

CALGARY QUASI-JUDICIAL BOARDS 2011–2013 REPORT



ARB

ASSESSMENT REVIEW BOARD



SDAB

SUBDIVISION AND DEVELOPMENT APPEAL BOARD



LCSAB

LICENCE AND COMMUNITY STANDARDS APPEAL BOARD

PREFACE



What is a quasi-judicial board?

A quasi-judicial board is a tribunal that hears and decides claims or disputes that may determine some legal rights, duties or privileges of those who come before it. The intent of quasi-judicial boards is to fairly resolve claims or disputes in a way that is relatively fast, informal, and inexpensive. Quasi-judicial boards, for example, do not generally apply strict rules of evidence and procedure, as is the case in most proceedings before the courts. At the same time, quasi-judicial boards must take considerable care to be fair to all parties by applying the rules of natural justice, which entail a number of important considerations, including the following:

- Parties must have advance notice of hearings.
- Parties must have an opportunity to be heard.
- Parties have a right to an impartial decision-maker.
- Parties have a right to legal representation.
- Parties have a right to know the reasons for decision.

In most cases, the boards hear matters anew, admitting relevant and material evidence to be submitted for their consideration. In some cases, however, hearings are restricted to a consideration of evidence that is available from the record of a decision that is under appeal.

Those who appear before a quasi-judicial board should expect to state their position, present evidence to support it, respond to any evidence or submissions which might

oppose their position, and answer any questions the board may have. Although the law will vary depending on the circumstances of a case, evidence and submissions must usually be provided in advance to the boards and/or others participating in the hearing; this is to ensure that everybody has a fair opportunity to be aware of what the board will consider, and have a chance to respond to it.

The decisions of a quasi-judicial board typically do not create legal precedent, but the boards are obligated to follow and apply legal precedents established by the courts. In all cases, the boards' decisions are final, but they may be challenged in the courts by way of appeal or judicial review.

Calgary's Quasi-Judicial Boards

Calgary's Quasi-Judicial Boards are independent and impartial boards of subject-matter experts and community representatives. Members of these Boards are charged with the responsibility of hearing and deciding challenges to certain decisions made by officials of The City of Calgary. The Boards provide citizens with a way to challenge those decisions in a way that is considerably cheaper and faster than would be the case were such disputes to be dealt with in the first instance by a court. In most cases, representatives of The City of Calgary are respondents to these challenges and make submissions to the Boards against complaints or appeals. Each Board is established by a bylaw enacted by City Council, as required by the *Municipal Government Act* (MGA).

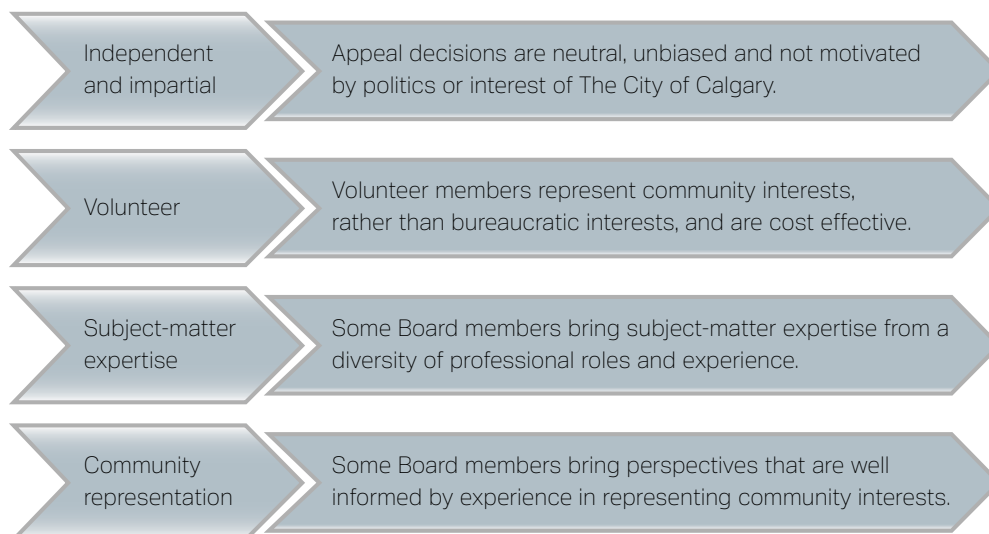


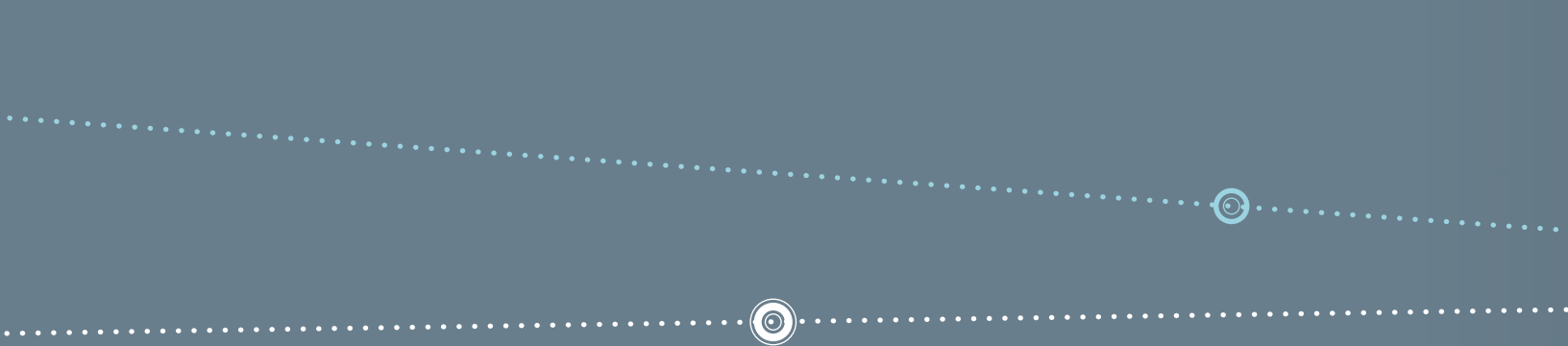
Calgary Assessment Review Board (ARB) – The largest of the Quasi-Judicial Boards, the ARB hears complaints from those who wish to challenge the annually assessed values of property and businesses, as determined by The City of Calgary Assessment Business Unit. Hearings typically run from April into November.

Calgary Subdivision and Development Appeal Board (SDAB) – The SDAB hears appeals of decisions made by The City of Calgary's Development and Subdivision Authorities regarding development permits, subdivision applications and enforcement orders issued under the MGA. The Board meets each Thursday and may schedule other special meetings from time to time as required.

Calgary Licence and Community Standards Appeal Board (LCSAB) – The LCSAB hears a variety of different types of appeals, including those relating to certain decisions made by The City of Calgary's Manager of Livery Transport Services, the Chief Licence Inspector, the Chief of Police, the Chief Building Inspector and Bylaw Enforcement Officers. The LCSAB typically meets on the last Tuesday of each month, if there are appeals to be heard.

The Quasi-Judicial Boards are all independent from City Council, The Corporation and the officials whose decisions they review. The current model for membership of the Quasi-Judicial Boards has a number of advantages:





In adjudicating complaints or appeals, the Boards must first and foremost observe and apply provisions of the MGA – and other relevant bylaws, statutes and regulations that may apply – but each also has the authority and right to establish policies and procedures they may deem necessary to carry out their mandates.

Board members

Every year, the Boards advertise in print and electronic media to invite applications from those who may be interested in becoming Board members. These advertisements convey the criteria and qualifications for Board members that have been established for each Board.

Once the application period closes, the Boards establish selection sub-committees which short-list and interview candidates, after which recommendations for appointments and reappointments are made to City Council by the Chairs of the respective Boards. Recommendations for appointments to the Boards are made on the basis of the criteria and qualifications, and on evaluation of candidates' fit with the Boards' needs.

City Council ultimately determines who is appointed to the Boards.

Board members report to the Chairs of their respective Boards on matters of Board administration. It is Board Chairs who assign and schedule members to adjudicate on certain days, or in certain matters. Board members are bound to standards of conduct established either in codes of conduct, or by their Board's policies and procedures.

Each Board has a process to orient and train new members, and they work to provide ongoing learning and development opportunities for all members.

Honoraria and expenses are payable to Board members under provisions of their respective bylaws. More information about remuneration can be obtained by contacting the Manager of Quasi-Judicial Boards.

What is the role of support staff?

The City Clerk acts as the clerk for each of the respective Boards. The City Clerk's Business Unit is charged with administratively supporting the operations of the Boards through the Quasi-Judicial Boards Division. The City Clerk delegates her authority to the Manager of Quasi-Judicial Boards who may, in turn, delegate it to coordinators and other staff.

The Boards' leaders work collaboratively with the City Clerk's staff to identify the resources they need to carry out their mandates. The City Clerk is ultimately responsible and accountable for the management of the budget, support and resources of the Quasi-Judicial Boards. Reporting on the financial and administrative performance of the Boards operations therefore flows through the City Clerk's Office Business Unit within the Corporate Administration Department.

Support staff work with the Boards to ensure that their operations are as open, accessible and impartial as possible. Some support staff roles include:

- Ensuring compliance with the various legislation and regulations that govern the Boards.
- Receiving, reviewing and processing all appeals/ complaints and associated fees.
- Carrying out administrative and scheduling tasks as required and directed by the Boards.
- Notifying all parties of appeal dates and times, including submission deadlines.
- Ensuring that documents submitted by all parties are assembled in a report prepared for review by the Boards and the parties.
- Assisting in preparing a record of the proceedings of the hearing.
- Distributing Board decisions once signed by Presiding Chairs.
- Maintaining the Boards' various websites and other communication vehicles.

- Providing the courts with required records of the hearing upon appeal.
- Working with the Boards to facilitate and present learning and development training opportunities for members.

Where questions or matters of Board procedure arise, or in carrying out administrative support to facilitate the hearing and adjudication of any complaint or appeal, support staff take direction only from Board Chairs or Presiding Officers of the Boards, as appropriate.

Hearings of the Boards are conducted on premises operated by staff from the Quasi-Judicial Board Division, at 1212 31st Avenue N.E.

During the summer of 2013, the premises of the Quasi-Judicial Boards Division at the Deerfoot Junction III building were hastily reorganized and refitted to accommodate colleagues and officials displaced due to the flood and closure of City Hall and the Municipal Building. Meetings of City Council and some of its Committees were held in the City Appeal Boards' (SDAB and LSCAB) primary hearing room, while meetings of the SDAB and LCSAB were continued, in large part, by way of relocation to other onsite available hearing rooms.

Notable changes since 2011

Since the last report of Calgary's Quasi-Judicial Boards, ARB has been operating under a new legislative scheme. This scheme, and the Board's functioning under it, is further described in the ARB General Chairman's report further on in this report.

In January 2013, the Calgary ARB launched an internal system, called eCourt, to manage the internal processing of complaints received from taxpayers, agents and businesses. It also launched a new, independent website – calgaryarb.ca – and a new visual identity, including a new logo, to reinforce public understanding of the Board's independence from The City and those whose decisions it reviews.

In January 2014, the Board also launched its ePortal system, to allow for the online filing and tracking of complaints by complainants and/or their agents. Complaints filed in ePortal flow into the Board's eCourt system, where they can be efficiently and effectively managed by the Board's support staff. The ePortal system exceeded expectations in its first year; approximately 70 per cent of complaints were received through the system, reducing time-consuming and cumbersome paper applications. A strategic investment for upgrading and improving the ePortal system has been approved for 2015 and 2016, to enhance usability for its users and to ensure that case processing is as efficient as possible.

In response to a Notice of Motion, the City Clerk and Calgary SDAB made a series of joint recommendations to City Council in 2013 to improve the efficiency and effectiveness of the Board. The joint recommendations were adopted by Council and work is well underway on most of these initiatives, such as:

A pilot project to assess whether addressing procedural and jurisdictional matters at the outset of an appeal hearing could result in a more efficient process.	Underway
Enlarging the size of the Board.	Completed
Lengthening and staggering terms of appointment for Board members.	Completed
Implementing a new mechanism for establishing remuneration for the Board.	Completed
Creating a new visual identity to rebrand the Board.	Completed
Establishing a new website for the Board.	Underway
Increasing the appeal filing fee to \$100.	Completed
Establishing fee refunds for withdrawn appeals.	Completed



In response to a Notice of Motion arising in 2012, the LCSAB amended its Procedural Manual to improve clarity about the Board's procedures and specify those instances in which it would conduct its hearing of appeals on the record, or by hearing all evidence and matters anew. The Board made further amendments to its order of proceedings in 2013.

Finally, the composition of the LCSAB was altered by Council in 2011 through a bylaw amendment, so that Council members no longer participate on the Board.

Future and ongoing work

As the work of the Boards continues in 2014 and beyond, the Quasi-Judicial Boards Division works towards ongoing improvement in the openness, transparency and impartiality of the Boards' operations.

The SDAB is undertaking a pilot project to review procedural and jurisdictional matters at the commencement of each hearing, and will be evaluating the effectiveness of this approach in 2015.

A new website for the SDAB should be implemented by the end of 2014, making the Board's processes more accessible to the public. Both the SDAB and ARB websites will be augmented with a series of short videos explaining how the Boards' hearings work.

Decisions of the SDAB are also now becoming more broadly available, with the Board being the first municipal tribunal in Canada to publish its decisions through the reputable and respected CanLII.org website. The Board has also begun to make its decisions available through The City of Calgary's Open Data Catalogue. Work has already commenced on bringing the ARB's decisions online as well.

Work is also underway to explore ways to expand the use of electronic records, which should serve to decrease the Boards' reliance on paper records and bulk printing. This transformation of case processing must

address many challenges, but the hope is to provide records that meet or exceed the Boards' needs while at the same time reducing operational and environmental costs associated with printing.

Appreciation

We would like to close this preface to the Boards' reports with a sincere note of appreciation for the incredible dedication and hard work of all Board members. Board members bring considerable collective knowledge and subject-matter expertise to their roles. They dedicate significant amounts of time to serve and support the Board's efforts to faithfully carry out their mandates. The time that members contribute represents personal and professional sacrifices made in the best tradition of civic duty and participation.

Their role is often not an easy one, being that they are regularly required to adjudicate matters which are adversarial in nature and prone to conflict, and yet they remain professional, objective and dispassionate in hearing and fairly considering the views of the parties before them. We would like to extend a special note of appreciation to all of the Board Chairs and Vice-Chairs, past and present, who have brought patience, understanding and high competence to their roles and their working relationships with us and other Quasi-Judicial Boards staff.

Finally, we would like to extend our sincere appreciation to all of the staff of the Quasi-Judicial Boards Division, past and present, who have demonstrated dedication, commitment and passion for serving the Boards and those who come before them, and without whom the Boards could not succeed.

Sue Gray
City Clerk

Jeremy Fraser
Manager, Quasi-Judicial Boards

2011 – 2013 Quasi-Judicial Boards budget and operating expenses (000s)

Quasi-Judicial Boards Division

		2011	2012	2013 ¹
Budget		\$5,812	\$5,588	\$5,539
Actuals	Revenue	(\$878)	(\$608)	(\$636)
	Expenditures	\$4,055	\$3,921	\$4,756
Net operating costs		\$3,169	\$3,152	\$4,119

Assessment Review Board

		2011	2012	2013
Budget		\$5,028	\$4,715	\$4,721
Actuals	Revenue	(\$871)	(\$599)	(\$625)
	Expenditures	\$3,071	\$2,972	\$3,759 ²
Net operating costs		\$2,191	\$2,212	\$3,133

City Appeal Boards (SDAB and LCSAB)

		2011	2012	2013
Net budget		\$628	\$720	\$637
Actuals	Revenue	(\$7)	(\$9)	(\$9)
	Expenditures	\$832	\$806	\$847
Net operating costs		\$825	\$797	\$837

¹ 2013 revenue figures include provincial recoveries relating to costs associated with the flood.

² 2013 expenditures include accrued liabilities for pending litigation where this was not included in prior years figures.

Quasi-Judicial

Appeal Board



Licence and



Subdivision



Assessment R

ARB

ASSESSMENT REVIEW BOARD







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Message from the Chairman

The Calgary Assessment Review Board (ARB) is dedicated to conducting public hearings on matters relating to assessments in a fair and equitable manner and in accordance with the principles of natural justice. It is our mission to render decisions of the highest standard as mandated by governing legislation and applicable regulations.

The Calgary ARB is an independent board, duly appointed by City Council pursuant to provisions of the *Municipal Government Act*, other supporting legislation and The City of Calgary Bylaw 55M98. Administrative support for the Board is provided by staff of the City Clerk's Office, **NOT** the Assessment Business Unit.

The past four years has seen the ARB conduct hearings under new provincial legislation. With the introduction of Bill 23, the entire complaint and appeal process was changed. The *Municipal Government Act* (MGA) was amended and the new *Matters Relating to Assessment Complaints Regulation* (MRAC) was introduced. These legislative changes established Local Assessment Review Boards (LARB) to hear complaints on single residential property assessments and business assessments. Composite Assessment Review Boards (CARB) continued to hear non-residential assessment complaints such as industrial, commercial and multi-family properties.

The major difference between these Boards is that the Presiding Officer on CARB hearings must be a provincially appointed Municipal Government Board (MGB) member, whereas an MGB member cannot sit on a LARB hearing. Further, there is now only one level of complaint, with the only avenue of appeal being to the Court of Queen's Bench on a point of law or jurisdiction.

Several of the other changes include:

- Complainants now have 60 days to file a complaint (as compared to 30 in the past).
- All hearings must have written decisions which must be rendered within 30 days of the last hearing date for that complaint, or December 31, whichever comes sooner.
- Introduction of an authority for CARB to award costs.

2013 complaints

2013 Annual Business and Property Assessment Notices were mailed out on January 3, 2013 with the final date for filing of complaints being March 4, 2013. Hearings before the LARB commenced on April 29, 2013 and for CARB on June 10, 2013. Once CARB hearings commenced, as many as eleven Boards were conducting hearings at any given time. Fridays were left open for Board decision-making and writing. Hearings on annual assessment complaints were not completed until January 20, 2014 with the last written decision mailed as of January 27, 2014. These dates extended past the legislated December 31 deadline, but the Minister of Municipal Affairs altered the statutory timelines of the *Municipal Government Act* on request of the Board.

Amended and Supplemental Assessment Notices are generated throughout the year, with newer filing deadlines depending upon the date the respective notices were mailed. The last of these were mailed in late December 2013 with a final date for complaint in late February 2014. Hearings for these complaints were completed in May 2014 due to the notice and evidence filing timelines.



Recruitment and training

Under the new legislation, the Board has found it beneficial to have more members with legal knowledge and training to participate in hearings. As such, the Board has over recent years appointed several active and retired lawyers. This, coupled with use of the Board's independent counsel, has strengthened the Board's performance in its adjudicative roll. The Board has also ensured that newer members to the Board have a background in any of the following:

- appraisal
- assessment
- land development
- real-estate sales
- law

Currently, the requirement under the legislation is for all members to complete two, two-day courses on Administrative Justice and Assessment. In the Board's dedication to fulfilling educational requirements, members attend additional training seminars to cover relevant topics. This is further strengthened by every day meetings.

It is the opinion of this Board that the present scheme established for assessment review in the MGA and MRAC has worked well and that future changes to the Act or related legislation should only be minor adjustments. Calgary ARB members and members of the Alberta Municipal Government Board are working very well together in hearing and adjudicating assessment review complaints.

Board activity

The total number of complaints over the past two years has appeared to level off between 3,000 and 4,000. This is a significant drop from the 2007-2008 period where the Board dealt with between 12,000 and 13,000 complaints.

Year	Complaints
2011	5108
2012	3433
2013	3777

The reason for the overall reduction in complaints is not clear; however, it may have something to do with the Assessment Business Unit's pre-consultation period and open houses where misconceptions are clarified and/or settlements are reached.

For 2013, a total of 1,240 (32.8 per cent) complaints were withdrawn. Of these, 324 (8.6 per cent) were withdrawn upon receipt of reduced Amended Assessment Notices issued by the Assessment Business Unit, therefore requiring no hearings. The Boards conducted 2,537 hearings, resulting in 2,507 written decisions. (The difference between the number of hearings and written decisions is due to decisions on some complaints being combined.)





Parking complaints

Each year, since 2002, the LARB has reviewed several hundred complaints against business parking assessments. These complaints revolve around the following questions:

- Is business taking place in the premises?
- Is the owner the correct assessable party?

Each year, since 2010, and under the new legislation, the Board's decisions have been appealed to the Court of Queen's Bench. Finally, in March 2013, the appeal for the 2010 parking complaints was heard by the Court. The challenge to the Board's decision was two-fold: in the first instance, an argument was made that the Board's decision on the foregoing questions was wrong; secondly, it was argued that the Board was biased as its structure, composition and procedures did not meet requirements for institutional independence.

The resulting Queen's Bench decision was issued in October 2013 and it overturned the ARB's decision on the merits; however, the Court concluded that the Board met the minimum requirements of institutional independence. The Court's decision was then appealed by The City to the Alberta Court of Appeal on the merits, while a cross-appeal was filed on the question of the Board's independence. A stay of the Queen's Bench decision was issued. This appeal was heard in May 2014 and the Board is currently awaiting the Court of Appeal's decision.

Because the Queen's Bench decision was relevant to the 2013 parking complaints, the decision for these latter complaints was delayed past the statutory deadline, while the Board awaited final submissions from the parties on the Queen's Bench decision. This delay

was addressed through an extension of the statutory deadline by the Minister of Municipal Affairs. Decisions for the 2013 parking complaints were finally issued by the Board on January 27, 2014. All other hearings had been completed in November.

As previously mentioned, as many as 11 panels consisting of three members were scheduled each day, four days per week, with five or six residential or business hearings per panel per day. Having consideration for their complexity, one to 20 hearings were scheduled per panel each week for non-residential (commercial, industrial, etc) properties.

Board members

Board appointments for the ARB were for the calendar year January 1, 2013 to December 31, 2013. As set out in the current legislation, City Council appointed three persons (one Presiding Officer and two members) to each Local Assessment Review Board and two members to the Composite Assessment Review Board. The ARB completed the 2013 assessment year with 38 members and a General Chairman.

Notices for new members for 2013 were published in various newspapers and on The City website. Eighteen applications were received, eight were interviewed and two were selected. During the year, one member accepted other employment and one other left for personal reasons.

All new members joining the Board must attend and complete the Municipal Affairs two-day Assessment Training Course, Foundations of Administrative Justice and Introduction to Administrative Justice courses. Existing members must attend a two-day refresher course every three years. This was completed in 2012. These courses



must be successfully completed before Board members can sit on hearings. Further in-house training was provided through joint one-day seminars with the Municipal Government Board (MGB) and an annual two-day seminar.

Based on the change in legislation, court decisions and the correctness and reasonableness of Board Decisions, it has become apparent that the requirement for more legal expertise was needed. As such, over the past few years, the Board has recruited six lawyers (retired and active) to compliment its membership.

The Presiding Officer for the CARB, which hears non-residential and multi-residential complaints, must be a member of the Alberta Municipal Government Board (MGB), as required by the legislation. Neither The City of Calgary nor the LARB have input into who the MGB appoints as Presiding Officer, or its selection of members. The local municipality is obligated, however, to pay these members' honoraria and subsidize their expenses.

The merging of the two cultures (LARB and MGB) has resulted in excellent co-operation and a very successful, streamlined process.

It is the opinion of the General Chairman that the existing members of the LARB and CARB are a highly professional group of citizens.

Goals of the ARB

- To render decisions of the highest standard, in a fair and equitable manner.
- To achieve greater consistency in rendered decisions.
- To improve the quality of written reasons so as to reduce the number of appeals to the Court of Queen's Bench.

- To complete all complaint hearings and written decisions within legislated time frames.
- To continue to recruit and train top quality and knowledgeable Board members.

As previously indicated, the volume of complaints has stabilized between 3,000 – 4,000 for the past two years and I anticipate that it will remain the same for 2014. Changes to the MGA and Regulation 310/09 resulted in a requirement for written decisions with reasons to be issued in every case. For each day of hearings, one to two days are required for decision-making and writing. This has caused a considerable workload for the Board.

The only avenue for appeal is to the Court of Queen's Bench on a point of law or jurisdiction. On the 2013 single residential and business (LARB) hearings, there were 2,507 written decisions, of which only one residential decision was appealed (it had also been appealed in previous years). Complaints on industrial, commercial and multi-residential (CARB) hearings have remained stable over the last two years at around 2,000. Appeals to Queen's Bench, which have been filed by both the Assessment Business Unit and tax agents, decreased to 44 in 2013, compared to the 70+ in previous years. This may be a result of two factors:

- Over the past four years the quality of written decisions with reasons has improved dramatically, and increased deference has been granted to tribunals by all levels of courts.
- The appeals to Queen's Bench have accumulated over the past four years and have been slow to be heard.

As mentioned earlier, the 2010 appeal on parking was heard in March 2013.





Recruiting

As per City policy, advertisements are published in September to allow for the recruitment of newer Board members, or to replace any that have departed. This is not a practical situation as it applies to the Local Assessment Review Board (LARB), as it is not known until the beginning of March what the volume of complaints will be and thus the manpower required. It is suggested that this policy be changed so that advertisements are published during the last two weeks of February and Board member selection made in early March.

Legislation

The *Municipal Government Act* (MGA) and associated legislation are presently under review. This Board has adjudicated complaints for the last few years under the new legislation. This Board's opinion is that the system in place under the current legislation has worked extremely well; however, some minor adjustments could be made.

The requirement for written reasons on all single residential (LARB) hearings is wasteful. Written reasons should only be provided on request at the hearing, or on appeal of the complaint to the Court of Queen's Bench.

Greater transparency on the part of the respondent, including disclosure of coefficients, would be beneficial. As stated by Madam Justice Sulyma in the Wood Buffalo judgement paragraph 157, the respondent Assessment Business Unit should "... deliver and provide access to all information relevant to the assessment calculations..."

It should be mandatory that the parties (Complainant and Assessor) meet and discuss the complaint prior to the scheduled hearing in an attempt to solve differences.

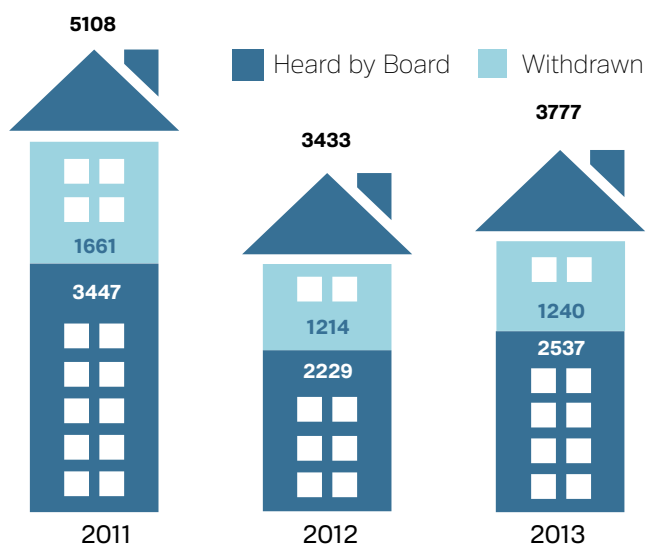
Rules regarding complaint withdrawals should be spelled out in the legislation. References to withdrawals in the Board's Bylaw are workable; however, it would be beneficial if there was clearer statutory guidance on such matters.

These are only a few suggestions which could help to streamline the process further.

Finally, the Board wants to thank the Manager of Quasi-Judicial Boards, as well as the ARB Coordinator and staff for their administrative support and dedication in 2013. Without that support, the year would not have been as successful as it was.

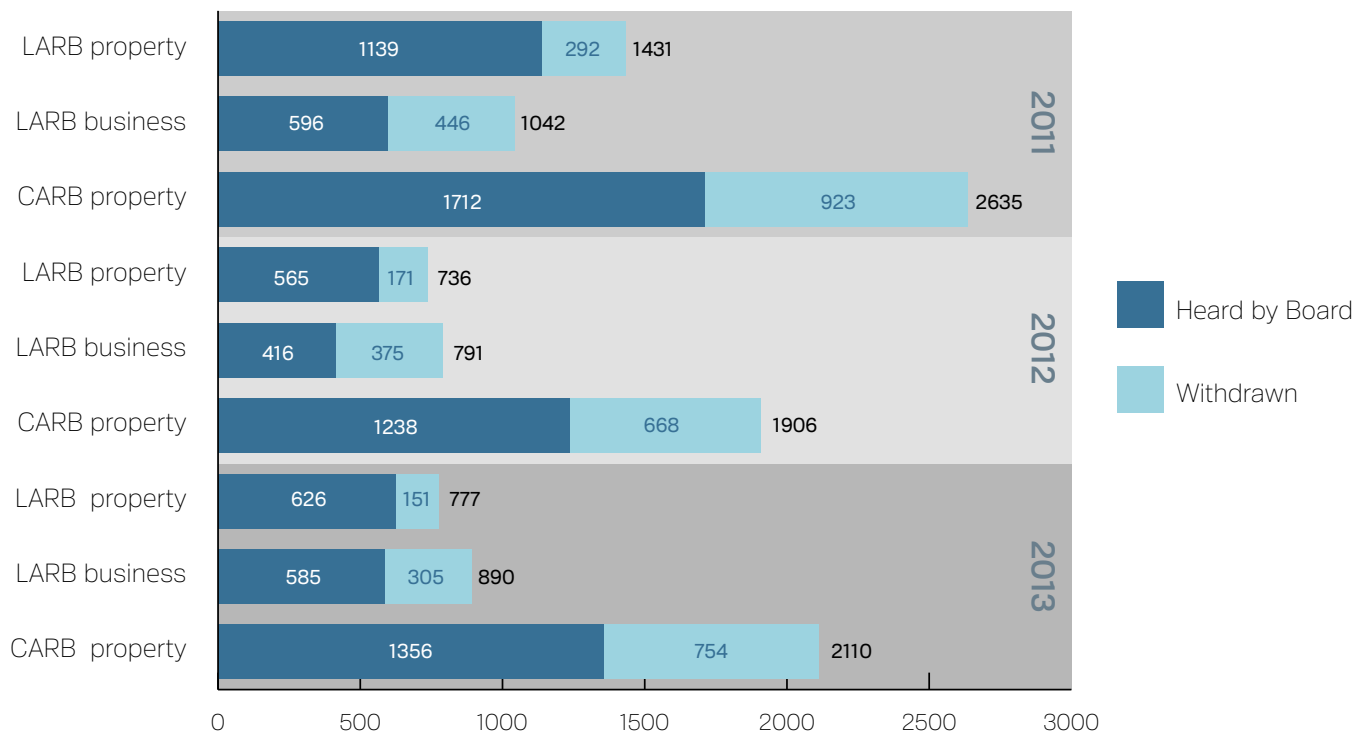
Walt Paterson, General Chairman
Calgary Assessment Review Board

Comparison of total complaints, 2011 – 2013





Complaints and outcomes, 2011 – 2013



Local Assessment Review Board (LARB) composed of single residential, business and farmland.
Composite Assessment Review Board (CARB) composed of non-residential and multi-residential.

Decisions made by Board

		Confirmed	Reduced	Increased	Reduced on mutual agreement	Other
2011	Total	2,352	1013	2	76	4
	LARB property	682	437	0	20	0
	LARB business	485	81	1	25	4
	CARB property	1,185	495	1	31	0
2012	Total	1,333	831	2	41	36
	LARB property	332	224	0	4	6
	LARB business	311	100	0	11	9
	CARB property	690	507	2	26	21
2013	Total	1,607	857	3	22	0
	LARB property	402	201	1	2	0
	LARB business	480	88	0	7	0
	CARB property	725	568	2	13	0

2013 Calgary ARB members


Helen Ang
 Kevin Barry Bickford
 Arlene Blake
 Martin Edmund Bruton
 Peter Charuk
 Dick Cochrane
 Ray Deschaine
 Ken Farn
 Ian Fraser
 Peggy Grace
 Ann Huskinson
 Borodin Jerchel
 Jim Joseph
 Dwight Julien
 Jim Kerrison
 Robert Kodak
 James Lam
 Terry Livermore
 Andrew Maciag
 Joseph Massey
 John Mathias
 Paul McKenna
 Garry Milne
 Dale Morice
 Yvette Nesry
 Jade O'Hearn (Vice-Chair)
 Phillip Pask
 Walt Paterson (General Chairman)
 Douglas Pollard
 Jim Pratt
 Jim Rankin
 Ed Reuther
 Ron Roy
 Donald Steele
 Terry Usselman
 Alfredo Wong
 Allan Zindler

Past members of Calgary ARB (2011–2013)

Kate Coolidge
 Maurice E. Peters
 Sherry Rourke

ASSESSMENT REVIEW BOARD HEARING PROCESS

1 RECEIVE ASSESSMENT NOTICE IN THE MAIL




You have 60 days from the mailing date listed on your notice to file a complaint with the ARB.

**CONTACT THE CITY'S
ASSESSMENT BUSINESS UNIT**


Call 403-268-2888 if you disagree with your Assessment Notice. Disagreements may be resolved without a hearing with the ARB.

**3 REGISTER AND FILE
A COMPLAINT ONLINE**




Use ePortal at CalgaryARB.ca to register and file a complaint by the deadline if your disagreement is not resolved.

4 TRACK YOUR COMPLAINT




Use ePortal to track your complaint and watch your email inbox for an official Notice of Hearing from the ARB.

**5 PREPARE INFORMATION
AND EVIDENCE**



Gather compelling evidence in advance of your hearing. CalgaryARB.ca offers useful information to help you collect relevant documents and upload them to ePortal.

6 DISCLOSE EVIDENCE



Disclose evidence to the ARB using ePortal and separately to the Assessment business unit by the deadlines indicated on your Notice of Hearing. This is another opportunity for you and the assessor to resolve this issue before the scheduled hearing.


7 ATTEND YOUR HEARING



8 DELIBERATION

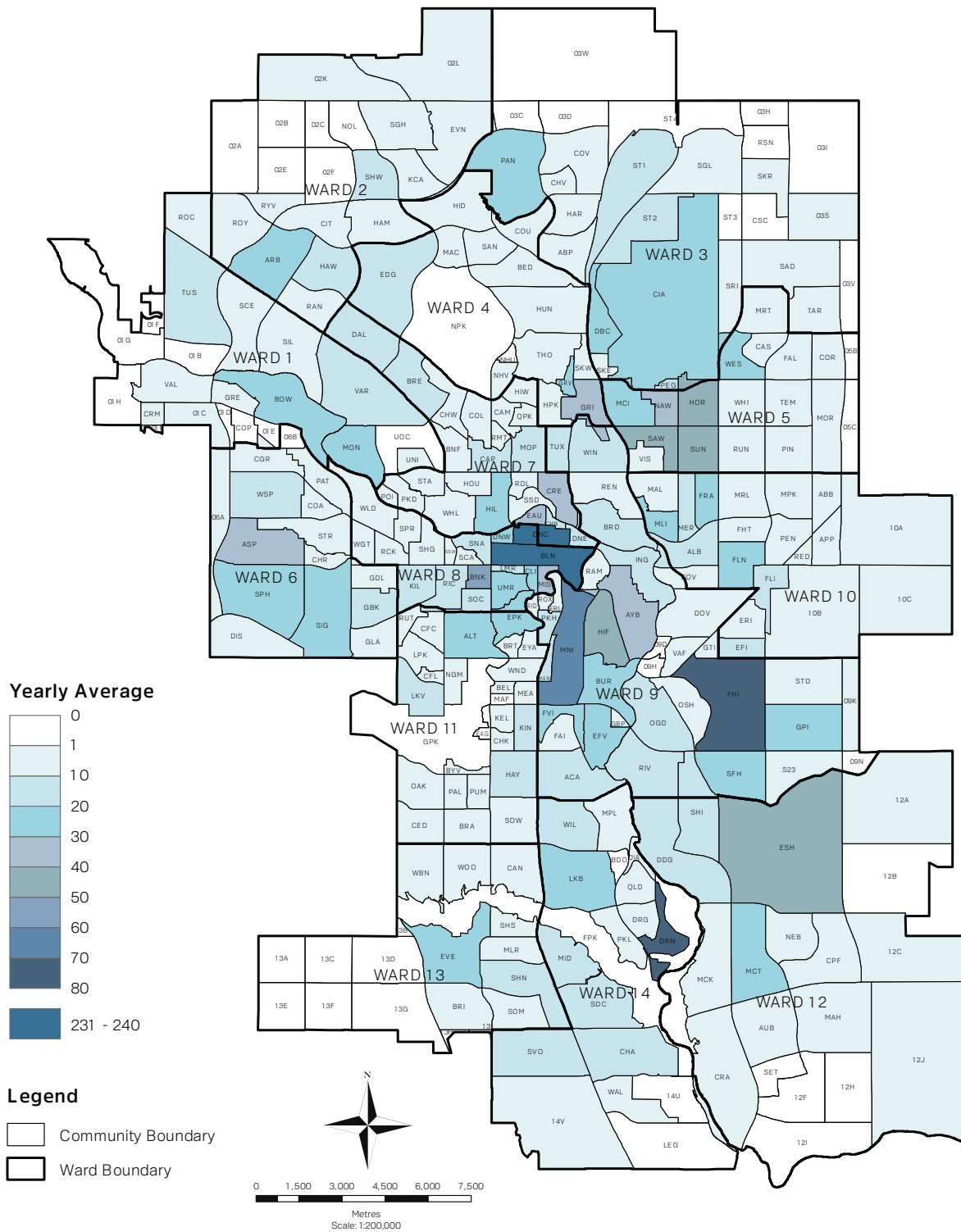
Board will deliberate and render a decision.

9 DECISION



Four to six weeks after the hearing, you will receive an email from the ARB with the written decision to either modify or confirm your assessment. Decisions can also be accessed through ePortal.

Complaints by community, yearly average 2011 – 2013



Projects: Calgary 3TM WGS 1984 W114
Data: City of Calgary
Date printed: May 28, 2014 ISC: Protected
G:/PROJECTS/Corporate/251 40007_Complaint and Appeal

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Quasi-Judicial

Appeal Board



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SUBDIVISION AND DEVELOPMENT APPEAL BOARD

SDAB



Subdivision
& Development
APPEAL BOARD



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Message from the Chair

I am pleased to present the triennial report of the Calgary Subdivision and Development Appeal Board (SDAB or Board). This report contains information on the operations of the Board in the year 2013 and the previous two years including statistics on appeal volume and decisions rendered.

As with so many residents, communities and functions of The City, the SDAB was impacted by the devastating June flood in 2013. For several weeks, scheduled appeals were adjourned, Development and Subdivision Authorities files were unavailable and hearings were relocated from the Board's regular hearing room to accommodate Council meetings and committee meetings displaced by the closure of the Municipal Building and City Hall. Despite the backlog and delays, the Board was able to meet its obligation to hear appeals as required by the legislation.

The volume of appeals filed in 2013 was somewhat lower than the average number historically before the Board. This can be attributed to the fact that, due to some amendments of Land Use Bylaw 1P2007, there are a larger number of permitted uses, which can only be appealed on a limited basis (when there is a misinterpretation or relaxation of the Bylaw).

In concurrence with the trend of the last few years, the Board experienced an increase in complexity of appeals. The new Land Use Bylaw continues to create challenges for the Board in terms of interpretation issues. In particular, the contextual permitted use provisions continue to be the subject of appeals. It is the Board's experience that the public has difficulty understanding these contextual rules. Furthermore, it's significant that the new Land Use Bylaw had a large number of amendments over the past five years.

The number of Board decisions that are the subject of an application for leave to the Alberta Court of Appeal continues to be low compared to other SDABs and administrative tribunals in Alberta. In 2013, there were two leave applications filed which were subsequently denied. It must be noted that no decision of the Board has been overturned by the Court of Appeal since 2001. This is a remarkable record for a quasi-judicial tribunal.

As a result of a Council-adopted motion, a review was conducted in 2013 about the Board's operations. In order to be more effective and efficient, the Board implemented some changes, including increasing the number of Board members. In 2014, the Board also implemented procedural and jurisdictional hearings on a pilot project basis to manage hearing timelines and to address, in appropriate cases, procedural and jurisdictional matters at the beginning of hearings.

Furthermore, in 2012, the Board established a Code of Conduct to give direction to the Board members in terms of their role and responsibilities.

Finally, I would like to thank the Board members from 2011 to 2013 for their public service, the SDAB Administration for their dedicated service, the Board Solicitor for providing legal counsel, and the participants in the appeal process for enabling the Board to discharge its duties and obligations under the requirements of the *Municipal Government Act*.

H. J. (Rick) Grol, Chair
Calgary Subdivision and Development Appeal Board



Role of the Board

The Calgary Subdivision and Development Appeal Board (SDAB or Board) is an independent quasi-judicial tribunal established by Calgary City Council as mandated by the *Municipal Government Act* (MGA). The Board hears appeals of decisions of the Development and Subdivision Authorities regarding development permits, subdivisions or enforcement orders. The MGA provides the role and responsibilities, powers and jurisdiction of the Board. It requires the Board to hold a hearing for any appeal that is filed.

The City of Calgary Bylaw 25P95 (SDAB Bylaw) provides for the establishment of the Board as well as its organization, governance and operation. It defines large and small panel hearings and the quorum for each.

As a quasi-judicial board, the SDAB establishes its own procedure. It hears and decides appeals as informally as possible, free of the encumbrances of formal rules of evidence. The Board's duty is to act fairly and to observe the principles of natural justice and procedural fairness. These principles include the right to be heard and the right to legal counsel.

The Board's independence from The City's Development and Subdivision Authorities is necessary to ensure impartial hearings that are free from a reasonable perception of institutional bias. To emphasize the independence and autonomy of the Board, the Appeal Boards' administration is located at the Deerfoot Junction III Building, 1212 31st Avenue N.E. and all Board hearings take place at this location.

Organizational structure

The Quasi-Judicial Board Division of the City Clerk's Office administers the SDAB. It processes appeals, prepares the Board hearing reports and supports the Board so that it can adjudicate appeals.

As of 2014, Council appoints the members of the Board for a one or two-year term. The Board consists of between 12 and 17 citizen members and no more than one councillor. In addition, Council may appoint up to seven supernumerary members, defined as those who have previously served as an SDAB member for at least two years. Board members cannot be employees of The City of Calgary or members of the Calgary Planning Commission.

SDAB website

The Subdivision and Development Appeal Board section of The City of Calgary website contains information about the appeal process, the governing legislation, the Board itself, including the Board's Code of Conduct, and public notices, agendas and a database of previous decisions. Board hearing reports are also available online in advance of each public hearing.

Appeal process

Anyone wishing to appeal a decision of the Development or Subdivision Authorities regarding a development permit, subdivision, or enforcement order must file the appeal to the Board, along with the filing fee, and within the appeal period, as prescribed by the MGA.

Appeals may be filed by an applicant whose subdivision or development permit application has been refused or who opposes any of the conditions of approval, or by anyone who is affected by a proposed development, subdivision or enforcement order.





Hearing

The Board schedules a hearing within 30 days of the receipt of an appeal, as mandated by the MGA, typically on a Thursday. The appellant, applicant, property owner and anyone deemed affected will receive written notification of the hearing date approximately five days prior to the hearing.

The hearing date is advertised in the Calgary Herald and on the SDAB website one week prior to the hearing, in accordance with the MGA and the Land Use Bylaw.

The appeal is heard either by a large or small panel of the Board, as prescribed by the SDAB Bylaw. The Board Chair selects Board panel members to ensure a balance of skill, experience, expertise and background.

At the hearing, the Board typically hears from the Development or Subdivision Authority, followed by the appellant, followed by any affected party, unless there are preliminary issues to be determined. Preliminary issues relate to the jurisdiction of the Board or to determining affected party status.

The SDAB hears matters de novo, which means 'afresh', and is not bound by the reasons of the Development and Subdivision Authorities.

Decisions

In deciding appeals, the Board only considers relevant planning matters based on the evidence submitted. Each case is determined on its own merits. The Board acts as the Development or Subdivision Authority in rendering its decision.

Following the hearing, the Board issues a written decision regarding the outcome of the appeal and the

reasons for the decision. The Board's decisions are final once they are signed and issued in writing.

The Board may deny the appeal (uphold the decision of the Development or Subdivision Authority); allow the appeal in part (vary the decision of the Development or Subdivision Authority and add or remove conditions to the development permit or subdivision approval), or allow the appeal in full (overturn the decision of the Development or Subdivision Authority).

Appeals of the Board's decisions

The Board's decisions may be appealable to the Alberta Court of Appeal on a question of law or jurisdiction. Permission to appeal must be sought from the Court within 30 days of the date the decision was issued.

Recent activity

2013 flood

As with so many residents, communities and functions of The City, the SDAB was also impacted by the devastating June flood. For several weeks, scheduled appeals were adjourned, Development and Subdivision Authority files were unavailable, and hearings were relocated from the Board's regular hearing room to accommodate Council meetings and committee meetings displaced by the closure of the Municipal Building and City Hall. Despite the backlog and delays, the Board was able to meet its obligation to hear appeals as required by the legislation.

Appeal volume

While the number of appeals has decreased during the last few years, the complexity of the cases has increased. This is due to the growth of the City, the



number of appeals of large development projects, and the impact of Land Use Bylaw 1P2007 in relation to grandfathering issues, interpretation matters and non-conforming buildings and uses.

	Number of appeals	Per cent of total Development Permits
2013	182	3%
2012	202	4%
2011	185	3%

Prior to 2011 the ratio between the number of appeals and development permits was four to five per cent.

These numbers reflect the number of decisions appealed, not the number of appellants, nor the number of notices of appeals filed.

The decline in appeals may be attributed to the increase in permitted use Development Permits issued under Bylaw 1P2007, particularly Contextual Single Detached and Contextual Semi-Detached Dwellings. These uses cannot be appealed if they meet all the rules of the Land Use Bylaw.

The volume of appeals is highest in Wards 7, 8, and 9.

Appeal outcomes

	Appeals denied*	Appeals allowed/allowed in part
2013	37%	62%
2012	45%	55%
2011	39%	61%

* Including appeals where the Board had no jurisdiction.

In the majority of cases, proposed developments that have been the subject of appeal have ultimately been approved, sometimes with additional conditions imposed by the Board. This includes cases where the Board determined that the Development Authority overlooked relaxations of the Land Use Bylaw, which the Board corrected in its decisions.

Observations

Land Use Bylaw 1P2007 is three times the size of the preceding bylaw and far more prescriptive. This results in frequent interpretation issues when adjudicating appeals and in longer, more complex, hearings and decisions. The Land Use Bylaw had many amendments over the last five years that affected appeals before the Board.

Under the contextual rules, the Land Use Bylaw permits a much larger building envelope, particularly in terms of height, setbacks and projections, than the historical pattern of development on a given street. The use of the term 'contextual' to describe such developments, in general, causes considerable confusion.

The nature of appeals is increasingly adversarial between stakeholders, including applicants, developers, property owners, residents and affected parties perhaps due to the pressures of development in the City.

The number of legal counsels, agents, and expert witnesses appearing before the Board is increasing.

The Development Authority continues not to attend small panel hearings, which may compromise the fairness of the proceeding and which has, on occasion, delayed the hearing and decision.



There are numerous examples of the Board hearing the same matter multiple times in a span of a few years because the Development Authority has not enforced Board decisions.

The quality and accuracy of decision rendered plans is decreasing.

The number of appeals against conditions of approval is increasing, particularly with regard to servicing and infrastructure requirements and costs.

There is an increase in appeals pertaining to liquor stores.

The number of complex and legally challenging cases before the Board is increasing, in part due to the Alberta Court of Appeal decision *McCauley Community League v. Edmonton (City)*, 2012, ABCA 224, which determined that decisions of the Development Authority other than the issuance or refusal of a permit could be prone to appeal.

Board challenges

Timelines

The MGA stipulates the notice of appeal period, the deadline to schedule an appeal, and the timeline to render a decision. The Board consistently meets the requirement to hear an appeal within the mandated timeline; rendering a decision is less feasible.

Scheduling

Scheduling appeals remains a challenge for the Board due to the following factors:

- The MGA requires the Board to hear appeals within 30 days of receipt of the notice of appeal;

- Parties frequently request adjournments in order to prepare for hearings and the Board is often obligated under the rules of natural justice and procedural fairness to grant these adjournments;
- The volume of appeals in a given week varies greatly;
- The Board cannot anticipate the number of people who will appear to speak to an appeal, the amount of material that will be presented during an appeal, or the amount of time a hearing will take;
- Staff are not always available; and,
- For cases that require multiple hearing days, maintaining a quorum is difficult.

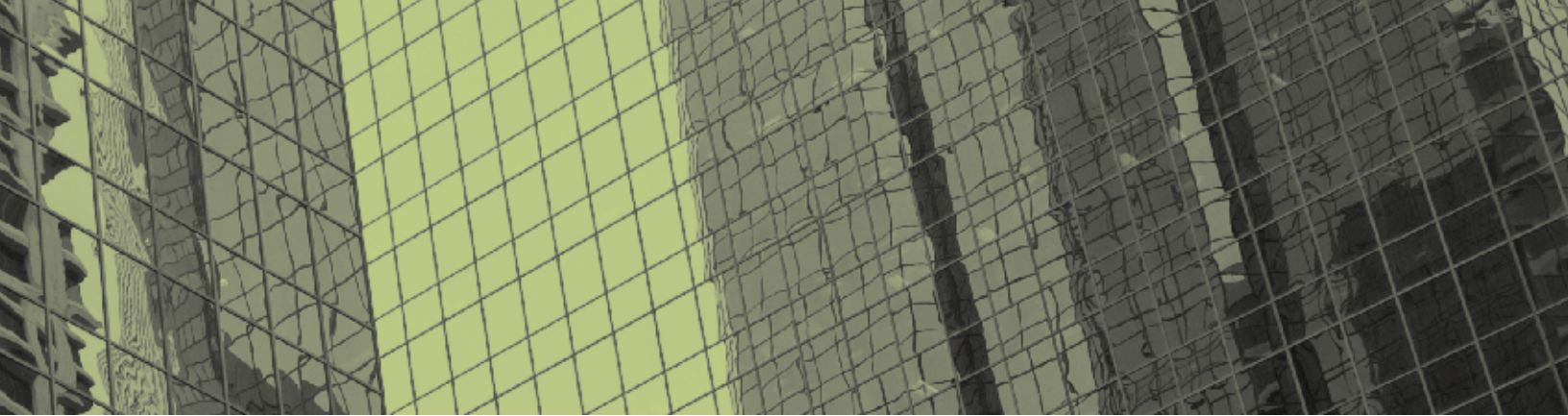
To mitigate some of these challenges, the Board schedules special hearing dates outside of the regular Thursday schedule to deal with complex hearings.

The small panel hearings allow the Board to expeditiously deal with less complex issues like garages, decks, signs, home occupations, and enforcement orders. Small panel hearings have successfully reduced delays in scheduling hearings and rendering decisions.

The Board's ability to schedule hearing dates has improved since hearings have been moved to the Quasi-Judicial Boards administration office.

Decision time

The MGA sets a 15-day timeline for the Board to render written decisions, however, the Courts have ruled that this provision is directory and not mandatory. On average, the Board issues a decision two months from the day the notice of appeal is filed.



To meet the legal standard, the Board must address all relevant issues in its decisions, including its findings and reasoning. The more complex the appeal, the more time is needed to write decisions. Increasingly, hearings involve legal counsel, agents and expert witnesses, which increases the volume of material presented during a hearing and therefore the number of issues that must be addressed in the decision. Furthermore, laypeople are increasingly sophisticated in their presentations, taking advantage of online access to bylaws, plans, policy documents, records, and precedents.

Other factors that impact the time it takes to render decisions include: the complexity of the Land Use Bylaw and associated legal issues; poor quality or inaccurate plans presented during a hearing, which require amelioration before the decision can be written; and, the lack of predictability about the volume of appeals and the complexity of appeals at any given time.

To mitigate these challenges, the Board is distributing decision-writing responsibilities as the resources to train Board members become available.

Affected person issue

"Affected person" is not defined in the *Municipal Government Act*. The Board determines affected persons on a case-by-case basis. The onus is on the person to demonstrate that he or she is affected. An affected person might be someone who feels the enjoyment, use or value of his or her property is affected by a proposed development. If the Board determines that a person is not affected, the appeal may be struck or the person is not allowed to participate at the hearing.

Alberta Court of Appeal activity

In 2013, two applications for leave to appeal were filed with the Court of Appeal regarding SDAB decisions, compared to five in 2012, and none in 2011. Since 2001, only one case has been granted leave to appeal by the Court of Appeal (2007), however, it was ultimately dismissed. No decision of the Calgary SDAB has been overturned by the Court of Appeal in more than 14 years.

Review of the Board

Following adoption of a motion of Council in 2012 regarding the operations of the Board, City Clerks conducted a stakeholder review. The resulting report (PFC2013-0139) outlined various ways that the SDAB and its processes could be made more efficient and effective. The Board and the City Clerk recommended changes to the Board that were subsequently adopted by Council through amendments to Bylaw 25P95.

The following changes were made:

- Effective January 1, 2014, the filing fee was increased for the first time since 2002 from \$25 to \$100.
- The fee will now be refunded if the appeal is withdrawn prior to the start of the hearing, or at the discretion of the Board after the hearing has commenced.
- The Board began a procedural and jurisdictional hearing pilot project in February 2014 with the intent of avoiding unnecessary delays in the hearing process that result from scheduling difficulties among the parties appearing before the Board, or not knowing the scope of evidence that will be presented during a hearing.





- The size of the Board has been increased to between 12 and 17 citizen members plus up to seven supernumerary members, to reduce scheduling conflicts and better distribute the workload of the Board.
- Council is now represented by one member, instead of two.
- An updated remuneration model for Board members has been established, in accordance with the model used for the Calgary Assessment Review Board.
- Additional funding is in place to assure adequate training and development for Board members and the Appeal Board administration.

Code of Conduct

In 2012, the Board established a Code of Conduct to improve Board governance. The primary purpose of the Code of Conduct is to: (a) Preserve the integrity

and impartiality of the Board; (b) Provide behavioural guidance to Board members; (c) Assist Board members in optimizing efficacy during hearings and deliberations; (d) Maintain high-quality Board decisions; and (e) Protect the rights of Board members and the public.

Board members

The SDAB members bring a wide range of skills, education and training to the Board including building and development, architecture, planning, law, business and community experience.

Prior to 2014, citizen members were appointed for a one year term. Effective January 1, 2014, members are appointed for either a one or two-year term. Council members on the Board are appointed during Council's Organizational Meeting in October of each year for a one-year term effective November 1.

2013 Calgary SDAB members

Kerry Armstrong

Jo Anne Atkins

John Attrell

Meg Bures (Vice-Chair)

Brian Corkum

Rick Grol (Chair)

Sally Haggis

Heather Hiscock

Dale Hodges

Stefne Madison

Natasha Pashak

Terry Smith

Joe Magliocca (Councillor)

Past member of Calgary SDAB

Andrew Wallace (2011 – 2012)



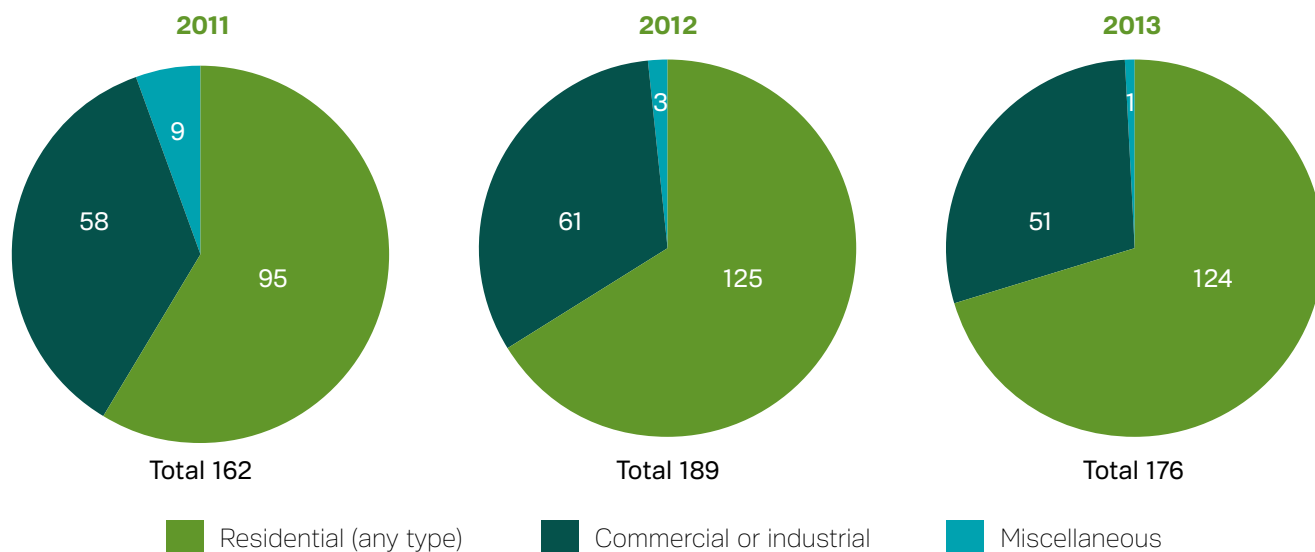
Total number of appeals 2011-2013

	2011	2012	2013
Appeals filed	210	230	236
Appeal hearings (appeals grouped for the same development)	185	202	182
Appeals withdrawn	38	43	24
Appeals heard and decided	147	159	155
Appeals outstanding as of May 6, 2014	0	0	3

Types of appeal hearings

	Development Permits	Enforcement Orders	Subdivisions	Total
2011	162	19	4	185
2012	189	8	5	202
2013	176	5	1	182
	93%	6%	2%	

Types of development permit appeal hearings



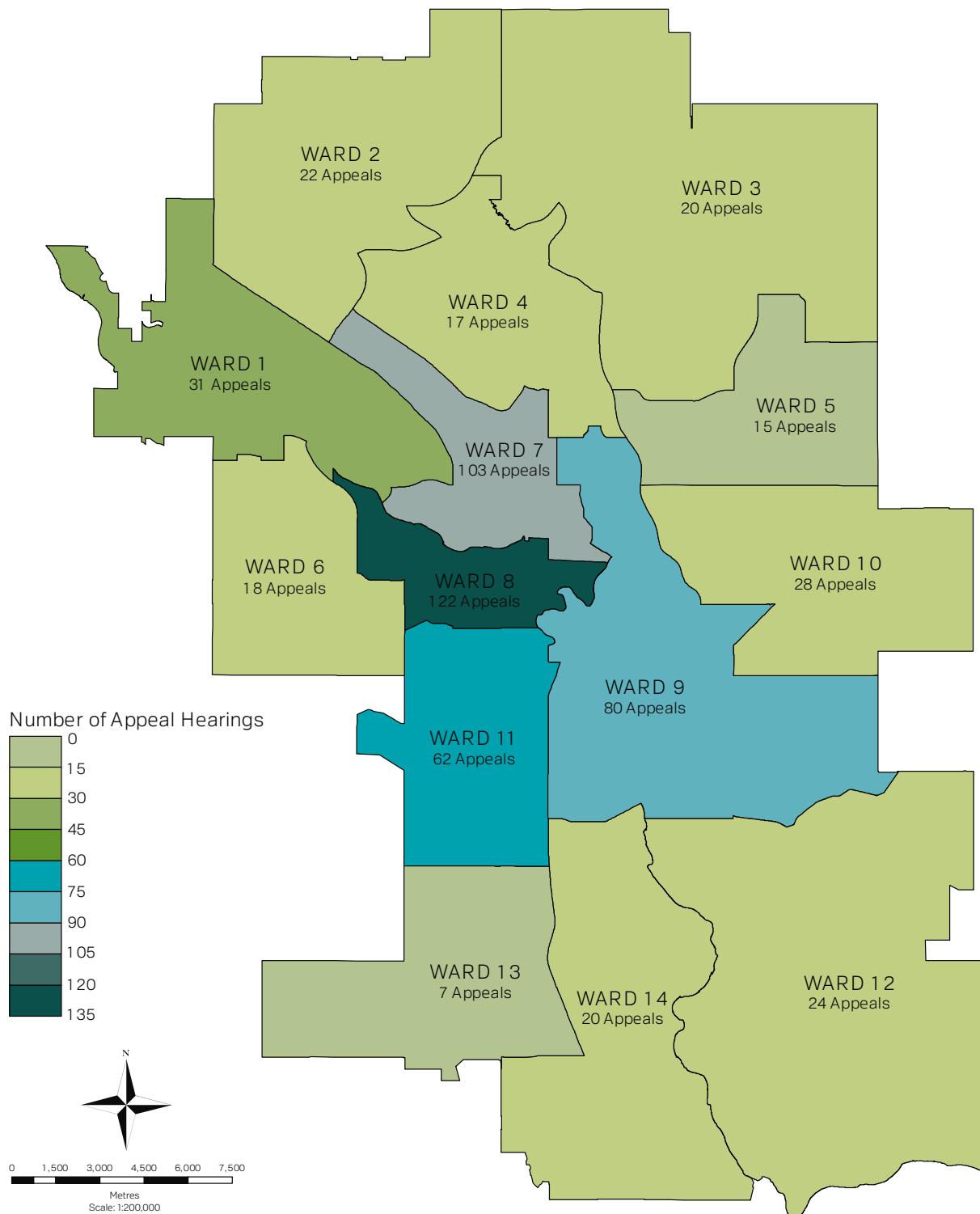
CALGARY SUBDIVISION AND DEVELOPMENT APPEAL BOARD APPEAL PROCESS



Subdivision
& Development
APPEAL BOARD



SDAB Appeals, 2011 – 2013 by Ward



Projects: Calgary 3TM WGS 1984 W114
Data: City of Calgary
Date printed: August 19, 2014 ISC: Protected
G:/PROJECTS/Corporate/251 40007_Complaint and Appeal

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Quasi-Judicial

Appeal Board



Licence and



Subdivision



Assessment R

LCSAB

LICENCE AND COMMUNITY STANDARDS APPEAL BOARD

LCSAB





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Message from the Chair

The Licence and Community Standards Appeal Board (LCSAB) is a quasi-judicial board of The City of Calgary. The Board hears appeals of business licence revocations, suspensions and refusals under a number of Bylaws such as the Livery Transport Bylaw, the Business Licence Bylaw, the Alarm Services Bylaw, and others. We hear Community Standards appeals, such as appeals of remedial orders related to neighbourhood nuisance, safety, and liveability issues. Finally, we also hear appeals under Sections 545 and 546 of the *Municipal Government Act* that relate to orders by the Chief Building Inspector to remedy building contraventions, safety issues, and unsightly premises concerns, including those incidental to some excavation and construction projects.

Effective 2011, City Council amended the composition of the Board so that it is constituted by five citizen members, removing the requirement for two City Council members. The intent of this change was to allow LCSAB to operate as a true quasi-judicial tribunal at arm's-length from Council. At the same time, Council approved a recommendation that the appointments for LCSAB be handled in the same manner as the City's other quasi-judicial boards, i.e. the Assessment Review Board and the Subdivision and Development Appeal Board, and that members of LCSAB be appointed to one-year renewable terms that coincide with the calendar year.

The LCSAB is currently made up of five citizen members, and it relies on advice from independent legal counsel when appropriate.

The Board has the authority and ability to set its own procedures. In 2013, certain improvements were made to the LCSAB procedures through amendment of the Board's Procedural Manual. These changes refined the hearing process to minimize duplication of hearing evidence when an appeal follows a properly conducted administrative hearing.

I encourage those with an interest in learning more about the LCSAB and its procedures to visit the Board's website at calgary.ca/lcsab.

I extend my sincere thanks to Board members past and present for their dedication and hard work, as well as to the Board's counsel. Also, many thanks to The City of Calgary Appeal Board staff for their very competent assistance.

Rick Smith, Chair
Calgary Licence and Community Standards
Appeal Board



Licence and Community Standards Appeal Board jurisdiction

The Licence and Community Standards Appeal Board (LCSAB) is a quasi-judicial board established under the *Municipal Government Act*. The Board hears appeals with respect to decisions of the Manager of Livery Transport Services, Chief Licence Inspector, Chief of Police, Chief Building Inspector and Bylaw Enforcement Officers.

Organizational structure

The City Appeal Boards section of the Quasi-Judicial Boards Division, under the City Clerk's Office, processes appeals filed with the LCSAB. It is responsible for supporting administration of the LCSAB as well as providing assistance to the Board at their meetings.

Board members are appointed annually by City Council for one year terms from January 1 to December 31 of each year. As of the 2010 organizational meeting of Council, the LCSAB consists of five citizen members. Board members are citizens with diverse backgrounds in areas such as law, business and community involvement.

LCSAB operations

Hearing facilities

The Board conducts meetings in a hearing room at the Quasi-Judicial Boards administration offices, emphasizing the Board's at arm's-length relationship

with City administration. The benefits of a separate hearing facility include:

- A private room for City administration.
- Free parking for staff, Board members and the public.
- An accessible location off Deerfoot Trail; additionally, Calgary Transit stops in front of the building.
- The convenience of a private deliberation room for Board members, which will eliminate the need for the parties and the public to vacate the hearing room when the Board deliberates.

Legal counsel - Board solicitor

In order to avoid conflicts, the LCSAB now has independent external counsel. Since 2009, the Board retained J. Patrick Stopa, Q.C. of the law firm Caron & Partners LLP, but with the unfortunate passing of Mr. Stopa, the role of Board solicitor has been assigned to Tim Platnich, with the capable assistance of Jennifer Sykes. Both have experience in providing counsel to urban municipal clients and to municipal boards, and they have appeared before all levels of court in Alberta and before various boards, commissions and tribunals.





2013 Calgary LCSAB members

Teresa Goldstein

Elizabeth Hak

Rick Smith (Chair)

Dylan Snowdon (Vice-Chair)

Glenn Solomon

Past member of Calgary LCSAB

Jo Anne Atkins (Vice-Chair, 2011 – 2012)

LCSAB comments

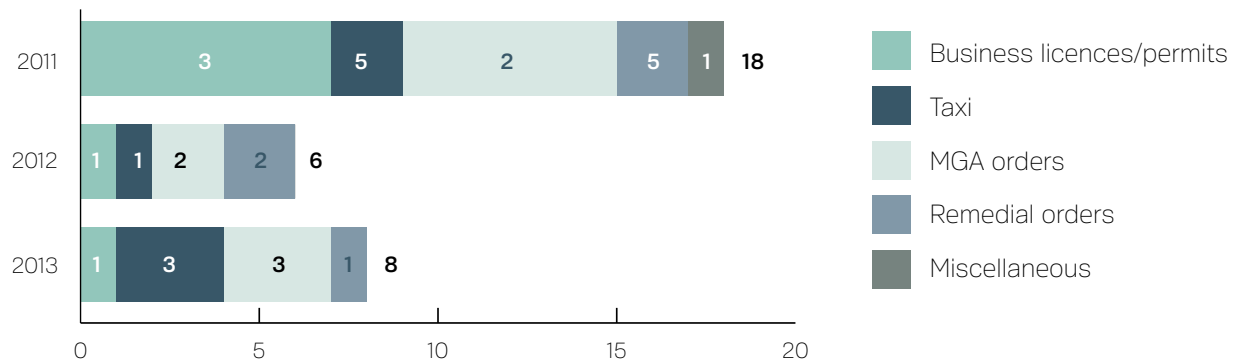
The LCSAB has a webpage that was developed as part of the City Clerk's website. Its purpose is to provide the public with information on tips for presenting to the Board, and outlines the appeal process. The webpage also provides downloads for the Board's Procedural Manual, brochure and notices of appeal.

In recent years, the number of appeals that have come before the LCSAB has reduced and, in fact, the Board only heard 21 appeals in the three years between 2011 and 2013. Board members give credit for this reduction in the number of appeals to the good work that is being done by The City administration with respect to procedural improvements to their internal hearing process, and their general handling of decisions related to licensing and bylaw enforcement matters.

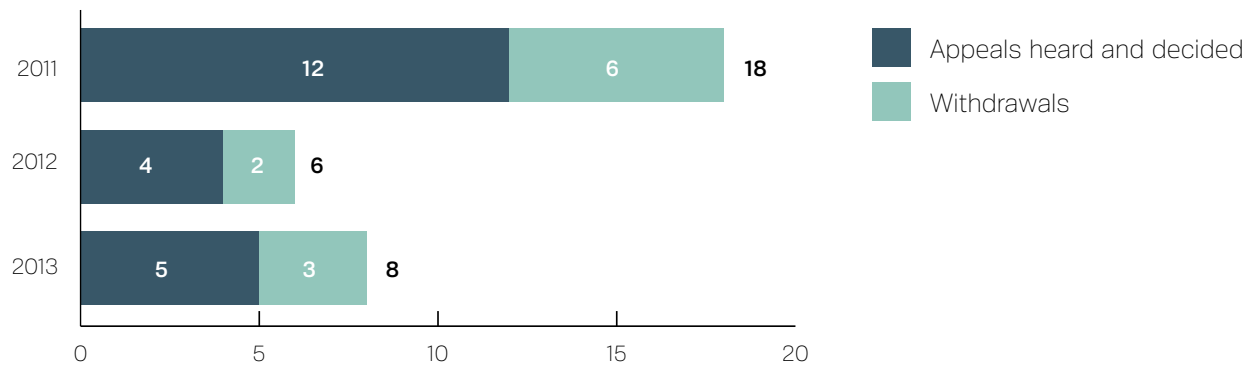
In 2013, specific amendments were made to the LCSAB Procedural Manual. The Board has the authority to set its own procedures and these changes were intended to clarify the appeal process, particularly when an appeal followed a properly conducted administrative hearing. The changes aim to minimize the duplication of evidence heard by the Board.



Appeal type

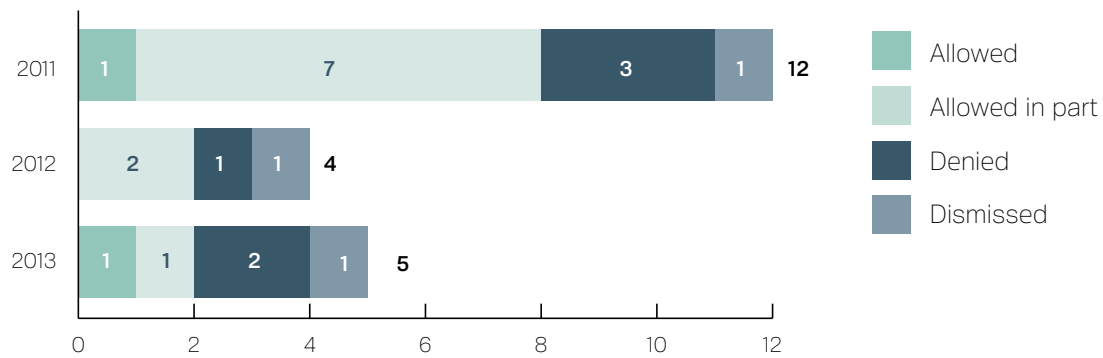


Total appeals



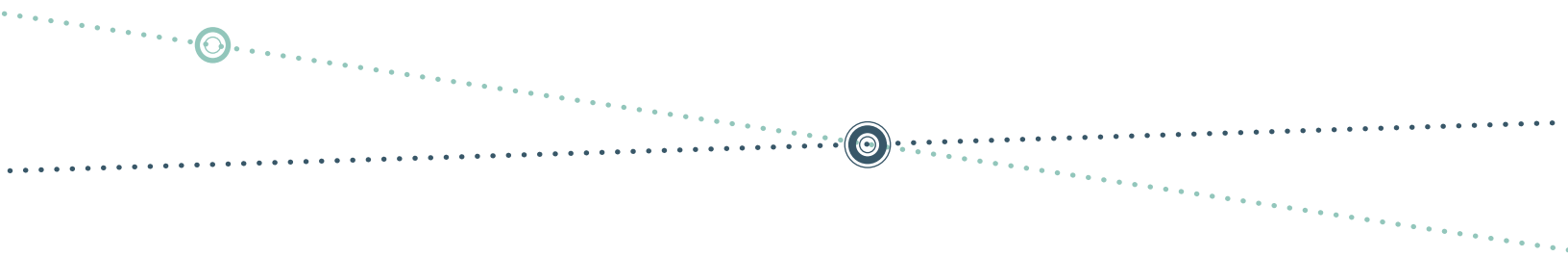


Decisions rendered, 2011 – 2013



Number of meetings, 2011 – 2013

	2011	2012	2013
Number of meetings	9	5	2





ADULT BLOCK

MODERN COUNTRY INTERIORS

THEATRE

IRONWOOD
STAGES & MORE

Inglewood

bowling

rivas
THE FIVE TONE

LIVE MUSIC NIGHTS
AT RIVAS
THE FIVE TONE
THE FIVE TONE
THE FIVE TONE

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