

Please respond to the BELLEVILLE office

via ERO submission

May 31, 2019

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

Dear Mr. O'Hara:

**Re: ERO Registry No. 019-0018 - Proposed Modifications to O. Reg. 311/06: Transitional Matters – Growth Plans
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 Honey Harbour Heights Estates Ltd. for amendments to the Transition Regulations (proposed modifications to O. Reg. 311/06) and/or the Growth Plan, 2019 and Greenbelt 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 2019 Growth Plan.

We are requesting that the minor rounding out of hamlets as permitted under Clarington's Official Plan Amendment 107 be exempt from certain policies of the 2019 Growth Plan, so as to not unduly disrupt ongoing matters that may be impacted by the policy changes in the new Growth Plan 2019, as follows:

- **Provide that, notwithstanding the Greenbelt Plan, policy 12.4.6 and the resolution of deferrals of the hamlet expansions in the following official plan amendment are subject to the Growth Plan for the Golden Horseshoe 2019 with the exception of policy 2.2.8.2 and subsections K) i, ii, and v of policy 2.2.8.3:**

- **Clarington Official Plan Amendment 107.”**

Or in the alternative:

- **Provide that policy 12.4.6 and the resolution of deferrals of the hamlet expansions in the following official plan amendment are subject to the Growth Plan for the Golden Horseshoe 2019 with the exception of policy 2.2.8.2 and subsection K) i, ii and v of policy 2.2.8.3:**
 - **Clarington Official Plan Amendment 107.**

and

- **that the Province of Ontario provide a transition regulation for the Greenbelt Plan, 2017 to accommodate the minor rounding out of hamlets in appropriate circumstances within the Greenbelt Plan Area where an official plan or official plan amendment for such minor rounding outs has been adopted by an area municipal Council prior to July 1, 2017.**

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 feedback on proposed modifications to the Minister's transition regulation in support of implementation of the Plan. We provided an earlier similar submission in response to ERO Registry No. 013-4505 on February 28, 2019.

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 Schedules 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 Schedules to be exempt from certain policies of the 2019 Growth Plan that prohibit the minor rounding out of hamlet boundaries in the Greenbelt area.

Sincerely,
TEMPLEMAN LLP



JENNIFER SAVINI
JGS/



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