**Third Party Objective Source Expert Report**

**As to Need for Increase in Density and Intensity of Development in the Clarcona Rural Settlement**

**Pursuant to Orange County Comprehensive Plan**

**FLU 6.6.8**

**Prepared for: Clarcona Improvement Association, Inc.**

**By**



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Court Appointed Real Estate Receiver

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**I. Assignment**

Prepare a third party objective report as to need for increase of density and intensity of Tract in Clarcona Rural Settlement as contemplated in Application for Future Land Use Map Amendment 2017-2-1-2-2 – CLRM Investment Co.

**II. Purpose of Report**

The Application submitted for Proposed Future Land Use Map Amendment 2017-2-1-2-2, by CLRM Investment Co., (hereinafter “Application”) does not contain a report from a third party objective source showing evidence and documentation as to the need for the requested increase of density and intensity of the CLRM Investment Co. tract in the Clarcona Rural Settlement as required by Orange County FLU 6.6.8. In the absence of such otherwise missing report, this objective source third party report has been prepared.

**III. Executive Summary**

The Application requests a Future Land Use Map Amendment to a 212.3 acre tract in the heart of the Clarcona Rural Settlement to change the density from one unit per every 5 acres to 2 units per every 1 acre. The property contains approximately 54 acres of surface waters and surrounding wetland areas. **This Application requests a ten-fold increase in density when viewed overall as to the entire tract, and would allow a maximum of 316 additional residences.** However, due to clustering requirements in the Clarcona Rural Settlement/Wekiva Basin area, all development must be clustered on 30% of the property, leaving an **effective density/intensity in the area developed of 6.65 units per acre.** This would result in the **effective density of the development to be increased more than 33 times the currently existing density/intensity.** As pointed out in the Orange County staff report relating to this Application, such density is actually an “urban” density, not a rural or suburban density.

It appears that the Clarcona Rural Settlement is extremely stable as far as maintaining population is concerned, and there is no realistic reason to assume that a protected community, such as the Clarcona Rural Settlement, that was initially developed in the late 1800s, and currently has only 662 residences, would be anticipated to “need” an increase of residences of 9% yearly going forward. Even if a 9% increase in population “need” were to be identified, that “need” would be projected to be under 60 additional residences per year in the entire Clarcona Rural Settlement. With the proposed change in the comprehensive plan to allow an additional 316 residences on the CLRM site, it would take up the entire “need” (assuming a 9% growth “need”) in the Clarcona Rural Settlement for a period of over 5 years.

FLU 6.6.8 provides that an Applicant must show that “locations in areas of lower vulnerability or areas that already allow the proposed land use are not available within a reasonable distance” in order to justify an increase in density and intensity in the Clarcona Rural Settlement. The Applicant does not address this in any way in the Application. In fact, there are over 3,000 vacant lots on properties that already allow the proposed land use within the immediate area of the subject property.

It is the undersigned’s understanding that at the Planning and Zoning Board meeting, the applicant asserted that regardless of the terms of their application, they really intended to develop to a lower density than would be allowed if their comprehensive plan amendment were passed. There does not appear to be any way that such a representation could be enforced, but even if it were enforceable, such reduction, which would still result in a massive increase in density/intensity, is deemed irrelevant to the results of this study.

**As will be illustrated below, the undersigned has studied this issue and has concluded that there is no need for an increase in the density and intensity of the CLRM Investment Co. tract to fulfil a demonstrated need that is not otherwise met by existing or already approved vacant lots or units within a reasonable distance that are not located in a rural settlement.**

**IV. Materials Reviewed**

Among the many materials reviewed and used for background and statistics for the substance of this report are:

1. Orange County Rural Settlement Study dated June 2000
2. CLRM Investment Co. Application for Proposed Future Land Use Map Amendment 2017-2-1-2-2
3. Orange County Comprehensive Plan
4. Orange County Staff report concerning Proposed Future Land Use Map Amendment 2017-2-1-2-2
5. Materials as to current development applications – City of Ocoee
6. Materials as to current development applications – City of Apopka
7. Materials and maps contained on the Orange County Property Appraiser’s website ([www.ocpafl.org](http://www.ocpafl.org))
8. Materials contained on the Internet regarding on-going and proposed development in the immediate vicinity of the subject property
9. U.S. Census data

**V. Background regarding Clarcona Rural Settlement**

In order to put into perspective the facts set forth in this report, it is important to understand the specific intent of Orange County when designating and setting forth requirements for development in Orange County’s Rural Settlements. A good summary of this intent is set forth in the Orange County Rural Settlement Study, dated June 2000, which states:

“At present, residents of Orange County who make the choice to live in rural communities find a different landscape than in past years. Suburban development patterns and central utility services are reaching the boundaries of several rural communities through municipal annexations. In addition, several rural areas have residential development at higher densities within or near their borders due to their proximity to employment centers. This residential development, in some cases built on a scale or with amenities not usually found in rural areas, alters the surroundings and the character of rural areas. These trends call into question the continued viability of rural areas in Orange County. Orange County has made a number of efforts to preserve and protect rural communities in recognition of their historical nature, existing development patterns, and community cohesiveness. Such efforts include the designation of Rural Settlements on the Future Land Use Map of the Orange County 1990-2010 Comprehensive Policy Plan, the development of related future land use policies, protection of some Rural Settlements included in Joint Planning Area Agreements with municipalities, and creation of Preservation Districts. In light of the degree of urbanization in Orange County, the question of whether rural areas are merely areas waiting to be urbanized or are in need of preservation is important, as is the effectiveness of current initiatives for their preservation.”

**VI. Requirements of FLU 6.6.8**

FLU 6.6.8, which applies to the Application, provides:

**Land uses within the Rural Service Area portion of the Wekiva Study Area shall be limited to very low and low intensity uses to the greatest extent possible. Existing land uses are recognized but density and intensity shall not be increased through a future land use change unless there is substantial evidence that the change will satisfy a demonstrated need in the community or area. Any petitioner for a future land use map amendment must submit documentation that substantiates that a particular need exists in the community or area in which the change is being proposed. This documentation shall clearly identify the particular need and clearly describe how the proposed change is anticipated to satisfy that need. Evidence and documentation indicating need and indicating that the proposed development would satisfy that need must be submitted from a third party objective source. In preparing such documentation, the petitioner shall keep in mind that market demand does not necessarily constitute need.** The following evaluation factors shall be used to determine consistency with this policy. **To ensure environmental protection, projects shall identify whether a site is located in an environmentally sensitive area and whether locations in areas of lower vulnerability or areas that already allow the proposed land use are not available within a reasonable distance. Applicants must demonstrate that the proposed land use is compatible with existing land uses and community character and is the least intensive to meet the demonstrated need.** Additionally, the project will be evaluated based upon whether community or economic benefits are derived from the proposed land use at that location, as well as whether the proposed use benefits the environment (such as projects that will be designed and constructed using conservation design and green principles). **Residential projects shall demonstrate the need for additional residential development using analytical tools such as population projections and availability of existing or already approved vacant lots and/or units.** Additional considerations will include housing affordability and impacts on public services and facilities. Non-residential and mixed-use projects shall demonstrate that the proposed land use will not generate hazardous materials and waste. Additionally, factors such as support for forestry, agriculture, fishing and natural resource-based outdoor recreation industries, as well as dependence on site-specific natural resources will be evaluated for the proposed land use. [Emphasis supplied.]

**VII. Applicant’s Analysis of FLU 6.6.8**

The applicant, in Section 5 of the Application, merely states in regard to FLU 6.6.8:

“The CLRM Property is poised at the edge of an urban area located within the City of Ocoee jurisdiction, toward the western edge of Orange County. The 212.3-acre site serves as a transition point from the urban land uses in Ocoee to the rural nature of the Clarcona Rural Settlement to the north and east. An analysis of the 2010 Census Block Groups encompassing, and immediately to the east of, the subject property reflect that, while there is a higher level of quality single family residential uses within the City of Ocoee to the west and south, the areas north of the property are predominantly non-residential, including a number of institutional and governmental uses to the north. The residential uses to the north include the Lost Lake RV Resort and several individual rural homesteads and vacant land, as indicated by the figure below. This figure also reflects a high demand for single family residential property in the immediate area to the east and south, illustrated by a high level of build-out in the subdivisions found in these census tracts.

“The Orlando Economic Development Commission’s Demographic Summary for Orange County reflects a 9% increase in population County-wide and an average 9.6% increase in owner occupied housing units from 2013-2018. In order to continue keeping pace with the growing population in the County and encourage high-quality, owner-occupied housing, it is necessary to continually evaluate land suitable for single family residential development. The subject property is in an ideal location to further this goal while remaining sensitive to the rural nature of the area to the east and north through a high degree of open space preservation and a transitional density between the urban land uses in the City of Ocoee to the low density Clarcona Rural Settlement.”

**VIII. Critique of Applicant’s Analysis of FLU 6.6.8**

The Applicant’s analysis quoted above is woefully inaccurate. It begins by stating:

“The CLRM Property is poised at the edge of an urban area located within the City of Ocoee jurisdiction, toward the western edge of Orange County. The 212.3-acre site serves as a transition point from the urban land uses in Ocoee to the rural nature of the Clarcona Rural Settlement to the north and east.”

In fact, as pointed out by the Orange County staff analysis, the CLRM Property is located in the heart of the Clarcona Rural Settlement, and it is not “poised at the edge of an urban area located within the City of Ocoee,” but rather the south edge of the property abuts an area (not in the rural settlement) in Ocoee that is suburban (not urban) in character.

The analysis goes on by stating that “[t]he 212.3-acre site serves as a transition point from the urban land uses in Ocoee to the rural nature of the Clarcona Rural Settlement to the north and east.” Again, the Ocoee property is suburban (not urban) in character, and not in the rural settlement. In addition, the subject property, as well as the property to the west, north, and east of the subject property are all conforming properties within the Clarcona Rural Settlement. In fact, directly abutting the subject property, and on the same side of McCormick Road, are 5 properties (4 of which are developed) that are zoned for 1 dwelling unit for every 5 acres. There is no way that the intensification of the density of the subject property would act as a “buffer” to the remainder of the adjacent Rural Settlement Property.

The Applicant’s analysis then incongruously states:

“This figure also reflects a high demand for single family residential property in the immediate area to the east and south, illustrated by a high level of build-out in the subdivisions found in these census tracts.”

First, the single family residential property to the east and south, are **not** in a rural settlement; second, FLU 6.6.8 specifically provides that “[i]n preparing such documentation, the petitioner shall keep in mind that market demand does not necessarily constitute need;” and third, the Applicant ignores the massive number of available existing and already approved vacant lots and/or units (not in the Rural Settlement) to the west and north of the subject property [which properties will be discussed herein below.]

The Applicant then provides generalized information regarding average population growth County-wide over a period of five years. How this relates specifically to demand to live within the Clarcona Rural Settlement is unknown. In addition, there is no discussion whatsoever about how this County-wide “demand” is being filled through development in other areas of the County.

It should be noted that the Clarcona area was first settled in the late 1800s, and today there are only 662 residences within the Clarcona Rural Settlement. If this comprehensive plan application were approved, it would permit a possible additional 316 residences in the rural settlement for an increase in the number of residences in the entire Clarcona Rural Settlement of approximately 48%. Even if there is a “demand” county-wide for an increase of single-family residences of 9%, it is bizarre to assume that there would be a “demand” for an increase of 48% in the Clarcona Rural Settlement.

It appears that the Clarcona Rural Settlement is extremely stable as far as maintaining population is concerned, and there is no realistic reason to assume that a protected community, such as the Clarcona Rural Settlement, that was initially developed in the late 1800s, and currently has only 662 residences, would be anticipated to “need” an increase of residences of 9% yearly going forward. Even if a 9% increase in population “need” were to be identified, that “need” would be projected to be under 60 additional residences per year in the entire Clarcona Rural Settlement. With the proposed change in the comprehensive plan to allow an additional 316 residences on the CLRM site, it would take up the entire “need” (assuming a 9% growth “need”) in the Clarcona Rural Settlement for a period of over 5 years.

The Applicant ends its analysis of FLU 6.6.8 by stating:

“In order to continue keeping pace with the growing population in the County and encourage high-quality, owner-occupied housing, it is necessary to continually evaluate land suitable for single family residential development. The subject property is in an ideal location to further this goal while remaining sensitive to the rural nature of the area to the east and north through a high degree of open space preservation and a transitional density between the urban land uses in the City of Ocoee to the low density Clarcona Rural Settlement.”

What this statement really means is anyone’s guess. It appears to have been added to take up space in an otherwise meaningless analysis involving FLU 6.6.8.

**IX. Need for future housing stock is being met in non-rural settlement areas within a short distance of subject property**

FLU 6.6.8 provides that an Applicant must show that “locations in areas of lower vulnerability or areas that already allow the proposed land use are not available within a reasonable distance.” The Applicant does not address this in any way. The undersigned, however, has researched this issue and has learned that, in fact, there are over 3,000 vacant lots on properties that already allow the proposed land use within the immediate area of the subject property. The following is a summary of those properties:

McCormick Reserve (Ryan Homes) – development complete and lots/homes now being sold in City of Ocoee – less than a 1 minute drive due West on McCormick Road from the subject property. 134 lots

Apopka Woods (Maronda Homes) – development complete and lots/homes now being sold in the City of Apopka – a 1 minute drive due West on McCormick Road from the subject property. 76 lots

Oak Pointe South (Thompson Hills Estates) – in the process of development in the City of Apopka – directly to the West of Apopka Woods (East of Hwy. 429) – also only a 1 minute drive due West on McCormick Road from the subject property. 224 lots

Oak Trail Reserve (Center Lake Properties) – platting complete and land for sale in the City of Ocoee – a 3 minute drive West on North side of Clarcona-Ocoee Road from the subject property – 80 townhouse lots

Arden Park North (CalAtlantic Homes) – development complete and lots/homes now being sold in City of Ocoee – a 3 minute drive West on Clarcona-Ocoee Road from the subject property. 203 lots

Brynmar Estates – developed and being built - 33.5 acres on SE corner of McCormick Road and Ingram Road – a one minute drive West of subject property – 95 lots

Ocoee Pines (f/n/a Whispering Pines) – approved plat in City of Ocoee – on NE corner of intersection of West Street and Jay Street – 5 minute drive from subject property – 154 townhouses and 189 single-family lots (total 343 units)

Arden Park Phase 2 (Standard Pacific Homes) – developed and being built in City of Ocoee – 5 minute drive from subject property West on Clarcona-Ocoee Road – 217 lots

Silver Oaks (Surrey Homes) – in the process of development in Apopka – 5 minutes to North of subject property on East Keene Road – 183 lots

Arbors at Crown Point PUD – in the process of development – 5 minutes to West of subject property on West Road – 192 multi-family units on 17.5 acres

Forest Lake Estates (Ryan Homes) – development complete and now building in Ocoee – 5 minute drive on Clarcona-Ocoee Road to subject property – 240 lots

Eagle Creek of Ocoee – in the process of development in Ocoee off of Ocoee-Apopka Road and Fullers Cross Road – 7 minutes from subject site – 213 residential units, 10 Estate units, 24 Manor units, 28 Village units, 151 Cottage units – (total of 426 units)

Standard Pacific of Florida – in the process of planning in the City of Ocoee – 5 minutes from subject property once Clarke Road is extended (which will occur when property developed) – 223 acres with estimated 892 lots

The total residential units available within a reasonable distance of the subject property (not more than an easy 7 minute drive) total 3305. None of these 3305 lots are in a rural settlement and are available for development and construction to fill any perceived need for residential units within a reasonable distance from the subject property.

**X. Conclusion**

It is the conclusion of the undersigned real estate expert that there is no need for an increase in the density and intensity of the CLRM Investment Co. tract to fulfil a demonstrated need that is not otherwise met by existing or already approved vacant lots or units within a reasonable distance that are not located in a rural settlement. Therefore, **it is the undersigned expert’s conclusion that the proposed Future Land Use Map Amendment 2017-2-1-2-2 – CLRM Investment Co. application does not meet the threshold requirement for approval as set forth in FLU 6.6.8.**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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**Curriculum Vitae**



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**Professional Experience**

**State of Florida Real Estate Broker’s License** from 1974 to current (inactive 1998 to 2003 due to conflict of interest when serving with State of Florida, Department of Professional Regulation, Division of Real Estate)

**Co-Founder Steele Realty, Inc.** owned with his longtime partner, and bother, Val Steele. Steele Realty, Inc. (closed in 2003), was a general practice real estate firm, specializing in environmentally endangered land sales to Federal, and State Agencies resulting in being a major contributor to Hubbs Sea World Real Estate Institute, and the Archie Carr National Wildlife Refuge. Manager of the Commercial Division and involved in key developments of Brevard County.

**Expert Witness** (retained by numerous law firms to render legal opinions and provide reports and testimony as to real estate matters in Florida)

**Director – Division of Real Estate, Florida Department of Business and Professional Regulation, Orlando Department.** Appointed by Governor Jeb Bush. In charge of a team of investigators. Worked with FREC and FREAB. Mission of protecting the public through regulation of real estate licensee’s and appraisal licensees.

**Chairman, Florida Real Estate Commission -** Appointed by Governor Martinez 1988 to serve four years. Re-appointed in1992 by Governor Lawton Chiles for additional 4-year term. Served as Vice-Chairman, then Chairman.

**Licensed Florida Real Estate Instructor – Jason Steele Real Estate Institute**

**Director of Governmental Affairs for Smith & Associates Law Offices** A non-lawyer and sole advisor on political matters for the firm’s offices in Melbourne and Tallahassee. Head of business development and provider of expert witness testimony as to Real Estate matters in State and Federal Courts.

**Court Appointed Receiver for the Hampton Inn of West Melbourne, FL -** Strong Receivership skills have been recognized by the Circuit Court many times. Responsible for overseeing the staff and daily operations while making much needed improvements to insure occupancy, profitability and the maintaining of the Hilton flag while the property was undergoing lengthy court proceedings. Previously a Receiver in a highly visible Brevard Builders case in which he was able to save many homeowners from major losses, due to corruption of the builders. Prior receiverships also encompass apartments’ hotels, and residential subdivisions

**Downs Corporation, 2050 S. Patrick Dr. Indian Harbor Beach -** Project Manager for Dragon Pointe Mixed Use Development and Broker of Record for Downs Realty, LLC

**Coldwell Banker Ed Schlitt Realty Melbourne -** Managing Broker of the Melbourne office with multiple sales agents in real estate. Duties included oversight of all sales contracts, weekly sales meetings, performance reports, and organization of sponsored community programs.

**Appointed receiver for Brevard Builder Group by Circuit Court Judge George Maxwell -** The Honorable Judge George Maxwell needed an expert in real estate to help a group of Brevard County residents doing business with a local builder. Worked with the families on claims of misrepresentation and fund mismanagement. Expertise required knowledge of real estate contract law and qualifications for DBPR programs for claimants’ return of funds.

**Community Leadership and Involvement**

**Appointed by Senate President Andy Gardiner to Enterprise Florida Board of Directors -** a not-for-profit government and business partnership to guide Florida's economy.

**Appointed by Senate President Andy Gardiner to Space Florida Board of Directors -** anaerospace economic development organization, committed to attracting and expanding the next generation of space industry businesses in Florida.

**Member of Brevard County Charter Review Board**

**Member of East Central Florida Chamber of Commerce Legislative Committee**

**Member of Economic Development Council Board of Directors**

**Chairman of Marco Rubio Campaign for United States Senate**

**Chairman of Brevard County Republican Party**

**Member of Melbourne Palm Bay Chamber of Commerce**

**Member of Prevent Board of Directors**

**Member of Hubbs Seaworld Research Institute Florida**

**Founder, and Member of Space Coast Tiger Bay Club**

**Liaison to Florida Real Estate Education Foundation**

**Agency Task Force committee member**

**Tourism, Economic Development and Transportation, Private Property Rights, Chairman Brevard County Legislative Delegation**

**Elected to Florida House of Representatives serving Brevard County**

**References**

**Attorney References:**

**Charles Stack (Case: Sumner vs. Transportation Union)**

**Michael Palach**

**George Maxwell**

**David Dyer (Case: Kasser vs. Mendez)**

**Allan Whitehead**

**William Zei**

**Jim Mitchell**

**Randy Schwartz**

**Daniel Villazon**

**Leon N. Patricios**

**Curtis Mosley**

**Malcolm Kirschenbaum**

**Michael O’Connor**

**Jill Powers**

**Edward Tietig**

**Daniel Moody**

**Allen C.D. Scott II**

**C. Deborah Bain**

**Louis D. D’Agostino**

**Joel Boyd**

**William Bailey**

**Other References:**

**Governor Jeb Bush**

**Governor Bob Martinez**

**Governor Claude Kirk**

**Agricultural Commissioner Charlie Bronson**

**Attorney General Bill McCollum**

**Tom Gallagher**

**Rep. Thad Altman**

**Rep. Ralph Poppell**

**Rep. Mitch Needleman**

**Senator Bill Posey**

**Former United States Congressman Loy Frey**

**Former Orange County Mayor Rich Crotty**

**Guy Spearman**

**Jim Swann**

**Malcolm Kirschenbaum**

**Malcolm McClouth**

**Andy Anderson**

**Circuit Court Judge George Maxwell**

**Circuit Court Judge Bruce Jacobes**

**District Court of Appeals Judge Vince Torpy**

**Brevard County Sheriff Jack Parker**

**Former Sheriff Phil Williams**

**Ray Halbert,**

**Tom Downs**

**Dr. Michael Lesser**

**Dr. Mario Olivera**

**Bill Potter**

**Mike Krasny**

**Circuit Court Judge Charlie Roberts**

**Frank Kinney**

**Shannon Pitner**

**Frank Tsamoutales**