



# Fast

# FACTS

CANADIAN CENTRE FOR POLICY ALTERNATIVES – MANITOBA

October 25, 2012

## Keeping them at bay: Practices of municipal exclusion

**C**ontrol over the use of land is politically charged, and has frequently led to cases of unfair treatment in the courts and human rights tribunals. Rulings have found that many cities in Canada have used their powers to exclude sections of the population, and Winnipeg is no exception. In fact, a case of ‘people zoning’ – the attempt to regulate on the basis of occupants rather than buildings – from this city the early 1990s has been used as a key precedent. The long and ongoing history of such uses of municipal power has had important impacts for people and neighbourhoods.

Since the 1960s, planning for community-based care for people with disabilities has been a major focus in Canada. This shift, from large psychiatric hospitals and long-term residential institutions to small scale residential and other service facilities for people living with psychiatric disabilities and people with mental disabilities, is known as deinstitutionalization.

Although this shift took place at the upper levels of government, the impact was felt most immediately at the municipal level. Facility managers avoided areas where rezoning would be required and targeted deteriorating areas. This led to a new phenomenon described as ‘institutional saturation’ in the city centre. Soon after deinstitutionalization began, concerns were raised about the concentration of community-based care facilities in inner city areas.

Zoning is a planning tool used by

municipalities to control and manage land development: it ensures that land is used in desirable ways, and also that incompatible uses are spread out. Many municipalities have adopted zoning strategies that exclude facilities for people with disabilities from their territory. As such, zoning has been an important tool in segregating people based on race or ability.

For example, the City of Kitchener tried to block residential and other facilities for people with disabilities in the Cedar Hill neighbourhood. It passed by-laws in 2005 and the Regional Municipality accepted the plan in 2008. However, the Advocacy Centre for Tenants Ontario challenged the by-laws at the Ontario Municipal Board. Early in 2010 the OMB ruled that the City had to clarify its position, including:

- how its by-laws were not people zoning (i.e. regulating who uses the land rather than how the land is used) and
- how poor people and people with disabilities affected by them would be accommodated.

By June, 2011, the City had repealed the by-laws.

Local pressures have driven the way municipal planning is applied to community-based care facilities for people with disabilities. A sign of how common negative responses are is that the term NIMBY, the acronym of Not in My Back Yard, shifted from

there is an alternative.

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environmental planning into human service delivery in the 1980s. As planning student Dana Ross put it, this shift places disabled people on par with hazardous land uses. Although NIMBY is based in unjustified social fears, it has been a major driver of municipal land use regulation that affects the location of community-based facilities for people with disabilities.

In addition to formal barriers such as zoning, municipalities also use informal mechanisms. For example at the siting of a hospice in Toronto for people living with HIV-AIDS, the local councillor advised developers to locate the facility in an area that would create less opposition than the first choice.

Other examples of informal mechanisms include

- pressuring developers of community-based services for people with disabilities to hold public meetings when they were not officially required,
- applying standards designed for large institutions,
- raising costs beyond the budget of developers, and
- requiring amenities such as sidewalks that are not adopted in the area.

A further formal mechanism is the control of the level of community-based services in the city. In Kitchener, for example, the number of facilities was restricted in a particular neighbourhood. Others have capped the total number of group home residents: Smiths Falls limited the total city-wide group home population at 36. Other municipalities have set ceilings on the number of occupants for each residential facility, as in Cornwall where the maximum is three per home.

Further, many municipalities require residential facilities to be separated by distances of 100 to 500 meters. The effect of these requirements is made clear by the HomeComing Community Choice Coalition, who observe that “no municipality would set up rules to ... ensure no Catholic family lived within 400 meters of other Catholics”.

The use of land use controls to affect municipalities’ social composition is a long-standing one in Canada. Although in many cases legislation, case law and tribunal decisions have forced municipalities to withdraw their exclusionary measures, it seems that many continue to zone to the exclusion of people with disabilities, and these practices are widespread. On zoning, the late US planner Marsh Rizdorf argued:

*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)*

These uses of municipal powers restrict the ability of people to live in neighbourhoods that might provide access to employment, services and other amenities. They also dampen the health and diversity of neighbourhoods. However, municipalities do not have to act in this way, and, as the courts and legislatures have argued, they must not. Municipalities can, and should, use their powers to promote inclusive social relations to create a more cohesive and democratic society.

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