



April 7, 2025

Chairman Marshall Sawyer
Hart County Board of Commissioners
800 Chandler Street
Hartwell, GA 30643

RE: PROPOSED AMENDMENTS TO CHAPTER 46 (LAND DEVELOPMENT STANDARDS) -OPPOSE****

Honorable Chairman of the Commission, Marshall Sawyer, and Board of Commissioners:

The National Association of Home Builders (NAHB) regrets opposing the Chapter 46 amendments that will place stringent criteria in building housing in Hart County, Georgia. These proposed amendments to Chapter 46 of the Hart County Land Development Standards Code will have a negative trickle-down effect pushing housing costs higher. Hart County's vision statement in the 2022 Comprehensive Plan says growth should "...providing a safe and affordable hometown for all."

Hart County's average home price is \$339,900 ¹versus the national average home cost of \$357,138. ²The 2023 U.S. Census Bureau data reports the median income in Hart County was \$57,241. ³With a \$60,000 annual income, a typical homebuyer following the 28% income-to-housing cost guideline would afford a home priced between approximately \$170,000 and \$250,000, depending on the down payment and loan terms. This falls well below the current average home price, indicating a significant affordability gap.

Also listed in the 2022 Comprehensive Plan for Hart County is the identified threat of the "lack of affordable housing"; around 50% of surveyed residents listed the need for more affordable housing as a "high priority". With the rise of housing costs and limited housing stock available, homeownership will be difficult to achieve. The proposed amendments to Chapter 46 will place a 3-acre minimum lot size requirement, increasing the cost of housing due to the cost of land. Local builders estimate the cost per acre at \$20,000-\$25,000; this lot size requirement could add \$75,000 to the development and selling price.

¹ https://www.realtor.com/realestateandhomes-search/Hart-County_GA/overview

² <https://www.zillow.com/home-values/102001/united-states/>

³ <https://data.census.gov/profile?q=Hart+County,+Georgia+Employment&t=Income+and+Poverty>

Putting an application annulment and requirement that if a previous ownership does not complete the project before the sale and requiring the new owner to go through the application process from zero will increase the project's timeline of completion which in turn will increase the cost. For example, when a developer purchases land or an unfinished project, they are still responsible for paying property taxes, loan and principal on the loan, and consultant fees. Additionally, timeline changes can affect labor contracts, potentially impacting the future cost of the house.

A small to medium-sized housing development employs more than 100 individuals and more than 10 trades—architects, engineers, plumbers, electricians, construction workers, carpenters, roofers, and the list goes on and on that leave a mark on the local economic development of the community. For instance, a developer will purchase materials from the local Home Depot or Loewe's which directly impact the local economy. Individuals who work on the development project use the local retail and restaurants that promote the economic success of the small business in the economy. Further, more housing promotes attainable housing for the next generation of Americans who want to live and grow near their families. Having more housing stock in the county directly impacts the betterment of the community by generating local taxation dollars that are spent on strengthening community safety, health, and education. This would mean having dollars to put into supporting law enforcement, the fire department, schools, parks, and local hospitals.

Land use rules that impose vague or subjective criteria on how properties can be used or developed limit a property owner's ability to make decisions that best suit their needs. When approval processes rely on discretionary judgments rather than clear, consistent standards, they create uncertainty, increase costs, and make it harder for residents to invest in and improve their land. This not only restricts economic opportunity but also concentrates decision-making away from the individuals who are most directly affected. Over time, such regulations can stifle innovation and erode the fundamental principle that those who own property should have a fair and predictable path to making use of it.

Attainable housing is essential to the American Dream, allowing families to build stability, wealth, and a sense of community. When housing is within reach for police officers, teachers, and other blue-collar workers, it strengthens neighborhoods, ensuring that those who serve and sustain a community can also live in it. Affordable, accessible homes fuel economic growth by supporting workforce retention and fostering local investment. Without it, communities risk losing the very people who keep them safe, educated, and thriving.

NAHB's Legal Department reviewed the proposed Chapter 46 Amendments and found a number of provisions that raise serious legal and constitutional concerns that warrant immediate consideration. Without clarification or modification, these provisions risk violating due process, equal protection, and private property protections.

To begin, we are deeply concerned by the provision in Section 46-77(5) that automatically nullifies subdivision approval upon any change in ownership. This type of penalty—imposed without a hearing, opportunity to cure, or even clarity about what constitutes a “change in ownership”—is inconsistent with basic principles of due process. Particularly in the case of intra-entity transfers or transfers to wholly owned affiliates, there is no rational basis for invalidating previously approved development rights. This type of administrative overreach invites litigation and exposes the County to potential constitutional challenges. Similarly, other provisions that condition plat approval or subdivision development on approvals from third parties lack clear standards and enforceable timelines, opening the door to arbitrary enforcement. As the U.S. Supreme Court noted in *Grayned v. City of Rockford*, vague or overly discretionary laws violate the Due Process Clause because they fail to provide fair notice and encourage inconsistent application.

Additionally, the amendment appears to draw distinctions between classes of property owners in a manner that may run afoul of the Equal Protection Clause. For example, land divisions transferred to “immediate family” members are exempted from otherwise applicable requirements, while similar transfers by unrelated individuals or entities are subject to full regulation. This type of classification is not justified by a compelling public interest and may result in discriminatory outcomes. The categorical prohibition on flag lots also raises constitutional concerns, especially in rural areas where topography or parcel configurations make such lot shapes the most viable option. A complete ban without allowance for case-by-case consideration may constitute an unreasonable restriction on property rights.

The ordinance also raises takings concerns under the Fifth and Fourteenth Amendments. Requiring that all infrastructure be completed before any change in ownership—including within a multi-phase project—unreasonably burdens the right to convey property and may constitute a regulatory taking under the standards set out in *Penn Central Transportation Co. v. New York City*. The same applies to the provision in Section 46-115 that allows the County to reserve up to 25% of a subdivision for public use for four years without compensation or acquisition. These provisions may deny landowners economically viable use of their property without just compensation and are likely to trigger legal scrutiny. Further, performance bond requirements of up to \$100,000, with a mandatory 50% cash escrow, may disproportionately impact small and mid-sized developers and are excessive in the absence of individualized cost assessments or waivers.

For all these reasons, we strongly encourage the Board to revise the proposed amendment before adoption. Specifically, we urge you to eliminate the automatic invalidation of subdivision approvals due to ownership changes, clarify the criteria for administrative and discretionary decisions, reconsider exemptions that risk creating unequal treatment, and ensure that all requirements are clearly defined and fairly applied. We also recommend conducting a



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comprehensive legal review to confirm that the amendment does not result in a regulatory taking or otherwise infringe on constitutionally protected property rights. NAHB remains available to assist in reviewing, drafting, or refining ordinance language to ensure it balances legal compliance with sound land use policy.

Sincerely,

A handwritten signature in black ink, appearing to read "Zachary Packard". The signature is fluid and cursive, with a large initial "Z" and a long, sweeping underline.

Zachary Packard
Staff Counsel, National Association of Home Builders (NAHB)