

1 Case No. H035836

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8 **COURT OF APPEAL OF THE STATE OF CALIFORNIA**
9 **SIXTH APPELLATE DISTRICT**

11	Cove Britton,)	Case No.: H035836
12)	
13	Appellant,)	
14	vs.)	APPELLANT’S OPENING BRIEF
15	County of Santa Cruz, a political subdivision)	
16	of the State of California, the Board of)	
17	Supervisors of the County of Santa Cruz,)	
18	County of Santa Cruz Planning Department,)	
19	and Does 1 through 50,)	
	Respondents)	

20 **INTRODUCTION**

21 This is an appeal from a denial of a Petition for Writ of Mandate.

22 On January 26, 2010, the First Amended Petition for Writ of Mandate (CCP section 1085)
23 with its related prayer for mandamus, injunctive relief, damages and costs of suit was filed. The
24 Petition was filed by Cove Britton, a licensed architect practicing in the County of Santa Cruz,
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1 against the County, the County’s Board of Supervisors and the County’s Planning Department.
2 (CT 1-11) The Petition was brought, in essence, to compel the Respondents to reconstitute the
3 County’s Building and Fire Code Appeals Board with persons having the requisite qualifications
4 mandated by California statutory law and allow such reconstituted Board to do its State
5 mandated job without inappropriate interference.

6 On May 25, 2010, following a hearing on the Petition, the Superior Court of the County
7 of Santa Cruz denied the Petition and all relief it sought and entered judgment in favor of
8 Respondents. (CT 215-216)

9
10 On July 20, 2010, this appeal was timely filed by Petitioner. (CT 218-221)

11 **SUMMARY OF APPEAL**

12
13 The Petition, and now this appeal, primarily revolves around a single issue, preemption,
14 and the question of whether the County of Santa Cruz, as a local government, may lawfully
15 ignore or take actions in conflict with applicable laws of the State of California, specifically
16 California’s Building Standards Code.

17 Historically, the State of California had no uniform building codes and, therefore, local
18 governments had few restrictions in regulating building standards within their jurisdiction. In
19 1970, the California Legislature declared a statewide interest in uniform building codes and,
20 simultaneously, expressly preempted the field of setting building standards. (*See ABS Institute v.*
21 *City of Lancaster* (1994) 24 Cal. App. 4th 285; [29 Cal. Rptr. 2d 224]; *Health and Safety Code* §
22 17922.] The uniform building codes, published under Title 24 of the California Code of
23 Regulations (often referred to as the “California Building Code” or the “CBC”), cover all aspects
24 of building from materials to construction. The CBC also contains administrative provisions.
25 Those administrative provisions include a mandate that every local jurisdiction appoint a

1 **“qualified and specifically knowledgeable”** appellate body (labeled a “local appeals board”) to
2 hear appeals of any “decision, order or determination” made under the Codes. (CBC sections
3 108.8.1 and 108.8.3)

4 The Petition, and now this appeal, presents the important question as to whether the local
5 governing body may appoint to a local appeals board persons who lack the qualifications
6 mandated by the CBC for membership. Specifically here, as set forth in Petitioner’s First
7 Amended Petition, the County’s Board of Supervisors, as the governing body of the County,
8 disbanded its local appeals board that had been comprised of newly appointed members who
9 were appropriately **“qualified and specifically knowledgeable in the California Building
10 Standards Code.”** (See CBC section 108.8.1) The Board of Supervisors then appointed
11 themselves (CT 7:17-19- Board Agenda items Nos. 73 and 73.1), none of whom are **“qualified
12 and specifically knowledgeable”** to act as a local appeals board.

13 The Superior Court determined that the Board of Supervisors had the legal authority to
14 take over and act as the local appeals board, even when none of their members were “qualified
15 and specifically knowledgeable in the California Building Standards Codes,” stating that
16 “California Health and Safety Code section 17920.5 and California Building Code section 108.8
17 et seq. (24 Cal. Code Regs. 108.8 et seq.) specifically give the County Board of Supervisors
18 discretion to either appoint a local appeals board or to act as the local appeals board itself.” (CT
19 210-211).

20 The Superior Court’s determination and its judgment that followed in favor of
21 Respondents, was timely appealed by Petitioner. (CT 218-221) Since the Superior Court’s
22 determination was one of law, it should be reviewed *de nova* by this Court.

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1 **STATEMENT OF FACTS**

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3 **A. THE CALIFORNIA STATUTORY AND REGULATORY SCHEMES**
4 **GOVERNING BUILDING CODES**

5 Although Petitioner’s and Respondents’ disagreement centers on only one feature of
6 California’s statutory and regulatory schemes that govern building codes, it may be helpful to
7 summarize those somewhat complex schemes.

8 The “California Building Standards Law” is located at Health and Safety Code section
9 18901 *et seq.* and establishes the existence, mandate, and authority of the California Building
10 Standards Commission (the “CBSC”), including the process for adopting building standards to
11 be contained in Title 24 of the California Code of Regulations. (See CT 121-*A Guide to*
12 *California Housing Construction Codes*, at p.4) Title 24 is referred to as the California Building
13 Standards Code or California Building Code (“CBC”) and it is an adoption of regulations
14 proposed by several State agencies, including the California Department of Housing and
15 Community Development (“HCD”), that are authorized by State law to regulate specific types of
16 buildings or building features and site preparation. (*Id.* at pp. 6-7)

17 The “State Housing Law” is located at Health and Safety Code section 17910 *et seq.* and
18 charges the HCD with the responsibility to adopt administrative regulations necessary to carry
19 out its provisions and for proposing building standards to the CBSC for adoption with
20 application to the construction of hotels, motels, lodging houses, apartments and dwellings. (*Id.*
21 at p.10) HCD has adopted Title 25 of the California Code of Regulations to implement,
22 interpret, clarify and make specific the mandates of State law regarding housing. (*Id.* at p. 11)
23 The CBSC has adopted and published the building standards of HCD as part of the CBC (*Id.* at
24 pp. 9-10)

25 Health and Safety Code section 17922 essentially adopts for California the building
standards contained in the Uniform Building Code of the International Conference of Building

1 Officials. Those building standards so established, including the administrative procedures
2 implementing them, are primarily set forth in Title 24 of the California Code of Regulations and,
3 as previously mentioned, are often all referred to as the “CBC.” The 2007 California Building
4 Standards Code (“CBC”) is the most current version of the standardized codes.

5 The State building standards so established are adopted by and controlling on all
6 California counties, except in very limited circumstances where a county may modify or
7 eliminate a code provision after securing approval from the State and after showing that such
8 was “reasonably necessary because of local climatic, geological or topographical conditions.”
9 (H&S Code, sections 17958, 17958.5 and 17958.7)

10 One of the most important provisions of the CBC is found in section 108.8.1 that
11 mandates that:

12 “Every city, county or city and county *shall* establish a local appeals
13 board....The local appeals board...shall each be comprised of at least
14 five voting members that shall serve at the pleasure of the city,
15 county or city and county. Appointments shall not be employees
16 of the jurisdiction and *shall consist of members who are qualified
and specifically knowledgeable in the California Building Standards
Codes and applicable local ordinances.*” (Emphases added)

17 Both Health and Safety Code section 17920.5 and CBC section 108.8.1 defines a “local
18 appeals board” as:

19 “...the board or agency of a city or county which is
20 authorized by the governing body of the city or county
21 to hear appeals regarding the building requirements of
the city or county...”

22 An important related provision of the CBC is section 108.8.3 relating to “Appeals”
23 mandates that:

24 “...any person...affected by a decision, order or determination
25 by a ...county...relating to the application of building standards
published in the California Building Standards Code, or any

1 other applicable rule or regulation adopted by the Department
2 of Housing and Community Development, or any lawfully
3 enacted ordinance by a city, county or city and county, may
4 appeal the issue for resolution to the local appeals board....”

5 HCD explicitly adopted California Building Code section 108, including all its
6 subsections at issue. (CT 176- CBC -- Matrix Adoption Table California Chapter 1 – General
7 Code Provisions) The State codes mentioned above have also been expressly adopted, at least in
8 part, by Santa Cruz County Code 2.100.010. (CT 28) In addition, the County’s “Policies for
9 Permit Processing,” as adopted by its Board of Supervisors, provide in part that:

10 “ 4. An applicant is to be provided with information concerning
11 any and all appeals processes available concerning decisions
12 made by the County of Santa Cruz which relate to the
13 application.” (CT 46)

14
15 **B. THE MANDATES CONTAINED IN CALIFORNIA’S BUILDING CODES
16 CONCERNING APPEAL OF BUILDING CODE DETERMINATIONS ARE
17 NOT FOLLOWED BY RESPONDENTS.**

18 The decision by the Respondent Board of Supervisors to take on the role of the “local
19 appeals board” is the culmination of a series of efforts to thwart State law concerning State
20 mandated “local appeals board” formation, jurisdiction and availability. A brief review of the
21 history of those efforts makes graphic why California law does not ordinarily allow the Board of
22 Supervisors to act as the local appeals board.

23 First, the Board of Supervisors failed to comply with the mandates contained in the CBC
24 by appointing persons to the local appeals board that were neither qualified nor specifically
25 knowledgeable in the CBC. (CT 47-52)

Second, the Board of Supervisors failed to comply with the mandates contained in the
CBC by failing for almost ten (10) years to have a quorum of qualified and appointed members
of such a “local appeals board” available, which the County at various times and most recently

1 has called its “Building and Fire Code Appeals Board,” to act as the State mandated “local
2 appeals board”. (CT 52-59)

3 Third, employees of Respondents failed to comply with the mandates contained in the
4 State Codes by refusing to allow an appeal made to the County’s Building and Fire Code
5 Appeals Board (“BFCAB”), as the County’s “local appeals board,” to be delivered to and
6 decided by such board. (CT 62-75)

7 Fourth, employees of Respondents incorrectly reported to the Board of Supervisors that
8 no appeals by residents or their agents to its BFCAB, as its “local appeals board,” have ever been
9 made and, therefore, that empanelment of the local appeals board for hearings of appeals has not
10 historically been needed. This then caused the County Board of Supervisors to report incorrectly
11 to the residents and the media that no BFCAB has been empanelled to hear an appeal because no
12 appeals by residents have ever been made and that the historical lack of appeals caused the
13 County inadvertently to overlook the fact that the terms of persons appointed to the BFCAB had
14 expired long ago. (CT 7-14)

15 Fifth, after facing much adverse public comment and the potential for litigation for their
16 failures to provide a working BFCAB, the Board of Supervisors then empanelled the BFCAB
17 with five qualified members. But, employees of Respondents then derailed the BFCAB’s
18 activities by asserting a “gatekeeper” function and determining for the BFCAB whether a matter
19 appealed to that body was within the appellate jurisdiction of that body rather than letting the
20 body determine whether it had jurisdiction over the matter appealed to it. (CT 76-87)

21 Lastly, the Board of Supervisors failed to comply with the mandates contained in the
22 CBC by unilaterally disbanding the BFCAB (CT 7:17-19- Board Agenda items Nos. 73 and
23 73.1) and purportedly taking over the functions of, or becoming, the “local appeals board.” The
24 Board unilaterally disbanded the BFCAB and appointed themselves as the local appeals board,
25 even though *no* member of the Defendant Board of Supervisors is a person “*qualified and*

1 *specifically knowledgeable in the California Building Standards Codes and applicable local*
2 *ordinance*” as required by CBC 108.8.1. The Board was apparently motivated to disband the
3 BFCAB and take over its function, because of the BFCAB’s refusal to act as a puppet for the
4 Board’s provincial wishes concerning building codes. The Board of Supervisors for a long time
5 had held the incorrect belief that they could not only act as a “gatekeeper” for what matters
6 could be heard as an appeal under the CBC but also could dictate that County codes be followed
7 even when those codes conflicted with the CBC. (See CT 87-letter from Supervisor Coonerty to
8 the BFCAB stating: “...a member who believes that they cannot carry out his or her official
9 duties in a manner consistent with the policies and regulations approved by the Board of
10 Supervisors should reconsider his or her continued participation as an appointee.”)

11 The Defendants’ failure to comply with the mandates of the CBC and their own County
12 codes concerning the formation, continued establishment and availability of the BFCAB to
13 receive and process appeals has allowed Respondents to defeat the fundamental purposes that the
14 State of California had in establishing its CBC and, in particular, mandating the establishment of
15 a “local appeals board.” These fundamental State purposes included: (a) the establishment of a
16 local appeals board whose membership would be independent of a county that formed it and that
17 county’s departments and personnel whose decisions or actions a property owner or other
18 interested person desired or needed to contest; (b) the establishment of a local appeals board
19 whose members were “qualified and especially knowledgeable in the California Building
20 Standards Codes and applicable local ordinances,” for example as licensed general contractors
21 and civil engineers, and in an ideal position, therefore, to investigate and decide building code
22 decisions or actions of county employees who are frequently not appropriately qualified and
23 knowledgeable; and (c) the establishment of an appeal process which would direct the “local
24 appeals board,” as the appellate body, to determine whether an appeal filed and directed by the
25 appellant to it was a proper matter for appellate review and decision by it. All these purposes

1 helped to achieve the overarching State purpose of safeguarding public health, safety and the
2 general welfare. (See General Code Provisions 101.2 “Purpose: The purpose of this code is to
3 establish the minimum requirements to safeguard the public health, safety and general
4 welfare...”)

6 LAW AND ARGUMENT

7 A. CERTAIN DECISIONS, ACTIONS AND ORDINANCE NO. 5050 OF THE 8 COUNTY OF SANTA CRUZ IMPERMISSIBLY CONFLICT WITH 9 CALIFORNIA BUILDING CODE AND, THEREFORE, ARE UNLAWFUL AND PROPERLY THE SUBJECT OF INJUNCTIVE RELIEF

10 City and county ordinances must not conflict with general laws, and where a conflict is
11 found that ordinance is void. (*Cal. Const., art XI, § 7; Gov. Code § 37100; Building Industry*
12 *Association of Northern California v. City of Livermore (1996) 45 Cal. App. 4th 719, 724, [52*
13 *Cal. Rptr. 2d 902].*) A conflict exists if the ordinance duplicates, contradicts, or enters into a
14 field of regulation expressly or impliedly reserved to the state. (*Water Quality Association v.*
15 *County of Santa Barbara (1996) 44 Cal. App. 4th 732, 740, [52 Cal. Rptr. 2d 184].*) With
16 respect to the instant case, pursuant to a statewide interest in uniform building standards and
17 building codes, the field has been expressly preempted by state law. (*Health and Safety Code §*
18 *17922; ABS Institute v. City of Lancaster (1994) 24 Cal. App. 4th 285; [29 Cal. Rptr. 2d 224].*)
19 The uniform standards are set forth in Title 24 of the California Code of Regulations, also known
20 as the California Building Codes (“CBC”). (*Health and Safety Code § 17922.*) Injunctive relief
21 by mandate is appropriate to void conflicting ordinances and enjoin conflicting decisions and
22 actions. (*Johnson v. City and County of San Francisco (2006) 137 Cal. App. 4th 7; [40 Cal. Rptr*
23 *3d 8].*)

24 Two sections of the CBC as adopted by the HCD are of primary importance. First, section
25 108.8 of the CBC governs the establishment of an Appeals Board. CBC section 108.8.1 states,

1 in relevant part, “Every city, county or city and county shall establish a local appeals
2 board...comprised of at least five voting members...*who are qualified and specifically*
3 *knowledgeable* in the California Building Standards Codes and applicable local ordinances.”
4 Second, consistent with Health and Safety Code section 17920.5, CBC section 108.8.2 defines
5 the Local Appeals Board as “The board...authorized by the governing body of the...county to
6 hear appeals regarding the building requirements of the...county. In any area where there is no
7 such board or agency, “Local appeals board” means the governing body of the county having
8 jurisdiction over the area.”

9 Here, the County of Santa Cruz Board of Supervisors unlawfully decided to remove the
10 duly appointed and appropriately qualified Building and Fire Code Appeals Board (hereinafter
11 “BFCAB”) and designate themselves the local appeals board. As stated above, CBC section
12 108.8.1 requires local governments to provide access to an appellate body that is “specifically
13 knowledgeable in the California Building Codes [i.e. the CBC] and applicable local ordinances.”
14 While the Board is presumed knowledgeable of all local ordinances, no member of the Board is
15 specifically knowledgeable in the specialized and technical CBC and, as a result, is not qualified
16 to function as the local appeals board under CBC section 108.8.1. Because the State has
17 preempted the field of building standards and State law mandates that citizens and their
18 representatives be afforded a qualified appellate body, the County of Santa Cruz Ordinance No.
19 5050, which resulted in the appointment of member of the Board of Supervisors to act as the
20 local appeals board impermissibly conflicts with state law.

21 It is clear that the County’s new ordinance also impermissibly conflicts with State law
22 regarding appeals for fire-related issues. Health and Safety Code § 13145 authorizes the State
23 Fire Marshall to adopt CBC model code sections related to fire protection services. With respect
24 to fire-related appeals, the State Fire Marshall adopted CBC Appendix § 112. (CT 202- CBC
25

1 Matrix Adoption Table; Appendix Chapter 1—Administration.) Appendix Chapter 1 § 112
2 provides:

3 **Section 112 Board of Appeals**

4 **112.1 General.** In order to hear and decide appeals of orders,
5 decisions or determinations made by building officials related to
6 the application and interpretation of this code, there shall be and is
7 hereby created a board of appeals. The board of appeals shall be
8 appointed by the governing body and shall hold office at its
9 pleasure. The board shall adopt rules of procedure for conducting
10 its business.

11 **112.2 Limitations on Authority.** An application for appeal shall
12 be based on a claim that the true intent of this code or the rules
13 legally adopted there under have been incorrectly interpreted, the
14 provisions of this code do not fully apply or an equally good or
15 better form of construction is proposed. The board shall have no
16 authority to waive the requirements of this code.

17 **112.3 Qualifications.** The board of appeals shall consist of
18 members who are *qualified by experience and training to pass on*
19 *matters pertaining to building construction and are not*
20 *employees of the jurisdiction.*

21 (CT 204) (Emphasis added)

22 § 112 unequivocally mandates that the local governing body empanel a “*qualified*”
23 appeals board. Yet, the County admits that Santa Cruz County Ordinance 5050 appointed the
24 Board of Supervisors as the Appeals Board for fire-related matters. (CT 108:20-22)

25 The Respondents attempted to justify the new Santa Cruz County Ordinance 5050 by
citing local policy considerations. (CT 108:18-109:3-“County’s Memorandum of Points and
Authorities in Opposition to First Amended Petition.”) Such purported policy considerations
cannot, however, provide the County with a safe harbor from State law that preempts the field of
building code provisions for housing as adopted by the HCD and the field of building code
provisions for fire related matters as adopted by the State Fire Marshall.

1 **B. PREEMPTION APPLIES NOT MERELY TO “BUILDING STANDARDS”**
2 **BUT ALSO TO EVERY OTHER PROVISION ADOPTED AS PART OF THE**
3 **CALIFORNIA BUILDING CODE BY AUTHORIZED STATE AGENCIES.**

4 Respondents have attempted to justify their new ordinance and conduct by asserting that
5 the legislature has not preempted local discretion with respect to “administrative matters”
6 because they do not constitute “building standards.” (CT 110:14-111:9) Their assertion lacks
7 merit. Under CBC § 108.2, the HCD “is authorized by law to promulgate and adopt building
8 standards *and regulations* for several types of building applications...” (Emphasis added) (CT
9 201) Therefore, a plain reading of the statute indicates that HCD’s authority is not limited to
10 “building standards.” Whether CBC § 108.8 meets the technical definition of a “building
11 standard” is irrelevant, because HCD authority to adopt model code provisions is not restricted to
12 “building standards.” Under CBC §108.2, every model code section adopted by HCD becomes
13 State law and preemption principles are applicable. HCD adopted CBC §108.8 such that this
14 section is binding State law. Consequently, the County has no discretion to disregard this statute.
15 As a result, Santa Cruz County Ordinance 5050 is void because it impermissibly conflicts with
16 CBC §108.8.

17 **C. POLICY BULLETINS ISSUED BY THE CALIFORNIA BUILDING**
18 **STANDARDS COMMISSION DO NOT TRUMP THE AUTHORITY OF THE**
19 **HCD AND THE STATE FIRE MARSHALL CONCERNING THE REQUIRED**
20 **MAKEUP OF THE LOCAL APPEALS BOARD.**

21 The Respondents have also tried to justify the new ordinance and their actions by
22 referencing the authority and policies of the California Building Standards Commission. (CT
23 111:10-112:16) Their attempt fails scrutiny.

24 The Respondents fail to understand the limited role of the California Building Standards
25 Commission and how it differs from the role of the agencies involving CBC 108.8.1 and
Appendix Chapter 1 section 112, the HCD and the State Fire Marshall, respectively, and the
preemptive effect of their jurisdiction. Specifically, HCD and the State Fire Marshall have the

1 express authority to adopt and implement specific sections of the model code. (*See* CBC § 108.2
2 and HS § 13145.) In contrast, the California Building Standards Commission conducts technical
3 reviews of proposed building standards for necessity, clarity, and appropriate jurisdictional
4 authority. (CT 134- *A Guide To California Housing Construction Codes*, hereinafter “the
5 Guide”) Further, the Guide also presents a helpful algorithm for approaching the CBC contained
6 in the California Code of Regulations, Title 24. (CT 137). This algorithm is as follows: 1)
7 Identify the state agency having jurisdiction over the building project; 2) Use the Matrix
8 Adoption Tables to identify model code sections adopted by the relevant state agency; 3) Identify
9 any applicable California amendments; and 4) Apply Only the Adopted Model Code Language.
10 (*Id.*) As presented above, HCD and the State Fire Marshall are authorized to adopt model code
11 sections for their respective jurisdictions. The Matrix Adoption Tables clearly indicate that HCD
12 has adopted CBC§ 108.8 and the State Fire Marshall has adopted CBC Appendix Chapter 1 §
13 112.

14 It is undoubtedly not merely coincidental that other local communities, including the City
15 of Napa, have interpreted the requirements for independent and qualified appeals boards in the
16 same manner urged by the Petitioner. [CT 206-City of Napa Municipal Code Section 15.04.080
17 Building and Fire Code Board of Appeals)

18
19 **D. CALIFORNIA BUILDING CODE SECTION 108.8.2 DOES NOT PERMIT AN**
20 **LOCAL GOVERNING BODY, UNQUALIFIED UNDER SECTION 108.8.1,**
21 **TO ACT AS THE LOCAL APPEALS BOARD.**

22 The Respondents conceded no member of the Board of Supervisors met the qualifications
23 set forth in CBC section 108.8.1. Contrary to the assertion made by Respondents in defending
24 the new ordinance and their actions (CT 107:8-14), CBC section 108.8.2 does not permit the
25

1 Board of Supervisors to act as the local appeals board regardless of whether the Board meets the
2 qualifications for a local appeals board as set forth in CBC section 108.8.1.

3 An established rule of statutory construction provides that “every statute should be
4 construed with reference to all other statutes of similar subject so that each part of the law as a
5 whole may be harmonized and given effect.” (*California Apartment Association v. City of*
6 *Fremont* (2002) 97 Cal. App. 4th 693, 700 [118 Cal. Rptr. 2d 603] citing *Franchise Tax Board v.*
7 *Superior Court* (1998) 63 Cal. App. 4th 794, 799 [73 Cal. Rptr. 2d 889].) By reading CBC
8 sections 108.8.1 and 108.8.2 together, it is clear that the mandate of 108.8.1 requiring that the
9 local appeals board be “comprised of at least five voting members...who are qualified and
10 specifically knowledgeable in the California Building Standards Codes” applies regardless of
11 whether the local governing body acts as the local appeals board or appoints others to that board.
12 Section 108.8.2 of the CBC permits the local governing body to act as the local appeals board,
13 but only when, pursuant to section 108.8.1, the local governing body consists of at least five
14 members with specific knowledge of the CBC. Where the local governing body does not meet
15 those qualifications mandated by CBC section 108.8.1, the governing body must establish a
16 board of appeals comprised of members who do have the mandated qualifications.

17 To permit the local governing body to act as the local appeals board regardless of their
18 qualifications and knowledge of the Building Standards Codes would impermissibly render
19 portions of CBC section 108.8.1 superfluous. Although CBC section 108.8.2 permits the local
20 governing body to act as the local appeals board, no language in the CBC or Health and Safety
21 Code exempts a local governing body from the qualifications of a local appeals board set forth in
22 108.8.1. In that context, allowing an unqualified governing body to function as the local appeals
23 board impermissibly renders a portion of CBC section 108.8.1 superfluous because the language
24 requiring that appeals board members be “specifically knowledgeable” of the Building Codes
25 would be given no effect. Thus, in order to give meaning to each portion of the statute, CBC

1 section 108.8.1 must be interpreted as mandating a qualified local appeals board even when the
2 local governing body performs that function.

3 In addition, the overarching goals of the CBC can only be reasonably met with a qualified
4 and knowledgeable local appeals board. Before the CBC was first adopted, the prior lack of
5 state wide regulation had produced a myriad of insufficient and conflicting building and
6 construction standards. The Legislature obviously had improved safety and uniformity in mind
7 when it passed the CBC and specifically preempted the field in California. The Legislature also
8 recognized that due process principles would require access to appeals, because adverse
9 decisions under the CBC would likely involve a cognizable property interest. The Legislature
10 undoubtedly also recognized that their overarching goals of safety and uniformity could be best
11 achieved when challenges to an adverse decision under the CBC were heard by an appellate
12 body knowledgeable in the CBC. It must have been clear to the Legislature that the CBC do not
13 contain general ideas about building standards written in language that is familiar and
14 comprehensible to laymen. Rather, almost every section of the CBC involves specific and
15 technical standards.

16 When viewed in context of the entire CBC §108, subsection 108.8.2 is best interpreted as
17 providing a default for the Local Appeals Board rather than an invitation to substitute the local
18 governing body in its place in all cases. To clarify, there are instances in which it would be
19 appropriate for the local governing body to serve as the local appeals board. For example, the
20 local governing body may consist of individuals who meet the qualifications specified under
21 CBC §108.8.1. Alternatively, the local governing body may have been unsuccessful in their
22 attempts to comply with CBC §108.8.1 due to conflicts or lack of qualified individuals willing to
23 serve. The default mechanism functions as an exception rather than a rule and does not apply
24 where, as here, the local governing body does not meet the qualifications requirement and there
25 are independent and qualified individuals eager to serve as members of a Local Appeals Board.

1 **E. HEALTH AND SAFETY CODE SECTION 17920.5 DOES NOT AUTHORIZE**
2 **THE BOARD OF SUPERVISORS TO ACT AT THE LOCAL APPEALS**
3 **BOARD REGARDLESS OF WHETHER THEIR MEMBERS MEET THE**
4 **QUALIFICATIONS OF CBC SECTION 108.8.1**

5 Respondents have attempted to justify the new ordinance and their conduct by asserting
6 that Health and Safety Code section 17920.5 allows the Board of Supervisors to act as a local
7 appeals board without regard to whether any member has the qualifications mandated in CBC
8 108.8.1. (CT 106:13-107:6). But their reasoning is flawed.

9 Petitioner concedes that the State Housing Law, specifically HS § 17920.5, addresses
10 building-related appeals in a cursory manner in definitional language. However, the text of the
11 statute clearly indicates that the definition of the local appeals board applies only to HS § 17910
12 *et seq.* Other than the definition located in HS § 17920.5, the State Housing Laws contain no
13 other language pertaining to building-related appeals, including any prescriptive language for the
14 composition of board. (*See* Health and Safety Code § 17910 *et seq.*) The Respondents have
15 acknowledged HCD’s authority, pursuant to Health and Safety Code section 17910 *et seq.* to
16 implement, clarify and make specific the mandates of the State Housing Law. (CT 106:6-12)
17 That’s exactly what it did when the HCD adopted CBC § 108.8 with the obvious intent to
18 implement, clarify and make specific the prescriptive requirements for the “Local Appeals
19 Board.”

20 This conclusion is especially reasonable given that CBC § 108 contains the only
21 regulatory language prescribing the constitution of a local appeals board, including number,
22 independence and qualifications of its members. Because HCD adopted CBC § 108 and because
23 it “is authorized by law to promulgate and adopt building standards *and regulations* for several
24 types of buildings,” CBC § 108.8 is binding and applicable California law. (See CBC § 108.2,
25 emphasis added.) Accordingly, the County cannot rely on the more general and solely

1 definitional, provision of the Health and Safety Code to avoid the mandate of CBC § 108.8
2 regarding the empanelment of an independent and qualified Local Appeals Board.

3
4 **CONCLUSION**

5 It is respectfully submitted by Petitioner that this Court should reverse the judgment of
6 the Superior Court and remand the matter with instructions to enter judgment in favor of
7 Petitioner granting his request for injunctive relief against Respondents as prayed for in his First
8 Amended Petition for Writ of Mandate.

9 Dated: December 27, 2010

BARRON & ASSOCIATES

11 By: _____

12 GERALD V. BARRON
13 Attorney for Petitioner
14 Cove Britton