v. City & County of San Francisco, et. al.***
  - **SETTLED.** This lawsuit challenged the Board's decision on April 20, 2011 to uphold a Planning Commission Motion allowing a reduced setback on a proposed 24-story office building at 350 Mission Street. The case was settled with no liability to the City.

- ***Fisherman's Wharf Community Benefit District v. City & County of San Francisco, et. al.***
  - **NEW.** A challenge was filed to the Board's decision on April 12, 2012 to overturn the Department of Public Works and issue a mobile food facility permit to Ola's Exotic Coffee & Tea OakBBQ to operate a food cart serving coffee and tea at 2801 Leavenworth Street. Briefing and a hearing on the merits have not yet been scheduled.

- ***Robert Michael Friedman v. San Francisco Taxi Commission, et. al.***
  - **PENDING.** This lawsuit challenges 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.

- ***Friends of the Landmark Filbert Street Cottages, et. al., v. City & County of San Francisco, et. al.***
  - **PENDING.** This case challenges, among other matters, the Board's denial on March 16, 2011 of late jurisdiction on three permits for a project that was given Conditional Use Authorization by the Planning Commission. The City prevailed at the trial court level. Petitioners appealed. The matter has yet to be briefed or heard by the Court of Appeal.

- ***Wes Hollis v. San Francisco Municipal Transportation Agency, et. al.***
  - **DISMISSED.** A challenge was filed to the Board's decision on August 18, 2010 to revoke Mr. Hollis' color scheme permit and to suspend his taxi medallion for one year. The MTA had revoked both entitlements and the Board overturned the MTA with respect to the medallion, suspending it instead. This matter was dismissed in March 2012 due to the death of the petitioner.

- ***NextG Networks of California, Inc. v. City & County of San Francisco, et. al.***
  - **PENDING.** This case challenges the Board's decision on April 20, 2011 to revoke a wireless site permit issued by the Department of Public Works to a telecommunications services provider. After the Superior Court refused to grant NextG's application for a temporary restraining order, NextG appealed. On July 18, 2011, the City filed a motion to dismiss the appeal along with its opposition to NextG's petition to enjoin the City from removing the wireless facility at issue pending resolution of the underlying lawsuit. On September 29, 2011, the Court of Appeal granted NextG's request for a stay, which prevented DPW from requiring NextG to remove the facility. Briefing and a hearing on the merits have not yet been scheduled.

- ***Nob Hill Association, et. al., v. City & County of San Francisco, et. al.***
  - **PENDING.** This lawsuit challenges the Board's decision on January 13, 2010 that effectively affirmed 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. On June 29, 2011, the Superior Court issued a decision overturning the Board's decision that the proposed renovation of the Masonic Memorial Temple could be approved through conditional use authorization. The City and Masonic Temple have appealed and the appeal has been fully briefed. A date for oral argument has not yet been set by the Court.

- ***San Francisco Architectural Heritage v. City & County of San Francisco, et. al.***
  - **PENDING.** A challenge was filed to 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 developer filed a demurrer, which the City joined; a hearing date is pending.

- ***SF Coalition for Children's Outdoor Play, Education and the Environment v. City and County of San Francisco, et. al.***
  - **NEW.** This lawsuit challenges the environmental determination associated with the 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. A briefing and hearing schedule has not yet been issued.

- ***Greg Schoepp, dba Bay Area Compassion Health Care Center v. City & County of San Francisco, et. al.***
  - **UPHELD.** This case challenged the Board's decision on February 9, 2011 to deny a building alteration permit for the construction of a medical cannabis dispensary. In February 2012 the Superior Court denied the writ petition and upheld the Board's decision. No appeal was filed and this decision is now final.

- ***350 Beach LLC v. City & County of San Francisco, et. al.***
  - **UPHELD.** This lawsuit challenges the Board's decision on March 3, 2010 to uphold a Zoning Administrator 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. On August 23, 2011, the Superior Court denied the writ petition finding that the Board did not abuse its discretion and relied on substantial evidence when it upheld the Zoning Administrator's decision. Judgment was entered in January 2012 and the appeal period expired with no appeal filed.

- ***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 merits of the underlying writ petition has not yet been scheduled.

- ***Winfield Design International, Inc. v. San Francisco Planning Department, et. al.***
  - **PENDING.** A lawsuit was filed challenging the Board's November 29, 2011 decision to uphold a Zoning Administrator Notice of Violation and Penalty that found a residential development project at 3000-23rd Street (aka 2690 Harrison St.) in violation of the Planning Code due to its non-compliance with Conditional Use requirements that the project provide seven Below Market Rate housing units. The City won on a demurrer in Superior Court and the plaintiffs have appealed. A briefing and hearing schedule is pending. *Note*: the Board of Appeals is not a named defendant in this action.

BUDGET

In fiscal year 2011-12, the Board experienced its first year of relative financial stability after three years of budgetary challenges. With revenues coming in closer to projections than in the recent past, and with continued cautious spending, the Board was able to close the year with a significant surplus.

The Board's budget is derived from two sources. The majority (95%) comes from surcharges placed on permit applications for those types of permits that have a recent history of being appealed to the Board.[15] The remainder (5%) comes from fees paid by individuals, community groups and businesses at the time a new appeal is filed.[16] 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.[17] Any

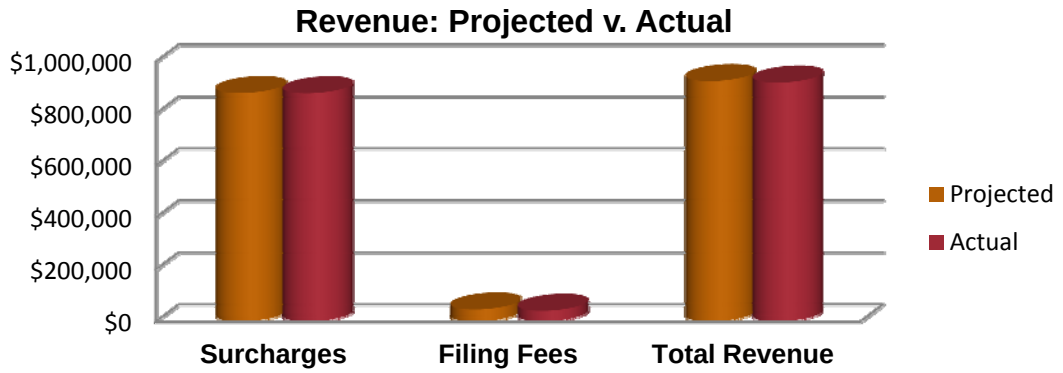
[15] Surcharges are calculated by (1) determining the number of appeals filed in the prior fiscal year that originated with actions taken by each funding department, (2) applying the percentage of appeals for each department to the Board's budget to determine the dollar amount each funding department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

[16] The Board's fees are found in S.F. Business and Tax Regulations Code Article 1, Section 8.

[17] San Francisco Administrative Code Chapter 10G.

adjustment to filing fees also must be done by legislative action. With the expectation that the nation's continuing economic recovery would increase permit application volume throughout the City, no increases were made to the Board's surcharge rates. No changes were made to the filing fees as well.

The Board's revenue budget of $925,289 was based on projected surcharge revenue of $879,252 and filing fee revenue of $46,037. As depicted below, the Board ended the year having realized $919,454 in total revenue (99% of projected); with $878,358 from surcharges (reflecting an $894 or .1% shortfall) and $41,096 from filing fees (reflecting a $4,941 or 11% shortfall). On balance, this left the Board with a revenue deficit of $5,835, which is less than one percent of its projected revenue budget (.6%).



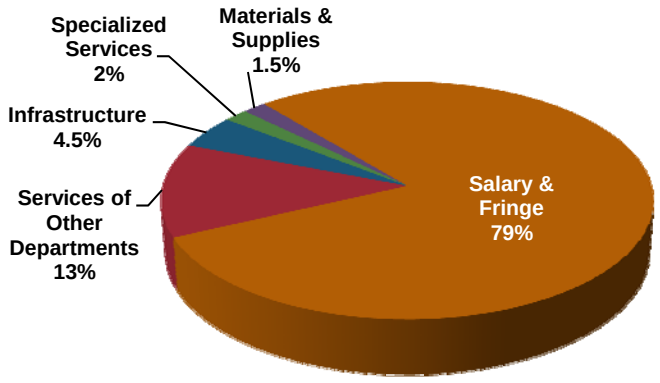
This revenue deficit is significantly smaller than those of the past three years, down from six percent ($52,802) in fiscal year 2010-11, nine percent ($71,805) in fiscal year 2009-10 and from sixteen percent ($125,949) in 2008-09.

With the revenue shortfall experience of the past three years in mind, the Board took steps throughout the year to limit its expenditures whenever possible, in order to hedge against a possible deficit. When a member of the Board's staff took a six month leave of absence, the position was left unfilled in order to recoup available salary savings. Since appeal volume continued to be lower than average, the Board was able to reduce spending on neighborhood notification services and other non-personnel expenses associated with the processing of appeals. Decreased appeal volume also allowed the Board to reduce its utilization of services provided by other City departments, including the services of the Department of Technology personnel involved with recording and broadcasting Board meetings, as well as the services of the City Attorney. Overall, expenses were reduced by 20% ($186,765). Offset by the revenue shortfall described above, these savings allowed the Board to end the year with a surplus of $180,930.

As the chart below reflects, over three-quarters (79% or $585,039) of the Board's total expenditures of $738,524 were used to pay for the salaries and fringe benefits of its employees. Thirteen percent ($94,256) 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 SFGovTV services, and support provided by the Department of Technology for the Board's computer systems and website. The expenditures for infrastructure costs such as rent, phones and the rental of a photocopier, represented 4.5% ($33,491) of the Board's total expenditures. Two percent ($14,639) paid for

specialized services such as those of a contractor who researches and prepares the neighborhood notification labels, couriers delivering meeting materials to Board members, and interpreters who attend Board meetings to assist limited-English speaking individuals. Materials and supplies represented 1.5% ($11,099) of the Board's expenditures, paying for commodities such as postage, paper and other office supplies.

Expenditures by Category



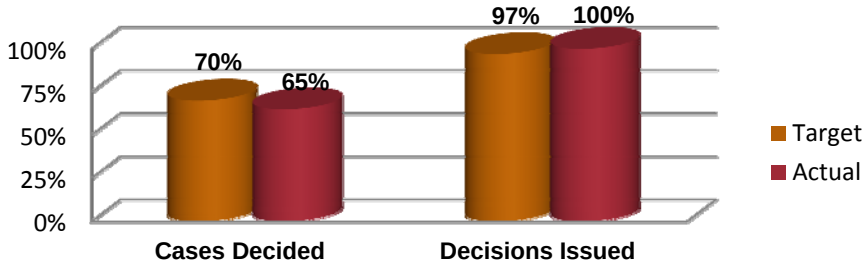
PERFORMANCE MEASURES

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 the time it takes for the Board to decide cases and issue 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. In fact, the Board decided 65% of its caseload within the stated timeframe. In most instances, when cases are decided beyond the 75 day window, the delay is a result of continuances requested by the parties to allow time for settlement negotiations or further case preparation. In some cases, Board decisions are delayed when additional evidence is needed in order for the Board to make a fully informed decision, for instance, when a permit holder fails to provide architectural plans and the Board cannot accurately assess the impact of a project without them.

The Board's second performance measure looks at how often written decisions are released within 15 days of final Board action. The Board was able to release all written decisions within this timeframe, exceeding the 97% target to reach 100%.

Performance Measures: Target v. Actual

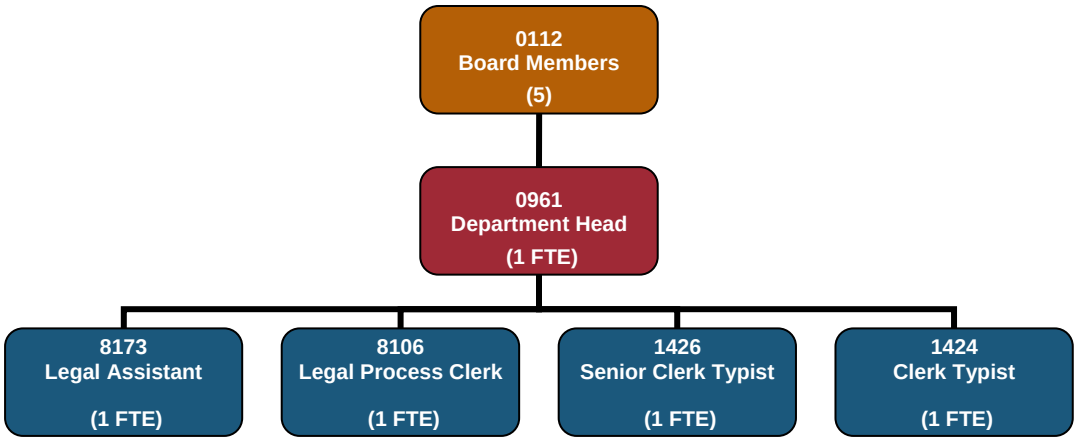


BOARD STAFF

The work of the Board is supported by an Executive Director, Legal Assistant, two Clerk Typists and a Legal Process Clerk. Staff is responsible for managing many facets of the appeal process, from the intake of new appeals to the preparation of the Board's Notices of Decision which articulate the final determination made by the Board members at hearing. Given the complexity of many of the appeals heard by the Board, it is common for voluminous filings to be submitted by the parties, including written argument, architectural plans, statements and studies prepared by experts and comments from members of the public. Staff tracks these documents as they move through the appeal process, ensuring that each Board member is given the materials needed to decide the matters presented at each meeting.

In addition to their usual responsibilities, the clerks at the Board have been engaged in an ongoing project to capture Board decisions in an electronic format. Working backward from the present, Board decisions are being scanned and shared with the Planning Department for inclusion in the City's on-line Property Information Map.[18] Depicted below is the Board's current organization structure:

Organizational Chart



IMPROVEMENTS TO INFRASTRUCTURE

During fiscal year 2011-2012, the Board continued to look for ways to increase the accessibility of its services to the public and to improve its operating systems:

- The Board took advantage of the City's new "Smart PDF" system, which replaces static forms with forms that can be filled out on line, and where appropriate, submitted online as well.

- The Board continued to create electronic versions of historical Board decisions for public access and inclusion in the Planning Department's Property Information Map.

[18] This online database may be found on the internet at: http://ec2-50-17-237-182.compute-1.amazonaws.com/PIM/?address=&x=57&y=17.