

The Missing Middle Legal Impediments or Opportunities

Katie Cole, Esq.
Hill Ward Henderson
600 Cleveland Street, Suite 800
Clearwater, FL 33756
Katie.cole@hwhlaw.com



HILL WARD
HENDERSON
ATTORNEYS AT LAW

Overview

- **Private Property Rights**
- **Affordability Issues**
- **Land Use and Zoning**
- **Political Considerations**



Property Rights

- Due Process – right to notice, fair hearing, equal protection
- Bert Harris Act (Fla. Stat. 70.001, et seq.)
 - Government actions cannot indirectly “take” private property through regulations as applied to the specific property
 - Provides relief to owners when a law, regulation, or ordinance inordinately burdens, restricts or limits private property without amounting to a taking under the US Constitution
 - Potential viable claims?
 - Change of use on adjacent property burdened property – NO (see Jacksonville v. Smith, 2015 WL 798154 (Fla. 1st DCA 2015)) (subsequent legislative change)
 - Equitable Estoppel – Likely not (see Citrus County v. Halls River Dev., Inc. 8 So. 3d 413 (Fla. 5th DCA 2009))
 - Speculative or proposed use – NO (see Jacksonville v. Coffield, 18 So. 3d 589 (Fla. 1st DCA 2009))



- **Authority of Jurisdiction to make decisions**
 - **Legislative Decisions**
 - **Quasi Judicial Decisions**
- **Land Use decisions (policy) v. Zoning Decisions (regulatory)**





HILL WARD
HENDERSON
ATTORNEYS AT LAW

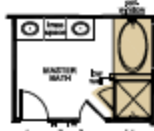
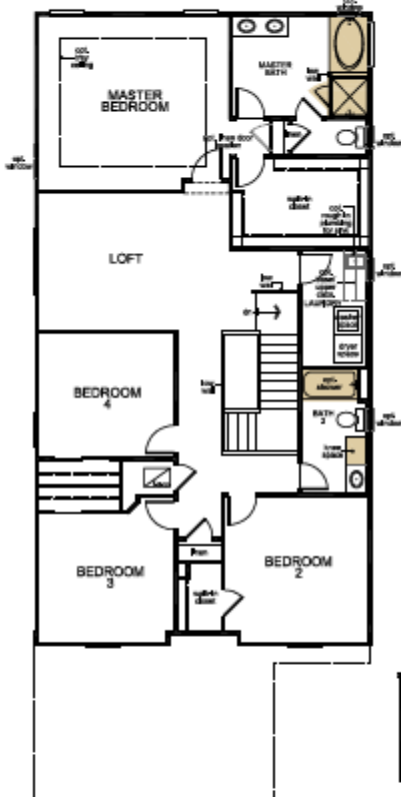
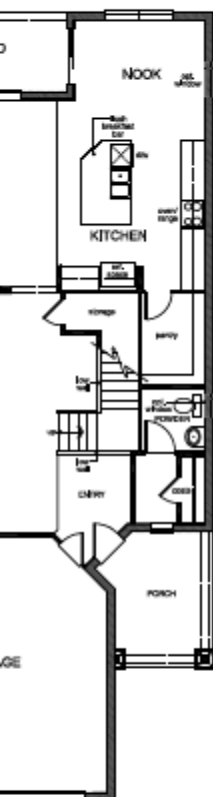
Land Development Codes

- **Density availability**
- **Coastal Resiliency Concerns**
- **Subdivision Standards & Infrastructure requirements**
- **Minimum Lot Size**
- **Original Plat dimensions**
- **Public Hearing process**
- **Variances – hardship standard**
- **Nonconforming Lots**
- **Accessory Dwelling Units**

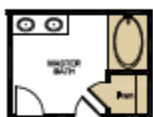


gourmet kitchen, raised breakfast
low wall between Family room and
dining room
Optional per plan

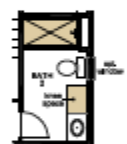
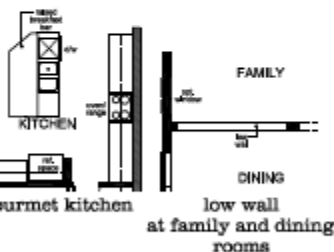
Master Bedroom: Tray ceiling
Master Bath: Shower with linen closet, Garden tub with linen closet, linen door location, Extended vanity with dual sinks and knee space
Bath 2: Extended vanity with dual sinks, Shower in lieu of tub
Laundry: Optional rough-in plumbing for sink
Windows: Optional per plan



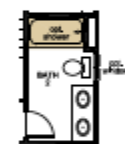
extended vanity with knee space at master bath



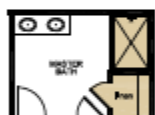
garden tub with linen closet at master bath



shower in lieu of tub at bath 2



extended vanity with dual sinks at bath 2



shower with linen closet at master bath

Home can be built to order so you'll enjoy the features you want most. Plus you can choose from a variety of
prior features and details at KB Home Studio. Select appliances, cabinets, countertops, lighting, flooring, and more.
need to create a home as unique as you.

ARTISAN PRESERVE

PLAN 2851

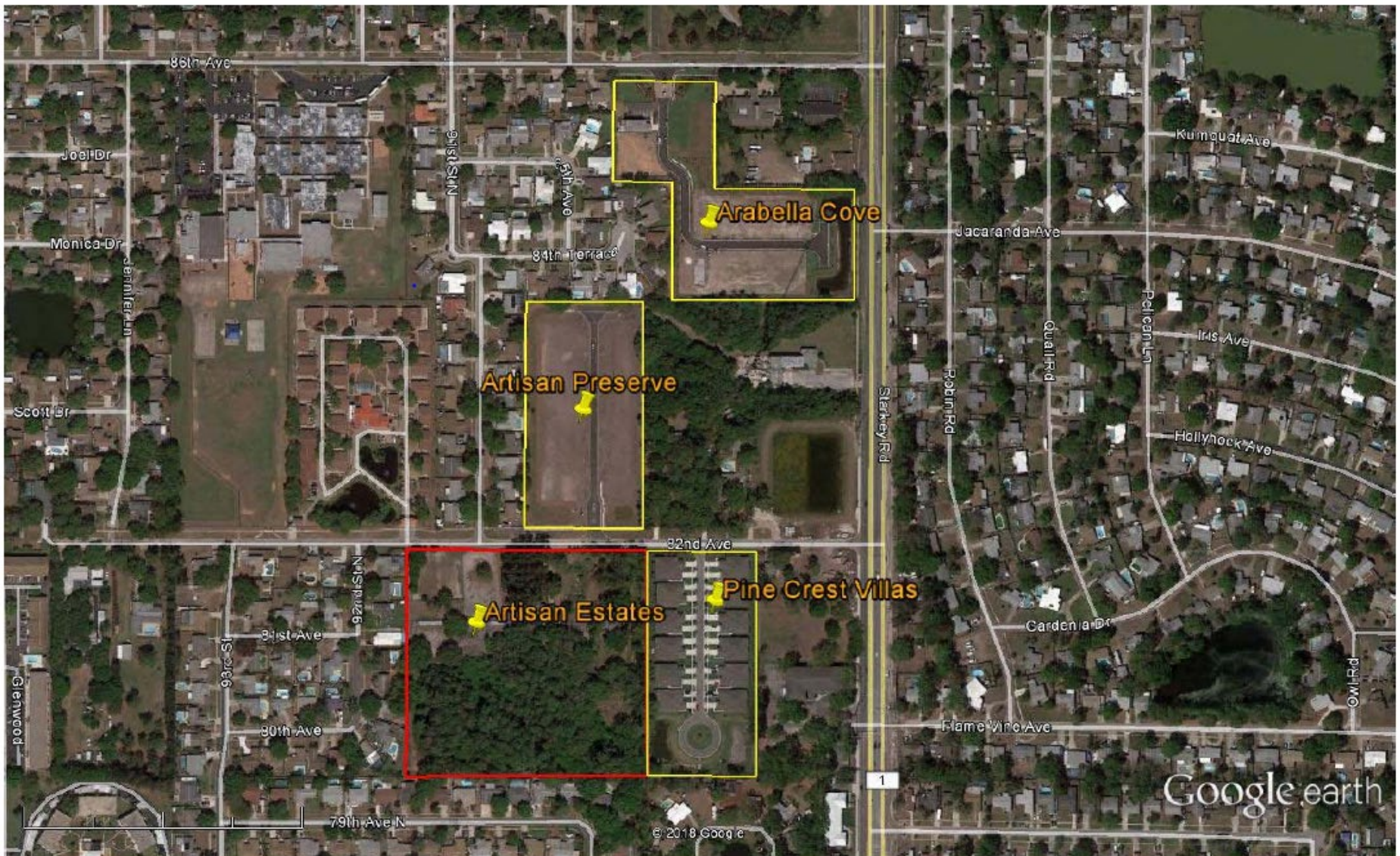
2,851 sq. ft. 4 bedrooms 2.5 baths



Elevation "D"

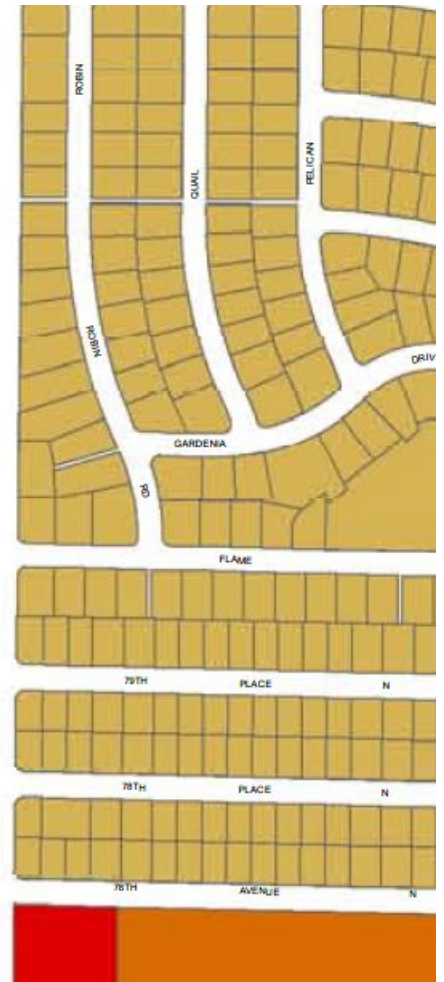


Elevation "E"



HILL WARD
HENDERSON
ATTORNEYS AT LAW

City of Seminole



Proposed LUPA
to RL

City of
Seminole



HILL WARD
HENDERSON
ATTORNEYS AT LAW

Affordability

- **Financing/Lending**
 - **Loan to Value**
 - 25-30% equity infusion
 - Balloon Note
 - **Cost of Land – Highest and Best Use**
 - **Restrictive Covenants**
 - **Construction Loan**
 - **Unexpected Costs of New Construction (impact fees, stormwater, etc)**
- **Construction Risks/Costs**
 - **Cost comparison of alternative uses**
 - **Neighborhood Values**
 - **Renovations versus new construction**
 - Building Code issues
 - Life Safety
 - Government Programs





HILL WARD
HENDERSON
ATTORNEYS AT LAW

Government Funding Programs

- Restrictive Covenants
- Limited neighborhoods
- “Bang for buck”
- Flexibility for programs
- California SB35
- Non-profit partnerships



HILL WARD
HENDERSON
ATTORNEYS AT LAW

Preserving Multifamily and Workforce Affordable Housing

Financing vehicle	Primary purpose(s)	Demonstrated strengths	Potential limitations	Capital sources and financial returns
Below-market debt funds	Acquisition of land and existing subsidized affordable properties and new development; often not limited to housing	As revolving funds, provider of a continuing source of capital Facilitator for affordability-focused developers to compete in hot markets	Complex administration; significant startup costs General dependency on availability of permanent "takeout" financing	Local public agencies, foundations, CDFIs, financial institutions Interest rates to senior lenders generally range from 2 percent to 6 percent, depending on capital source and fund structure
Private equity vehicles	Acquisition of existing subsidized and/or "naturally occurring" affordable properties	Ability to act at market speed Scale of capital	Varying degrees of commitment to long-term affordability Less transparency in structure, returns	Financial institutions, pension funds, university endowments, high-net-worth individuals, foundations Cash-on-cash returns to investors from 6 percent to 12 percent
Real estate investment trusts	Acquisition of existing subsidized and/or "naturally occurring" affordable properties	Strong focus on preserving affordability Facilitator for affordability-focused developers to compete in hot markets	Considerable technical expertise required to manage (only two exist that focus solely on workforce-affordability sector)	Foundations, financial institutions, CDFIs Total returns to investors generally from 4.5 percent to 8 percent



HGTV:



HILL WARD
HENDERSON
ATTORNEYS AT LAW