**Q: I am a homebuilder and I recently received an unfavorable decision from a local zoning official.   The zoning official denied my building permit to start work in a subdivision. What are my remedies?**

A: First, most cities and counties have a provision in their development codes that provides an administrative appeal from the decisions of a zoning official.  Those appeals often go first to the city manager for review and then to the Board of Zoning Appeals (“BZA”) or that municipality’s equivalent.  While most municipalities rubber stamp the decisions of its staff, sometimes those boards “do the right thing.”  If your appeal to the BZA is unsuccessful, you may now appeal that decision to the superior court in the county where you are building.  The time limit is usually 30 days but confirm this with the applicable code.

Your question, however, adds a new wrinkle that we are noticing among newly-formed municipalities and counties revising their development codes.  Many are adding new sections to the development code, or an entirely separate set of regulations, that deal specifically with subdivision development.  You should be aware that these subdivision regulations may add an entirely new appeals process that is distinct from the process set forth in the code described above.  It is not entirely clear in these codes whether they are mutually exclusive or may be cumulative.  A best practice is to file appeals using both processes lest the municipality take the position that you picked the wrong one.  Failure to take the proper route can result in a denial of the appeal.

Any appeal procedures found in subdivision regulations should not be viewed as a trap for the unwary, however.  An appeal under the subdivision regulations may have potential procedural and political advantages over an appeal to the BZA.  For example, subdivision regulations may require you to submit questions relating to interpretation of the subdivision regulations to a city official different from the zoning official as an intermediate step before any hearing on the appeal.  The city official may be a decision-maker with a bigger picture perspective on the issues than the staff member that made the initial decision.  If the reviewing official reverses the staff member decision, the appeal ends there and the permit should issue. If a hearing is necessary, the subdivision regulations could provide for a hearing before the BZA or mayor and council (or county equivalent), which may be a more politically favorable panel to hear the appeal.

You should consider whether the appeal procedures in the subdivision regulations apply, both to make sure you follow the right steps to appeal the decision and to ensure that an advantageous avenue is not inadvertently overlooked.