Q: I am a local builder and developer of single family homes, and recently I’ve noticed that many counties and municipalities are enacting extensive and costly design and performance construction standards.  These new regulations impose conditions that are hard to meet and that directly affect my bottom line.  Are you aware of any efforts to oppose these new rules?

A: Like you, we’ve noted the trend in legislation by local governments establishing detailed performance and design standards.  For example, Forsyth County recently proposed new standards for home façade and subdivision design that—to name only a few requirements—prohibit the use of less costly materials like vinyl siding, require that exposed foundation walls be faced in brick or stone to the level of the first floor when there is a basement, and provide that any front or side wall must have window openings whose area sum equals or exceeds ten percent of the area of the wall, calculated per floor.

With respect to what is being done about this type of regulation, there are two approaches.  The first is litigation and the second is legislation.

First, on the litigation front, we are fighting on behalf of many Georgia homebuilders, in the trenches, county by county and subdivision by subdivision to push back on anti-development ordinances.  There are two basic types of challenges to these laws.  We bring facial challenges, which focus on the flaws in the ordinance itself and the ways in which the ordinance violates the United States or Georgia Constitutions.  The ordinance might have a procedural defect in the way in which it was passed rendering it violative of the due process clauses.  And more likely, the ordinance suffers from one or more substantive defects such as discriminating against certain classes of property owners or lacking a nexus to the public health, safety or welfare.  These challenges are available regardless whether the ordinance has yet been applied to a property owner.  On the other hand, property owners that have been denied an LDP or building permit or C.O. based on the new ordinance should bring “as applied” challenges to the ordinance’s application to their property.  These claims generally involve the highly fact-intensive analysis of vested rights and whether the property is grandfathered from the new rules.

Second, we worked closely with the Homebuilders Association of Georgia law year to develop legislation that would prohibit cities and counties from legislating building design elements and architectural standards under the guise of their zoning powers.  This level of regulation is not zoning.  It does not govern use.  The law needs to be clarified to take these powers away from local government.  That is precisely what Senate Bill 469 aimed to do.  I expect HBAG will reintroduce the language of SB 469 this coming legislative session in a new bill and I strongly encourage you to contact the legislators in your spheres of influence to support the legislation.

Enacting state-wide legislation is an efficient and effective way to stop these local regulations. As you have seen, allowing local governments to continue down the current path of regulation results in additional expense and headache for homebuilders.