

February 28, 2019

via upload to Environmental Registry of Ontario website

Mr. Charles O'Hara  
Director, Growth Policy, Planning and Analysis  
Ministry of Municipal Affairs and Housing  
777 Bay Street,  
23<sup>rd</sup> Floor, Suite 2304  
Toronto, Ontario  
M5G 2E5

Dear Mr. O'Hara

**Re: ERO Registry No. 013-4505**  
**Proposed Amendment to O. Reg. 311/06: Transitional Matters – Growth Plans**  
**Hamlet of Hampton, Municipality of Clarington**  
**Part of Lot 17, Concession 5, in the former Township of Darlington**

CM Planning Inc. is the planning consultant for 562503 Ontario Limited and Honey Harbour Heights Estates Ltd., the owners of land located north of Ormiston Street, in the Hamlet of Hampton, Municipality of Clarington. As shown in Attachment 1, the property is subject to a minor rounding out of the hamlet boundary, deferred by the Region of Durham through the approval of the Municipality of Clarington's recent Municipal Comprehensive Review (Official Plan Amendment No. 107). **For the reasons detailed below, we request that OPA No. 107 be prescribed in O. Reg. 311/06: Transitional Matters – Growth Plans as being continued and disposed of in accordance with the 2006 Growth Plan as it read on June 16, 2006 and exempt from the policies in the Growth Plan 2017 that prohibit the minor rounding out of hamlet boundaries in the Greenbelt Area.**

OPA No. 107 was adopted (November 1, 2016) and approved (June 19, 2017) prior to the effective date of the Growth Plan 2017 (July 1, 2017). OPA No. 107 approved the minor rounding out of six hamlet boundaries within the Municipality of Clarington, yet deferred the limits of the hamlet expansions on the schedules to the Official Plan. OPA No. 107, and the minor rounding out of the hamlet boundaries, conformed with the provincial plans in effect at the time of adoption and approval, as required by section 3(5) of the Planning Act. The deferrals were used as a mechanism similar to a holding zone and are to be lifted once required studies and policy requirements are completed to justify the limits of the hamlet expansions. Attachment 2 from Templeman LLP sets out excerpts from various municipal and regional reports and correspondence in support of the hamlet expansions in OPA No. 107.

Through ERO Registry No. 013-4505, the province is seeking feedback regarding specific planning matters currently 'in process that should be addressed through the transition regulation' O. Reg. 311/06, including official plan amendments that have been adopted and are under appeal. OPA No. 107 is an official plan amendment that was adopted and approved (with deferrals) prior to the effective date of the Growth Plan 2017 and is currently under appeal. The ERO notice

provides the opportunity for such matters to be prescribed in the transition regulation as being approved in conformity with the Growth Plan 2006 and exempt from the policies of the Growth Plan 2017, as amended.

Section 3(6) of O. Reg. 311/06 provides for ‘matters’ such as official plan amendments that were ‘commenced by an upper-tier or single-tier municipality after June 15, 2006 and before May 18, 2017’ [emphasis added] to be continued and disposed of in accordance with the 2006 Growth Plan as it read on June 16, 2006. As per section 2(b) of the Regulation, with respect to official plan amendments, ‘commenced’ means ‘on the day the by-law adopting the plan, amendment or repeal is passed’ [emphasis added]. Thus, the existing regulation provides for ‘matters’ ‘adopted’ by an upper-tier municipality to be approved in conformity with the 2006 Growth Plan. OPA 107 was ‘adopted’ by the lower-tier municipality on November 1, 2016, yet ‘approved’ by the upper-tier municipality on June 19, 2017. It is therefore ambiguous when the ‘matter’ (OPA 107) was deemed to have been ‘commenced’.

Section 3(5) of the historical version of O. Reg. 311/06 in place at the time of adoption and approval of OPA 107 (historical version for the period June 17, 2013 to June 27, 2017) provides that a ‘matter’ that ‘commenced on or after June 16, 2006 shall be continued and disposed of in accordance with the Plan’. Section 2.1(2) of the historical version of O. Reg. 311/06 directs that such matters be ‘continued and disposed of in accordance with the Plan as it read after Amendment 2 (2013) came into effect’, ie. Growth Plan 2006 as amended by Amendment 2(2013). Thus, at the date of adoption and approval, OPA 107 was approved in accordance with the Growth Plan 2006, as amended and in accordance with the transition regulations then in effect.

As the existing wording of sections 2(b), 3(6) and 3(7) of O. Reg. 311/06 is ambiguous in its application to OPA No. 107, we believe it is important to preserve the intent of OPA No. 107 to approve the minor rounding out of the hamlet boundaries, by having it prescribed in the regulation as approved in conformity with the Growth Plan 2006 and exempt from the policies of the Growth Plan 2017 that prohibit the minor rounding out of hamlet boundaries in the Greenbelt Area.

The MMAH News bulletin on the proposed changes to the Growth Plan dated January 15, 2019, states that the Ontario government is proposing changes to the Growth Plan to “[m]ake growth planning easier for rural communities” and that “[m]unicipalities, including rural communities, would be able to adjust settlement area boundaries more easily”. Addressing this specific planning matter regarding OPA 107 through the Growth Plan transition regulation would aid greatly in making growth planning easier for rural communities by recognizing the intent of OPA 107 as it relates to the minor rounding out of hamlet boundaries.

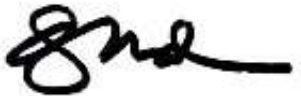
**We therefore request that OPA 107 be prescribed in O. Reg. 311/06: Transitional Matters – Growth Plans as being continued and disposed of in accordance with the 2006 Growth Plan as it read on June 16, 2006 and exempt from the policies in the Growth Plan 2017 that prohibit the minor rounding out of hamlet boundaries in the Greenbelt Area.**

# CM PLANNING INC.



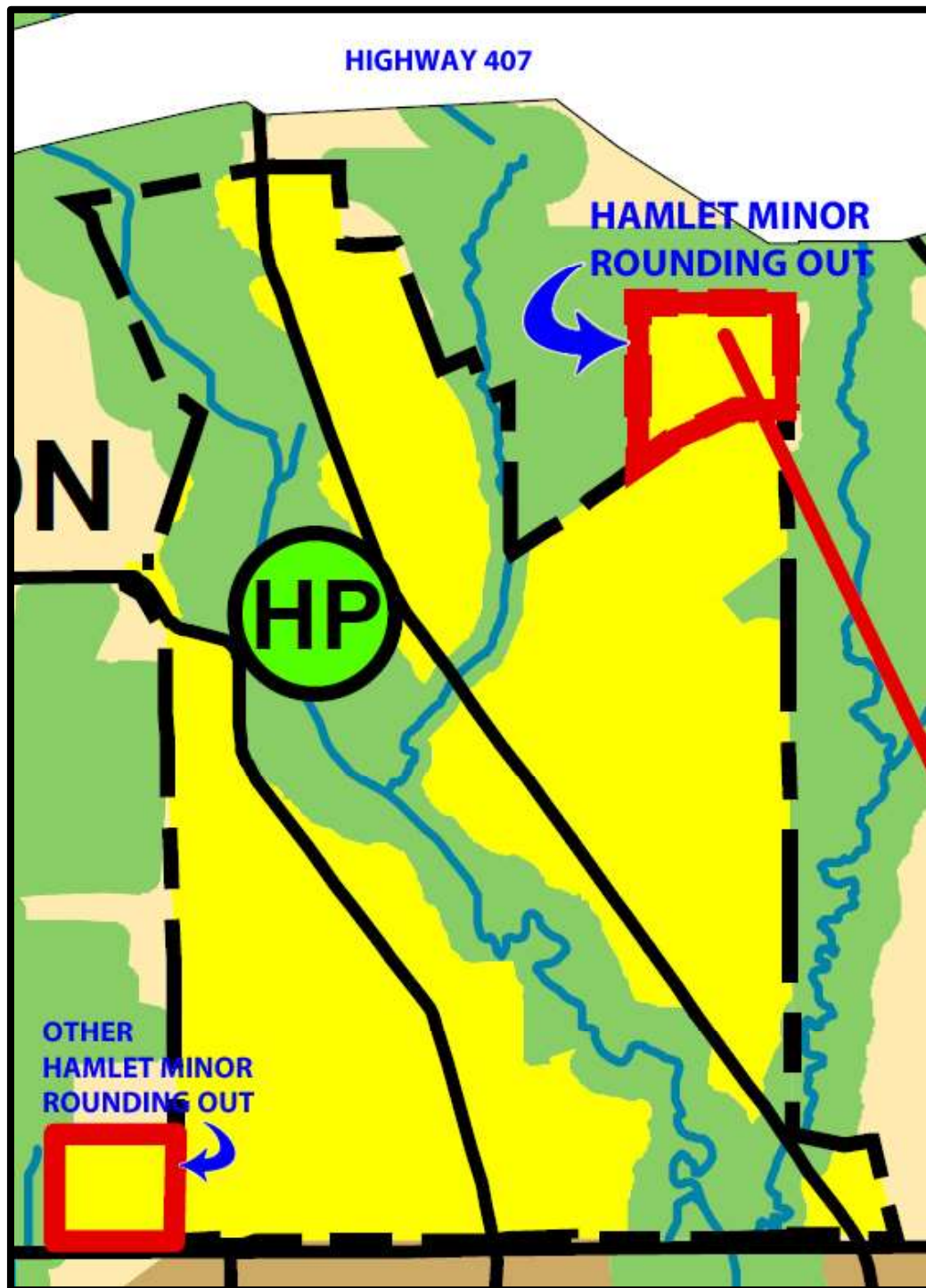
Thank you for the opportunity to provide comments on proposed changes to O. Reg. 311/06: Transitional Matters – Growth Plans and for your consideration of this important matter. We believe the changes requested herein will help to align the Growth Plan transition regulation with the intent of the Proposed Amendment to the Growth Plan.

Yours truly  
CM PLANNING INC.



Carolyn Molinari

cc Templeman LLP  
Municipality of Clarington  
client



**Location of Hamlet of Hampton Minor Rounding Out**

Base map: partial of Municipality of Clarington Official Plan Map A1 Land Use

Source: <https://www.clarington.net/en/do-business/resources/Official-Plan/Map-A.pdf>

via ERO submission

February 28, 2019

Mr. Charles O'Hara  
Director, Growth Policy, Planning and Analysis  
Ministry of Municipal Affairs and Housing  
777 Bay Street,  
23<sup>rd</sup> Floor, Suite 2304  
Toronto, Ontario  
M5G 2E5

Dear Mr. O'Hara:

**Re: ERO Registry No. 013-4505 - Proposed Amendment to O. Reg.  
311/06: Transitional Matters – Growth Plans  
ERO Registry No. 013-4504 – Proposed Amendment to the Growth Plan,  
2017  
Hamlet of Hampton – Part of Lot 17, Concession 5, in the former Township  
of Darlington, Clarington**

#### **A. INTRODUCTION AND OVERVIEW**

This correspondence has been prepared in support of the request on behalf of our client 562503 Ontario Limited and Honey Harbour Heights Estates Ltd. for amendments to the Transition Regulations (proposed modifications to O. Reg. 311/06) and/or the Growth Plan, 2017 as they relate to our client's site-specific property in the Hamlet of Hampton, Municipality of Clarington and more generally to the 2017 Growth Plan.

The following paragraphs contain excerpts from the various Municipal and Regional reports and correspondence dealing with Policy 12.4.6 of Clarington Official Plan Amendment No. 107 that provides for minor rounding out of several hamlets in Clarington including Hampton.

Clarington Planning Staff expressly state that the net result of the Region of Durham adding by modification a new section 12.4.6 to OPA 107 is that "the one-time **rounding out of hamlets** under the Greenbelt Plan is preserved and can be implemented through



an individual decision on each Hamlet when a proponent (or the Municipality) has justified, through the appropriate studies, that the Hamlet may expand”.

**B. CLARINGTON PLANNING SERVICES REPORT (PSD-054-16) SEPTEMBER 12, 2016 (EXCERPTS)**

1. “The purpose and effect of draft OPA #107 is to bring the Clarington Official Plan into conformity with the Province’s Growth Plan and Greenbelt Plan and the Regional Official Plan. The comprehensive review of the Official Plan has been undertaken by the Municipality as required by Section 26 of the Planning Act”. [Page 2]. *Commentary: Section 26 of the Planning Act provides that if an official plan is in effect in a municipality, the council of the municipality that adopted the official plan shall revise the official plan as required to ensure that it conforms with the provincial plans or does not conflict with them, as the case may be. OPA 107 clearly states that the purpose and effect of the official plan amendment was to bring the Clarington Official Plan into conformity with the Province’s Growth Plan and Greenbelt Plan, which as of the date of adoption of OPA 107 by Clarington was the 2006 Growth Plan (consolidated 2013) and the 2005 Greenbelt Plan.*
2. Page 11 - Section 6.10 of Clarington Report states “As provided in the Greenbelt Plan, minor rounding out of hamlet boundaries is permitted as part of a municipal conformity exercise. As provided in the draft OPA 107, Staff is proposing that the...Hamlet of Hampton [*note: among others*] be rounded out to include an area to the north that may be further subdivided.”
3. Page 12 - Section 6.11 of Clarington Report states: “It will be up to the development proponent to satisfy the tests of the Durham Region Official Plan which provides an extensive list of criteria that must be met prior to any further subdivision, or development of the above lands”.

**C. DURHAM REGION POST CIRCULATION COMMENTS ON CLARINGTON OPA #107 - May 5, 2017 (EXCERPTS)**

1. In this letter, the Region notes that OPA 107 addresses conformity to the Provincial Greenbelt Plan, Provincial Growth Plan and Regional Official Plan. *Commentary: As noted above, the relevant Provincial Plans were the 2006 Growth Plan (consolidated 2013) and the 2005 Greenbelt Plan.*
2. In this letter, the Region writes: “A new policy [12.4.6 – see below] is proposed to address the provision of Hamlet rounding out. The related mapping changes are

deferred, allowing Clarington to complete the appropriate studies to justify the rounding out of specific hamlets”.

3. Modification No. 80 inserts a new Section 12.4.6 - Hamlet Rounding-Out as follows: “12.4.6 Notwithstanding policy 3.4.3.2 of the Greenbelt Plan, minor rounding out of the hamlet boundaries of... Hampton... may be permitted in accordance with the relevant policies of the Greenbelt Plan and the Durham Regional Official Plan, subject to the completion of appropriate studies to justify and establish the limits of such rounding-out.”

**D. CLARINGTON PLANNING SERVICES REPORT (PSD-036-17) MAY 15, 2017 (EXCERPTS)**

1. Section 2.8 of this Report states as follows: “The Region is deferring a decision on the expansion of hamlet boundaries until more detailed information is prepared by the landowners [emphasis added] that would meet the requirements of the Greenbelt Plan and the Regional Official Plan. This includes studies of such matters as hydrogeology, impact of development on existing wells, suitability of soil conditions for private sewage disposal systems, surface drainage and hamlet character. Accordingly, the Region of Durham is proposing a modification (Modification 80) below.

“A new Section 12.4.6 is hereby added as follows:

12.4.6 Notwithstanding policy 3.4.3.2 of the Greenbelt Plan, minor rounding-out of the hamlet boundaries of Leskard, Newtonville, Kendal, Hampton, Maple Grove and Solina may be permitted in accordance with the relevant policies of the Greenbelt Plan and the Durham Regional Official Plan, subject to the completion of appropriate studies to justify and establish the limits of such rounding-out.

The net result is that the one-time rounding out of hamlets under the Greenbelt Plan is preserved and can be implemented through an individual decision on each Hamlet when a proponent (or the Municipality) has justified, through the appropriate studies that the Hamlet may expand.  
[emphasis added]

Staff agree with deferral and related modification...”.

*Commentary: the wording above in the Clarington Staff report is very clear that the intent of the deferral was to allow individual developers to undertake the necessary studies.*

**E. NOTICE OF DECISION BY REGION OF DURHAM WITH RESPECT TO OPA #107  
MUNICIPALITY OF CLARINGTON-June 19, 2017**

1. Region issues its Notice of Decision including Modification No. 80 adding new Section 12.4.6 - Hamlet Rounding-Out as follows: *"Notwithstanding policy 3.4.3.2 of the Greenbelt Plan, minor rounding out of the hamlet boundaries of... Hampton... may be permitted in accordance with the relevant policies of the Greenbelt Plan and the Durham Regional Official Plan, subject to the completion of appropriate studies to justify and establish the limits of such rounding-out"*.

*Modification No. 80 in the Notice of Decision is identical to the wording in the Durham Region Post Circulation Comments (above in section C) and is identical to the wording that was considered and supported by Clarington staff in its May 15, 2017 staff report (above in section D). Accordingly, since there was no change to the wording of the modification, the statements of planning staff in both the Durham Post Circulation comments and the Clarington May 2017 planning staff report are still applicable.*

**F. SUMMARY**

The excerpts from the Region and Municipal reports above consistently and clearly indicate that both the Region and Clarington intended that the minor rounding out of hamlets would be allowed in accordance with the Durham Official Plan and the provincial plans in effect at the date of adoption by Clarington and approval by Durham. In fact, Clarington Planning Staff expressly stated that the net result of section 12.4.6 of OPA 107 is that the one-time rounding out of hamlets under the Greenbelt Plan is preserved and can be implemented through an individual decision on each Hamlet when a proponent (or the Municipality) has justified, through the appropriate studies that the Hamlet may expand.



## G. SECTION 3(5) OF THE PLANNING ACT

Section 3 (5) of the Planning Act is relevant:

### ***Policy statements and provincial plans***

*3(5) A decision of the council of a municipality ..... in respect of the exercise of any authority that affects a planning matter,*

*(b) shall conform with the provincial plans that **are in effect on that date**, or shall not conflict with them, as the case may be. (Emphasis added)*

When OPA 107 was adopted by Clarington Council on November 1, 2016 it conformed with the 2006 Growth Plan. Again, when Durham Region approved OPA 107 on June 19, 2017 it conformed with the 2006 Growth Plan. The Growth Plan did not change until July 1, 2017. Specifically, at the dates of adoption (Clarington) and approval (Durham) the minor rounding out of the specified hamlets conformed with the Growth Plan then in effect as required by Section 3 (5) of the Planning Act. In our view, this is a critically important fact.

## H. PROPOSED MODIFICATIONS TO O. REG. 311/06

The Province of Ontario is seeking submissions “as to whether there are any specific planning matters (or types of matters) in process that should be addressed through the transition regulation. This could include, for example, official plans or official plan amendments that have been adopted and are under appeal”.

In our respectful submission, OPA 107 and in particular section 12.4.6 thereof should be “grandfathered” in the proposed amendments to O. Reg. 311/06 as Clarington OPA 107 was indeed “in process” (i.e. it had been adopted and approved subject to appeals) prior to the effective date of the new Growth Plan on July 1, 2017.

Further, in our respectful submission, it is entirely justified and appropriate to amend O.Reg.311/06 given:

- i) that the clearly stated intention of the Region of Durham and the Municipality of Clarington was to allow for and preserve the ability for a one-time minor rounding out of the specified hamlets (as was permitted in the 2006 Growth Plan) subject only to the completion of appropriate studies in accordance with the approved Region of Durham Official Plan; and
- ii) that OPA 107 was adopted and approved prior to the enactment of the 2017 Growth Plan.

## **I. FORMAL REQUEST**

For the reasons outlined in this correspondence, we therefore request that Section 12.4.6 and the accompanying Schedule of OPA 107 for the Municipality of Clarington be prescribed in O. Reg 311/06 Transitional Matters-Growth Plans to allow Section 12.4.6 and the accompanying Schedule to be approved in conformity with the 2006 Growth Plan and be exempted from the policies of the Growth Plan 2017 that prohibit the minor rounding out of hamlet boundaries in the Greenbelt area.

We further request that a policy be added to the proposed amendment to the Growth Plan to allow for the minor rounding out of hamlet boundaries within the Greenbelt Area where determined appropriate at a local level.

Sincerely,  
**TEMPLEMAN LLP**



**D. WAYNE FAIRBROTHER/JENNIFER SAVINI**  
JGS/



Certified by the Law Society of Ontario as a Specialist in Municipal Law (Local Government/Land Use Planning and Development)