



# BOARD OF APPEALS ANNUAL REPORT

FY 2015

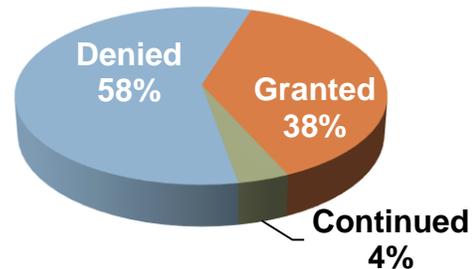
# HIGHLIGHTS

## APPEAL VOLUME



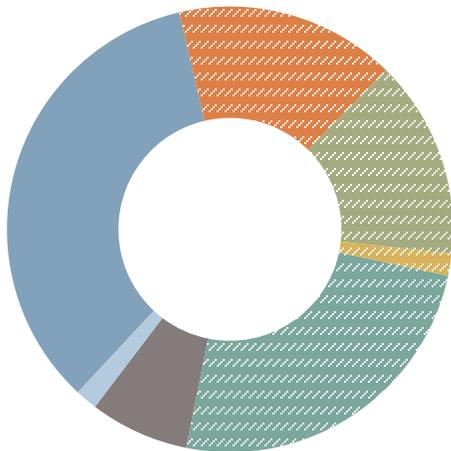
## BOARD ACTION

Of the 125 appeals heard, the Board denied 72 and granted 48.



## CASE ORIGINATION

Appeals stem from decisions made by a wide range of City departments and Commissions, depicted below. The land use-related cases (66%) are shaded.



	Building Inspection & Planning	34%
	Building Inspection Only	16%
	Zoning Administrator	14%
	Planning Commission	2%
	Public Works	25%
	Public Health	7%
	Municipal Transportation Agency	2%

Percentages have been rounded.

## BOARD MEETINGS & MEMBERSHIP

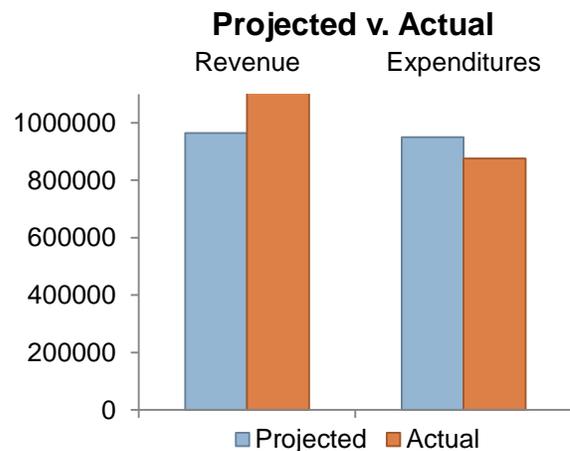
106 Meeting Hours  
90% Board Attendance

Current Board members:

Ann Lazarus, President  
Darryl Honda, Vice President  
Frank Fung, Commissioner  
Rick Swig, Commissioner  
Bobbie Wilson, Commissioner

## BUDGET

The Board generated \$1,106,120 in total revenue, exceeding projections by 15%. Expenditures of \$875,398 were 8% less than projected.



**Total Surplus \$230,722**

## 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 a final administrative review process for 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 as the last step in the City's review process.

## 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 require the approval of the Board of Supervisors.

Board officers are elected for one-year terms at the first regular meeting held after January 15<sup>th</sup> each year.<sup>1</sup> At the Board's annual elections this year, Ann Lazarus was re-elected Board President and Darryl Honda was elected Vice President.

Bobbie Wilson joined the Board at the end of September 2014, appointed by Board of Supervisors President David Chiu to fill a seat vacated by Chris Hwang. In April 2015, Board of Supervisors President London Breed appointed Rick Swig to fill a seat vacated by the Board's former Vice President Arcelia Hurtado who resigned in November 2014.

Current Board membership is as follows:

<b>Commissioner</b>	<b>Appointing Authority</b>	<b>Appointed</b>	<b>Term Expires</b>
Ann Lazarus President	Mayor	July 25, 2012	July 1, 2018
Darryl Honda Vice President	Mayor	December 4, 2012	July 1, 2016
Frank Fung <sup>2</sup>	Mayor	October 19, 2004	July 1, 2016
Rick Swig	Board of Supervisors	April 2, 2015	July 1, 2016
Bobbie Wilson	Board of Supervisors	September 30, 2014	July 1, 2018

<sup>1</sup> Rules of the Board of Appeals, Article I, §1.

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

# MEETINGS OF THE BOARD

During the fiscal year, the Board met 30 times, totaling over 106 meeting hours. There were fourteen instances when a member was absent, giving the Board a 90% attendance record.

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

- Elected officers (January 28, 2015)
- Adopted the Board's two-year budget covering fiscal years 2016 and 2017 (February 18, 2015)
- Adopted a resolution encouraging the establishment of noticing requirements for permits that may result in the removal of unpermitted residential units (April 29, 2015)
- Heard presentations from other City departments on topics related to the work of the Board:
  - Department of Public Health Environmental Health Section – on new local ordinances addressing the sale of tobacco to minors, e-cigarettes, and restrictions on the number of tobacco sales establishment permits that may be issued in any one Supervisorial district. (April 15, 2015)
  - Municipal Transportation Agency Division of Taxis and Accessible Services – on rules governing the taxi industry, how the Division works with the industry on rules compliance, and the use of progressive discipline in enforcement cases. (June 3, 2015)
  - Rent Board – on services offered to landlords and tenants, including with respect to the removal of unpermitted dwelling units. (June 24, 2015)

Unless otherwise noticed, Board meetings are held on Wednesdays starting at 5:00 p.m. in City Hall.<sup>3</sup> Meetings are conducted in accordance with the Rules of the Board of Appeals. In most cases, appellants will be first to present their arguments to the Board, then determination holders, respondent City departments and members of the public. An opportunity for rebuttal is given to the parties.

Board meetings are open to the public and are broadcast live on San Francisco's government television station (SFGovTV) cable television channels 26 and 78. Meetings may also be viewed on-demand.<sup>4</sup> Closed captioning is provided for these broadcasts and on the in-room monitor during Board meetings in City Hall. The Board posts on its website meeting agendas, approved minutes, the appeal briefs and other materials associated with the cases heard by the Board.<sup>5</sup>

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<sup>3</sup> The Board's annual meeting schedule is available at the Board office and on the web at: <http://sfgov.org/bdappeal/meetings>.

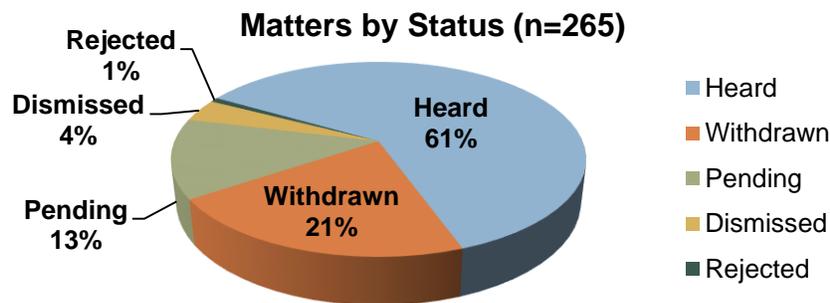
<sup>4</sup> Internet access is found at: [http://sanfrancisco.granicus.com/ViewPublisher.php?view\\_id=6](http://sanfrancisco.granicus.com/ViewPublisher.php?view_id=6).

<sup>5</sup> The Board of Appeals website is found at: [www.sfgov.org/boa](http://www.sfgov.org/boa).

# APPEAL EXPERIENCE

During the year, 265 cases were on the Board's docket: 217 appeals, 27 rehearing requests and 21 jurisdiction requests (to file a late appeal). Of these, 228 were filed with the Board this year, consisting of 183 appeals, 26 rehearing requests and 19 jurisdiction requests.<sup>6</sup>

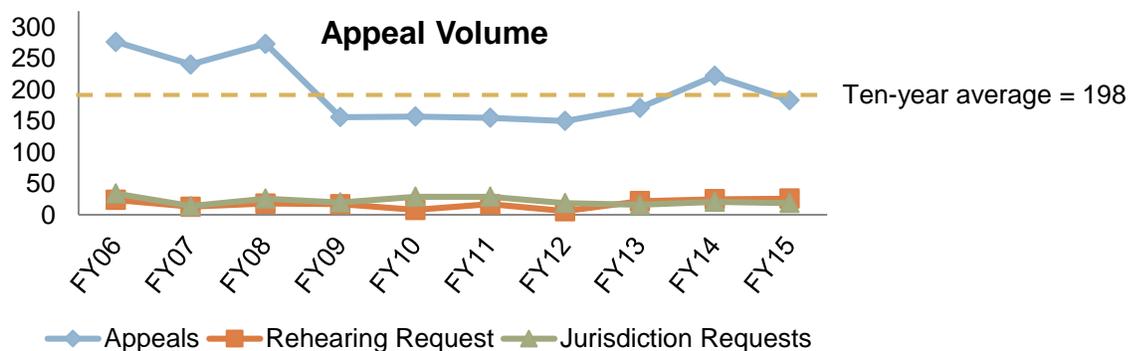
- The Board heard 162 matters: 125 appeals, 21 rehearing requests and 16 jurisdiction requests.
- Of the 103 matters that the Board did not hear, 56 were withdrawn by the appellant, ten were dismissed by the Board when the underlying permit was canceled by the permit holder, 35 were filed late enough in the year that they will be heard in the subsequent year, and two were rejected by the Board.<sup>7</sup>



The Board's jurisdiction and appeal process are described in Appendix A. Information on the specific appeals heard by the Board during the reporting year may be found in Appendix B.

## Volume

The number of new appeals filed with the Board fluctuates in relation to the health of the City's economy, when new permitting legislation is enacted triggering a spike in a particular appeal type, and when new business trends require permits. The 183 new appeals filed this year fall eight percent below the ten year average of 198 appeals, and 21% below last year's volume. However, as shown below, last year the Board saw a spike in new appeals, likely stemming from a new business trend that required utility excavation permits. The number of rehearing requests and jurisdiction requests has remained relatively constant over time.



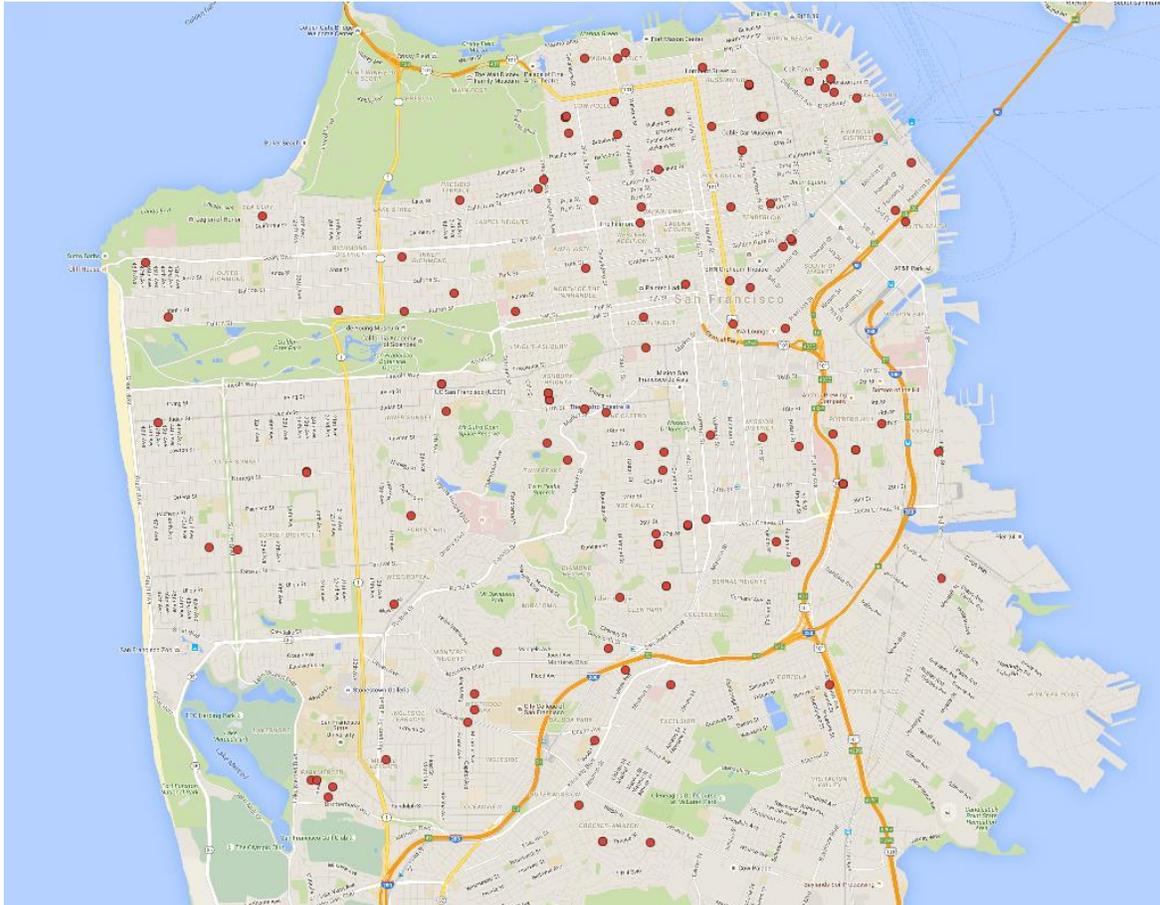
<sup>6</sup> The 37 additional matters were carried over from the prior year.

<sup>7</sup> Cases may be rejected after filing when the Board determines it lacks jurisdiction over the subject matter being appealed; for instance, where an appeal of a building permit is filed for a project that has been given a conditional use authorization. (See, San Francisco Charter Section 4.106(b).)

## Geographic Distribution

The appeals heard by the Board during the year were associated with properties located in a wide range of San Francisco neighborhoods, as depicted on the map below. The highest volume is found in the City's northeast quadrant, with the fewest number of appeals seen in the southeast and western portions of the City.

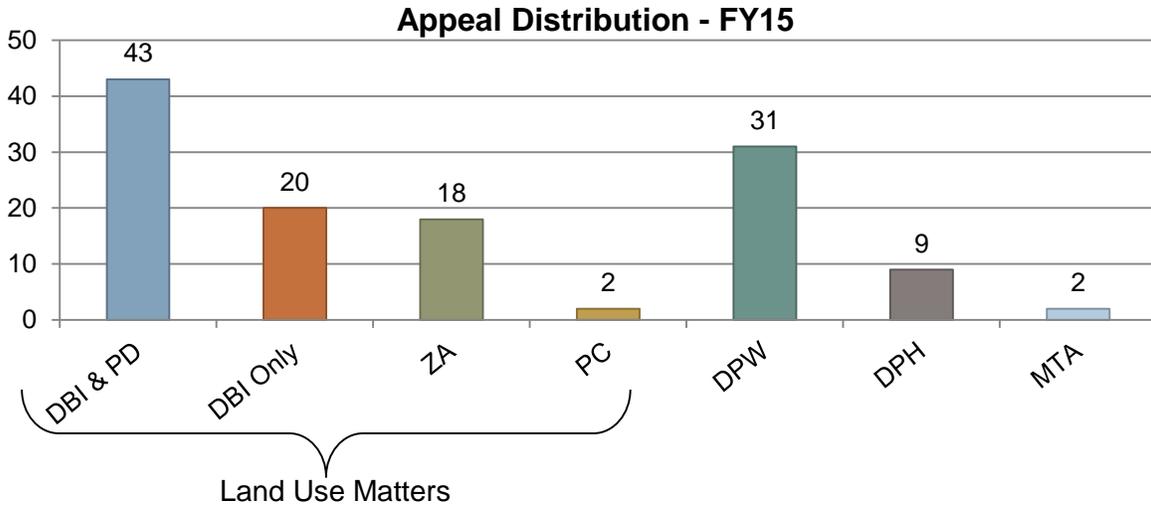
### Geographic Distribution of Appeals Heard



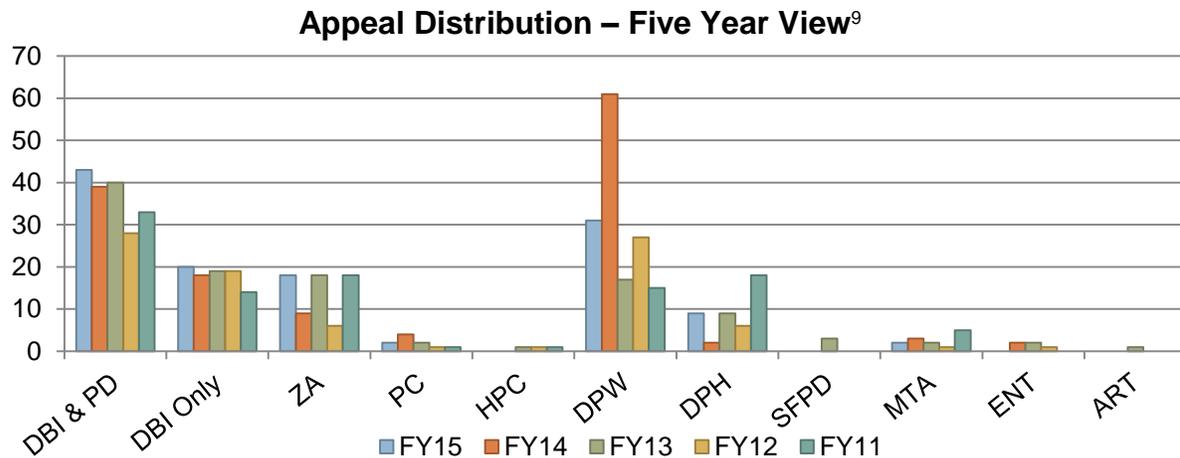
## Subject Matter

Two-thirds of the appeals heard during the year (83 cases) were of land-use related determinations made by the Department of Building Inspection, the Planning Department, Planning Commission or the Zoning Administrator. Typically, land-use matters from these sources represent 60-75% of the Board's docket. This year, the Board saw a surge in the number of appeals related to the removal of residential units, primarily units that were unpermitted, with 28 such appeals filed. In addition, ten jurisdiction requests were filed by tenants of such residential units who had missed the appeal filing deadline. In response to the increased number of jurisdiction requests of this type, the Board passed a Resolution urging the establishment of noticing requirements when permits are issued to remove this type of housing. Legislation is currently being considered by the Board of Supervisors for this purpose.

The balance of the cases heard by the Board include 31 appeals (25%) associated with determinations issued by the Department of Public Works, nine appeals (7%) from decisions issued by the Department of Public Health and two (2%) taxi-related decisions issued by the Municipal Transportation Agency. A detailed description of the appeals heard can be found in Appendix B. The chart below depicts the 125 appeals heard by the Board by source.<sup>8</sup>



A five year view of appeals by source is set out in the chart below. This chart depicts how appeal volume from each source varies from year-to-year, with changes sometimes reflecting new business trends and practices or changes in permitting legislation. In FY14, for example, the Board experienced a surge in DPW-related appeals associated with AT&T's efforts to roll out new technology that involves the placement of utility boxes in the public right-of-way. Also depicted is the fairly consistent presence on the Board's docket of appeals stemming from the Planning Department, Department of Building Inspection and Zoning Administrator.

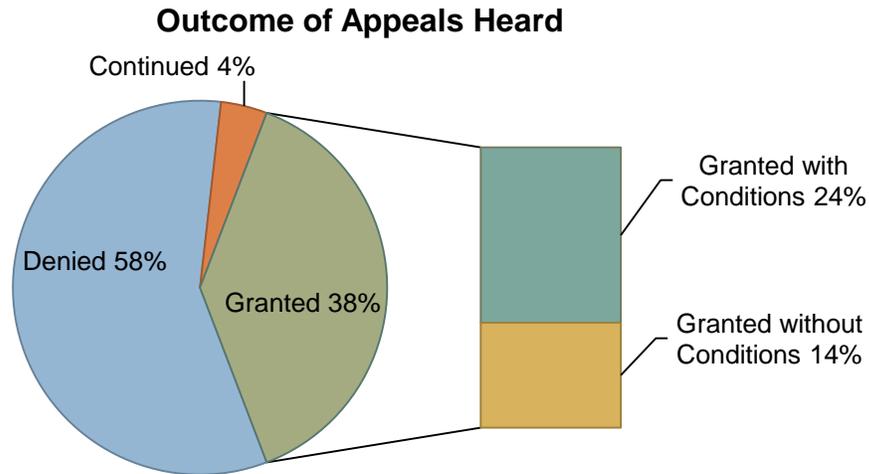


<sup>8</sup> DBI = Department of Building Inspection; PD = Planning Department; ZA = Zoning Administrator; PC = Planning Commission; DPW = Department of Public Works; DPH = Department of Public Health; MTA = Municipal Transportation Agency.

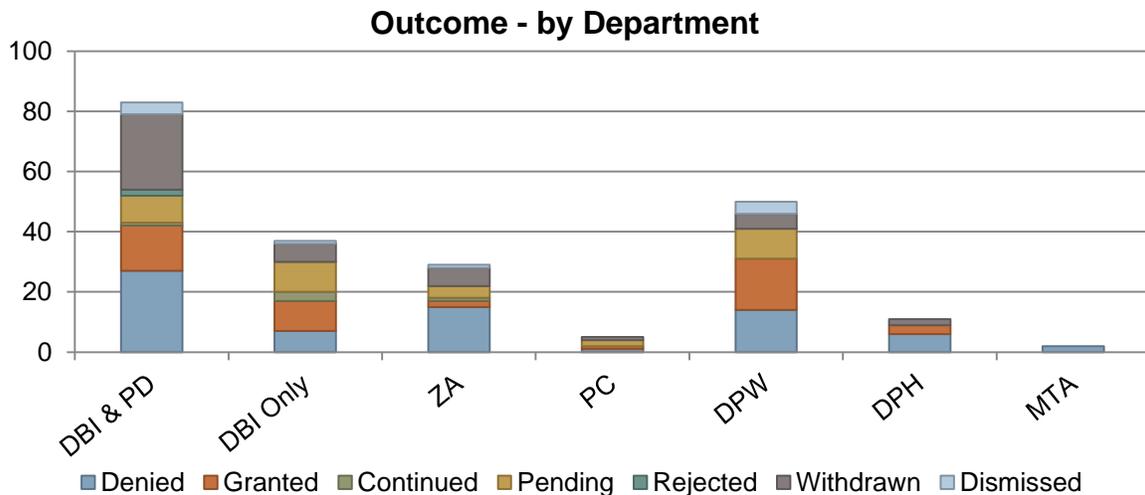
<sup>9</sup> HPC = Historic Preservation Commission; SFPD = Police Department; ENT = Entertainment Commission; ART = Arts Commission.

## Appeal Outcome

Of the 125 appeals heard during the year, the Board denied the appeal and upheld the underlying departmental decision in 72 cases (58%). The Board granted 48 of the appeals heard (38%), overruling the underlying departmental decision in 18 of the granted appeals and modifying the decision in thirty cases. Five cases (4%) were continued by the Board after hearing.<sup>10</sup>



The chart below depicts the outcome of appeals relative to each department from which determinations originated. This is described in more detail in Appendix B.

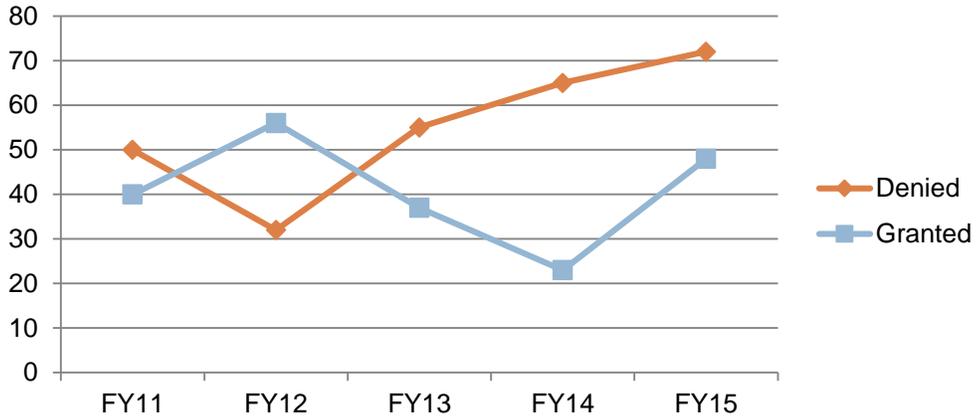


The number of appeals granted and denied by the Board over the past five years is shown in the chart below. This depicts how the Board's decision-making can fluctuate significantly from year to year. In some years, there is a clear reason for the trend. For

<sup>10</sup> Four of the continued cases were sent to the Board's Call of the Chair calendar. This calendar is used for cases the Board puts on hold because some factor suggests that the matter is best decided at a later, unknown time. Here, one case is awaiting the outcome of a conditional use authorization decision by the Planning Commission and three are on hold to allow the underlying departments to resolve related issues.

example, in FY14 the increase in denied appeals was due, in part, to the large number appeals of DPW utility excavation permit denials, which presented nearly identical factual and legal issues. In the current year, the increase in denied appeals isn't attributable to a clear trend in appeals heard. As seen in the chart above, the denials in FY15 were spread across all appeal types.

**Outcome - Over Time**

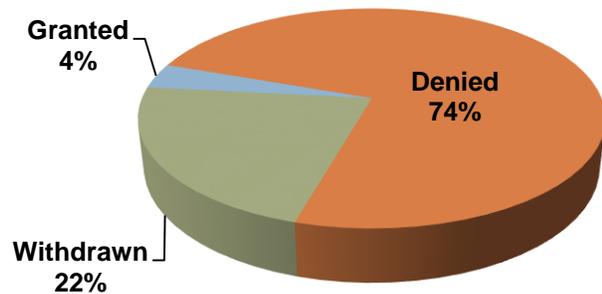


## Other Matters Heard

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.<sup>11</sup> Pursuant to the Board's Rules, upon the vote of a supermajority of Board members, a motion for rehearing may be granted to prevent manifest injustice or 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."<sup>12</sup>



There were 27 rehearing requests on the Board's docket during the year; one (4%) was granted and twenty (74%) were denied. The remaining six (22%) were withdrawn.

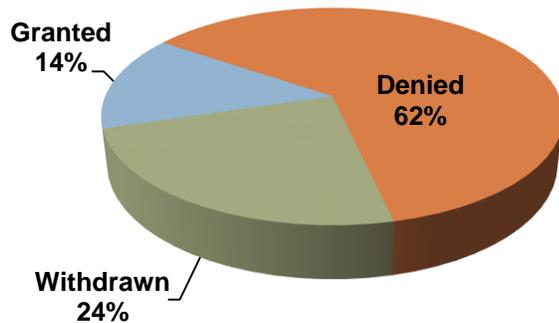
<sup>11</sup> See San Francisco Business and Tax Regulations Code, Article 1, §16; and Rules of the Board of Appeals, Article V, §9.

<sup>12</sup> Rules of the Board of Appeals, Article V, §9(b).

## 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>13</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. When a jurisdiction request is granted, a new five-day appeal period is created within which the requestor (and only the requestor) may file an appeal. Again, a supermajority of votes is needed for such a request to be granted.



Twenty-one jurisdiction requests were before the Board during the year. Three requests (14%) were granted and thirteen (62%) were denied. Five requests (24%) were withdrawn.

## LITIGATION

Parties dissatisfied with a Board determination may seek further review and relief in court. During the year, four 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 mixed. In addition to the four new matters, four previously filed cases have yet to be litigated or are on appeal.

A description of each case and its status is provided in Appendix C.

## BUDGET

The Board's budget experience in fiscal year 2015 clearly evidenced the City's continuing economic improvement. The Board closed the year with a surplus of \$230,722, derived from revenues that exceeded projections and expenditures that were less than projected, as described in the budget detail below.

### Revenue Detail

The Board's revenue 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.<sup>14</sup> The remaining 5% comes from fees paid by individuals, community groups and businesses at the time a new appeal is filed. Each year,

<sup>13</sup> See *Franklin v. Steele*, 131 Cal. App. 3d 558 (1982); Rules of the Board of Appeals, Article V, §10.

<sup>14</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.

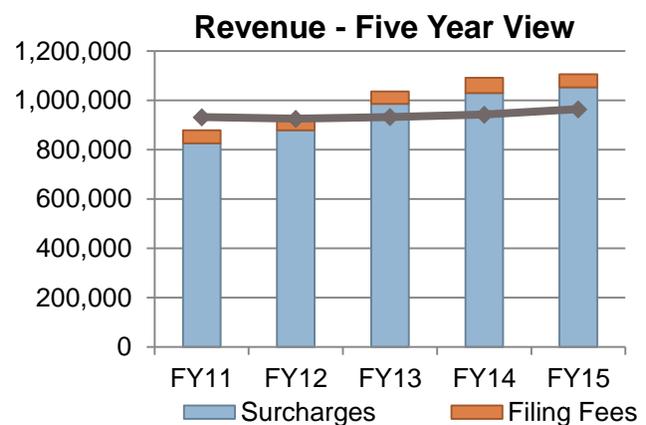
in preparing the coming year's budget, the Board and Controller's Office work together to determine whether any adjustments to the surcharge rates are needed in order to provide sufficient revenue to cover the Board's actual operating expenses. Any adjustment beyond inflation requires legislative action,<sup>15</sup> as does any change to filing fees.<sup>16</sup>

Going into fiscal year 2015, no adjustments were made to surcharge rates or filing fees. Instead, it was assumed that the City's continuing economic recovery would prompt an increase in permit application volume which would, in turn, generate sufficient additional surcharge revenue to cover the small increase in the Board's expenditure budget from the prior fiscal year. This assumption proved correct; the Board ended the year with surplus surcharge revenue. Filing fee revenue also increased due to actual appeal volume coming in over projections.

### Projected v. Actual Revenue – FY15

	Projected	Actual	Surplus (\$)	Surplus (%)
Surcharge Revenue	\$918,343	\$1,053,029	\$134,686	15%
Filing Fee Revenue	\$46,037	\$53,091	\$7,054	15%
<b>Total Revenue</b>	<b>\$964,380</b>	<b>\$1,106,120</b>	<b>\$141,740</b>	<b>15%</b>

Since nearly all of the Board's revenue budget is tied to the number of permit applications filed with other City departments, the health of the City's economy has a strong correlation with the health of the Board's budget. The Board's surcharge revenue has grown in each of the past five years, though that trend has slowed some in the past few years. This year, the Board exceeded revenue projections in both budget streams for the third year in a row. The chart (right) depicts the Board's projected total revenue budgets for the past five years against actual revenue from the Board's two funding sources in each year.



### Expenditure Detail

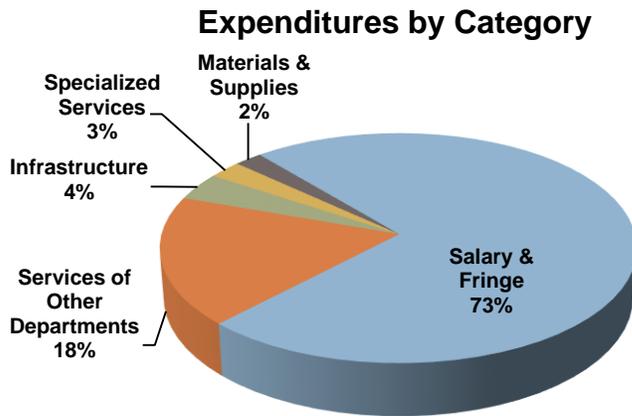
The Board had expenditure savings in several areas this year. Spending on the services of other departments came in approximately fifteen percent under projections, largely attributable to a dip in costs associated with City Attorney services. In addition, personnel-related expenses came in three percent under projections due to staff turnover that led to vacant positions during the year. Overall, expenses were reduced by 8% (\$74,896) from the projected expenditure budget of \$950,294.<sup>17</sup>

<sup>15</sup> San Francisco Administrative Code Chapter 10G.

<sup>16</sup> Board fees are found in San Francisco Business and Tax Regulations Code Article 1, §8.

<sup>17</sup> The Board's projected revenue and projected expenditure budgets are not always balanced at the start of the fiscal year, and were not balanced this year. This discrepancy is due to expenditure changes made close to the end of the City's budget process, such as modifications

As the chart below reflects, almost three-quarters (73% or \$641,370) of the Board’s actual expenditures (\$875,398) paid for the salaries and fringe benefit expenses of Board employees. Eighteen percent (\$159,361) 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.



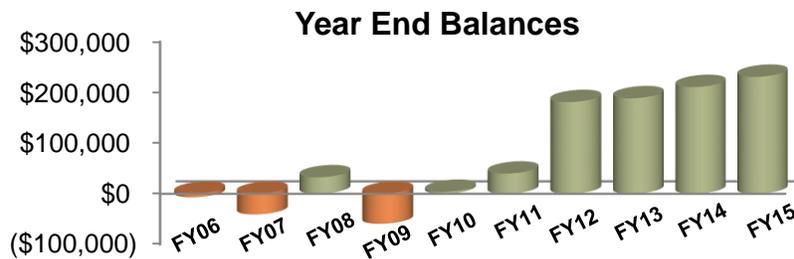
Infrastructure costs associated with office space rental, telephone usage and the rental of a photocopier, represented 4% (\$33,930) of the Board’s expenses for the year. Three percent (\$22,171) paid for specialized services such as the contractor who researches and prepares the neighborhood notification address information and maps, and interpreters who attend Board meetings to assist limited-English speaking individuals. Materials and supplies represented 2% (\$18,566) of the Board’s expenditures, paying for commodities such as postage, paper and other office supplies.

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## Budget Management

As noted above, economic factors outside the Board’s control influence the number of new permit applications and appeals filed each year, which, in turn, generate Board revenue. Even though the Board’s budget projections are carefully considered and spending is monitored closely, the Board will close some budget years with a deficit and other years with a surplus, as seen in the chart below.



To accommodate this variability, a ‘rainy day’ fund (deferred credit account) was established to capture any dollars remaining at the close of each year. This allows the Board to apply reserved dollars in future years where the cost of service exceeds revenue. Previously, in deficit years the Board would rely on an allocation from the City’s General Fund to balance its budget, and in years with a surplus, the additional dollars

to salaries resulting from new labor agreements and changes to health insurance rates. Since the revenue budget and surcharge rates have been established by that point in the process, they are not revised to bring the budget into balance. Increases in expenditures are typically small and the Controller’s Office assumes they will either be covered by revenue exceeding projections, or by an allocation from the Board’s rainy day fund. This year, a small reduction was made to expenditures toward the end of the budget process, so there were no revenue concerns.

would be deposited into the General Fund as a form of reimbursement. The rainy day fund acknowledges the inherent fluctuation in the Board's revenue streams; it allows the Board to be self-sufficient and to avoid relying on General Fund dollars in lean revenue years when such dollars are scarce.

## PERFORMANCE MEASURES

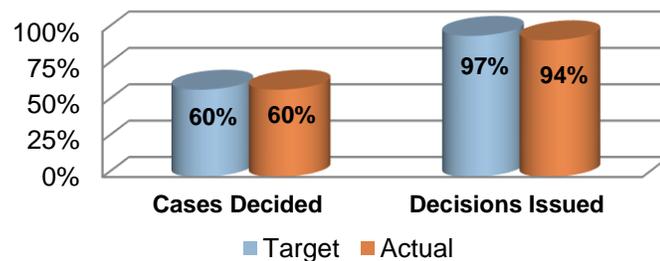
All City departments are required to report on specific statistical measures as a way of assessing and documenting performance. The two measures unique to the work of the Board of Appeals look at how long it takes the Board to decide cases and how quickly written decisions are released.

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 60% target was set for this measure which the Board met.

When cases are decided beyond the 75 day window, the delay is often the result of continuances requested by the parties seeking 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 example, when a permit holder fails to provide architectural plans and the Board cannot accurately assess the impact of a project without them.

**Performance Measures: Target v. Actual**



The Board's second performance measure looks at how often written decisions are released within 15 days of final Board action. A 97% target was set for this measure. In fact, the Board released 94% of its written decisions within the 15 day timeframe, the vast majority on the first day they were eligible for release. The six instances when a decision was released beyond the 15 day window all involved multiple appeals filed on the same determination, where a rehearing request was filed on only one of the linked appeals. The Board's decision is held until the rehearing request is decided and the final outcome of all connected appeals is known, in order to avoid having the Board make different, conflicting decisions on the same determination.

## STAFF ACTIVITIES & COMPOSITION

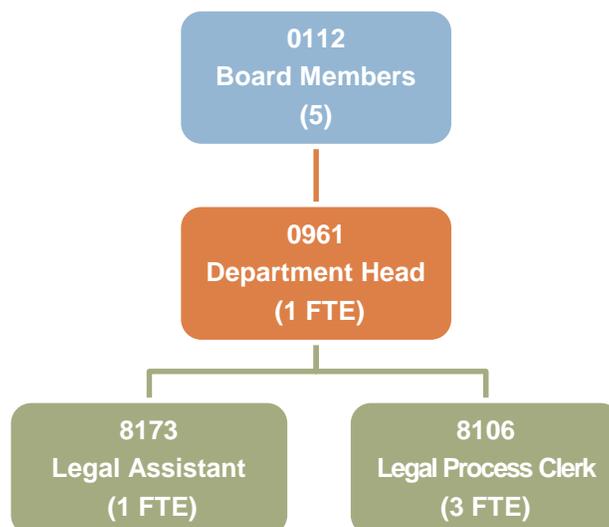
In the current year, the department upgraded its computer equipment for all staff. In addition, staff worked with the Department of Technology to redesign the Board's website, making information about the appeal process and the workings of the Board more accessible to the public. Board decisions dating back to the agency's inception in 1932 are now available on the Board's website, and new decisions are added when they are issued. This provides the public with an easy-access tool for finding information on Board decisions affecting specific properties of interest.

The work of the Board is supported by an Executive Director, Legal Assistant, and three Legal Process Clerks. Staff is responsible for managing many facets of the appeal process, including the intake of new appeals, providing staff support at Board meetings, and preparing the Board's Notices of Decision which articulate the final determination made by the Board members at hearing.

Staff manage the large amount of paperwork submitted to the Board by the parties to appeals and by interested members of the public, ensuring that these documents comply with the Board's Rules so that all parties have an equal opportunity to present their case to the Board. Staff prepare Board packets to provide Board members with the materials needed to decide the matters presented at each meeting. Staff also post meeting materials on the Board's website in order to make this information more accessible to the public.

Depicted below is the Board's current organizational structure.

### Organizational Chart



# APPENDIX A – APPEAL OVERVIEW

## BOARD JURISDICTION & TYPES OF APPEALS

Most of the appeals heard by the Board are filed pursuant to the authority given 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....

Excluded from the Board's Charter authority are appeals of building and demolition permits for projects that have been granted a conditional use authorization by the Planning Commission<sup>18</sup> and determinations made by the Recreation and Park Commission or Department, or by the Port Commission.<sup>19</sup>

In addition to appeals heard by the Board pursuant to the City Charter, there are other City laws that give the Board the authority to hear specific types of appeals. For example, the Planning Code authorizes the Board to hear appeals of certain Planning Commission determinations, such as Large Project Authorizations under Section 329, exceptions to the Planning Code granted under Section 309, and decisions about office developments under Section 322. Other examples of Code-authorized appeals include certain Certificates of Appropriateness issued by the Historic Preservation Commission, as well as some disputes over Project Development Fees assessed by the Department of Building Inspection.<sup>20</sup>

The authority to hear appeals not otherwise under the Board's jurisdiction may be delegated to the Board through a memorandum of understanding (MOU) entered into with another City department or entity. For example, in 2014 the Board entered into an MOU with the Port Commission for the purpose of transferring to the Board the Port Commission's decision-making authority over appeals of Port-related entertainment permits.

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 is also applied to the Board's review of some Planning Commission decisions, where required by Code.

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 have been reviewed by the Planning Department or result from discretionary review decisions of the Planning Commission
- Actions by the Zoning Administrator (ZA), such as variance decisions, Letters of Determination, Suspension Requests and Notices of Violation and Penalty

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<sup>18</sup> Appeals of the underlying conditional use authorization may be made to the Board of Supervisors.

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

<sup>20</sup> Planning Code §1006.7 and Building Code §107A.13.9.2, respectively.

- Tree planting and tree removal permits issued or denied by the Department of Public Works (DPW)
- Permits issued or denied by DPW for the placement of wireless telecommunications facilities in the public right-of-way
- 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:

- Planning Commission determinations dealing with large downtown developments
- The suspension or revocation of DPH-issued permits for restaurants and massage establishments
- Appeals protesting the issuance by DPH of Medical Cannabis Dispensary permits
- Mobile food facility permits issued by DPW
- The suspension or revocation of taxi driving permits and medallions issued by the Municipal Transportation Agency
- DPW-issued permits for minor sidewalk encroachments and street space occupancy
- DBI-issued electrical and plumbing permits, often appealed in conjunction with related building permits

## Appeal Process

The San Francisco Business and Tax Regulations Code<sup>21</sup> sets out 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 various parties and neighbors 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. The Rules of the Board of Appeals provide additional requirements for the appeal process, including guidelines on how parties and members of the public may communicate with members of the Board in order to ensure the appeal process is fair to all involved.

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 appeals of Certificates of Appropriateness issued by the Historic Preservation Commission must be filed within thirty days. 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 has caused a would-be appellant to miss the appeal period.<sup>22</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, the parties are given a schedule establishing deadlines for these submittals and are advised of the Board's requirements on length and formatting.<sup>23</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

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<sup>21</sup> Article 1, §8, *et seq.*

<sup>22</sup> Rules of the Board of Appeals, Article V, §10.

<sup>23</sup> Rules of the Board of Appeals, Article V, §4.

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 foot radius of any property that is the subject of an appeal.<sup>24</sup>

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. 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:

- Changes to 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 the 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 the hours of operation, to mitigate competition to neighboring restaurants
- 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 private 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 a determination.

The Charter<sup>25</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 overruled or modified.<sup>26</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.

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<sup>24</sup> San Francisco Business and Tax Regulations Code Article 1, §12.

<sup>25</sup> See San Francisco Charter §4.106(d).

<sup>26</sup> 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 B – APPEAL DETAIL

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

### Department of Building Inspection and Planning Department

Forty-three of the 125 appeals heard by the Board during the year stemmed from determinations made by the Department of Building Inspection (DBI) that also involved Planning Department review. These appeals constitute 34% of the appeals heard and focused on both Planning Code and Building Code issues.

- Forty appeals protested the issuance of a building or demolition permit:
  - Protest appeals are typically filed by individual 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, restrict access to light and air, or obstruct the mid-block open space. This year the Board experienced an increase in appeals associated with roof decks. Demolition permits often are appealed in conjunction with building permits but sometimes such appeals stand alone. In those cases, the allegations often focus on how the demolition work may be disruptive or dangerous to neighbors or that it will destabilize the foundation of a neighboring building.
  - Sixteen of the protest appeals filed during the year were by tenants objecting to permits to remove residential units.
- Three appeals protested the denial of a building permit:
  - Appeals of permit denials are filed by property owners seeking permission to move ahead with a project that has been disapproved by DBI and/or Planning. Permit disapprovals are often made 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 Guidelines.<sup>27</sup>

The Board denied 63% (27) of these appeals and granted 35% (15), placing conditions on the underlying permits in 10 of the appeals granted. The remaining case (2%) was sent to the Board's Call of the Chair calendar to allow time for a pending Notice of Violation to be resolved.

### Department of Building Inspection Only

Twenty of the appeals heard (16%) were of determinations made solely by the Department of Building Inspection:

- Seventeen appeals protested the issuance of a building, electrical or plumbing permit.
  - Of these, twelve were appeals filed by tenants protesting permits to remove residential units.
- Three appeals protested the imposition of penalties.
  - Penalty appeals are filed by property owners who have been assessed fines for performing work without a permit or for exceeding the scope of a

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<sup>27</sup> The Residential Design Guidelines promote residential building design that protects neighborhood character, preserves historic resources and promotes the goal of environmental sustainability.

permit. In some cases, the Board will reduce a penalty where it finds that the property was purchased after the unpermitted work was performed or based on other extenuating circumstances.

The Board denied 35% (7) of these appeals and granted 50% (10), imposing conditions in six of the appeals granted. The remaining 15% (three cases) were continued by the Board to allow time for Notices of Violation to be resolved or for permits to be canceled.

### Zoning Administrator

The eighteen appeals of Zoning Administrator (ZA) determinations comprised 14% of the appeals heard by the Board:

- Seven appeals protested variances granted by the ZA.
- Five appeals protested 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 piece of property. For example, an LOD may address whether alcohol may be sold by a store in a particular zoning district, whether a previously granted entitlement has expired, or what the legal dwelling unit count is for a particular parcel.
- Three appeals protested the ZA's request to release a suspension that had been placed on a permit, two appeals protested Requests for Revocation, and one objected to a Request for Suspension.

The Board denied 84% (15) of the appeals of Zoning Administrator determinations, and granted 11% (2), imposing conditions in one case. The remaining case (5%) was sent by the Board to its Call of the Chair calendar to give a project sponsor time to seek a needed conditional use authorization.

### Department of Public Works

Thirty-one of the appeals heard (25%) relate to determinations made by the Department of Public Works (DPW):

- Fifteen appeals were of tree removal permits. Eight of these protested the denial of a permit to remove trees and seven protested the issuance of such permits.
- Eight were of utility excavation permits sought by AT&T. Two of these were filed by AT&T challenging DPW's denial of a permit and six were protest appeals filed by residents objecting to the granting of a permit to AT&T.
- Three appeals were of temporary occupancy permits taken out by a tree removal company seeking permission to use the public right-of-way to stage equipment.
- Two appeals protested the issuance of mobile food facility permits.
- One appeal each was filed in association with a minor side encroachment permit, night noise permit and parklet.

The Board denied 45% (14) of the DPW-related appeals and granted 55% (17), imposing conditions in eleven of the appeals granted.

### Department of Public Health

Nine appeals (7%) were filed on determinations made by the Department of Public Health (DPH). Seven appeals were of suspensions or denials of tobacco sales permits. There was also one appeal of the issuance of a medical cannabis dispensary permit and one of a noise variance. The Board denied six of the appeals and granted three, imposing conditions in two of the granted matters.

### Planning Commission

There were two appeals of Planning Commission decisions heard by the Board during the year. One protesting exceptions granted under Planning Code Section 309 for a development in the Civic Center area and the other protesting the allocation of office space for a downtown project. The Board denied the office allocation appeal but granted the appeal filed under Section 309 in order to modify the project as requested by the project sponsor.

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

The Board heard two appeals stemming from SFMTA actions, both taxi-related revocations. One was associated with a part time driving permit and the other a dispatch permit. Both were denied.

## APPENDIX C – LITIGATION DETAIL

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.

**NEW.** A federal lawsuit was filed challenging (1) the City's implementation of interim zoning controls applying formula retail restrictions to the commercial district where 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 applies for a conditional use authorization for its pharmacy. The City agreed. The conditional use application is still pending before the Planning Commission.

### Clear Channel Outdoor, Inc. v. Board of Appeals of the City & County of San Francisco

**DECIDED.** 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. The time

within which Clear Channel could pursue this ruling further has lapsed and the case will soon be dismissed.

**Fisherman's Wharf Community Benefit District v. City & County of San Francisco, et al.**

**DISMISSED.** A challenge was filed to the Board's decision on April 12, 2012 to grant a mobile food facility permit for the operation of a cart serving coffee and tea at 2801 Leavenworth Street, and overturn the Department of Public Works decision to deny the permit. On October 9, 2014 the plaintiff voluntarily dismissed this case with prejudice after the permit holder failed to use or seek to renew the permit.

**Robert Michael Friedman v. San Francisco Taxi Commission, et al.**

**DISMISSED.** This lawsuit challenged the Board's decision on July 23, 2008 to uphold the Taxi Commission's revocation of a taxi driver permit and taxi medallion. The statute of limitations to bring the case to trial has run and the City will soon move to have the matter dismissed.

**Sharon Hassan v. City & County of San Francisco, et al.**

**WITHDRAWN.** The owner of a coffee cart filed a lawsuit after the Board decided on October 23, 2013 to uphold a DPW decision to deny the renewal of her mobile food facility permit. The cart had been permitted to operate in the Fisherman's Wharf area and the renewal was denied on the grounds that the permit holder failed to demonstrate she had been operating her cart during the pendency of the permit. Ms. Hassan withdrew her lawsuit in July 2015.

**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.

**Neighbors for Preservation and Progress, et al v. San Francisco Board of Appeals et al.**

**DECIDED.** A lawsuit filed in July 2014 challenged the Board's decision on an appeal of a permit for the construction of a five story twelve-unit residential building with a ground floor commercial use at 1050 Valencia Street. The suit was filed by neighbors dissatisfied with the Board's February 26, 2014 decision to reduce the size of the project, but not to the degree desired by the plaintiffs. On April 29, 2015 the Court ordered the Board to vacate its decision and return the matter to the Board for further hearing, finding that the Board failed to sufficiently explain the basis and rationale for its decision. In June 2015 the Board adopted revised findings supporting its original decision and providing a more detailed explanation of the basis for its determination.

**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)**

**NEW.** 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 in the building protesting the Zoning Administrator's 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 concerning the permit. The federal case focuses on federal constitutional claims. Because both suits challenge the same conduct and seek the same damages, the federal court agreed that it was appropriate to let the State court resolve issues of local land use law before it determines whether any federal constitutional issues remain to be resolved. On this basis, the Federal court lawsuit was stayed pending the outcome in State court. Briefing in State court is underway and a trial has been set for fall 2015.

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

**NEW.** The neighbors of a project at 312 Green Street are challenging 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. The matter has been fully briefed and argued and a decision is expected by the end of the year.

#### **Pacific Bell Telephone Company v. City of San Francisco, et al.**

**DECIDED.** In May 2014, AT&T California (dba Pacific Bell) filed a lawsuit challenging the Board's decisions to uphold the DPW denial of excavation permits for the placement of utility boxes in the public right-of-way in various locations throughout the City. The suit also challenged a Board decision to overturn DPW's grant of an excavation permit on Prague Street. Some of these appeals were decided by the Board after new permitting legislation took effect and the Board found the permit applications failed to meet the requirements of the new law. In June 2015 the Court agreed with AT&T with respect permits that were denied where DPW failed to follow the decision-making process outlined in the Surface Mounted Facilities Order. The court agreed with the Board in six cases where permits were denied on the basis that they did not comply with new permitting legislation in effect at the time of the Board's review. No appeal has been filed and this matter is now final.

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

**STAYED.** This lawsuit is challenging, 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." A stay of action has been negotiated with an expectation that the matter will become moot.

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

**ON APPEAL.** This lawsuit is challenging 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. The petitioner's time to seek Supreme Court review has not yet passed.

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

**ON APPEAL.** This case challenges 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 is 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 is the Board's upholding of a Planning Commission determination granting exceptions under Planning Code Section 309. Petitioners lost at the trial court and have appealed the decision to the Court of Appeal. The case has been fully briefed and awaits a schedule for oral argument. The parties are jointly requesting a stay of the appeal to pursue a potential settlement.

**United Taxicab Workers, et al. v. San Francisco Municipal Transportation Authority, et al.**

**DISMISSED.** A lawsuit was filed challenging both the SFMTA's adoption of a Resolution authorizing the lease of 150-200 taxi medallions to taxi companies and the Board of Appeals decision on November 17, 2012 to deny the United Taxicab Workers' request that the Board accept jurisdiction over its appeal of this SFMTA Resolution. On May 21, 2015, this case was dismissed without prejudice after the Superior Court, in a companion case in which the same plaintiffs challenged a different SFMTA resolution that did not involve the Board of Appeals, rejected the legal arguments that were the same as those made by the plaintiffs in this case.

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

**NEW.** 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. A briefing and hearing schedule has not yet been set.