The phrase "people zoning" is a cliche. However, in land use planning in a multicultural context, the phrase has become an obstacle to clear thinking about the nature of planning and the development of "good planning" responses to the growing diversity of Canadian society. The notion of "people zoning" implies discrimination on some restricted grounds. In 1990, for example, the Government of Ontario went so far as to amend the Planning Act to explicitly prohibit the passing of zoning by-laws distinguishing between related and unrelated people. This eliminated an instance of "people zoning."

The Ontario Municipal Board (OMB) has defined "people zoning" as zoning that "depends on personal characteristics of occupants of land to explain restrictions governing adjacent land uses." The board has said that rules based entirely on the perceptions of objectors are difficult to justify, and yet it has acknowledged that restrictions may sometimes be made in order to preserve social values, on the condition that such rules are general, and that all enjoy the same protection.

Land use planners may also have a positive obligation to accommodate difference, as the Ontario Court of Justice has directed in the case of a zoning by-law prohibiting the keeping of horses in a residential area in which many Old Order Amish resided. The court made the following observation about zoning and land use:

The Crown alleges that... in this country, land is zoned on the basis of use and not people. I am not so sure that that position is correct. Land use practices are made by human beings, by people, and are made with human beings in mind as well as a concern for land resources.

One effect of increased diversity is a need for a more inclusive planning vocabulary. Mosques provide a good example. Municipalities have responded by deleting the terms "church" and "synagogue" in favour of the more generic "place of worship" or "religious assembly with other uses." Another less obvious effect involves the views of different groups towards community institutions and land uses. These views often take municipalities and land use planners by surprise. Many come to light only in response to the circulation of a planning application.

A recent case in Ottawa illustrates some of the issues. In 1998, Ottawa tied Calgary as the fourth receiving city for all immigrants, after Toronto, Vancouver, and Montreal. That same year, Ottawa also passed Calgary as the fourth receiving area for skilled immigrants. And in the 1996 census, Chinese (both Mandarin and Cantonese) was the third most common language spoken at home in Ottawa, surpassed only by English and French.

The case involved a zoning change to allow a funeral home in a residentially designated area. The zoning was appealed to the Ontario Municipal Board by residents on several conventional planning grounds, as well as on the grounds that the proposed use was culturally offensive to many residents in the area. In cultural and ethnic terms, the affected residential neighbourhood is extremely diverse. Community leaders have calculated that the area had five or six times more Asian families than did the Ottawa-Carleton region as a whole. Many of these residents came to Canada as highly skilled workers, often with doctoral degrees, and are now employed in the burgeoning high-tech industry.

In many cultures and countries, Canadian-style funeral homes do not exist, or have only recently been built. As one resident from mainland China exclaimed, "How would we ever wonder if a funeral home could be located near a residential area? It is completely unthinkable!" A Muslim woman explained that a body had to be buried quickly — otherwise the soul would not make a safe journey and would never be at rest. She was very uncomfortable with the idea of keeping a body in unfamiliar surroundings for several days for visitation. Another resident, from Shanghai, explained that he would worry constantly that the restless spirits would negatively affect his family, his son, his career, and his health. Because the site of the future funeral home was visible from his residence, he found it almost impossible to get it out of his mind.

These kinds of objections were voiced by residents from many different backgrounds: a Muslim from Pakistan, a Sikh family, families from four different parts of mainland China, and a resident from Czecho-Slovakia. Even more interesting, other families in the area who did not share these views felt very strongly that the views should nonetheless be respected and taken into account in land use decisions. Many had been attracted by the diverse nature of the community. In their view, inclusiveness and respect for diversity are fundamental Canadian values. To approve the funeral home would offend these fundamental values. It would also be seen as a personal rejection of the highly skilled immigrants that Canada so urgently needs.

What are the opportunities for responding to diversity in a way that falls well within the bounds of "traditional land use planning," that constitutes "good planning," and that enables planning to reflect the evolving public interest? In addition to the Grace Villa decision cited earlier, several OMB decisions provide insights. In Whitwell Developments v. Town of Richmond Hill, the Board was satisfied that a proposed "Chinese mall" was a new retailing format, one which had very different land use impacts from the existing (non-Chinese) commercial facilities used to create standards in the zoning by-law. The Board emphasized that it was not racist to consider the different impacts and the new format, regardless of their base in the practices and needs of recent Chinese immigrants.

Another decision, Tilzen Holdings Ltd. v. Town of Markham, dealing with an appeal of rezoning to add a funeral home use, acknowledged that the Planning Act allows an official plan to concern itself with relevant social and cultural matters. Yet, Markham’s Official Plan contained no provisions for social and cultural matters. For this and other reasons, the board did not allow the appeal.
Plan

Nancy Smith, a planner and mediator who specializes in land use and environmental issues, took part in the Urban Forum/Metropolis Workshop on Urban Diversity in Ottawa. She holds an M.A. in Sociology from Carleton University and was formerly a Member of the Ontario Municipal Board, Chair of the Ontario Housing Corporation, and a regional and city councillor in Ottawa. She is a provisional member of OPPI and CIP. (She is not to be confused with Nancy Smith, a Toronto architect who specializes in urban safety.) Nancy Smith can be reached at: nancylou@cyberus.ca

Tilzen opened a door, however. Official plans are subject to public notice and appeal. By this process, the contents of the plan have passed the test of going beyond "individual perceptions" and establishing values shared by the community. Official plans also allow for general land use rules that apply equally to all and are known in advance.

If a community values and respects diversity, appropriate policies must be incorporated into the official plan. The official plan can be a legitimate means to link the authority provided in the planning act with actual by-law provisions.

Summary
The cliché "people zoning" has become an obstacle to clear thinking about land use planning and diversity. The Ontario Planning Act allows municipal official plans to contain policies on the effects of physical change on the social, economic, and natural environment. A 1996 decision of the Court of Justice (Provincial Division) noted that "land use practices are made by people." A review of Ontario Municipal Board decisions suggests that official plan policies requiring respect for diversity may provide a legitimate means to link the authority provided in the planning act with by-law provisions.

Sommaire
Les concepts d'aménagement du territoire et de diversité entrent parfois en conflit avec celui d'un zonage au profit du citoyen. En Ontario, la Loi sur l'aménagement du territoire prévoit qu'un plan officiel peut contenir des politiques concernant les conséquences sociales, économiques et environnementales d'un changement physique. En 1996, la Cour de justice (provinciale) déclarait : «Les pratiques d'aménagement du territoire sont établies par des gens». Une analyse des résolutions de la Commission des affaires municipales de l'Ontario permet d'établir que les politiques officielles d'aménagement tenant compte de la diversité pourraient encourager l'adjonction de dispositions de règlements municipaux à la Loi sur l'aménagement du territoire.

References
4. Other cities may face similar cases. Until recently, funeral homes had developed very gradually, within existing communities. New applications are now appearing, reflecting the aging baby boomer market, a change from local family businesses to national or international corporations, and competition for market share. See Town of Markham, Funeral Home Study (June 1999), p. 2.
5. At the time of writing, the OMB had rejected the appeal and appellants were seeking leave to appeal the Board's order to the Divisional Court. The hearing on the motion for leave was due to be heard in August 2000.
7. Evidence indicated such differences as longer visits, the combination of eating and shopping activities, greater frequency of eating out among new residents from Hong Kong, and subsequently a different and greater impact on traffic and parking.
8. Tilzen Holdings Ltd. v. Town of Markham, OMBD no. 569 (1998).
9. Although the Board was dealing with Section 1(h) of the 1983 Planning Act, essentially the same content is found in s. 16 (1) (a) of the current Planning Act (R.S.O. 1990 c. P. 13 as amended).

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