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Reforming Statutory Public Hearings for Planning

Aaron A. Moore and Alexandra Caporale



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By

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Abstract

This paper considers the continued relevance of statutorily required public hearings as effective forums for participation in planning in Canada, and whether provincial and municipal governments should seek to reform or remove them from the planning process. We examine the entire rezoning and amendment process in four cities: Toronto and Brampton in Ontario, and Vancouver and Surrey in British Columbia, by drawing on the findings of our earlier study (Moore and Caporale 2023) and an additional 27 interviews we conducted with stakeholders familiar with the respective planning processes. Based on our analysis, we find that statutory public hearings are a necessary part of the planning process, but in their current form are ineffectual forums for public participation. We suggest several reforms to address their current failings.

Keywords: Urban planning; urban politics; Canada; public hearings; public consultation, public participation

JEL Codes: P11, Z18

Reforming Statutory Public Hearings for Planning

I. Introduction

Throughout Canada, provincial legislation requires municipal governments to hold public hearings on certain issues pertaining to land use planning, including amendments to official and comprehensive plans and zoning bylaws. Compiling a singular definition of public hearings based on the statutes that govern them is a difficult task, complicated by the fact that provincial legislation increasingly includes provisions for other forms of public consultation and engagement. Nevertheless, the intent of statutorily required public hearings (which we refer to as both statutory public hearings and public hearings) is broadly similar: to provide concerned parties with a forum to comment on proposed developments and other land use matters in front of the body responsible for rendering decisions on issues of planning (municipal councils, sub-committees of council, zoning boards). Every province in Canada requires that municipalities hold public hearings on planning matters relating to the creation or amendment of official plans and secondary plans (or their equivalents) and the creation or major amendment of zoning bylaws.

In this paper, we address questions about the continued relevance of public hearings as forums for participation in planning in Canada. Should provincial governments reform requirements for public hearings or remove them? If public hearings are retained, what reforms are necessary to improve their usefulness as forums for public participation? Are alternative methods of public engagement adequate replacements for public hearings?

These questions presuppose a consensus on the definition of effective public participation. There is a substantial body of literature devoted to the study of public participation in municipalities and the many perspectives on what effective participation entails. We cannot adequately summarise the discussion in this paper, nor address all aspects of the debate in our conclusion (see Andrew et al. 2022). Instead, we base our definition of effective public participation on the logical extension of our findings in Moore and Caporale (2023). At the most basic level, we believe effective forums for public participation in planning must allow residents to influence decision-making, be open and accessible to all residents, and encourage constructive dialogue among all actors.

To answer our questions and determine whether government should reform public hearings, we examine the entire rezoning and amendment process in four cities: Toronto and Brampton in Ontario, and Vancouver and Surrey in British Columbia, to understand where and when public engagement occurs, who is involved, and how the broader rezoning and amendment process erodes the effectiveness of public hearings. To do this, we draw on the findings from our earlier study (Moore and Caporale 2023) and an additional 27 interviews we conducted with various stakeholders, including private and public sector planners, current and former municipal councillors, council staff, lawyers, developers, architects, and members of residents' associations in the four jurisdictions.

Based on our quantitative analysis (Moore and Caporale 2023) and the findings from our interviews, we make the following four recommendations:

1. Public hearings should take place earlier in the planning process (for example, during the application process), when developers might be more receptive to making changes.
2. Public hearings should be held in the neighbourhoods affected by proposals, rather than at City Hall (or similar out-of-area venues), and should be scheduled for the evening.
3. Municipalities should move away from the antagonistic, quasi-judicial nature of traditional statutory public hearings in favour of forums, such as open houses, that facilitate open discussion among residents, City planners, elected officials, and developers.
4. Public hearings should continue to include all members of the decision-making body (council or committee) or their representatives.

We argue that provincial legislation should continue to require public hearings of some sort, but that the current format should be replaced. Provincial and municipal governments should introduce forums for public participation used in cities like Toronto and Vancouver, which are held before and during the planning application process. While these forums are imperfect, they can serve as a template for reformed statutory public hearings that take place earlier in the planning process and include the participation of elected officials or their representatives.

1.1 Public hearings and their critics

Public hearings typically allow residents to express their concerns regarding a development proposal directly to elected officials or appointed board members. As such, they are one of the oldest, if not the oldest, form of participatory planning in Canada and the United States, and arguably one of the oldest forums for participatory democracy. Yet many proponents of participatory planning, and many residents, question whether public hearings allow community members to have any substantive input into planning decisions.

Critics of public hearings argue that, at best, they provide a one-way flow of information – from residents to planners (Checkoway 1981), and at worst, create an illusion of public participation (Innes and Booher 2004). They note that hearings are often inaccessible to most residents, due to their locations and timing (Baker et al. 2005), and their increasingly technical nature (Campbell and Marshall 2000). As a result, public hearings tend to attract residents who do not represent the broader community (Burby 2003; Einstein et al. 2019; 2020; Innes and Booher 2004; Jowell 1969).

In addition, as Innes and Booher (2004) note, and Cunningham (1975) and Jowell's (1969) commentary support, the quasi-judicial nature of public hearings creates unnecessary antagonism among those participants who attend. Innes and Booher (2004) argue that this antagonism may discourage residents from participating. Where development is contentious, no forum can ensure the absence of conflict in planning; however, an effective approach that encourages participation should aim to temper any tensions.

These criticisms raise important questions about the usefulness of the statutory public hearing as a forum for participatory planning in Canada. If public hearings do

not function as effective venues for public participation in planning, should provinces continue to require them as part of the municipal planning process? If so, how should we reform public hearings to make them more effective forums for participation?

With few exceptions (see Whittemore and BenDor 2019), the literature devoted to public hearings does not empirically evaluate their effectiveness as forums for public participation. The criticisms are largely based on anecdotal evidence or personal experience. To address this gap in the literature, we conducted a study that examined whether resident opposition to development at public hearings influenced council decision-making (Moore and Caporale 2023).¹ To inform the study, we drew on data from our larger comparison of planning politics in four cities: two in Ontario (Toronto and Brampton) and two in British Columbia (Vancouver and Surrey). We examined whether the presence of resident opposition to development at public hearings influenced council decision-making; whether council was more likely to refuse a proposal, amend a proposed bylaw, or defer a decision; and if it led to division among council members. We found that opposition to development had little or no impact on council decisions that followed public hearings.

While our findings confirmed many of the criticisms of public hearings, we suggested that the ineffectiveness of public hearings as forums for public participation in the four jurisdictions arose, in part, from changes in planning. The extensive, iterative process of planning in each city included multiple, substantive opportunities for resident engagement well before the public hearing. We concluded that this early engagement, as well as the intensive application process for development proposals, renders public hearings, which occur at the very end of the planning process, useless.

Our study and much of the criticism of public hearings entails that public participation provides an opportunity for residents and other actors to influence and shape policy decisions. While no process can ensure that a given policy will address every resident's concern or suggestion, it needs to allow for the possibility of their influence. In the four jurisdictions we studied, public hearings do not meet this simplest of tests.

We do not expect everyone to agree with our proposal to reform public hearings. For one, planning scholars concerned about the representativeness of the residents that attend hearings and the risk of parochialism may question our emphasis on neighbourhood representation (Einstein et al. 2020; Innes and Booher 2004). These are valid concerns, and not easily addressed. Although we offer our own perspective on public hearings, what we hope to achieve is greater dialogue concerning their continued usefulness and the adequacy of alternative forums that are growing in use.

We present the remainder of this paper in five sections. Section 2 briefly discusses the origins of public hearings for planning and summarises the governing legislation in all 10 provinces. Section 3 outlines the method of research and analysis we used for this study, and Section 4 summarises the findings of our prior paper on the efficacy of public hearings. Section 5 provides an in-depth account of the rezoning and amendment process and the numerous points for public engagement that emerge during the planning process

1. The article is publicly accessible at <https://doi.org/10.1080/07352166.2023.2195664>

in each city. In Section 6, we discuss our findings and suggest ways to reform public hearings in Canada.

2. Statutory public hearings in Canada

The origins of statutory public hearings for planning in Canada are unclear. However, the practice likely came to Canada from the United States, with the importation of zoning. In American jurisdictions like California, legislation requiring public hearings for zoning bylaws (or zoning ordinances) and amendments to bylaws emerged not long after the introduction of zoning at the municipal level (Whittemore 2010). While traditional accounts of the adoption and proliferation of zoning in the United States suggest the practice spread along with the emergence of the planning profession, Fischel (2001; 2015) and Perin (1977) suggest zoning grew in popularity as a means for wealthier residents to limit the incursion of unwanted uses into their neighbourhoods and communities. If such is the case, then the proliferation of legislation requiring public hearings for zoning amendments likely emerged as a further means for residents to object to unwanted development.

Many early depictions of public hearings (Babcock 1966) and some recent works (Einstein et al. 2019; 2020) support such an account of residents' engagement in public hearings. In Canada, the legislation governing public hearings in New Brunswick, Newfoundland and Labrador, and Prince Edward Island specifically refer to them as forums for residents to express their objections to proposed development (see Appendix 1). Whatever their origins, statutorily required public hearings on planning issues are now ubiquitous in Canada, and largely serve as forums for residents and other interested parties to raise concerns and objections about proposed developments.

2.1 Forums and timing of public hearings

In practice, public hearings unfold in the same manner throughout much of Canada. However, the statutes that govern public hearings differ in specificity. Most provinces delegate authority, while others require a particular type of forum or specify when hearings must be held.

While nine of 10 provinces in Canada delegate the responsibility for public hearings to municipalities, Newfoundland and Labrador delegates to provincially appointed commissioners. Some provinces, like Prince Edward Island, allow municipalities to delegate some or all authority to municipally appointed boards. British Columbia and Ontario allow municipalities to delegate responsibility for minor zoning variances to appointed boards (Boards of Variance and Committees of Adjustment, respectively), which also hold public hearings. In all other instances, provinces require municipal governments to hold public hearings on official plans and major zoning amendments in front of council as a whole or a council subcommittee.

Some provincial statutes also dictate the timing of public hearings. In the western provinces (British Columbia, Alberta, Saskatchewan, and Manitoba) and in Nova Scotia, the legislation requires municipalities to hold public hearings in council between the first reading of a proposed bylaw or amendment and the second or third reading. This situates the public hearing toward the end of the planning process, after municipal planners and City staff have vetted the proposal and prepared their recommendations for council.

In the other provinces, the legislation does not specify when public hearings should be held. Despite the absence of timing provisions, municipalities in these provinces also hold public hearings after planners and staff have submitted their final recommendations to council or a subcommittee of council. This also situates the public hearing toward the end of the planning process.

2.2 Public hearings in practice

Beyond the forum and timing of public hearings, the only other aspect that most provincial statutes specify is the requirement that municipalities provide advance notice of a public hearing, communicate adequate information about a proposal to the public, and recognize the right of any individual to make an oral or written submission to council. Otherwise, provincial legislation provides little direction on how public hearings should unfold and how councillors should respond to opposition to development. The sole exception is a short clause (s. 61) in Ontario's *Planning Act* that states, "throughout the course of passing the bylaw the council shall be deemed to be performing a legislative and not a judicial function." This suggests that, at least in Ontario, public hearings function as an addendum to the regular legislative function of municipal council. In practice, however, there exists a significant tension between the legislative nature of municipal planning and the reality of public hearings.

In the absence of provincial legislation to guide the format of public hearings, municipalities across Canada have largely adopted the same practices when convening a hearing. In most municipalities, where there is little opposition to a proposed development or planning amendment, public hearings unfold much like any other sitting of council or subcommittee of council. However, where opposition exists, public hearings, in practice, transform into quasi-judicial venues, where residents often serve as the plaintiffs, City staff and developers (or their representatives) act as defendants, and council members (or their delegates) preside as judge (although the view of whom is defendant and plaintiff may vary depending on the participant). Regardless of the intent of governing legislation, public hearings are largely forums where residents try to sway council members or their delegates to refuse unwanted development in their neighbourhood. While there are instances of residents and other interested parties attending public hearings to support development proposals, the existing literature on the nature of resident participation suggests opposition to development is the norm (see Einstein et al. 2019; Moore 2022; Whittemore and BenDor 2019).

While it is impossible to definitively state that public hearings unfold in the same manner in every municipality and planning jurisdiction in Canada, the legislation governing public hearings in the western provinces and Nova Scotia, and the extant American research and literature on public hearings (see Campbell and Marshall 2000; Checkoway 1981; Innes and Booher 2004) suggest most public hearings occur late in the planning process and unfold in a similar manner. Municipal planners or developers present a proposal to council or an appointed planning board, and in response, residents and other interested parties are given an opportunity to express their views and raise questions. After all interested parties have had their say, council or board members either render their decision immediately or defer their final decision to a later date.

3. Method of Research and Broader Project

The research we draw on in this paper comes from a larger project that compares the politics of urban development and planning in two suburban cities (Brampton and Surrey) with the respective urban core in their larger city region (Toronto–East York and Vancouver).² We chose the four cases due to their similar size, fast growth, and development. They also allowed us to compare their suburbs and respective downtowns and examine the differences between municipalities with at-large, partisan councils (Surrey and Vancouver) and those with ward-based, non-partisan councils (Brampton and Toronto). In Surrey and Vancouver, Council as a whole is both the de facto decision-maker and the forum for public hearings. In Brampton, a subcommittee of Council, comprised of all councillors but excluding the mayor, is the de facto decision-maker and forum. Where we discuss Toronto, we are usually referring to the Toronto and East York Community Council (TEYCC), rather than the City of Toronto as a whole, because the Toronto–East York area excludes the city’s inner suburbs and TEYCC is the de facto decision-maker and forum for public hearings on planning proposals (as are each of the additional three community councils in the City of Toronto).

Our choice of case studies somewhat limited our analysis. While we believe the process of planning that occurs in all four cities likely reflects the practices in many other large, fast growing municipalities in Canada, our findings may not apply generally to all municipalities, particularly those that are smaller or experiencing slow, or no, growth. As we suggest in our study of the efficacy of public hearings (Moore and Caporale 2023), those held in smaller, more homogenous communities may be more effective forums for resident engagement. However, as Einstein et al. (2020) suggest, these jurisdictions may have their own problems. Notably, the authors argue that residents in many American municipalities use public hearings and other venues to hinder attempts to introduce denser and more affordable housing into existing communities. Nonetheless, we believe our findings provide effective grounds for dialogue on the continued practice of holding statutory public hearings for planning.

This paper focuses on individual development proposals that trigger amendments to official plans, major amendments to zoning bylaws, or, in Vancouver, amendments to official development plans (a more elaborate form of zoning, as noted by one of our interviewees). For simplicity, we refer to these proposals and the ensuing processes as “rezoning and amending” for the remainder of this paper. We examine rezoning because the process is often the primary focus of resident participation in planning (Inch 2012), and the main source of conflict. For this study, the focus on rezoning is appropriate because statutory public hearings are embedded in rezoning and amendment processes.

Our larger project incorporates both quantitative and qualitative research and analysis. We discuss the database and quantitative research at length in our two scholarly articles (Moore 2022; Moore and Caporale 2023). To summarise, we compiled a database of all rezoning and amendment proposals that ended in a public hearing from 2012

2. This project includes a paper on the nature of resident opposition in the four jurisdictions (Moore 2022). This article is publicly available at <https://doi.org/10.1177/10780874211016939>

through 2016 in each jurisdiction, as well as the number of residents attending each public hearing, City planners' recommendations to council, and council decisions. In addition to drawing on these databases for this paper, we interviewed 27 stakeholders in the same four jurisdictions (see Appendix 2). While our quantitative findings (see Section 4) reveal how ineffectual public hearings are as forums for public participation, we draw primarily on the interviews to better understand why public hearings are ineffectual and assess if there is opportunity for reform.

To identify potential interviewees, we compiled a list of regular participants in public hearings and urban planning, identifying individuals with varying perspectives and experiences with the planning process of each city. In each of the four case study areas, we were able to speak to city councillors or their staff (apart from Surrey), city planning department representatives, members of the development industry or their representatives (private planners, architects, lawyers), and members of residents' associations. In the case of Toronto, while we focused on the TEYCC area, many of the interviewees were able to speak to the rezoning process throughout the entire city. From this point forward, we refer to Toronto as the whole of the city, Toronto–East York as the specific central area of the city, and TEYCC as the subcommittee of council.

Our interviews involved asking participants open-ended questions about their perception of planning practices and politics (see Appendix 3) during the period of our quantitative analysis (2012–2016) and currently (2023), allowing us to understand how planning has evolved in their respective jurisdictions. We asked questions about the planning process, the role of different actors (residents, City planners, councillors, developers), and to what extent they engaged with one another. We also asked specific questions about statutory public hearings and other forums for public participation in planning. These interviews provided a nuanced and in-depth understanding of the planning process in each jurisdiction, and the function of public hearings in those processes. They also provided the seeds for reform.

4. Findings of the Quantitative Study

Before examining the rezoning and amending processes in the four cities and considering the potential for reform, we recount the findings of our study on the efficacy of public hearings as forums for participation (Moore and Caporale 2023), and whether public opposition to rezoning and amendments at public hearings influenced council or committee decision-making.

Table 1 provides a snapshot of the number of cases we examined, the prevalence of public opposition to development at public hearings, and the frequency of different responses to proposals from committees and councils following public hearings. Resident opposition to development is common in all four jurisdictions, but higher in Toronto–East York and Vancouver. A previous study by Moore (2022), based on the same data, suggests the greater prevalence of opposition in these jurisdictions results from a greater proportion of proposals occurring adjacent to or in existing residential neighbourhoods in the two downtown areas compared to their suburban counterparts.

Table 1 also shows that TEYCC is the only decision-making body that regularly amends proposals following a public hearing, and that in Surrey and Vancouver, there is greater dissent among councils, which regularly refer their decisions to later dates. The table also suggests that council refusal of proposals following a public hearing is rare, apart from TEYCC. During the period of our study, Vancouver council approved every proposal that made its way to a public hearing. These findings suggest some variation in how committees and councils respond to proposals but does not reveal whether public opposition at public hearings influences these outcomes.

Table 1: Public participation and council/committee decisions in public hearings, 2012 through 2016

City hearings and attendees			Council and committee decisions			
City	Public hearings (#)	Public attendees opposed (%)	Amend (%)	Dissent (%)	Forward or refer (%)	Refuse (%)
TEYCC	267	50.2	48.6	0.7	7.5	20.6*
Brampton	115	37.4	0.02	0.0	0.9	3.5
Vancouver	158	60.1	0.01	29.1	32.3	0.0
Surrey	597	33.2	0.003	11.4	4.5	2.0

*All refusals by the TEYCC resulted in appeals to the Ontario Municipal Board (now the Ontario Land Tribunal).

To examine whether resident opposition to development at public hearings influences council decisions, we conducted multiple Chi-squared tests for independence, to examine the relationship between two categorical variables. We examined the relationship between the presence or absence of public opposition at public hearings, and the four dichotomous council or committee responses to the proposals, as shown in Table 1. To be sure that City planners’ recommendations to council did not influence our findings, we also conducted another set of Chi-squared tests using their recommendations as a control. Table 2 presents our findings.

As Table 2 shows, we found no relationship between resident opposition and amendments to proposals in Brampton, Surrey, and Vancouver, and a weak relationship in Toronto. After surveying the amendments made by the TEYCC, we determined that the local ward councillor proposed the amendment 97 percent of the time, and that amendments usually resulted from last-minute changes proposed by the developer and planner, or the addition of a Section 37 agreement (of the Ontario

Planning Act, on density bonusing/community benefits charges) to the proposed bylaw. Thus, the weak relationship between amendments and resident opposition to development does not account for the high prevalence of amendments in Toronto.

Table 2: Relationship between residents’ opposition at public hearings and council/committee responses to proposals

City	Amendment	Dissent	Forward or refer	Refuse
TEYCC	none	weak	moderate	weak
Brampton	none	weak	moderate	none
Vancouver	none	none	none	none
Surrey	weak	none	none	none

Source: Moore and Caporale, 2023.

For the remainder of our tests, we found no relationship between resident opposition to development proposals at public hearings and council responses to proposals, in Brampton or by the TEYCC. However, as Table 1 suggests, the TEYCC refused proposals at a much higher rate than Brampton, Surrey, and Vancouver. In this case, refusals usually emerged when City planners and developers failed to come to an agreement on a proposal before the provincially legislated timelines for a decision from council. City planners usually recommended that council and committee refuse the application and prepare to defend the City’s position at the Province’s land use tribunal while continuing to work with the developer. The Ontario Municipal Board (OMB) served as the land use tribunal during the period of our initial study; it was replaced by the Province in 2019 with the Local Planning Appeal Tribunal, and in 2021 with the Ontario Land Tribunal. Past research on the OMB and Toronto suggests that City planners and developers are often able to reach agreement on a proposal before a hearing (Moore 2013a).

We found a weak relationship between opposition and dissent on council in Vancouver and Surrey, which we suggest is a product of the partisan at-large system in the two cities (see appendix in Moore and Caporale 2023). In both jurisdictions, we also found moderate relationships between resident opposition and council decisions to refer final rulings on proposals to a later council meeting. This finding suggests councillors may want more time to consider a proposal after hearing residents’ concerns, or that they want to move the decision to a forum with fewer residents in attendance. Finally, we found no evidence of a relationship between opposition and council refusal in Vancouver, and a weak relationship in Surrey.

We argued that the absence of any strong relationship between resident opposition to development at public hearings and council/committee refusal, or substantive amendments

of proposals, suggests that public hearings are ineffective venues for public participation in planning. While we found a relationship between opposition to development and dissent on Surrey and Vancouver councils, and between opposition and referring decisions to later council meetings, neither result influenced the outcome of a proposal (aside from a possible weak relationship in Surrey). For a forum for public participation to be effective, residents need to be able to influence the final outcome of a decision, proposal, or policy.

5. The Rezoning and Amending Process in the Four Case Study Areas

Although the findings of our study into the efficacy of public hearings support the criticism of public hearings, we do not believe our findings substantiate the views of scholars like Innes and Booher (2004), who argue that public hearings are mostly cynical attempts to provide the illusion of public participation. Rather, we argue that public hearings in the four jurisdictions we examined fail as forums for public engagement because of the extensive planning process that occurs before the public hearing, including other forms of public engagement. We believe that the planning process leading up to public hearings severely restricts committees' and councils' ability to address concerns that residents raise during public hearings.

The remainder of this section provides a detailed account of the planning process in each jurisdiction and reveals how these processes limit the efficacy of public hearings. In addition, we discuss the strengths and weaknesses of other forums and processes for public participation that exist during the planning process in each jurisdiction. Our assessment of these forums is used to inform our recommendations in the conclusion to this paper.

In this study we examine a specific aspect of the broader planning process in the four jurisdictions: rezoning and amendments to plans requiring council approval. However, while these processes account for a significant proportion of planning activities in municipalities, they are only one aspect of municipal planning. In addition to rezoning, municipalities may periodically introduce a new official or comprehensive plan (a policy document that broadly defines the future direction of urban development in the municipality) or a substantial revision to the plan. Municipalities may also introduce secondary plans (that fall under the purview of official plans but are designed specifically for a defined sub-area of the city and may be more legally binding than higher level official or comprehensive plans), other policy documents, and bylaws to govern planning in a wider area or neighbourhood of the city. These additional plans often involve substantive public engagement and can later shape how city planners handle rezoning and amendment applications.

In all four of the jurisdictions we examine, resident input into planning may have already shaped rezoning and amendment outcomes before the process began. However, as Inch (2012), drawing on the work of Hajer (2003) notes, most residents only become engaged in the planning process once the impact of a proposal becomes apparent to them. Thus, even residents that participate in the early forums for planning may find themselves opposing a local development proposal when they perceive it to be a risk to their home or neighbourhood. This observation explains the need for continued public participation during the rezoning and amendment process.

The processes to create new planning policies and city-wide bylaws (as opposed to the localised rezoning and plan amendments that we focus on) or make major revisions, are extensive and involve significant public engagement. Often, councillors in all four cities play a substantial role in these processes. In our four case study areas and many other municipalities throughout Canada and the United States, these processes are the primary focus of participatory planning initiatives at the municipal level. City planners, other City staff, and elected officials will organize and engage in roundtables and charettes with residents to involve them in the process of creating or revising planning regulations and policies. However, while these forums and processes are an increasingly important part of the broader planning process, we do not consider them here. Rather, we focus on the specific processes involving rezonings or site-specific amendments to existing planning regulations. Applications for rezonings and amendments arise when developers propose developments that exceed or contradict existing planning regulations. The City will typically address and consider each proposal separately, and the processes that unfold following applications to rezone or amend existing plans result in a statutory public hearing. Table 3 provides an overview of the rezoning and amendment process in each of our four case study areas.

Since the focus of this paper is whether public hearings are necessary to ensure public participation in planning, we focus on the opportunities for, and the nature of, resident engagement in the rezoning and amending processes in the four cities prior to the statutory public hearing, and their involvement and relationship with other actors, including City planners, elected officials, and developers (and their representatives).

5.1 Actors' involvement in the planning process

In all four case study areas, the procedures for rezoning and amending plans involve long and iterative stages with many stakeholders. According to interviewees, the length of time it takes for proposals to make their way to council and the iterative nature of the relationship between planners and developers are among the reasons that councillors tend to adhere to City planners' recommendations at public hearings, even in the face of significant resident opposition. Elected officials are reluctant to oppose a proposal that planners support if it has already made its way through the extensive process with the city planning department. In Ontario, the potential for developers to appeal a refusal decision to an appointed provincial appeals board (the Ontario Land Tribunal) may also make councillors reluctant to react to resident pressure at public hearings.

The processes that a development proposal goes through in each city vary somewhat in complexity and length. Individual proposals may also require more time than others, but in all cases, City planners set a high bar for developers when assessing a proposal. City planners often require developers to prepare and submit a series of studies examining the potential impact of the proposal on the surrounding neighbourhood, in addition to the typical requirements for architectural drawings and site plans.

Different professionals take the lead in navigating the process in each jurisdiction. In Vancouver, for example, architects are often the main advocate or point-people for the developer in the rezoning process, while in Surrey, engineering/planning firms fill this role. In Brampton, planning firms usually take the lead. In Toronto, lawyers play

Table 3. Similarities and differences in rezoning and amendment processes in the four case study cities

Phase	Case study city			
	Toronto, ON	Brampton, ON	Vancouver, BC	Surrey, BC
Pre-Application	Mandatory; less structured meeting with City Planning and councillor.	Mandatory; informal; includes regional municipality.	<i>Phase 1: Pre-Inquiry</i> Mandatory; informal meeting with City Planning.	Voluntary; informal.
	Developer may hold open house or meet with residents' association (via councillor); councillor may initiate working groups.	Developer may reach out to councillors; encouraged to speak with residents.	Developer may reach out to planners; flag potential problems with proposal.	Developer may reach out to councillors, residents' association; encouraged to speak with residents.
	n/a	n/a	<i>Phase 2: Formal Inquiry</i> Mandatory; highly structured. City Planning conducts review of full proposal summary. Developer-run open house; may engage residents' association.	n/a
Application Submission	City planners gauge resident and councillor attitudes; flag potential problems with proposal. Developer submits full application, including all studies.			
Application Review	City posts notice of application and mails information to neighbouring residents. City Planning reviews application against requirements and consults with other City departments and local agencies, boards, and commissions (and in Brampton, with Peel Region).			
	Councillors may organize working groups.		n/a	
	City Planning submits initial report; organizes one or more town halls (open houses) or roundtables. Councillors regularly attend.	City Planning submits initial report; organizes open house or information centre and encourages developers to hold open house.		City Planning submits initial report; organizes one or more open houses.
	Developer holds its own open house.		n/a	

<i>Table 3. Similarities and differences in rezoning and amendment processes in the four case study cities (continued)</i>			
Phase	Case study city		
	Toronto, ON	Brampton, ON	Vancouver, BC
Final Report and Public Hearing	City Planning submits final recommendations to council.		
	Community council sets date for public hearing.	Committee sets date for public hearing.	Council reads and votes on proposal twice, then sets date for public hearing.
	Community council holds hearing, votes, and submits recommendations to full council (may forward without recommendation).	Committee holds hearing, votes, and submits recommendation to full council (may forward without recommendation).	Council holds hearing and third and final vote (may defer vote to later meeting).

a significant role, often submitting the application and leading the process on behalf of developers, while planning firms help guide the resident engagement process. According to a planner we spoke to in Brampton, Toronto developers' reliance on lawyers to lead likely reflects the high proportion of development proposals that make their way to Ontario's planning appeals board. British Columbia has no equivalent body.

5.2 Pre-application

Given the complexity and requirements of the rezoning process in all four jurisdictions, each City has established a pre-application phase in their planning process. The phases of the rezoning process vary by city. The pre-application phase allows developers to determine if the basic nature of their development proposal could receive support from the city planning department, and, in some instances, allows them to gauge resident and councillor attitudes before they spend the time and money on submitting a formal application. In practice, the pre-application process allows city planners to flag any major issues with a project before the formal process begins.

Vancouver's rezoning process is the most formalised of the four, and the pre-application process involves two steps. The first step is an informal pre-inquiry, when developers approach City planners to determine whether a proposal meets basic expectations, in theory. According to two past Vancouver councillors, developers often contact elected officials at this stage to inform them of the proposal. Councillors often suggest that developers speak with local residents' associations at this point, which can take place without their involvement or that of City planners.

The second step of Vancouver's pre-application phase is a formal inquiry. Developers pay a fee for City Planning and other departments, as appropriate, to conduct a review of a full summary of a proposal. At this stage, planners require the developer to engage with the local community. This event, which the developer runs, is intended to determine whether residents will support the project. Typically conducted as an open house, City planners usually attend the event to gauge residents' reaction to the proposal, and will inform council of these meetings, but councillors are not required to attend, and usually do not. Developers may also engage with residents' associations at this point. Many established developers do this on their own, while others do so at the direction of City planners or councillors.

The intent of Vancouver's formal engagement process is to determine whether a proposal should move forward to a full application. Even if City planners raise issues with a proposal, or there is significant opposition to development, developers may continue with the application. In most cases, developers want to ensure they have provisional support from City Planning and a least some buy-in from residents before moving forward.

The City of Toronto introduced a similar mandatory pre-application process in April 2023 for official plan amendments and rezonings (City of Toronto, n.d.). The new regulations codified and clarified what was already common practice. The process substantially deviates from Vancouver's, however, as it explicitly involves councillors in pre-application discussions. Typically, councillors and City planners will attend meetings with developers together as the process moves forward, to ensure everyone has the same understanding of the proposal.

At this stage, the councillor or their staff will usually encourage developers to meet with residents (through an open house or by reaching out to the local residents' association). In many instances, the councillor's office will arrange an informal open house or meeting. The involvement of the local councillors at this early stage is important, to give councillors a sense of residents' opinion on a proposal. In contrast, while City planners and developers inform council of pre-application open houses in Vancouver, councillors' involvement in these proceedings is limited. They may or may not attend and will not take a leading role.

In Toronto, at this early stage, councillors may initiate working groups comprised of the developer, City staff, residents' associations, or other community groups (such as condominium boards or local business improvement associations), and the councillor or their staff. One councillor we spoke to preferred to engage in working groups only after the developer has submitted the application, as some actors only emerge once the City has formally notified the public about the proposal. Provincial law requires the City to post notices of planning applications and mail information to residents, as is the case in all of the jurisdictions we studied. And, following the pre-application process, developers in Toronto can, as in Vancouver, choose to go forward with the application regardless of support from other actors.

While Toronto's approach to the pre-application process allows residents and developers early access to councillors, thus ensuring councillors are aware of resident concerns from the onset, the absence of a formal structure for the process may make it difficult for actors with limited experience to navigate. It is also unclear in both Toronto and Vancouver to what degree City planners, councillors, or developers ensure they are addressing a representative cross-section of a community. Some of our interviewees suggested that this early outreach largely focuses on residents' associations. As this early process is intended to test the support for a proposal, limiting public involvement to existing residents' associations may be appropriate. However, if the opinion of the broader public diverges it could lead to conflict and tensions later in the process.

As in Toronto, Brampton has introduced a mandatory pre-application process for development applications (that also involves the upper-tier Regional Municipality of Peel). However, during most of the period of our study, Brampton did not require developers to have a pre-application consultation with City planners. However, as in Surrey, planners would nonetheless often encourage developers to engage with them before submitting a full proposal.

In both suburban cities, developers also reach out to councillors. In Surrey, councillors will usually also encourage the developer to contact the local residents' association. In Brampton, residents' associations are less common or organized, so are less likely to enjoy the same level of participatory privilege as their counterparts in the other three cities. Despite concerns that residents' associations may not represent the interests of the broader community, they may help to facilitate dialogue among the municipality, the public, and the developers.

Pre-application resident consultation is less common in Surrey and Brampton than in Toronto and Vancouver. However, city planners often encourage developers to engage

with residents at large, and in Surrey, planners and councillors encourage developers to speak to the neighbourhood residents' association. When public engagements are held in Surrey and Brampton, the developer is the lead organizer, as in Vancouver, and councillors may or may not attend these events. In Surrey, councillor participation is usually very limited at this point and throughout the application process. In contrast, a developer representative in Brampton noted that councillors have become more engaged in the planning process, as is the practice in Toronto.

In Toronto and Vancouver, resident engagement and the creation of forums for public engagement regularly occur before the developer even submits an application. In Toronto, councillors typically play a central role in the rezoning process from the start, and as such, they are aware of residents' concerns from the beginning. In Surrey and Brampton, public consultation during the pre-application phase is not required, but does take place, particularly when city planners believe a proposal may be controversial (though it remains up to the developer whether to go forward with public engagement). Controversy around a proposal can arise for several reasons; however, it is usually due to the addition of greater density or changes to a use in or adjacent to an existing residential area (Moore 2022).

5.3 Application and review

After the pre-application process, developers choose whether to move forward with a rezoning application. In all four cities, developers must submit several documents and reports to complete their application package, which is a complex, time consuming, and expensive process. The expense is the reason that developers hope to obtain preliminary support from the city planning department and residents during the pre-application process. Complete applications include explanations and justifications for the proposed rezoning and amendment, architectural drawings, site plans, and plans of subdivision, as appropriate. Each jurisdiction requires a long and growing list of studies to allow an amendment to go forward.³ These studies typically examine how the proposal may impact the surrounding neighbourhood and environs. While the application process is

3. Lists of requirements for rezonings and official planning amendments for each municipality are available at the following links. Requirements may vary depending on the nature of the project.

Toronto: <https://www.toronto.ca/wp-content/uploads/2023/04/977c-city-planning-submission-checklist.pdf>;

<https://www.toronto.ca/city-government/planning-development/application-forms-fees/building-toronto-together-a-development-guide/official-plan-and-zoning-by-law-amendment/>

Brampton: <https://www.brampton.ca/EN/Business/planning-development/Documents/e-Forms/DevServ/Dev-App-PRE-Info-Package.pdf>;

<https://www.brampton.ca/EN/Business/planning-development/Pages/Development-Application-Guidelines.aspx>

Vancouver: <https://vancouver.ca/files/cov/application-for-cd1-rezoning-form.pdf>;

<https://vancouver.ca/files/cov/application-for-cd1-rezoning-guide.pdf>

Surrey: <https://www.surrey.ca/renovating-building-development/land-planning-development/land-development-application-process/submitting-a-development-application>

<https://www.surrey.ca/sites/default/files/media/documents/SubmissionRequirements.pdf>

https://www.surrey.ca/sites/default/files/media/documents/Sustainable_Development_Checklist.pdf

time consuming and costly, it appears to encourage developers to work with residents throughout the process to smooth the path to development.

Based on our discussion with developers and other private sector actors, Vancouver has the most onerous requirements, followed by Toronto, Surrey, and Brampton. The comments confirm that the extensive nature of the requirements for an application in Vancouver may encourage early engagement between developers and residents. For example, in Vancouver and Toronto, City Planning regularly requires developers to prepare a shadow study to determine the impact of a development on daylight and sun access for neighbouring properties throughout the year. In addition, in all four cities, developers usually must include a study on the neighbourhood impact of traffic and parking. In Brampton and Toronto, developers must also include an account of how they will engage with the community, as required by provincial legislation. Toronto has also created its own extensive requirements for engagement as an addendum to the Province's more general framework. In all cases, preparing a formal application is a long and involved process, as is City Planning's review, which includes consulting with other City departments (parks, transportation) and other local agencies, boards, and commissions, such as school boards, to assess existing capacity and future demand.

During the application process, ward councillors in Toronto may choose to organize working groups with a developer, community groups, and City planners. While most of the interaction between the City and developer happens with City Planning, ward councillors or their staff regularly communicate with the planners responsible for a specific proposal. In contrast, there is little contact between individual City planners and councillors in Vancouver. In fact, several interviewees from Vancouver noted that it was improper for a councillor to contact individual planners directly. Councillors are expected to contact only senior planning staff. As one interviewee noted, individual planners are required to immediately inform their supervisor if a councillor contacts them.

In Brampton, councillors are less involved than those in Toronto, though one private sector planner told us that elected officials are increasingly involving themselves in the planning process. In Surrey, councillors are almost entirely disengaged from the process, although it is unclear if it is simply a standard practice or if they are not permitted to interact with municipal staff.

As Moore (2013b; 2016) notes in his comparison of density bonusing in Vancouver and Toronto (and that appear to extend to Surrey and Brampton), the roles that councillors play differ, reflecting unique attitudes about planning and democratic participation. In Vancouver, and likely in Surrey, the planning community believes that certain aspects of the planning process, and specifically rezoning, should be apolitical. As a result, the structure of planning and decision-making should curtail councillors' involvement outside of the formal process of decision-making (the public hearing). In contrast, planning in Toronto and, to a lesser extent in Brampton, is highly political. That is not to suggest that planning outcomes in Ontario municipalities are primarily the result of political decisions, but rather, that planning includes both political negotiation and a regimented planning process.

While critics of Toronto's planning process perceive councillors' involvement as undermining the discipline of rational planning or allowing for undue influence of certain interests (residents' associations, developers), it allows for greater input from residents, as councillors can facilitate their engagement and consider their concerns throughout the planning process. In contrast, in Vancouver and Surrey, the absence of councillor involvement can lead to dissatisfaction among residents, who may feel their only opportunity to shape a planning decision is the ineffectual public hearing (see Moore 2022; speakers at public hearings also expressed that City planners ignore their concerns during the application process). Given the interaction and negotiation between developers and residents' associations in Vancouver and Surrey, it is unclear how the inclusion of elected officials in the process would impede progress, as the process of planning in these cities is clearly not as technocratic as those who would restrict councillor involvement may believe. In fact, the current approach prioritizes the interests of the same actors that would seek to sway elected officials in the first place.

In all four jurisdictions, once City Planning receives an application, department staff conduct an initial review. Planners will usually submit an initial report to council. At this point, they make no recommendations, but may advise that the City move forward with resident consultations or advise that more work is needed.

Following the initial report, both Vancouver and Toronto require City staff to facilitate consultations with residents. In Vancouver, these consultations take the form of open houses, organized and conducted by City planners, which begin with a presentation of the proposal to residents by the planners and the developer. Residents can then ask questions or raise concerns, and staff or the developer will try to address them. They usually take place in a location close to the proposed development and in the evening, to be more accessible to residents. It is common for hundreds of residents to attend these open houses, far more than the number that attend the statutory public hearings that take place toward the end of the planning process (Moore 2022). This may reflect the inconvenient location and timing of public hearings; the effectiveness of earlier consultations in addressing residents' concerns; or residents' sense of the futility of attending a public hearing. Alternatively, many residents may be interested in learning, but not speaking about, the proposed development.

As with the developer-led engagement during the pre-application process, councillors can attend the open houses. One former Vancouver councillor stated that they would occasionally visit an open house to ensure the process was going well, although several Vancouver planners stated that councillors rarely attend. While they noted some change in council participation over the years, City planners reiterated that councillors do not play a significant role in the rezoning application process. One planner suggested that councillors' presence at these open houses could influence the types of comments planners receive from residents. In addition to allowing residents to voice their concerns or questions at the open house, Vancouver City Planning lets residents leave written comments or submit them online.

Toronto's approach to resident engagement takes one of two forms, unlike in Vancouver, where the open house is the standard forum. For complex proposals that are

less controversial (and therefore may have fewer interested residents), Toronto planners, with the support of councillors and their staff, organize roundtable discussions. These are usually held in the evening. Each table has approximately eight participants and focuses on one aspect of the proposal, and councillor attendance varies. The roundtable process allows for in-depth involvement of those residents who are heavily engaged.

When Toronto planners anticipate significant opposition, or the proposal is simple, they organize a town hall, which uses the same format as Vancouver's open houses (held in the evening in a location within the neighbourhood of the proposed project.) In Toronto, it is not unusual for hundreds of residents to attend a town hall. One lawyer who regularly represents developers noted that everyone (planners, councillors, developers) listens carefully to residents in these forums and takes their concerns seriously, as opposed to the statutory public hearing, where communication with the public is a formality and in practice is rarely considered in a way that is meaningful to the decision to be made.

The Toronto ward councillor plays an important role throughout the resident engagement process. One senior City planner, speaking of the eight councillors on the TEYCC (during the initial period of our study there were 12), said they were all very committed to public engagement. One councillor described their role as two-fold: as an educator, particularly for those residents who are unfamiliar with the planning process, and as a someone who ensures that City planners respond to residents' concerns. Another councillor's staff member described the elected official's role in a similar vein – that they act as facilitators and mediators during the process.

In addition to City-organized community engagement, Toronto developers often independently engage with residents during the application process. A partner with one of Toronto's larger planning firms said they encourage their developer clients to connect with residents early in the process. This usually involves reaching out and working with residents' associations, condominium boards, and business improvement associations. When a project is large, developers will sometimes organize their own open houses, separately from those hosted by the City.

In Toronto and Vancouver, following open houses, roundtables, and towns halls, City planners collect feedback from residents and incorporate it into their next (and usually final) report to council or community council. During the period of our quantitative analysis of rezonings, the practice of incorporating residents' concerns differed between the two cities. In Vancouver, planners presented the concerns in the main body of their report and addressed them by explaining why they are not concerning. The practice reflects the belief in an apolitical technocratic approach to planning, but also accounts for the disillusionment among residents who attend public hearings and their frustration with the planning process. In Toronto, planners compiled concerns in an appendix to their report, with limited comments directed to council, leaving councillors to independently evaluate the merits of the comments.

The other two cities in our study, Brampton and Surrey, also usually rely on open houses for their public consultations, with some variations. The number of consultations vary depending on the complexity and amount of opposition to a proposal. In Brampton, the City may establish a "community information centre" for less controversial projects,

in place of an open house, as a drop-in for interested residents. City staff also encourage developers to hold more independent consultations. In this way, Brampton can meet the Province's requirement for engagement while expending fewer municipal resources (as in the absence of developer-led engagement, the municipality has to take the lead.)

Surrey's process for public engagement mirrors that of Vancouver's. However, according to one private sector architect familiar with both cities, the public engagement process in Surrey is less formal, and the City usually holds fewer open houses for each project. (Planners are increasingly requiring more open houses, whether facilitated by the developer or the municipality.) According to some of our interviewees, the increase in the number of open houses reflects the increasing conflict over development proposals in the city. As elsewhere, early engagement appears to be the main tactic of both City planners and developers to reduce the likelihood of conflict and tensions later in the planning process.

5.4 The statutory public hearing

Following the application process and public engagement activities, City planners in all four jurisdictions typically prepare a final report for their council or committee. If the department supports the proposal, planners also prepare a document with the proposed language of the amendment to accompany the report.

In Surrey and Vancouver, council must read and vote on an amendment three times. Typically, councils will read the amendment twice, with little discussion, and then schedule the statutory public hearings for before the final reading. Councils will usually vote at the end of the public hearing, but as we found in our quantitative study, they often defer the final decision to a regular sitting of council. In Vancouver, once City planners submit a final report and amendment, residents and developers can no longer contact councillors about the proposal. As many interviewees noted, the intent of this blackout period is to ensure that various actors (residents, developers) are unable to influence or sway councillors' decisions prior to the public hearing. However, as public hearings are ineffectual venues of engagement, councillors must rely almost entirely on City planners' recommendations and their accounts of the legitimacy of residents' concerns, as they have a limited role in the planning process up to this point, particularly when compared to the role of elected officials in our Ontario case studies.

In Toronto and Brampton, the City planner's report and amendment first go to the community council and planning committee, respectively. As noted above, TEYCC (and Toronto's three additional community councils) and Brampton's planning committee make the decision that council as a whole later adopts. As both the community council and planning committee only vote on the amendment once, City staff organize the statutory public hearing on the same day the body considers the proposed amendment. As elsewhere, councillors usually vote after the end of the public hearing, but may forward the proposal to full council without a recommendation, which means the council will decide whether or not to support the rezoning or amendment.

Despite the legislative nature of rezoning and amending bylaws and plans, the public hearings in all four jurisdictions unfold in the traditional quasi-judicial manner of public hearings throughout Canada and the United States. Interviewees in all four cities noted

that when residents attend these public hearings, the atmosphere is usually very tense and antagonistic. City staff present their report and recommendations, and the developer speaks to the proposal. Councillors may ask questions, and following the presentation, residents can speak to the proposal. Moore (2022) found that while residents do attend hearings to support a proposal, most are there to oppose it.

A lawyer from Toronto said that while the public hearings are organized as quasi-judicial venues in practice, they lack certain aspects of courts. Notably, there is no opportunity for cross-examination or for City planners, residents, or developers to engage and respond to one another. Each actor makes their argument or expresses their opinion, and then council is expected to make a decision. Legal scholars in the United States have noted the same problem, arguing that a quasi-judicial process is inappropriate for what is otherwise a legislative act (Cunningham 1975; Jowell 1969). The same lawyer felt that public hearings were “a farce.” He recounted one example when City planners recommended refusal of a proposal he was supporting. In his presentation to the community council, he noted that he was there to express his opposition to the refusal report from the planning department but knew that it would not influence their decision, to which council members responded by laughing.

In Toronto, a growing number of residents, and particularly residents’ associations, seem aware of the futility of opposing development at public hearings. As Moore (2022) found in his study of resident opposition to development in the four jurisdictions, between 2012 through 2016, the highest attendance at a public hearing in Toronto was about 30 residents. This turnout pales in comparison to the hundreds of residents that attend town halls during the application process.

In Brampton, the number of residents that attend public hearings is even lower than in Toronto. Overall, Brampton residents participate in lower numbers than in the other three jurisdictions; however, we do not have comparative data for the number that attend open houses. A notable feature of our interviews in Brampton is the lack of emphasis our interviewees placed on the public hearing. Aside from one City planner who suggested only residents who are opposed to proposals attend hearings, most of our interviewees focused on open houses as the forums for engagement.

One City planner in Surrey, after noting how tense public hearings can be, suggested that developers tend to go into the public hearing with the understanding that council will support the proposal. According to the planner, “very little stops development in Surrey.” A representative of a residents’ association echoed this opinion: residents’ associations understand it is not worthwhile to wait until the public hearing because, at that point, the developer has invested too much into the project. Early involvement is better.

Although residents’ associations in Surrey may not rely on public hearings as a venue to oppose development or seek changes, far more residents engage in public hearings than in Toronto and Brampton. During the period of our quantitative study, over one hundred residents attended public hearings for particularly controversial proposals in Surrey (Moore 2022).

Interviewees in Vancouver had the most to say about public hearings, and largely supported what we found in the other three jurisdictions. One City planner suggested

that by “front ending” communication among the planners, developer, and residents, they reduce the likelihood that something unforeseen will emerge and derail a proposal.

One former Vancouver councillor shared that opposition party members on council occasionally oppose development proposals in the face of significant resistance at public hearings only because they know the majority party would support it. This account is in accordance with our own findings (Moore and Caporale 2023). They, and another former councillor (from another party) further suggest, however, that councillors look for errors in the application or reports and hold City planners accountable when such errors occur. Otherwise, both former councillors believe in the knowledge and expertise of City staff members, and that, following a lengthy iterative process, the parties “figure everything out” before bringing a proposal to council. A representative of a Vancouver residents’ association, in contrast, believes that councillors lack crucial understanding of what they are voting on at public hearings. The interviewee did specify that this problem is more acute now than in the past when the two former councillors were in office.

Despite the perceived futility of opposing development at a public hearing, residents in Vancouver turned out in much larger numbers (in a few cases, more than one hundred residents attended) than in Toronto and Brampton (Moore 2022). Overall, however, turnout at public hearings in Vancouver is still much lower than at open houses. As Moore argues in his earlier study (Moore 2022), the higher turnout at public hearings in Vancouver (and Surrey) may result, in part, from the absence of councillor involvement throughout the pre-application and application process. In Toronto, residents have regular access to heavily engaged ward councillors throughout the process. While councillors are less engaged in Brampton, they are increasingly involving themselves in the planning process, and there is no taboo about their involvement as there is in Vancouver. (None of the Surrey interviewees mentioned a formal blackout period, but all indicated {via comment or omission} the limited participation of councillors in the process beyond the very early stage). For residents in Vancouver and Surrey, public hearings are their sole opportunity to make their case to councillors.

The interviewees we spoke with in all four cities suggest there are very robust processes for public engagement in place, both during the creation of new planning regulations and plans, and during the rezoning and amendment process. On public engagement in the rezoning process, the question is whether the forums for engagement during the process are effective, and whether provinces should continue to require public hearings. An effective forum for public participation in planning must allow for residents to influence planning and decision-making, be open and accessible to all residents, and encourage constructive dialogue among the various stakeholders.

6. Conclusions and Final Remarks

The findings from our study and the recommendations we draw reflect our analysis of the best and worst practices of the four jurisdictions we examined. We believe our recommendations can help address shortcomings in both statutory public hearings and other forums for engagement during the rezoning and amendment processes in all four jurisdictions. We also believe our findings offer insights into best practices that would apply in other municipalities that share common elements with the areas we studied.

For example, our findings will have relevance in other cities that have expanded the pre-application and application processes and introduced early opportunities for public engagement throughout. However, as we note above, the planning processes and outcomes in our case studies may not reflect the practices and outcomes for every jurisdiction in Canada. Both Einstein et al. (2019; 2020) and Whittemore and BenDor (2019) found that in the United States, residents can influence planning outcomes through public hearings. That said, as we suggest in our earlier study (Moore and Caporale 2023), many American city-regions include numerous small, homogenous, and predominately residential municipalities where the will of residents reigns supreme. In comparison, outside of a few suburbs in Montréal, the municipalities that comprise city-regions in Canada tend to be larger and include a greater diversity of land uses and population. We do expect some important variations across municipalities in Canada, however.

One of the limitations of public hearings in our four case studies is the significant demands City Planning places on developers to complete an application. The application requirements in Toronto and Vancouver necessitate a pre-application process, and in all four jurisdictions, iterative talks between City planners and developers in turn make it difficult for councillors to refuse staff recommendations at the end of the planning process, whether public engagement has occurred or not. The many points of public engagement that do occur makes it harder to refuse applications that have run the planning gauntlet.

Where such rigorous requirements for applications do not exist, residents may request studies on the impact of the proposal on traffic or school capacity, for instance, at the public hearing. We know from accounts of public hearings in the United States (Babcock 1966; Einstein et al. 2019; 2020) that such requests are common in certain jurisdictions and can provide residents with a means of slowing the planning process, if not defeating a proposal altogether. Some of the interviewees we spoke with suggested that cities like Toronto and Vancouver require too many of these studies up front. Their removal as a requirement for a complete application could allow for public hearings where residents can demand action from council, and council can respond with that action. Such outcomes, however, while giving a greater illusion of resident influence on planning decisions, will achieve little beyond delaying a project, in most cases.

While planning processes vary by municipality across Canada, and the models we see in our case studies may not be applicable in all cases, we believe that statutory public hearings, as currently constituted, are no longer effective forums for resident engagement in planning (if they ever were), regardless of the municipality. As a forum for public engagement, they are held too late in the planning process, create unnecessary and unproductive antagonism between residents and other actors in the planning process (and often among residents), and limit who can attend.

We do not believe, however, that the alternative forums for public engagement that Toronto, Brampton, Vancouver, and Surrey employ throughout the rezoning and amendment process are adequate replacements for public hearings. Toronto's practice of convening roundtables, town halls, and other meetings among all actors (City planners, councillors or their staff, residents, developers) comes close to offering an alternative to public hearings, but is imperfect. However, these forms of engagement do provide a template for reformed public hearings.

A reformed strategy of public engagement means that public hearings should occur earlier in the planning process when developers might be more receptive to making changes. Many of the interviewees we spoke with in Toronto and Vancouver (City planners, councillors and their representatives, developers and their representatives, and members of residents' associations) noted that an increasing number of developers are open to working with residents to achieve a development that satisfies, to some extent, both the interests of the neighbourhood and their own. However, once developers have invested significant time, resources, and money in a project, they become more resistant to change. City planners are also likely to become less supportive of change toward the end of the planning process, because they too have devoted significant time and resources (reviewing a project and addressing issues with the developer.) Some representatives of residents' associations expressed frustration with fellow residents that choose to oppose a development at the end of the planning process (though this finding raises questions about the representativeness of residents' associations). By moving the public hearings to an earlier point in the planning process, municipalities (and provinces, where legislation establishes the timing of the hearing) can provide a forum where substantive resident input into a proposal is still possible.

In addition to occurring earlier in the process, public hearings should take place within the neighbourhoods affected by proposals, rather than at City Hall or similar venues beyond the area of the proposal. Hearings should usually be held in the evening so more residents can easily attend after work. Many of the interviewees we spoke with, and critics of public hearings more generally, believe the residents who attend public hearing are not representative of the larger community. The location, and often the timing, of the hearing play a large role in restricting participation to older, often retired, residents that have the flexibility to travel and attend during the day. While the four municipalities we examined schedule some public hearings in the evening, the fact that they usually occur at City Hall can be a major hindrance for people who live and work some distance away from City offices and work throughout the day. All four municipalities recognize the limitations of holding public participation events in such locations. As a result, they ensure that the other venues for participation they offer occur within the neighbourhood of the proposals and at times of day that will be accessible to more residents. Public hearings must include similar provisions.

Such a practice will not address concerns about NIMBYism or parochial interests trumping the interests of the larger city. However, the reality is that the rezoning and amending process is a poor point to engage in discussion on the broader needs of the city. Ideally, City planners will consider the needs of the city and its people as a whole when conducting their review of a proposal and while engaging residents and developers. The process of rezoning or amending existing plans should not override the broader goals of those plans, despite the amendments. Indeed, many residents appearing at hearings relied on existing plans for a sense of certainty about neighbourhood conditions and lamented the potential loss of that certainty when controversial amendments were on the line. In practice, City planners in all four jurisdictions adhere to the broader goals of plans, which is often a source of tension with residents.

Municipalities should move away from the antagonistic, quasi-judicial nature of traditional public hearings in favour of forums, such as open houses, that allow for open discussion among residents, City planners, elected officials, and developers. The current practice of public hearings in all four jurisdictions begins with planners or developers presenting a proposal to council or committee, and City planners making their recommendations. Following the presentations, residents can express their thoughts on the proposal to councillors. While councillors can ask planners and the developer questions, there is no opportunity for discussion among planners, residents, and developers throughout the process, preventing discourse and fostering antagonism. In contrast, while open houses and similar venues do not prevent conflict from arising, they encourage discussion among the actors. When these forums occur earlier in the planning process, this discourse allows planners and developers to consider and address residents' concerns. To facilitate true resident participation in planning, all actors must be able to address and respond to one another, something the current practice does not enable.

Lastly, public hearings should continue to include all members of the decision-making body (council or committee) or their representatives. The inclusion of elected officials in formal public engagement is important because residents need a forum to ask questions or express concerns with members of council in attendance. In many respects, the existing forums for public engagement during the planning process in each city achieve many of our previous recommendations (Moore 2022). However, we believe these forums currently cannot replace statutory public hearings because of the limited participation of all council and committee members in these forums. In Vancouver and Surrey, elected officials rarely attend or participate, and as a result, the only opportunity residents have to raise their concerns with council is during the public hearing at the end of the process.

In our earlier studies (Moore 2022; Moore and Caporale 2023), we found the absence of council involvement during the planning process to be a point of frustration for residents in both cities, whether expressed explicitly, or arising implicitly from other concerns. While both representatives of Vancouver residents' associations we interviewed noted that councillors would listen to their concerns if they contacted them, their absence from town halls and other forms of engagement meant that they were largely unaware of concerns expressed by the broader community. Furthermore, the members of residents' associations we interviewed in Toronto, Surrey, and Vancouver also acknowledged that their organizations did not reflect the diversity of the communities they represented. One interviewee specifically noted the difficulty in getting young residents to join and participate in the association. This issue extends to other venues for participation as well, but the timing and location of these venues do encourage broader participation.

In Brampton, individual ward councillors increasingly engage in the planning process and attend the alternative forums for public engagement. However, Brampton does not require open houses as part of its planning process. In Toronto, the City does require open houses or roundtables, and ward councillors often lead or guide these processes from the start. As a result, residents have many opportunities to raise their concerns with their councillor, while in Brampton, there are increasing opportunities for engagement. Given the strength of "aldermanic prerogative" in Toronto, where other

councillors will acquiesce to the ward councillor on issues of planning in their ward (Moore and Caporale 2023), the current situation may already provide the best possible form of public engagement. Ideally, residents should be able to engage with and address their concerns to the larger decision-making body (the planning committee in Brampton, and TEYCC in Toronto) or a subset thereof, rather than to individual councillors or none at all. Councillors are not infallible, and may fail their constituents on occasion, or miss something in their assessment of a proposal; they are also susceptible to parochialism. And, while most of the councillors on the TEYCC are heavily engaged in the planning process, this is not the case in all parts of Toronto.

The one caveat in encouraging broader involvement of councillors earlier in the planning process is the difficulty of organizing events in different neighbourhoods that most of council or committee can attend. The advantage of the current practice of holding public hearings at City Hall or similar venues is that it allows council or committee to consider multiple projects from different parts of the jurisdiction in one sitting, and ensures all or most members of council or committee can attend. A shift away from this process would require significant coordination to allow for councillors to address more than one proposal in any given neighbourhood at a time. Even with such coordination, this process may not be feasible where councillors' time is already stretched thin. This issue is especially a problem in Toronto where the provincial government reduced the number of councillors in 2018, thus increasing the size of councillors' wards and constituencies. In light of the limitations, an alternative to having full councils or committees attend public hearings would be for some councillors to attend and others to send their representatives. In Toronto, many councillors already employ staff members with backgrounds in planning to act as advisors and communicate with stakeholders. While employee stand-ins for councillors is an imperfect solution, it would ensure that residents' concerns are articulated to councillors without being filtered through City staff first.

6.1 Final remarks

All four of the case study cities we studied engage in substantial discussion with residents when creating their various plans and broader planning regulations, and planners from every city are very proud of these processes. We also found that councillors in Vancouver participated directly in these processes as well, allowing for residents' engagement with elected officials. However, as Inch (2012) argues, these forms of participation do not prevent conflict later down the line. As we see in all four cities, conflict over individual proposals continues to exist. Assuming one believes that residents should have a say on individual development proposals and rezoning, there is a need for formalised forums for this engagement.

We believe that the alternative forums for engagement that municipalities and developers provide for residents to be able to engage throughout the planning proposal process are valuable additions. However, we do not believe they can replace formal public hearings. As such, we believe it is necessary for provinces and municipalities to reform public hearings so they can function as effective forums for public participation in planning.

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Appendix I. Provincial Legislation Governing Public Hearings

Alberta, *Municipal Government Act* RSA 2000 c. M-26

<https://canlii.ca/t/8239#sec216.4>

British Columbia, *Local Government Act* RSBC 2015 c. 1

<https://canlii.ca/t/8vs2#sec464>

British Columbia, *Vancouver Charter*, SBC 1953 c. 55

<https://canlii.ca/t/5632n>

Manitoba, *The Planning Act* CCSM c. P80

<https://canlii.ca/t/8gsq#sec114>

New Brunswick, *Community Planning Act* RSNB 2017 c. 19

<https://canlii.ca/t/563wh>

Newfoundland and Labrador, *Urban and Rural Planning Act* SNL 2000 c. U-8

<https://canlii.ca/t/89nm#sec43>

Nova Scotia, *Municipal Government Act* SNS 1998 c. 18

<https://canlii.ca/t/560tq>

Ontario, *Planning Act* RSO 1990 c. P.13

<https://canlii.ca/t/5657s>

Prince Edward Island, *Planning Act* RSPEI 1988 c. P-8

<https://canlii.ca/t/5652r>

Quebec, *Act Respecting Land Use Planning and Development* LRQ c. A-19.1

<https://www.legisquebec.gouv.qc.ca/en/document/cs/a-19.1>

Saskatchewan, *The Planning and Development Act* RSS 2007 c. P13.2

<https://canlii.ca/t/55zgc>

Appendix 2. Interviewees by Profession and Jurisdiction

We did our best to interview multiple and diverse actors in each jurisdiction. However, due to the COVID-19 pandemic, we lost contact with several individuals that expressed interest in speaking to us, and were unable to re-establish contact, particularly in Brampton. Also in Brampton, staff reductions in the city planning department impeded our access to staff. In Surrey, we were unable to find any current or former councillors who were willing to speak with us.

Nevertheless, we were able to speak with a variety of actors in each jurisdiction, allowing us to develop a fulsome picture of the local planning process. We thank all our interviewees for agreeing to share their insights and perspectives with us.

Municipality	Brampton	Toronto–East York	Surrey	Vancouver
Interviewee	<ul style="list-style-type: none"> • City Councillor • City Planner • Private Planner • Residents’ Association Representative 1 • Residents’ Association Representative 2 	<ul style="list-style-type: none"> • City Councillor • City Councillor Aide • City Planner • Lawyer • Private Planner • Residents’ Association Representative 	<ul style="list-style-type: none"> • City Planner 1 • City Planner 2 • City Planner 3 • City Planner 4 • Developer • Residents’ Association Representative 	<ul style="list-style-type: none"> • Architect 1 • Architect 2 • City Planner 1 • City Planner 2 • City Planner 3 • Former City Councillor 1 • Former City Councillor 2 • Residents’ Association Representative 1 • Residents’ Association Representative 2 • Residents’ Association Representative 3

Appendix 3. Interview Questions

In preparing our interview questions, we divided our interviewees into four groups: city councillors and their staff, City planners, representatives of residents' associations, and developers and their representatives (private planners, lawyers, and architects). We tailored interview questions to each group, and varied our questions to account for different institutional features of each municipality and differences in nomenclature. As these differences are minor, we do not include the variations below.

Councillors and their staff

- Broadly speaking, how involved are you and your fellow councillors in the planning process?
- What do you believe your main role should be in the planning process?
- Do councillors' approaches to the planning process vary?
- [Specific to Brampton and Toronto] Do you play a greater role in planning when proposals are in your ward?
- At what point do you usually get involved in the planning process?
 - Specifically, what role do you play in the consultation process that occurs prior to proposals making their way to the [Council or Committee]?
- If you do engage in the process early on, do you do so regularly, or as a result of constituents' questions or complaints?
- Do city councillors directly interact with the city planners responsible for individual development proposals, or do they largely deal with managers and directors?
 - How often did you interact with staff in [Name of Department]?
 - How much weight did you give planners' recommendations to council when considering proposals?
- While compiling our databases, we came across the names of a number of neighbourhood or ratepayer associations. What role do these organizations play in the consultation process in [municipality]?
 - How involved are they in the planning process, and how well organized are they typically, in your opinion?
- Now speaking of residents more broadly, how frequently did your constituents contact you regarding planning related issues – specifically proposals for new developments in their neighbourhood?
- Did or do developers ever contact you about proposed developments?
 - If so, at which point in the process do they usually contact you (for example, before submitting their proposal? After?)
 - If and when they contacted you, what was usually the reason for their contact?

City planners

- What steps do proposals for zoning bylaw and official plan amendments go through before they make their way to council?
- Following the initial submission of a proposal, how much discussion occurs between developers and planning? Is the process highly iterative (that is, is there a lot of back and forth)?

- Do city planners interact with city councillors during this process, or only when they forward the application to council or committee?
- What role do city planners play in the consultation process with residents?
- Do city councillors directly interact with the planners responsible for individual development proposals, or do you largely deal with managers and directors?
- Broadly speaking, how involved are councillors in the planning process?
- Are councillors involved in the consultation with residents? If so, what is their role?
- Do councillors' approaches to the planning process vary?
- There are a number of ratepayer and residents' associations in the [municipality].
 - What role do these organizations play in the consultation process?
 - How involved are they in the planning process, and how well organized are they typically, in your opinion?

Representatives of residents' associations

- How does your association and other residents' associations perceive their role in planning governance and policy making?
- At what point does your association usually become involved in the planning process?
- Outside of the larger consultation meetings with residents, how often or regularly does your association interact with city planners? City councillors?
- Does your association ever approach individual councillors for support? If so, how do you determine which councillors to contact?
- How often does your association interact directly with developers?
- How would you describe your association's relationship with city councillors? Planners? Developers?
- Broadly speaking, how involved are city councillors in the planning process?
 - At what point do councillors typically become involved in the planning process?
 - How readily are councillors willing to listen to you or your association on planning issues?
 - Has the willingness to engage with your association varied by councillor?
 - In your experience, do councillors' approaches to the planning process vary?
- Does the [name of residents' association] directly interact with the planners responsible for individual development proposals, or do you largely deal with managers and directors?
- Are the residents most engaged in the politics of urban development in your community representative of the community's diverse population? For instance, are different ethnic groups equally represented, or do certain groups dominate? How about different age groups/income levels?
- Do developers ever contact your association directly about proposed developments?
 - If so, at which point in the process do they usually contact you (for example, before submitting their proposal? After?)
 - If and when they contact you, what is usually the reason for their contact?

Developers and their representatives

- Do you approach city planners about a new development proposal before submitting a formal application for rezoning?
- How iterative is the process with city planners?
 - Is there significant discussion back and forth before the proposal is submitted to planning?
 - Is there significant discussion back and forth before the proposal makes its way to the [Council or Committee]?
- Do you ever approach [ward] councillors about a new development proposal before submitting a formal application for rezoning?
 - How often do you interact with city councillors before the proposal makes its way to the [Council or Committee]?
 - Why do you interact with city councillors, and at whose behest (do you contact them, or do they contact you)?
- Are you or your firm directly involved in the consultation process with city residents?
- Do you ever hold your own consultation with residents without city planners present? If so, why?
- Do you ever interact with residents, ratepayers, or neighbourhood associations?
- Broadly speaking, how involved are city councillors in the planning process?
 - At what point do councillors typically become involved in the planning process?
 - How readily are councillors willing to listen to you or your firm on planning issues?
 - Has the willingness to engage with your firm varied by councillor?
- Do you interact solely with the planners responsible for your individual files, or do you also deal with managers and directors?
 - If you deal with managers and directors, how regularly do you communicate with them, and for what reasons?

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