

When Human Rights and Land Use Planning Intersect

Irvin M. Shachter, Senior Counsel
Ministry of the Attorney General
Legal Services Branch - MAH
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Some Source References

- Universal Declaration of Human Rights
- Canadian Bill of Rights
- Canadian Human Rights Code
- Ontario Human Rights Code
- Canadian Charter of Rights and Freedoms

Land Use Planning

- Planning Act
 - Zoning
 - Regulations
- Provincial Policy Statement
- Provincial Plans
 - Parkway Belt West Plan
 - Oak Ridges Moraine Conservation Plan
 - Greenbelt Plan
 - Growth Plan for the GGH
 - Central Pickering Development Plan
 - Lake Simcoe Protection Plan

Land Use Planning

- Aspects:
 - Use Restrictions
 - Limitation on Numbers
 - Parking Standards
 - Separation Distances
 - Age Restrictions

Where do you draw the line?

- *Grace Villa Nursing Home Ltd. v. Hamilton-Wentworth* (1992)
- *Re Whitchurch-Stouffville East Half of Lot 2, Conc. 3 Redesignation Official Plan Amendment* (1997)

The Good Old Days?

Definition of Family

- *Village of Belle Terre v. Borass* (1974)
 - Village can restrict occupancy of a single-family house to persons related by blood or marriage in single family areas in order to exclude six unrelated college students from occupying a building.

(United States Supreme Court)

People Zoning - Families

- *R. v. Bell* (1979)
- Section 35(2) *Planning Act*

People Zoning - Families

- *Children's Aid Society of the Region of Peel v. Brampton* (2003)
- *Oxford Construction Ltd. v. North Grenville Chief Building Official* (2005)
- *Nipissing Condominium Corp. No 4 v. Kilfoyl* (2009)

People Zoning - Families

- *Neighbourhoods of Windfields Limited Partnership v. Death* (2009)
 - **If you build (UO)IT, they will come.**

Group Homes

- *Alcoholism Foundation of Manitoba v. Winnipeg* (1990)
 - By-law which applied geographic restrictions on the location of group care and neighbourhood rehabilitation homes for the aged, convalescent or disabled persons, discharged penal inmates and persons recovering from alcohol or drug addiction

Group Homes

- *Haydon Youth Services v. Kearney* (1997)
 - Whether the regulation of group homes through zoning by-laws is appropriate.

Seniors Housing

- *Goth v. Oakville* (1995)
 - Does the use of land for a seniors residence discriminate because of age so that the by-law breaches the Charter and HRC?



Emergency Shelters

- *Deveau v. Toronto* (2004)
 - Whether the use of zoning powers, including the imposition of separation distances, to control the location of emergency shelters grounds offend s. 15 of the Charter.

Impact on/impact of Identifiable Groups

- *Grace Villa Nursing Home Ltd. v. Hamilton-Wentworth (1992)*
 - Funeral Home proposed to be located immediately adjacent to a Nursing Home

Impact on/impact of Identifiable Groups

- *Whitwell Developments Ltd. v. Richmond Hill* (1996)
 - Allegations of racism raised by the Chinese community as the real reason for the enactment of an interim control by-law

Impact on/impact of Identifiable Groups

- *Grushman v. Ottawa* (2000)
 - Funeral Home proposed to be located in an area containing residents of Chinese and other Asian origin

Freedom of Religion

- Mornington (Township) v. Kuepfer (1996)



Houses of Worship

- *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (2004)*
 - Did the municipality lawfully deny a rezoning application to permit the Congregation to build a place of worship?

An Analytical Tool?

- American Planning Association:
 - Is the proposed zoning restriction intended to achieve a legitimate government purpose?
 - Does the proposed zoning restriction actually achieve that legitimate government purpose?
 - Is the proposed zoning restriction the least drastic means necessary to achieve that legitimate government purpose?

Where the Challenges Might Arise

- Land use planning
 - Separation distance standards
 - Land use planning tools
- *Shurparski v. Toronto* (2010)
 - Whether accessibility standards can be incorporated into section 37 agreements

Where the Challenges Might Arise

- *Accessibility for Ontarians with Disabilities Act, 2005*
- Province may make regulations establishing mandatory accessibility standards. The purpose for the mandatory accessibility standards is to identify, remove and prevent barriers for people with disabilities in key areas of daily living including:
 - customer service;
 - transportation;
 - information and communications;
 - the built environment; and
 - employment.

Environmental Rights and Climate Change as a Human Right

- 1972 United Nations Conference on the Human Environment
 - *“man’s environment, the natural and man-made, are essential to to his well-being and to the enjoyment of basic human rights-even to the right to life itself”*
- *Gippsland Coastal Board v. South Gippsland Shire Council* (2008)
- 2010 UN Social Forum of the Human Rights Council

What's Next?

- The Windsor Weeping Madonna

