

**Ontario Municipal Board**  
Commission des affaires municipales  
de l'Ontario



**ISSUE DATE:** June 9, 2015

**CASE NO(S):** PL141206  
PL141267

**PROCEEDING COMMENCED UNDER** subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Victor Veri  
Subject: By-law No. 14-238  
Municipality: City of Hamilton  
OMB Case No.: PL141206  
OMB File No.: PL141206  
OMB Case Name: Veri v. Hamilton (City)

**PROCEEDING COMMENCED UNDER** subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Victor Veri  
Subject: Proposed Official Plan Amendment No. 272  
Municipality: City of Hamilton  
OMB Case No.: PL141267  
OMB File No.: PL141267  
OMB Case Name: Veri v. Hamilton (City)

**Heard:** May 13, 2015 in Hamilton, Ontario

**APPEARANCES:**

**Parties**

City of Hamilton

Victor Veri

**Counsel\*/Representative**

Dennis Perlin\*

Self-represented

**MEMORANDUM OF ORAL DECISION DELIVERED BY C. HEFFERON AND W. R. WINNICKI ON MAY 13, 2015 AND ORDER OF THE BOARD**

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**MATTERS BEFORE THE BOARD**

[1] Two matters were before the Ontario Municipal Board (“Board”) in these proceedings.

[2] The first matter pertained to Zoning By-law No. 14-238, the purpose of which is a series of housekeeping amendments for the zoning by-laws of the seven former separate municipalities amalgamated with the City of Hamilton as well as City of Hamilton Zoning By-law No. 05-200.

[3] Amending the zoning by-laws of the former independent municipalities is necessary because the new comprehensive City of Hamilton Zoning By-law No. 05-200 does not at this time yet apply to any of the designated Residential, Commercial or Rural areas within the expanded municipal boundary of Hamilton. It does, however, apply to all other land use designations within the City’s geographic area.

[4] Zoning By-law No. 05-200 (“By-law”) is the City of Hamilton’s new comprehensive zoning by-law to implement the new Urban Hamilton Official Plan (“UHOP”). UHOP contains the land use policies for that 20% of the geographic area of Hamilton designated for urban-type land uses.

[5] The second matter before the Board in these proceedings pertained to Official Plan Amendment No. 31 (“OPA 31”), which amends UHOP by introducing new policies for urban agriculture and to permit urban farms, community gardens and the sale of farm produce within certain areas.

[6] Victor Veri, who described himself as an “urban farmer” appealed the September 2014 decisions of the City of Hamilton to pass these two instruments.

## **NOTICE OF MOTION**

[7] Dennis Perlin, Counsel for the City of Hamilton, presented a Motion pursuant to Rule 57 of the Board's *Rules of Practice and Procedure* to have the two matters heard together and/or consecutively by the same Panel since the two matters were closely related. The Motion was not opposed.

[8] Accordingly, the Board allowed the Motion and determined that the two matters would be heard together by the same Panel.

## **EVIDENCE AND FINDINGS**

[9] Mr. Veri was represented by Elbert van Donkersgoed. The Curriculum Vitae ("CV") that Mr. van Donkersgoed presented to the Board showed that he has considerable experience in all aspects of farming and farm policy development both at the municipal and the Provincial levels.

### **Motion to Exclude Mr. van Donkersgoed from Testifying**

[10] Before Mr. van Donkersgoed took the stand, Mr. Perlin introduced an oral Motion to exclude him from testifying as an expert witness qualified to present opinion evidence on the grounds that he does not exhibit the requisite degree of impartiality. In support of this contention, Mr. Perlin pointed out that right up until the hearing had commenced, Mr. van Donkersgoed had been listed as the "agent" of Mr. Veri.

[11] After consideration of Mr. Perlin's written and oral arguments and Mr. Veri's oral response, the Board dismissed Mr. Perlin's Motion in part. The Board determined that while Mr. van Donkersgoed would be permitted to present "technical" evidence he would not be allowed to stray into "opinion" evidence. Accordingly, the Board recognized him as a Participant.

[12] Mr. van Donkersgoed's CV was entered to the evidence as Exhibit 6.

## **Request for Costs**

[13] Mr. Perlin also raised the matter of costs. His client is seeking some \$980.00, which represents the direct costs of preparing materials for this hearing – not including professional time. The Panel will deal with this matter below.

## **Zoning By-law No. 14-238**

[14] Mr. van Donkersgoed said that Mr. Veri's concern with Zoning By-law No. 14-238 pertained solely to s. 38, which remove the term "agriculture" from s. 7.4.1 of Zoning By-law No. 05-200. The term is to be replaced by three terms, "urban farm", "community garden" and "farm produce". He explained that Mr. Veri has proposed that the term "agriculture" be left in the By-law and that the other three terms be added as well. In an email dated May 13, 2015 which was entered to the evidence as Exhibit 4, Mr. van Donkersgoed advised Mr. Perlin that Mr. Veri has no objections to any of the other clauses or sections of the by-law.

[15] The Board qualified Joanna Hickey-Evans, a registered professional planner employed as Manager, Policy Planning by the City to give opinion evidence on land use planning.

[16] Ms. Hickey-Evans testified that after considerable consultation with the community and with experts in the agricultural field, she recommended to City Council that retaining the term "agriculture" while adding the other three terms would be confusing to someone reading the By-law. Council agreed with her and decided to delete the term from the By-law.

[17] The Board accepted the un-contradicted evidence of Ms. Hickey-Evans' evidence that Zoning By-law No. 14-238 represents good planning and finds that the term "agriculture" should be removed from the By-law as provided in s. 38 of the Zoning By-law No 14-238.

[18] Mr. Veri indicated in an email dated May 13, 2015, which (along with the other email communications with the City in the series) was entered to the evidence as Exhibit 4 that he had no objections on any of the other clauses or sections of the By-law. Accordingly, the Board accepted the un-contradicted evidence of Ms. Hickey-Evans and finds that Zoning By-law 14-238 No. represents good planning.

### **OPA 31**

[19] Mr. van Donkersgoed described OPA 31 as a “good first attempt” at introducing urban farming to Hamilton but contended that Mr. Veri’s main concern is that it does not go far enough. As well, he expressed the following concerns:

1. He maintained it does not permit urban farming at ground level in areas designated in UHOP for Employment uses.
2. It contains what he characterized as “restrictive” language, which would discourage urban farming entrepreneurs from risking their capital and time.
3. He contended that the term, “mushroom operations” in the By-law does not convey sufficiently precise information for an urban farming entrepreneur to use. He said that modern mushroom operations use commercially-available and odour-free compost produced in large commercial operations well away from populated areas.
4. He maintained that good farming practice long demonstrated the world over recognizes the important symbiotic effect of farming animals and crops together and should be actively encouraged in OPA 31.
5. Finally, he contended that there is no reason why urban farming should be prohibited in Natural Open Spaces (“P4”), which includes wetlands

and forests. He maintained that crops such as raspberries and fiddleheads grow easily in certain types of wetlands, for example.

[20] Ms. Hickey-Evans advised that 80% of the expanded geographic area of Hamilton is designated for rural uses and that all types of farming are permitted there. She also confirmed that pursuant to Zoning By-laws Nos. 14-272 to 14-279 (as shown in Exhibit 1, Tab 12), the zoning by-laws of the seven former municipalities as well as the City of Hamilton Zoning By-law No. 05-200 had been amended to permit “urban farming”, “community gardening” and “farm produce/produce stand” in every district except those restricted to Employment uses and that even in those areas, roof-top farming and farming inside buildings located in Industrial districts is permitted. She cited examples of the latter as medical marihuana production, aquaponics and greenhouses. The meaning of the terms “urban farming” and “community gardening” is explained in her report to Council dated September 16, 2014. Her report was entered to the evidence as Exhibit 1, Tab 2.

[21] By way of further justification for prohibiting conventional farming in Employment districts she advised that the Guideline D-1-3 from the Ministry of Environment and Climate Change classifies “cash crops” as a “sensitive land use” and such uses are prohibited within 300 metres of an industrial plant. The reasons she cited for this include the fact that sensitive land use threatens the viability of the Employment land uses rather than the other way around even if the sensitive land use was intended only to be temporary.

[22] She testified that “mushroom operations” refers only to large commercial mushroom production. It was never intended to restrict growing mushrooms in a community garden for personal or small group use. She explained that when the term “mushroom operations” was included in the draft of OPA 31 that was adopted, Council had no evidence that odour-free compost was commercially available in the area.

[23] She further explained that OPA 31 does not itself restrict farming animals and crops together. However, the Responsible Animal Ownership By-law No. 12-031, with amendments, passed pursuant to the *Municipal Act*, restricts keeping certain types of animals within urban areas. Excerpts from this by-law were entered to the evidence as Exhibit 1, Tabs 13 and 13A.

[24] With respect to the use of P4 areas for urban farming, she maintained that it is Provincial and local policy that such areas should experience as little human traffic and disruption as possible. She contended that allowing crop growing within such areas would have an unacceptable adverse impact on the natural environment in return for little benefit. The Board agreed.

[25] She then directed the Board to the 2014 Provincial Policy Statement (“PPS”) and the Growth Plan for the Greater Golden Horseshoe (“Growth Plan”). On the uncontradicted evidence of Ms. Hickey-Evans, the Board finds that both Zoning By-law No. 14-238 and OPA 31 are consistent with the PPS and conform to the policies in the Growth Plan and, as well, represent good planning.

### **Section 2.1 of the *Planning Act***

[26] Finally, Ms. Hickey-Evans cited s. 2.1 of the *Planning Act*, which provides that the Board have regard for the decision of Council on any matter that the Board also hears. She contended that Messrs. Veri and van Donkersgoed had a number of excellent suggestions but they presented little or no fact-based evidence, whereas, what Council considered and what was before the Board in these proceedings was impartial, fact-based evidence.

[27] While the courts have determined that the Board is not in any way fettered by the decision of Council on any given matter, the legislation encourages the Board to consider it. After careful consideration of Council’s decision to pass both Zoning By-law No. 14-238 and OPA 31, this Panel can find no reason why this decision should be in any way altered.

**CONCLUSION**

[28] The Board appreciated the extensive knowledge and excellent technical information provided by Mr. van Donkersgoed as well as the sincere concerns expressed by Mr. Veri respecting the very important matter of local food production. Their input contributed positively to the Board's decision on this matter. Moreover, the Board in no way wishes to restrict any concerned person from appealing any matter that that person believes may not be in the public interest. Accordingly, no costs will be awarded in this matter.

**ORDER**

[29] The Board orders that the appeal is dismissed and Zoning By-law No. 14-238, as entered to the evidence as Exhibit, Tab 18, is approved.

[30] The Board orders that the appeal is dismissed and OPA 31, as entered to the evidence as Exhibit 1, Tab 5, is approved.

[31] The Board further orders that the Motion for costs is dismissed.

*"C. Hefferon"*

C. HEFFERON  
MEMBER

*W. R. Winnicki*

W. R. WINNICKI  
MEMBER



If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Ontario Municipal Board**

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