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MANITOBA

Keeping them at bay:

Practices of municipal exclusion

By Ian Skelton

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Table of Contents

Introduction: Zoning as a tool in municipal planning

Rulings have found that Winnipeg, Manitoba, and Kitchener, Ontario, have attempted to use their powers to exclude sections of the population from particular areas. As this paper shows, these instances are not exceptional, and in fact there is a long and ongoing history of such uses of municipal powers, with significant impacts for people and neighbourhoods.

Municipalities are empowered under provincial and territorial legislation to control land development throughout their jurisdictions in accordance with their official plans. One of their powers, zoning, refers to the identification of land uses and the specification of building characteristics. This is widely recognized as one of the principal means that municipalities use to control and manage land development: it is a tool engaged in their attempts not only to ensure that land is used in ways they deem most desirable, but also to ensure that uses considered incompatible are sufficiently spaced that they are not in conflict. Zoning typically details types of land use, such as residential, industrial, commercial, recreational and so on; and also such design elements as lot widths, setbacks, building heights and floor area ratios. As the central tool employed by municipalities in the control of land it is the main focus of this review, though other tools such as development control, subdivision control and building codes are also part of the apparatus of land control.

It is generally accepted that the first zoning provisions in North America were adopted in New York City in 1916, representing, on one side, a response to concerns over building heights and incompatible land uses in Manhattan (NYC, 2011); and on another, increasing standardization and control over urban development and other areas of life (Fischler, 1998). It is generally recognized that the legitimacy of zoning and its widespread adoption in the USA rest on a case decided by the USA Supreme Court in 1926: Village of Euclid v. Ambler Realty. The Court found that the zoning measures the municipality had brought in to prevent industrial development did not usurp the rights of property provided to individuals by the Constitution (Hodge & Gordon, 2008). The Advisory Committee on City Planning and Zoning, under USA President Coolidge, drafted the Standard State Zoning Enabling Act also in 1926; and while it was not passed into legislation, the Committee issued it as a model for state legislatures to use in delineating local government planning (Artibise, 2011).

In Canada the legitimacy of zoning was granted under the British North America Act as municipalities, through powers provided to provincial and territorial governments, were given the authority to control land (Longo, 2010). The literature suggests an important constitutional difference between the countries: in the USA state involvement in land control more strongly raises issues of individual property rights and more readily attracts legal challenges.

Zoning was first used in this country in the early 1920s: the Municipality of Point Grey, British Columbia, employed it to restrict development to residential use, and Kitchener, Ontario, used it to designate and separate five different land uses. Predating zoning in Canada were provisions to separate noxious industries from residential areas and also restrictive covenants preventing the sale of property for designated purposes. The case for minimizing negative externalities among land uses, for example, conflicts between industrial and residential facilities, could be based on sound planning principles aiming to protect the health and wellbeing of the population and to promote orderly development (Leung, 2003). However, it additionally can be argued that the measures were also used in ways that reflected and reinforced relations between social groups. Walker (1997) shows that restrictive covenants were targeted at different categories of people to prevent them from settling in designated areas: this affected blacks in Nova Scotia; Asians in British Columbia (see also Weaver, 1979); and both these groups as well as Jews in Ontario. The use of these covenants was eventually made illegal by Provincial legislation, such as the 1944 Racial Discrimination Act in Ontario and the 1950 Law of Property Act in Manitoba.

Concerning the USA, Silver's (1997) review shows that it is recognized that the early uses of zoning had a multi-faceted agenda: one side focused on physical aspects of the control of land and development; another on progressive social reform; and a third on exclusion of sections of the community deemed undesirable. Silver clarifies the latter:

> The two interest groups that were regarded as the undesirables were immigrants and African Americans. (Silver, 1997, p.24)

Zoning in the USA south specified black and white areas but this was declared unconstitutional as early as 1917. Applications of restrictive covenants continued, however, into the 1960s even though they had been outlawed in 1948 (Nelson et al., 2004).

This early history suggests that urban development is closely linked with social relations: relationships among social groups find expression in the urban fabric (Harvey, 1973; Lefebvre, 1968) and in turn, urban development can reinforce or alter social relations (Hayden, 1980). While zoning formally controls land uses, it effectively also controls people who may or may not use the land and consequently their ways of life. Different authors note this process. Valverde proposes that "legal tools designed to govern things, uses, and activities usually end up governing certain groups of persons" (2005, p.37). As Nelson et al. explain, "the agenda of traditional land-use controls [is] to segregate land uses and, by implication, people" (2004, pp.423-424). Perin argues that "land use classifications, definitions and standards — alongside all their concrete tasks — name cultural and social categories and define what are believed to be the correct relationships between them" (cited in Ritzdorf, 1985a, p.177). These authorities speak from the widely held position that municipal zoning is centrally implicated in the collective processes that alter the interface between built form and social relations.

In some instances, our historical vantage point enables the identification of such relationships that were not apparent at the time. For example, Laws (1993) argues that elderly people were effectively barred from living in the early North American suburbs since those areas were constructed exclusively for nuclear families, and

that this had a mutually reinforcing influence on ageist attitudes. Hindsight shows that in some instances an awareness of the role of planning in mediating physical and social relationships should have been more carefully brought into planning analysis, and an important example of this can be found in public housing siting work in Yonkers, New York, following World War II. As explained by Feld, planners had adopted criteria such as "political feasibility" (Feld, 1986, p.387) in locating new projects, which meant that public housing would be constructed in predominantly black areas. This, in turn, would add to racial segregation in schools, which, in a District Court ruling in 1985, was found to contravene civil rights legislation.

This report is a review of peer-reviewed literature[1] addressing zoning and other exclusionary measures used by municipalities. It examines scholarly works and analyses showing that municipalities, through their legal authority to zone their territories, have included or excluded certain groups of people, whether intentionally or otherwise. The report is developed in three sections. First, it reviews literature dealing with zoning measures that have set elevated expectations for housing in designated areas of municipalities, a practice commonly known as exclusionary zoning. Second, it reviews literature that addresses controls on facilities that provide residential and other services to people with disabilities. These sections, and particularly the first one, draw extensively on studies from the USA, reflecting the availability of published material. In many instances the experiences from the USA can be seen to apply to Canadian contexts, and the text attempts to draw out exceptions, particularly in relation to race.

The third and final section of the report is a brief summary drawing together the main themes of these two sections and commenting on their consequences for contemporary planning in Canada. The report demonstrates that while zoning is often thought of as an objective tool derived from technical principles and impartially applied, its uses can in many instances be seen to have a central role in mediating relations among social groups. More specifically, zoning has been an important component of processes of ghettoization of sections of the population identified as undesirable through certain characteristics such as race and ability.

Two limitations to this report should be mentioned. First, as a literature review, it does not bring in some forms of material, such as original case studies, that could inform the analysis. Second, due to time constraints the report focuses on the two thematic areas mentioned, thereby omitting a number of further instances of exclusions of people through the application of municipal powers. The twin focus enables the review of two, well-developed sets of literature, though it is acknowledged that restrictions on sex trade workers (Edelman, 2011; O'Connell, 1988), on people convicted of sex offences (Tewksbury, 2011), on people experiencing homelessness (Wynne-Edwards, 2003) and on places of worship (Germain & Gagnon, 2003), for example, are among the issues that are beyond the scope of the report.

1 In peer review, material is submitted anonymously to knowledgeable critics, and comments are provided anonymously to authors along with an editor's decision about acceptance or rejection, and requirements for revisions. Academic communities generally regard peer review as a useful guarantor of quality.

Exclusionary zoning

Zoning is the "planning tool that deals with the use of land and the physical form of development on individual parcels of privately owned land" (Hodge & Gordon, 2008, p.100). In the sense that it permits particular activities and buildings in particular places, zoning is necessarily exclusionary, because other uses are prohibited (Clingermayer, 2004). However, exclusionary zoning is the name given to various zoning practices that set particularly high standards for what is permitted in residential areas, thereby making them inaccessible for some social groups (Mandelker & Ellis, 1989). It generally relies on the use of measures such as minimum lot sizes, floor areas and setbacks; restrictions on multiple dwellings and manufactured homes; and architectural design specifications, all of which limit the types of buildings permitted in residential zones but also, as the literature suggests, restrict people.

The practice by municipalities of using controls on land use to constrain their social composition is a long-standing one in Canada. Writing about Shaughnessy Heights, Vancouver, over the period since the CPR developed the area as a suburb for the wealthy after World War I, Mitchell observed:

> Through various exclusionary tactics of zoning, pricing, marketing and the imposition of informal covenants, the area was established for, and remains controlled by, wealthy Anglo-Canadians. (Mitchell, 2004, p147)

The passage shows a clear role for the municipality through zoning, but also that the municipality's actions take place in a context in which they reinforce and are reinforced by actions of other constituencies and market mechanisms.

In Canada several authors have pointed to experiences, in a number of cities, of municipal controls such as zoning regulations which are operationalized to preserve high land and dwelling values, and to ensure that areas are developed and maintained for affluent groups (Carter and Polevychok, 2006; Conference Board of Canada, 2010; Gunn et al. 2009; Harris, 2004; Harris and Pratt, 1993; Ley, 1993; Marquis, 2010; Moore, 1982; Novac et al., 2002). The studies reveal a broad consensus that exclusionary zoning is prevalent in Canada though there is a serious shortage of studies analyzing the processes through which exclusionary zoning has been established, or the concrete ways in which it works in this country.

Exclusionary zoning has received particular attention in the USA, at least partly due to the influences of race relations on urban development there. Certainly, in considering implications for Canada of USA experiences with exclusionary zoning the differences between the countries, particularly in relation to the ways race is approached, must be kept in mind. Nevertheless the USA literature is well developed with both case studies and multicity analyses, and several principles apply to Canada.

Considering the motives for exclusionary zoning, several reasons have been extensively documented in the USA: fiscal issues, fear of crime and maintenance of "community character" (Danielson, 1976, p.2); preservation of property values (Bogart, 1993); and minimizing externalities among land uses and attracting favourable development (Chakraborty et al. 2010). Some of these reasons might be rationalized in terms of sound planning principles as mentioned above; however, several authors explicitly argue that zoning has been used to restrict black people's access to the suburbs (Chakraborty et al., 2010; Clingermayer, 2004; Danielson, 1976; Krefetz, 1979; Pendell 2000; Rabin, 1989; Ritzdorf, 1997; Rollenston 1987 in Bogart 1993; Silver, 1997).

Although exclusionary zoning in suburbs is generally acknowledged to be a widespread practice today, this does not necessarily mean that underlying racist ideas also predominate. Scheutz (2008) cites studies showing that such land use regulations can result from the influence of "a small number of active participants, even if their goal is contrary to the preferences of the passive majority" (p.558).

These studies suggest that zoning may enable municipalities to exclude racialized populations without resorting to overt expression of exclusionary sentiments (Krefetz, 1979), which might be illegal. They suggest also that zoning as a tool may be used without many members of the excluding communities being actively aware of their resulting exclusions, which attain an appearance of normalcy as they are enforced through the power of the police. Arguments expressed in terms of social fears and risks may obscure the exclusionary consequences of certain zoning legislations. Thus exclusionary zoning can be seen as an element of a complex of relations, that also govern other elements of contemporary urban life such as mortgage lending, real estate markets and infrastructure development, that maintain the status quo of social relations.

The following parts of this section document the various forms of opposition to municipal exclusionary zoning practices that emerged in civil society, legislatures and the judiciary in the USA. It notes that there are limited measures in place in Canada to counter exclusionary zoning, and concludes by highlighting the persistence of the practices in both countries.

Early action against exclusionary zoning in the USA

By the 1960s, racial segregation of cities in the USA was firmly entrenched, with marginalized, black communities in the city centres surrounded by white communities in the suburbs, many of which used zoning measures as indicated above to exclude racialized populations (Haar, 1997). The social tensions associated with this urban form were among the causes of federal legislative action on fair housing (Connerly, 2006) as access to quality residential environments and growing employment opportunities was racially determined.

While the majority of the population of suburbanites evidently has not taken responsibility for housing and social issues in the inner cities, many have done so. Movements for fair housing did emerge in several suburban municipalities in the US, particularly those with large and racially diverse populations, liberal values and professional planning staff (Danielson, 1976). Impetus for making exceptions to exclusionary zoning could be found even in affluent suburbs, because residents realized that the restrictions

prevented workers from filling jobs there, leading to a shortage of services (Ihlanfeldt, 2004a; 2004b).

Pressure within the suburbs for fair housing had limited effect because of the predominant sentiments in active politics for exclusion at the local level (Haar, 1997). Nevertheless by the 1960s a variety of local groups were actively working for fair housing.[2] These encompassed low-cost housing developers, fair housing committees, and civil rights groups; and national groups including trade unions, ecumenical organizations, the civil rights movement and foundations that had taken up the struggle. In 1969 planner Paul Davidoff and Neil Gold, a former staffer at the National Committee against Discrimination in Housing, formed The Suburban Action Institute (SAI). Davidoff was disdainful of exclusionary suburbs, which he argued had not gone to the expense of buying the land needed to protect their interests, but, through their powerful dwellers' influence, had set up legal means of doing so through exclusionary zoning. The SAI worked not only on political action and education but also on the actual development of low-cost housing. For the latter, they were prepared for legal action anticipating that suburbs would refuse to change low-density zoning. Overall, however, the direct provision strategy did not immediately result in the construction of many units as projects were bogged down in the courts, and the effects of local political pressure were muted.

Attacking exclusionary zoning through state legislatures

Attention turned to state legislatures as a vehicle for opening the suburbs. States were believed to be more amenable to taking action against exclusionary zoning because they would be aware of the need and because their political bases were broader than the suburbs. Validation of this point of view materialized in 1969 when Massachusetts brought in an Anti-Snob Zoning Law (Chapter 40B of the Massachusetts General Laws), under the leadership of new, liberally-minded legislators (Krefetz, 1979). The provisions allowed proponents of projects that included a mix of low- and moderate-cost units to apply for permission where existing zoning did not allow it. The process was expedited, and if the permit were denied then the State could order the municipality to issue it. The initiative in Massachusetts was replicated in Connecticut and Rhode Island, but not broadly throughout the USA as sympathetic state legislatures expected legal cases (Mount Laurel; see below) to set sufficient precedents against exclusionary zoning (Basolo, 2011). However, in other states legislatures responded evasively to exclusionary zoning as municipalities had done because there was a limited political base for opening the suburbs (Haar, 1997) and thus gains against exclusionary zoning were limited.

An early evaluation by Krefetz (1979) found some success under anti-snob provisions in building housing for elderly people but reported that lower cost, family housing was still effectively blocked. Krefetz also observed that the opponents used delaying tactics to destroy the viability of projects, an observation confirmed by Scheutz (2008) who argued that delays were used to undermine the effectiveness of anti-snob laws in the provision of affordable housing. Overall, however, an extensive analysis by Cowan was more favourable. He found:

> that adoption of an anti-snob law can result in the creation of significantly more affordable housing in exclusionary municipalities than would have been created if the law had not been enacted. (2006, p.307)

Cowan's study concludes with the recommendation that provisions such as anti-snob laws could fit with other mechanisms like mobility projects

2 Much of the historical material here is drawn from Danielson (1976).

that assist inner city residents to move to suburban housing, and projects reducing the inner city concentration of public housing. These mechanisms can contribute to overcoming the effects of exclusionary zoning that create and maintain the privileged composition of suburban communities. Cowan's suggestion, of course, reminds us that progress on a complex social problem will probably require multiple initiatives.

Initiatives through the USA judiciary

Another approach to undermining exclusionary zoning operates through the judiciary, perhaps most famously through the two Mount Laurel cases, Southern Burlington County NAACP v. Township of Mount Laurel, New Jersey, first argued in 1975 and then reaffirmed in 1983 (Payne, 2006). Following an influx of affluent whites, the Township of Mount Laurel brought in exclusionary zoning that priced development out of range for longer-term black residents, and the National Association for the Advancement of Colored People took action against the Township. The implications of the two New Jersey Supreme Court decisions were that municipalities are required to accept a proportion of the regional need for low-cost housing. They marked a major blow to exclusionary zoning by "finding and enunciating a constitutional right to live in the suburbs for all people—rich or poor, black or white" (Haar, 1997, p.635). However, the decisions also allowed municipalities to pay others to accept higher shares in lieu of providing for their own share of low-cost housing, leading to a "market of exclusion" (Bogart, 1993, p.1670) in which the right to exclude people is traded among municipalities.

The Mount Laurel decisions requiring a proportion of low cost housing to be included in municipal plans have been assessed as effective in undermining exclusionary zoning: "it is safe to conclude that the Mount Laurel decisions have enabled thousands of people in New Jersey to live in affordable housing units in attractive suburban communities that otherwise would have shut them out" (Haar, 1997, p. 642). Furthermore, courts in other states decided in a similar fashion (Cowan, 2006) as the decisions have affected legal thinking throughout the USA (Fischel, 2004). In addition, the decisions may also have been an encouragement for legislative action as several states brought in fair housing acts in their wake (Haar, 1997). Perhaps most important, the decisions dispelled the idea of zoning as a "neutral tool" (Dyble, 2010) and showed that it is centrally implicated in social relations in the urban realm.

Federal legislation in the USA

Prior to the Mount Laurel decisions, and in the wake of the 1964 Civil Rights Act, the national government in the USA adopted the Fair Housing Act. This legislation is Title VIII of the 1968 Civil Rights Act, and it received presidential signature just one week after the assassination of Martin Luther King, Jr. The Act placed housing under civil rights provisions (McCartney & Pratt, 2003) and prohibited discrimination in housing on the basis of race, colour, national origin and religion. By 1988 the Fair Housing Amendments Act also included sex, handicap and family status (Patterson & Silverman, 2011). The provisions extend to all aspects of housing, such as renting, selling, mortgaging and, important for our purposes here, zoning. They have been regarded as essential for the movement towards equality in housing though greater resources are required to develop a more robust enforcement system (Yinger, 1999), and racial segregation persists in the USA (Friedman, 2011). The scale and complexity of annual outstanding needs in relation to supporting fair housing are staggering:

> Literally millions of acts of rental, sales, lending, and insurance discrimination, racial and sexual harassment discrimination, and zoning and land use discrimination go virtually unchecked. (Henderson et al., 2008, p.13)

As a result Henderson et al., showing that the social relations mediating discrimination in hous-

ing are deeply rooted and inter-related, call for multifaceted initiatives including education and regional approaches as well as those focused on compliance.

Exclusionary zoning in Canada

The widespread recognition of exclusionary zoning practices in Canada was noted above, yet responses through federal or provincial legislatures or the judiciary have not emerged as consistently as they have in the USA. Reasons for this include heightened race relations in the USA coupled with the constitutional difference previously identified. Thus exclusionary zoning in the USA is more highly visible and more actively contested on the grounds of individual property rights than it is in Canada.

The Supreme Court in Canada has ruled that municipalities must zone for land uses and not for users of land. This principle figures prominently in the regulation of facilities providing services to people with disabilities, as shown in the following section of the report. However, leading legal experts argue that elements of exclusionary zoning such as minimum lot sizes, unit size and so on "can severely discriminate against the poor without zoning directly against the users of property" (Makuch et al., 2004, p.200).

Under a short-lived but bipartisan policy in Ontario, the Province required municipalities to bring in policies that would ensure that one-quarter of all new residential units within their areas would be affordable, under Provincial definition (Ontario Ministries of Housing and Municipal Affairs, 1989; Ontario Ministry of Housing, 1991, p.122). If fully implemented the measure would have increased supplies of affordable housing, but because affordable units could be anywhere in a municipality it would not necessarily have affected exclusionary zoning. The approach contrasts with inclusionary zoning more widely used in the USA, which promotes production of affordable housing as a percentage of each development (Gray, 2009).

Current legislation in most provinces and territories does not require municipalities to designate land for affordable housing. The exception is the Municipal Government Act in Nova Scotia, which merely states that municipal plans must "address" affordable housing as well as special needs and rental housing. The Act leaves it to municipalities to define needs and affordability, however, so there is no firm guidance from the Province. Inclusionary zoning is not addressed legislatively in Canada.

Summary

Despite the judicial and legislative frameworks that have been established in the USA, commentators agree that segregation and discrimination through municipal zoning still persist in that country (Lamb & Wilk, 2009; McCartney & Pratt, 2003; Schwartz, 2006). As Patterson & Silverman lament: "40 years after the passage of the Fair Housing Act, discrimination remains a mainstay in suburban housing markets" (2011, p.184).

Recognizing, through an examination of previous experiences, that municipalities tend consistently to apply zoning measures in exclusionary ways, these authors call for sustained intervention by regulators and the voluntary sector, access to resources that will fund these efforts, introduction of inclusionary zoning to replace exclusionary regimes, and concerted planning for fair share housing allocations. They propose that local leadership will need both training and commitment to overcome the structural barriers still in place, within which exclusionary zoning persists. The breadth and complexity of these interventions speak to the depth to which exclusionary zoning reflects exclusionary social tendencies within the USA.

In Canada the main tactic called for against exclusionary zoning is inclusionary zoning, broadly recognized as a potential tool for opening access to affordable housing (Conference Board of Canada 2010). There are currently no provin-

cial requirements for municipalities to dismantle their exclusionary zoning practices, whether through inclusionary zoning or otherwise.

While inclusionary zoning could be a useful measure, the experience of the USA shows that complex interventions are required because exclusionary zoning operates alongside other aspects of urban development in ways consistent with prevailing social relations. Without a concerted effort against exclusionary zoning, one of the main influences of municipal zoning on social relations will persist. A recent assessment of zoning states:

> It is a very effective way for communities to create legal barriers that support a hierarchy in which some human beings are privileged and some are subordinated because of their class, race, and gender characteristics. (Ritzdorf, 1997, p.56)

Community care for people with disabilities

Planning for community-based care for people with disabilities[3] has been a major focus of attention in several countries over the period since the 1960s. On one side, this was driven by the transformation of care from institutional situations to community settings for people living with psychiatric disabilities (Simmons, 1982) and people with mental disabilities (Simmons, 1990). Living in neighbourhoods changed from being thought of as an option for aftercare to being "the preferred site for almost all domiciliary care" (Budson, 1975, p.138). This transformation in the approaches to care in society, known as deinstitutionalization, led to the construction of small scale residential and other service facilities[4] to replace large psychiatric hospitals and long-term residential institutions. On another side, community-based care was driven as new needs were recognized and acted on through the development of community-based care options (Cameron & Crewe, 2006; Dear et al., 1997). For example, facilities for people with brain injuries, HIV-AIDS, substance use issues, and other circumstances were built according to what had become the prevailing decentralized, small scale, community norm.

The transformations in addressing the care needs of people with disabilities have many roots. Some authors suggest that the reasons for this conceptual conversion on the part of providers and funders include financial considerations (Dear & Wolch, 1987) and a desire to provide better care and quality of life (Martin & Ashworth, 2010; Rempel, 2007). More broadly, the shift reflected a growing belief in normalization and integration of this varied group of people into the mainstream of society rather than marginalization through segregation (Crawford, 2008a). The deinstitutionalization of people with disabilities enables us to think differently about social relations of ability, as the medical model of illness has given way to a social model of disability

3 The discussion focuses on psychiatric disabilities, often referred to as mental illnesses, and mental disabilities, often referred to as developmental disabilities or learning disabilities.

4 Residential and other services are in many instances considered together here because the focus is on municipal actions that exclude people with disabilities accessing any type of service. Some actions specifically target group homes as noted in the text, though in many instances the literature does not specify the service type.

(Raphael, 2009). The medical model views the experience of disability as a deficit that resides within an individual and as something that must be fixed if people are to live meaningful lives (Walker, 2004) through clinical interventions and medication (Humpage, 2007). In contrast, under the contemporary understanding it is the social environment that creates disability. It is the social environment that, drawing on Crooks & Chouinard (2006, 347), governs where people with disabilities belong, where they do not, and on whose terms. We move from thinking of people with disabilities as "recipients of care" to understanding all people to be "individuals possessing independent agency" (Finkler, 2009, p.16).

This section comprises four main parts. The first is a brief look at the growth of community-based care facilities and their spatial concentration in urban areas. The second part is an overview of local responses to the introduction of care facilities in urban neighbourhoods. These responses have been influential in stimulating the use of municipal powers in controlling the facilities. The third part presents an indication of the various ways that municipal powers have been employed to control community-based care for people with disabilities, and the ways that the courts and upper-level governments have acted to restrain the application of municipal powers. The final part is an assessment of the current situation of the uses of municipal powers in controlling care facilities for people with disabilities. As in the previous section, the sources used are predominantly American because the literature in the USA is well developed; however, several Canadian studies are also brought in.

Expansion and concentration of community-based care facilities for people with disabilities

Growth of the number of community-based care facilities for people with disabilities has been striking. Budson (1975) notes that in 1960 there were seven residences for people living with psychiatric disabilities in the entire USA; and by 2009, while national figures are not available, there were a reported 17,000 facilities providing residential care with community-based housing in the State of California alone (Beall, 2009).

In Canada data are not available to track the period of expansion, and there does not appear to be a source giving the number of non-residential, community-based facilities providing care for people with disabilities. Nevertheless Statistics Canada has monitored the number of residential care facilities since 1984-1985. These are defined as: those residential facilities that are approved by provincial or territorial bodies and have four or more beds for elderly people; people with mental, physical or psychiatric disabilities or substance use issues; children with emotional disturbances; and also people in a number of other circumstances. In 1984-1985 there were 2092 residential facilities beyond those for elderly people. At the end of the 2008-2009 fiscal year there were 4845 such facilities in Canada, of which 2216 were for elderly people (Statistics Canada 2011). Thus there were 2629 other residential facilities in the country, which by and large are the community residences that have drawn attention in planning. Growth in the number of residential facilities was not even over the period, but for our purposes here the data give an indication of the number of facilities nationally in Canada that provide residential care in communities rather than in institutions.

While it was at the upper levels of government that the decisions to deinstitutionalize were taken, the ramifications for people other than those centrally involved — such as service users, caregivers and workers — were felt most immediately at the municipal level. In the years following the initialization of deinstitutionalization, concentrations of community-based care facilities in inner city areas were said to cause considerable concern for urban form and function in several cities, including Toronto (Joseph & Hall, 1985). The concentrations referred to serv-

ice hubs that emerged in the deteriorated inner areas because low land values there made rents affordable for residents and development costs more manageable for providers (Wolch, 1979). A new phenomenon described as 'institutional saturation' was materializing in the city centre as managers avoided areas where rezoning would be required and targeted deteriorating areas.

The concentration of care facilities led some analysts to ask whether community health had successfully replaced institutional care, or "created a new monster, an asylum without walls" (Wolpert et al., 1975, p.25). Wolch (1980) argued that such concentrations had serious consequences. Using the term "service dependents" to refer to people in a range of disabling situations, she suggested that the social and environmental conditions of the deteriorating inner city could further disadvantage them. Their ghettoization could also accelerate urban decline or hamper renewal.

Recognizing the complicity of municipal control over land use in the process of concentration, Wolpert & Wolpert argued with prescience that municipalities should take responsibility for people with disabilities and adopt collaborative methods: "Rather than wait for court rulings to restore[5] freedom of residential choice for the disabled, local responsibility could be discharged now through a non-coercive method" (1974, p.75).

That was not to be. Using the same political logic applied in exclusionary zoning, as described in the previous section, municipalities attended to the demands of what were, in many cases, active minorities who resisted the siting of care facilities for people with disabilities and attempted to prevent the establishment of the facilities altogether (Applebaum, 1983, p.399) or to direct them away from areas they felt were likely to form effective opposition (Wolpert & Wolpert, 1974).

Characterized by some as "dumping" (Wolpert & Wolpert, 1974) the process of deinstitutionalization, rather than an integrated application of social policy and physical planning tools, left substantial sections of the community of persons with psychiatric or mental disabilities vulnerable to abuse and without options for services. Planning became "a realm of institutional practice where host community hostility is privileged and the right of disabled people to social participation through choice of living environment is curtailed" (Gleeson, 1997, p.123).

Local responses to community-based care facilities

Local pressures have driven the way municipal planning is applied in relation to community-based care facilities for people with disabilities. In many cases the response has been negative: Tse (1995) cites two early analyses of community-based residential care, one from 1975 claiming that one-half of the plans to locate group homes in residential areas in the USA had been derailed by local opposition, and the other from 1983 saying that three-quarters of group homes in that country had met significant resistance. An indication of the pervasiveness of negative responses is that the term NIMBY, the acronym of Not in My Back Yard, was transferred from environmental planning into human service delivery in the 1980s. As Ross (2007) astutely observes, the transfer places disabled people on par with hazardous land uses.

In practical terms, the growing need for community-based care facilities and the consistent pattern of opposition to them were contradictory elements (Davidson, 1981), constituting a serious blockage in social policy and preventing the people affected from developing options about how to live their lives. Several studies of community-based facility siting issues were undertaken to understand the opposition, and what to do about

5 The use of this term is noteworthy because people with disabilities did not previously have freedom of residential choice and therefore it could not be restored.

it. This part of the report summarizes current knowledge on the nature of NIMBY in relation to community-based facilities providing services to people with disabilities.

Some contextual factors influence local responses to proposals to locate care facilities for people with disabilities in neighbourhoods. Dear (1992) argues that "external events" such as unemployment and political currents can affect the level of acceptance of these facilities in a particular place. In these terms anger can be directed at any change in the urban fabric and generate opposition regardless of the actual nature of the particular community facilities proposed. Differences in responses can be expected to vary across space as well as over time: Gerdner & Borell (2004) argue that while NIMBY is a problem globally, its incidence varies as Sweden, for example, exhibits relatively low figures.

People's attitudes were thought to be a major generator of NIMBY and therefore of municipal action, and early studies were based on surveys probing the degree to which people would be accepting of a facility providing residential or other care to people with disabilities in their neighbourhood. A landmark study of services for people with psychiatric disabilities set in Toronto, *Not on our street*, produced an observation consistent with one noted in the analysis of exclusionary zoning in the previous section: opposition to community-based facilities was often spurred by a small but influential minority (Dear & Taylor, 1982). The study also found that characteristics of survey respondents, such as social status and contact with potential service users, seemed most strongly associated with their feelings about people living with psychiatric disabilities. It was these, Dear and Taylor document, which generated their attitudes to the facilities, rather than the specific nature of the facilities themselves or the characteristics of the neighbourhood.

Attitudinal studies, arguably, suffer a methodological limitation as they ask people about hypothetical sitings rather than about their immediate experiences with community-based facilities providing care for people with disabilities. Tellingly, some studies have found favourable attitudes towards people with psychiatric disabilities (Repper & Brooker, 1996), but this is counter to what many program organizers have found in attempting to site facilities (Cowan, 2003). To compensate for this discrepancy, research strategies were adapted, and several case studies of NIMBY episodes in varied circumstances, and other studies tapping into experiences across cases, have furnished some clearer understanding of the phenomenon.

Two early studies adopting case oriented strategies suggest that actual experience of a community-based facility is significant in shaping attitudes. In interviews with residents near community homes for people living with psychiatric disabilities in Long Island, Arens (1993) found that while opposition formed in early phases of siting processes, it wore off over time. Opinion surveys in suburban Virginia found that respondents living in neighbourhoods where residential services had located were more favourable to them than respondents in neighbourhoods where they had not (Wahl, 1993). Nevertheless, Wenocur & Belcher (1990) report that service providers felt a lack of previous sitings was associated with community acceptance.

While results of studies do not provide a conclusive understanding of NIMBY (Piat, 2000), a number of themes have emerged. Some work has attempted to differentiate the level of resistance in terms of neighbourhood characteristics. The influence of neighbourhood type on responses to proposed community-based facilities for people with disabilities is, however, uncertain: some argue that where class differences in neighbourhood opposition are found it indicates a lack of organization in the lower class areas, and highlights the importance of community development (Wenocur & Belcher, 1990). Others argue that it reflects a lack of political connectedness (Graham & Hogan, 1990).

Takahashi & Dear (1997) note that areas with less residential land use and those with mixed land use tend to foster less resistance to facilities, and that upwardly mobile neighbourhoods tend to oppose them. In addition to the characteristics of the particular community, the broad regional context (mentioned above) would reflect geographic differences in attitudes. Smaller facilities (Gerdner & Borrell, 2004), those built as apartments (Wenocur & Belcher, 1990) and relatively isolated from the local urban fabric (Davidson, 1981) may tend to be more accepted by a community. Beyond these basic contributions, though, the pattern of which areas might be receptive is quite complex, and depends on several factors, possibly including the forms of political representation at the local level (Clingermayer, 1994).

It has been recognized that the needs of different service users have affected the acceptability of different community-based facilities for people with disabilities. In an article showing certain biases of the time, Davidson (1981) anticipated "deviant behaviour" on the part of service users and reported literature arguing that in deteriorating neighbourhoods such behaviour might go unnoticed; and furthermore, residents might not value the neighbourhoods much so they wouldn't take action in a defence against a proposed facility. Cautions about behaviour of people with disabilities persisted in the literature (Takahashi, 1997) reflecting prejudice against them (Bergquist, 2006) and creating a social fear of an unspecified and unconfirmed risk or threat.

While the analysis of neighbourhood opposition to community-based facilities in Delaware by Davidson (1981) found several located in the suburbs (where opposition was expected by the author), these tended to be services for children or for people with physical or mental disabilities. Facilities providing care for people with psychiatric disabilities and substance use issues tended to be located in the inner city. A study in Philadelphia found that community-based services for people with mental disabilities were not clustered, whereas those for people with psychological disabilities tended to locate in relatively stressed and unstable neighbourhoods (Wong & Stanhope, 2009). The authors point to differences in siting principles between the two types of care facilities that probably underlie the spatial pattern, but also cite potential local concerns about people with disabilities, especially psychiatric disabilities.

Attitudes towards community-based facilities for people living with disabilities have been framed in terms of a "hierarchy of acceptance" (Dear, 1992, p.292) with the most acceptable people being in commonly experienced situations such as illness and old age. Less acceptable, in this hierarchy, are people whose situations are perceived as being of their own making, such as people involved in criminal activity or substance use. People with psychiatric and mental disabilities populate the middle ranges of the hierarchy. Takahashi and Dear (1997) reframe the issue arguing that underlying acceptability are the additional factors of the level of threat that a community may feel when faced with a proposed facility, and their bias towards people perceived as economically unproductive and therefore socially undesirable. These analyses lead to educational and other strategies that can be mobilized to allay a community's misgivings, further developed in Schively (2007).

Summaries of arguments used in NIMBY processes against the development of services for people with psychiatric or mental disabilities are provided by Cowan (2002, 2003), Dear (1992), Oakley (2002), Piat (2000), Stanley et al. (2005), and Wenocur & Belcher (1990). These are listed in Box 1.

It is generally recognized that the arguments are often used without firm basis (Bergquist, 2006) or rely on prejudices (Crawford, 2008b) rather than formal assessments (Schively, 2007). Detailed studies have, thus, probed how these arguments are manifested in NIMBY processes in order to

Box 1. Arguments invoked in NIMBY episodes

- People with disabilities will commit crime or behave antagonistically;
- People with disabilities are vulnerable and crimes will be perpetrated against them;
- The development will attract other undesirables such as drug vendors;
- The proposed location is unsuitable because vulnerable residents will be placed in a dangerous environment;
- The proposed location is unsuitable because children will be exposed to people with disabilities;
- The development will generate traffic and consume parking;
- Community-based services cannot care adequately for the proposed residents;
- The secretive activity of the proponents has undermined the favourable predisposition in the neighbourhood;
- The proponent, through its secrecy, has not made use of local knowledge in selecting the site and has therefore made a poor choice;
- Property values will drop;
- Quality of life will go down;
- The neighbourhood environment will deteriorate;
- The historical character of the area will be lost;
- The neighbourhood is already saturated with services for people with disabilities;
- The neighbourhood already suffers from too much low-cost housing;
- Officials are picking on the neighbourhood as an easy target;
- The proposed facility does not represent sound planning;
- There are insufficient services locally to support the new residents; and
- People with disabilities differ from current residents in terms of race, class and political views.

identify underlying views and values. A study of reactions to a proposed residence for people who are HIV-positive in Pennsylvania found that opposition was rooted in social anxiety about AIDS and sexuality issues across lines of gender and class (Colón & Marston, 1999). In Montréal, Piat (2000) found a basic mismatch between social policies promoting deinstitutionalization and residents' lack of support for them and for integration of people with disabilities, and called for new engagement processes and new strategies for deinstitutionalization and integration.

Critics have used discourse analysis techniques to explore arguments used in NIMBY situations. Cowan (2002, 2003) examined NIMBY processes in relation to a proposed facility for people living with psychiatric disabilities in Scotland. Her analysis highlighted the rhetorical devices that people used, that is, she focussed on the ways people made their arguments. Participants in the study who were against the development constructed their perspectives about people and events as factual and objective rather than reflections of their values and orientations. They understood that others might think of them as self-serving or prejudiced, anticipated those arguments, and tried to downplay them as adjuncts to other topics, which they portrayed as more important. Cowan pointed out that the arguments used were highly flexible and took shape around the particular context. The arguments referred to moral terms not planning principles and Cowan stresses that the former seem to be more persuasive in NIMBY debates.

Other analyses of NIMBY attitudes argue that surveys have not fully explored interactions among social differences (Wilton 2000) and particularly race (Wilton, 2002). Wilton's studies in California use interviews and other qualitative methods to show that the particular context in which a NIMBY episode unfolds is shaped by local expressions of power relations, and therefore the understanding of disability and the configuration of relations between people with disabilities and people without are both highly localized. In a context of urban and economic change, differences among people that contrast with established groups can become conflated, and concerns about some elements of change become focused on people with disabilities. Therefore, in a location that devalues certain skin colours, disability became racialized in Wilton's studies.

NIMBY has emerged in many settings and different ways in relation to facilities providing community-based services for people with disabilities. As Gleeson summarizes, "Each instance of NIMBY is … likely to reflect the specific combination of local community fears about the particular client group for whom the facility is intended" (1997, p.210). Its vital importance is that NIMBY, while predominantly grounded in unjustified social fears, has been a major driver of the application of municipal powers in land use regulation in attempts to prevent or restrain the placement of community-based facilities providing services to people with disabilities (APA, 1997; Davidson, 1981; Finkler, 2009; Gleeson, 1997; Oakley, 2002; Roman & Travis, 2006). While recent shifts in metropolitan land markets and other factors may alter the pattern (Zippay & Thompson, 2007), by and large facilities have tended to cluster in the central areas of cities, not only limiting the options available to people with disabilities but also defining their way of life.

Furthermore, evidence exists that NIMBY has caused municipalities to attempt to block developments that conform to requirements (Tighe, 2010). "Zoning barriers replaced physical obstacles" (Finkler, 2009, p.25) as the normalization and integration for people with disabilities promised by deinstitutionalization were poorly materialized.

Application of and limits to municipal powers

It is widely recognized that municipalities have applied their powers in a variety of ways in attempts to control community-based services for people with disabilities. In the USA, studies from the mid and late 1990s report that most cities in that country had shortages of supports for homeless people due to zoning prohibitions (Oakley, 2002). Similarly in Canada many reports exposed the role of municipalities in the lack of housing options for people with disabilities. The House of Commons Special Committee report *Obstacles* was critical of the barriers imposed by municipalities on community-based facilities for people with disabilities (Special Committee on the Disabled and Handicapped, 1981), and evidence presented to the Kirby Report named restrictive zoning as an impediment to services (Standing Senate Committee on Social Affairs Science and Technology, 2006). A toolkit maintained on the Centre for Addictions and Mental Health web site calls for governments to "change zoning laws and reduce licensing fees for group homes to make it easier for individuals from communities with few resources to establish group homes for members of their community" (Supportive Housing and Diversity Group, 2008, p.58).

Municipalities have used different strategies, here grouped as informal mechanisms of control, formal restrictive mechanisms and formal prohibitive mechanisms of control. The strategies are listed in Box 2.

Informal mechanisms to control the development of community-based services for people with disabilities operate outside of legislation, zoning and other regulations but can be effective deterrents. An example is the siting of Casey House, a hospice in Toronto for peo-

ple living with HIV-AIDS. In that case, the local councillor intervened to advise the proponents to locate the facility in an area that would create less opposition than the initial choice. The latter was an upscale district that would make for a convenient location but was described as "a neighbourhood with children" (Chiotti & Joseph, 1995, p.135) and, the argument suggested, for this reason unsuited for a hospice. Other examples of informal mechanisms of control include councillors pressuring developers of community-based services for people with disabilities to hold public meetings when they were not officially required (GHK, 2007). Proponents of projects may acquiesce to such informal pressure in order to access public funding but run risks of disruption of the development process, as indicated below.

In addition to applying informal pressure, municipalities have formally requested proponents of community-based care facilities for people with disabilities to hold public meetings not otherwise required, which is an example of a formal, restrictive mechanism of control. These strategies involve explicit requests to developers of facilities providing services to people with disabilities. Requesting a public meeting can effectively create a focus for NIMBY responses (APA, 1997; Finkler, 2009; Walker & Seasons, 2002) adding to costs and undermining project viability. Municipalities have applied other formal, restrictive mechanisms to limit community-based facilities providing services for people with disabilities. They have made requests that exceed established practices, for example, applying standards for buildings and for safety designed for large institutions, raising costs beyond the budget of developers, and have also required amenities such as sidewalks that are not adopted in the vicinity (Beals, Lalonde and Associates, 2006).

A further formal, restrictive mechanism employed by some municipalities is the control of the level of community-based services in the jurisdiction. In Kitchener for example, the number of facilities was restricted in a particular neighbourhood. Others, such as Smiths Falls, have capped the total number of group home residents: after the closure of the Rideau Regional Centre, that municipality limited the total city-wide group home population at 36 (Finkler, 2009) and the old facility has recently been sold for a retirement community (CBC, 2011). Some other municipalities have set ceilings on the number of occupants for each residential facility, as in Cornwall where the maximum is three per home (Finkler, 2009). They have also required zoning permission when services are changed, reducing the viability of programs and locking providers into current offerings (Johnson et al., 2008). Further, many municipalities have used separation distances to prevent clustering of residential facilities of 100 to 500 me-

Box 2. Municipal strategies to limit community-based facilities providing care for people with disabilities

Informal mechanisms

- Councillor suggests alternative location
- Councillor pressurizes for public meeting not otherwise required

Formal restrictive mechanisms

- Request public meeting not otherwise required
- Request extra safety standards
- Request extra amenities
- Control level of services
  - Number of facilities
  - Number of residents
  - Number of occupants per facility
- Require zoning permission to alter service mix
- Separation distances

Formal prohibitive mechanisms

- Outright ban
- Family definition

ters, measured in different ways (Finkler, 2009). The nature of separation distance requirements is made clear by critics who observed that "no municipality would set up rules to … ensure no Catholic family lived within 400 meters of other Catholics" (HomeComing Community Choice Coalition, 2005, p. 5).

Formal, prohibitive mechanisms of control are attempts to forestall development. They are illustrated in municipalities banning group homes outright (Tomalty & Cantwell, 2004) or denying permission to develop on the grounds that occupants would not fit the family definition[6] specified in zoning by-laws (Morin, 1992; Tomalty & Cantwell, 2004). The family definition requirement is a formal, prohibitive mechanism of control widely used by municipalities attempting to limit residential facilities for people with disabilities. Family definitions were introduced to zoning by-laws in the 1960s when, according to Ritzdorf (1985a), suburbs were concerned about different household types and living arrangements as well as deinstitutionalization. Ritzdorf argues that these mechanisms limit options available to many household types, including female-led or elderly households sharing to economize, communal and alternative families, and people living with disabilities in residential care facilities (see also Ritzdorf, 1985b).

In response to the widespread use of these mechanisms of control, since the late 1970s in Canada case law and tribunal decisions have supported the siting of facilities providing services for people with disabilities. The Supreme Court case Bell v. The Queen in 1979 established that requiring occupants of a dwelling unit to be related constitutes 'people zoning:' "not regulating the use of the building but who used it" (quoted in Makuch, 1983). In this case a by-law of the Borough of North York defined a family as two or more people related by blood, marriage or adoption; resident Douglas Bell was convicted by a lower court for living with two people outside of this definition but the Supreme Court agreed with him and overturned that decision.

Dear & Laws (1986) document the process through which group home siting was largely deregulated in Toronto, and argue that this process would be an important precedent throughout Canada. In 1978 the City of Toronto adopted a by-law consistent with Provincial policy that group homes could be sited as-of-right in residential neighbourhoods. The following year Metropolitan Toronto, a regional government embracing six municipalities including the City of Toronto, adopted a similar policy, and in 1981 its official plan, which would force the constituent municipalities also to permit group homes on an as-of-right basis, received approval from the Provincial Minister. The municipalities appealed to the Ontario Municipal Board, and in 1984 the Board ruled in favour of as-of-right siting for group homes in residential areas. There were exceptions: residences for people involved with corrections were constrained to arterial roads, residences for people involved with alcohol use were to be dealt with on an individual bases, and separation distances were permitted.

In the USA the right of municipalities to define families was upheld in court decisions throughout the 1970s (Ritzdorf, 1988) and a different route was taken to exempt group homes from restrictive zoning. The 1964 Civil Rights Act had prohibited discrimination in housing (and other areas) on the basis of race, religion or national origin and the protection was extended to gender in 1974. In 1988 the Fair Housing Amendments Act (FHAA) brought in disabilities, including involvement with substance use. Thus congregate living facilities for people with disabilities had to be considered single family uses in zoning (Foote, 1997) and municipalities had to make "reasonable accommodation" for group living (Bergquist, 2006). The FHAA left open the

6 Under a restrictive definition a family might include only people related by blood, marriage or adoption.

"direct threat" provision, which could block a residential facility if necessary to protect the health and safety of local residents. Under the 1990 Americans with Disabilities Act housing for people with disabilities was to be provided in the most integrated setting, further supporting group home arrangements. The provisions were tested at the Supreme Court in the Olmstead decision in 1999: two institutionalized women in Georgia, living with both psychiatric and mental disabilities, won the right to live in a community setting so as to be in the most integrated setting (Perlin, 2000).

Current situation

Despite the support enjoyed from legislation, case law and tribunals, community-based facilities for people with disabilities in Canada and the USA continue to experience resistance and, in cases, be blocked. The American Planning Association laments:

> Municipalities and counties throughout the nation continue to use zoning to exclude community residences from the single-family residential districts despite 25 years of planning standards and the vast majority of court decisions that recognize community residences for people with disabilities as a residential use. (APA, 1997, p.1)

Tensions around community-based facilities for people with disabilities continue in the USA (Sullivan, 2007), though a recent survey of cases notes that mechanisms such as distance requirements, stringent requests for fire and safety features, use of the "direct threat" provision of the Fair Housing Amendments Act, and a moratorium on group home developments have all been struck down (Bazelon Center, 2006).

In Canada, exclusion of people with disabilities persists. The Ontario Human Rights Commission (OHRC, 2009) cites cases of the continued use of family definitions and people zoning (the latter in Winnipeg). A study of discriminatory provisions in municipal by-laws in Ontario first conducted a scan of provisions and then concentrated on the siting of group homes, focussing on Cambridge, Kitchener, Ottawa, Sarnia, Smiths Falls and Toronto. The authors note that group homes are permitted as-of-right in many situations but that there are restrictions. They suggest that definitions of group homes in the Municipal Act highlighting residents' "emotional, mental, social or physical condition or legal status" (GHK, 2007, p.11) may have led municipalities to employ these characteristics in their zoning ordinances, and that this may be people zoning. When seen in connection with other aspects of zoning by-laws such as distancing requirements, the exclusionary nature becomes blatantly obvious:

> Should people with mental disabilities not live too closely to people with physical disabilities? (GHK, 2007, p.12)

A follow-up study to the report just discussed visited Kitchener-Waterloo, Ottawa, Smiths Falls, Thunder Bay and Toronto to hold research, education and networking meetings on discriminatory zoning (The Dream Team, 2009). The researchers speak to experience of several discriminatory mechanisms in municipal practices regarding housing for groups protected under the Canadian Charter of Rights and Freedoms as indicated in Box 3.

Most recently, the City of Kitchener attempted to block residential and other facilities for people with disabilities in the Cedar Hill neighbourhood, producing extensive technical planning documentation in support of its claims that the area is saturated and is experiencing decline (Stanley, et al., 2005). It passed prohibitive by-laws in 2005 and the Regional Municipality accepted the plan in 2008, but subsequently the Advocacy Centre for Tenants Ontario challenged the by-laws at the Ontario Municipal Board (OMB). Early in 2010 the OMB ruled on what "was called by the parties an 'unprecedented' case at the nexus between land-use controls and human rights"

Box 3. Discriminatory mechanisms in municipal practices

- Zoning definitions that disadvantage particular groups;
- Caps on the amount of housing;
- By-laws limiting housing in certain neighbourhoods;
- Moratoria on new building;
- Provisions giving municipal councillors or workers the authority to hold public consultations in excess of requirements;
- Requirements for public consultation for housing permitted as-of-right; and
- Requirements for architectural features that segregate residents from their neighbours such as:
  - Obstructions on views into or out of the residences
  - Barriers that prevent direct access for residents.

(OMB, 2010, p.1) The OMB ruled that the City had to clarify its position including, among other issues, how its by-laws were not people zoning and how poor people and people with disabilities affected by them would be accommodated. By June, 2011 the City had repealed the by-laws.

Municipalities have adopted a number of mechanisms of control in their zoning strategies to exclude facilities for people with disabilities from their territory in both the USA and Canada, in many instances responding to NIMBY pressure. As Morin remarks in the context of community-based services for people with psychiatric disabilities in Québec:

> Zoning, having become a tool of segregation towards these marginalized populations, constitutes from then on a sizable obstacle to the implantation of new residential resources. (Morin, 1992, p.48)

Although legislation, case law and tribunal decisions have in multiple cases forced municipalities to withdraw their exclusionary measures, it would appear that many of them continue to zone to the exclusion of people with disabilities. The consequence is to "reproduce the dominant form of social stratification" (Chiotti & Joseph, 1995, p.138) rather than working to undermine social exclusion.

Conclusion

This study has examined literature concerning municipal uses of zoning in the exclusion of particular groups. The first section focused on zoning requiring high standards for housing in designated areas of municipalities, a practice termed exclusionary zoning, and the second on zoning in relation to community-based facilities for people with disabilities.

Investigating these two types of municipal uses of zoning shows pervasive and historical exclusions, beginning with early attempts to constrain groups defined as undesirable due to origin / identity characteristics, and continuing to the contemporary period. It is widely recognized in Canada that exclusionary zoning is commonly practiced though most of the empirical studies of exclusionary zoning originate in the USA. Numerous studies of zoning to exclude residential and other community-based facilities providing services for people with disabilities were found in both Canada and the USA. While the scope of this review has been mainly limited to these two countries, we note that the findings may be more global. As the United Nations Special Rapporteur on adequate housing argues:

> Discrimination related to adequate housing may be the result of discriminatory laws, policies, and measures; inadequate zoning regulations; exclusionary policy development; exclusion from housing benefits; denial of tenure security; lack of access to credit; limited participation in decision-making processes related to housing; or lack of protection against discriminatory practices of private actors. (United Nations Human Rights Council, 2009, pp.19-20)

An important motivator for municipalities to use zoning to exclude sections of the community is the NIMBY syndrome, as municipal workers and politicians are concerned about negative reactions by residents to people who are perceived as different from themselves in negative ways. Numerous studies of community-based facilities providing care for people with disabilities suggest that residents' fears are largely groundless, and that negative reactions dissipate over time after a facility is in place, or may not even materialize.

The literature suggests that the courts and legislators in the USA have consistently gone against exclusionary zoning, yet in Canada the differences in race relations and in constitutional rights over the control of land have made exclusionary zoning less visible and less contestable. Courts and legislatures in both countries have

ruled against the use of zoning to exclude facilities for people with disabilities.

Zoning occupies a key position in the interface of social relations and built forms. It operates alongside other elements of urban development such as real estate markets, infrastructure spending and planning to produce urban space that reflects dominant social relations. This accounts for the numerous instances of municipalities employing exclusionary zoning and zoning against facilities for people with disabilities discussed in the report. These uses of municipal powers restrict the ability of people to live in locales that might provide access to employment, services and other amenities they need, and dampen the health and diversity of neighbourhoods. However, municipalities need not act in ways that are complicit with exclusionary social relations, and, as the courts and legislatures have argued, they must not. Municipalities have been urged to use their powers and should do so to promote inclusive social relations in the interests of creating a more cohesive and democratic society.

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