

Appendix D: Bloor Street Case Study

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Introduction

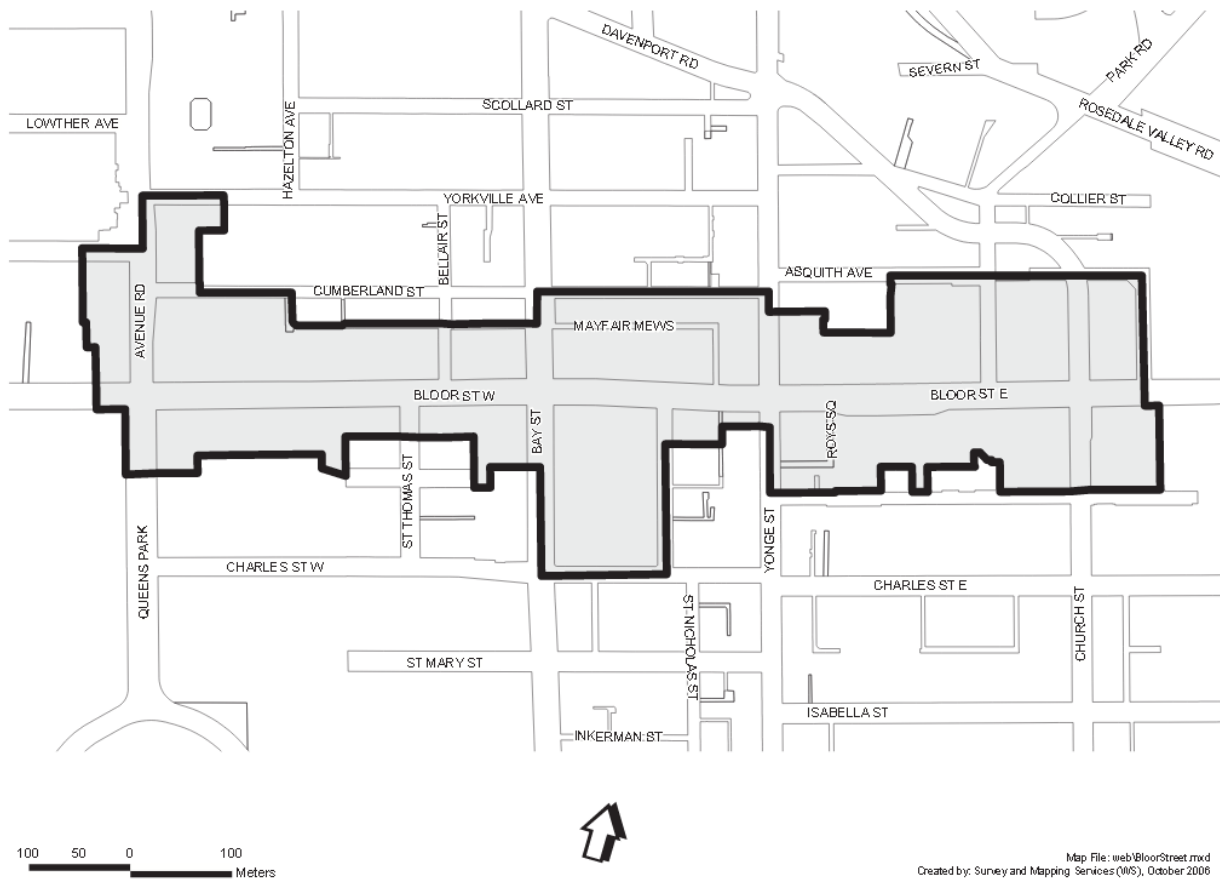
The Bloor Street Transformation project was an initiative to revitalize a stretch of Bloor Street in Toronto, Ontario known for its shopping and hotels by improving the pedestrian realm through widened granite sidewalks, narrowed motor vehicle lanes, and extensive landscaping and tree cover.

The project is noteworthy for its focus on widening the sidewalk, the Municipal Class Environmental Assessment (MCEA) classification, and the process undertaken by interested parties to oppose and contest the City’s choice of MCEA schedule, seeking ultimately to have the project reviewed in order to include on-street bike lanes on Bloor. Although sharrow markers were included in the final design instead of bicycle lanes, the resulting commissioner’s report from the contested situation recommended the MCEA process always consider active transportation in municipal road projects.

Study Area



Bloor Street Transformation Business Improvement Area



The Bloor Revitalization project occurred between Avenue Road and Church Street, which is within the Bloor Street Business Improvement Area (BIA). The Bloor Street BIA is an association of commercial property owners and tenants that work in coordination with the City on streetscape beautification and façade improvements. Funds are levied from each commercial property in the district by the City, and returned to the volunteer board that is elected from the members of the BIA to manage.

Process

The City of Toronto determined in the late 1990's that the water mains under Bloor Street between Avenue Road and Church Street would require extensive work in order to be replaced. The City notified the Bloor-Yorkdale BIA, whose members were interested in using the opportunity to make additional changes to the streetscape. The preferred changes by the BIA would narrow motor vehicle lanes while maintaining their capacity, remove on-street parking, widen granite sidewalks, and add extensive landscaping and tree cover. These changes were

intended to improve pedestrian's shopping environment. The economic and aesthetic benefits of pedestrian focused designs were central to private business' involvement in the project. Bicycle lanes were never included in the Bloor Street design, although advocates protested for their addition as part of a long-running campaign for bike lanes on Bloor,ⁱ dating back to at least 1992 when a consultant's report to the City of Toronto recommended Bloor Street as an "ideal route"ⁱⁱ.

The City began the planning process for the Bloor Street Transformation project, designating it in 2001 as a "Schedule A" MCEA. Schedule A is a classification created to streamline routine projects with minimal roadway changes without consultation or the consideration of alternative designs. This Schedule is applicable to projects that:

are limited in scale, have minimal adverse environmental effects and include a number of municipal maintenance and operational activities. These projects are pre-approved and may proceed to implementation without following the full Class EA planning process. Schedule A projects generally include normal or emergency operational and maintenance activities. (MCEA, 2011, Section A.1.2.2)

The schedule classification was criticized by some, stating that the choice was arbitrary. A brief email from a city engineer was the only documentation found for schedule classification rationale, which stated that "based on the scope of work that is being proposed there are no EA implications"ⁱⁱⁱ. Although this was the cause of public concern, the MCEA allows the classification and detail of documentation to be at the discretion of the proponent (MEA, 2011, Section A.2.1.1 and Appendix 1).

In 2003 the City established a reserve fund to accumulate funds from development in the vicinity of Bloor Street. This was done through Community Benefits contributions, which is a process outlined in Section 37 of the Planning Act and other sources.^{iv} A funding model for the full project was devised in 2005, when city staff proposed the creation of a BIA specifically for those businesses that would benefit from improvements to the local streetscape. Staff polled the potential members, and upon receiving positive feedback, City Council authorized the BIA's creation. The project was led primarily by the BIA, which gave oversight of the design process to the local business owners rather than the standard street redesign process oversight by the City, under whose supervision similar cases have generally received greater public scrutiny.

The new BIA was proposed to be the main funding mechanism for the Bloor Street Transformation – the full cost of the \$25 million reconstruction would be borne by the City, with \$20 million of that amount to be recouped over 20 years through a special levy on the BIA members. The members of the new BIA would remain members of the existing Bloor-Yorkdale

BIA, with the new association having a mandate only to oversee the repayment of the City's investment before being wound down.

In 2007 the City reclassified the project as Schedule A+, a designation that pre-approves projects, and requires public notification without consultation. By classifying a project as a Schedule A+, Part II Order requests were not possible, meaning that the project schedule could not be protested to the MOE. This classification's purpose is described as follows:

... to ensure some type of public notification for certain projects that are pre-approved under the Municipal Class EA, it is appropriate to inform the public of municipal infrastructure project(s) being constructed or implemented in their area. There, however, would be no ability for the public to request a Part II Order. If the public has any comments, they should be directed to the municipal council where they would be more appropriately addressed. (MCEA, 2011, Section A.1.2.2)

There are various factors outlined in the MCEA manual for guiding a proponent in the classification process. These include the extent or risk of environmental impacts (MEA, 2011, Section A.1.2.2), project cost and description (MEA, 2011, Appendix 1), and the project's technical requirements (MEA, 2011, A.2.1.1). The MCEA also considers the sensitivity of the public and agencies to the project and their appropriate level of involvement in classifying a project, which deals with the level of public awareness and concern of a project and the impact of the proposed intervention on the public and agencies (MEA, 2011, A.2.1.1) Despite this, the project description was the main factor that was later used to justify this decision. The MCEA manual provides various project descriptions that can be weighed and used to guide a proponent in the classification of a project. The following project descriptions, which suggest a Schedule A+ classification regardless of the project's cost, were applied in this project (MEA, 2011, Appendix 1):

Project description 3: Construction or operation of sidewalks or bicycle paths or bike lanes within existing rights-of-way

Project description 19: Reconstruction where the reconstructed road or other linear paved facilities (e.g. HOV lanes) will be for the same purpose, use, capacity and at the same location as the facility being reconstructed (e.g. no change in the number of lanes)

Subsequently in August of 2008, cycling advocates and a group of Bloor Street business owners concerned about loss of on-street parking^v and "what they perceive[d] as a lack of due process and lack of proper notification."^{vi}, under the combined banner of the Concerned About Bloor Coalition (CABC) filed a request for a judicial review of the city's classification of the project. They argued that the project merited a classification of Schedule B or C, which would

require more substantial consideration of alternatives and public consultation. The CABC argued that this reclassification was required due to the significant cost of the project, provincial laws requiring consideration of cycling infrastructure such as the *Provincial Policy Statement 2005* and the *Places to Grow Act 2005*, and the pollution that would result from maintaining traffic volumes on the street.^{vii} CABC hoped that through the project would be reclassified as a Schedule B or C, so that on-street parking could be maintained (the business owners) or that a bicycle lane would be included in the new street's design (the cycling advocates).

In response to CABC's request, the Ontario Divisional Court dismissed the judicial review, finding both the initial classification of A and subsequent reclassification to A+ as reasonable^{viii}. Indeed, the standard of reasonableness has been held by the courts to be the appropriate level of scrutiny of municipal actions in classifying EA schedules, meaning that the court will only intervene when the decision made "is not supported by any reasons that can stand up to a somewhat probing examination."^{ix} This has been criticized by some, who argue that EAs are of such importance that they should not be subject to municipal discretion and should instead be held to the stricter standard of correctness.^x In addition to the rejected judicial review, the Ontario Ministry of the Environment (MOE) also rejected a request for an investigation into the matter.

While the project proceeded apace, in his 2009 Annual Report, Ontario's Environmental Commissioner expressed concern with the process. He noted that the MOE's standard practice of working on a complaint-based compliance system rather than proactively reviewing and prosecuting Class EA infractions demonstrates reluctance to fulfill their obligations to prosecute failures to comply under the Environmental Assessment Act. Similarly, he noted that the MOE has been slow to provide documents and information to concerned citizens and appeal applicants. According to the Commissioner, there is a demonstrable need for better training with the MOE as shown when MOE staff provided incorrect information to the public, as staff were confused as to the legal relationship between the Bloor Street BIA and the City of Toronto. MOE staff initially dismissed public concerns, stating that the project was a private one, as the initiative was led by the BIA – a false statement, as the BIA is a public body created by the City, subjecting the City's obligations upon the BIA in the EA process.^{xi}

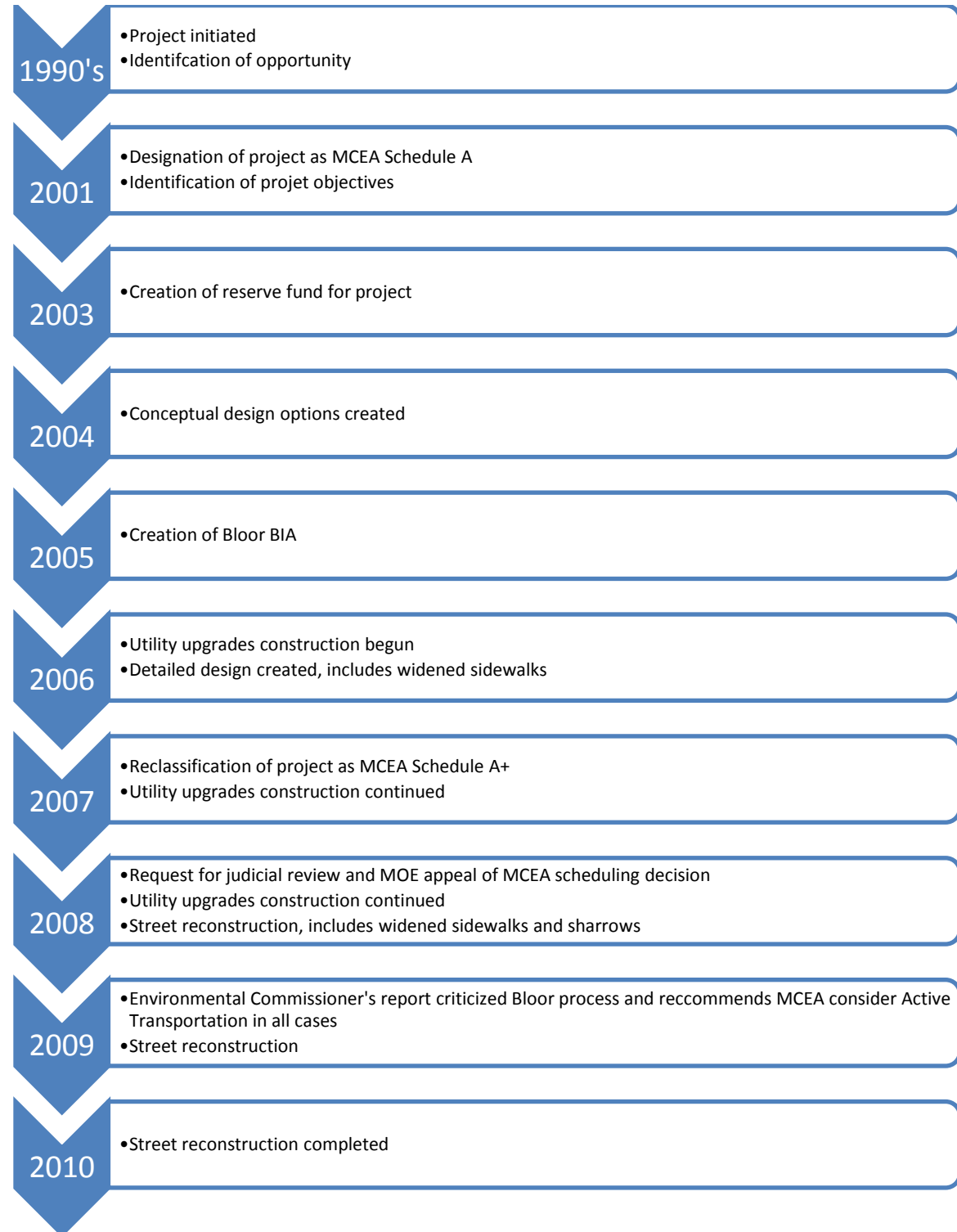
The result of the commissioner's report was a recommendation that the MOE consider ordering the Municipal Engineer's Association to amend the Municipal Class Environmental Assessment to explicitly promote cycling and walking as modes of transport. Such a requirement would bring consideration of active transportation modes in all schedules of MCEA. Similarly, the Commissioner recommended municipalities "engage cyclists in their

deliberations on planning”^{xii}, noting the importance of transparent consultation in planning for active transportation.

The construction of the project took longer than initially expected due to mid-process expansions of scope by permitting additional utility providers to make changes to their subsurface infrastructure, among other factors.^{xiii} Construction was completed in 2010 at a cost of \$24.2 million, \$4.5 million in excess of the planned \$19.7 million budget.^{xiv} The final design featured the widened sidewalks and pedestrian amenities that the BIA had sought, as well as on-street sharrows markings for cyclists.

In 2010 the City retained professional services to undertake a Schedule C Municipal Class EA Study for the establishment of a new bikeway in the Bloor-Danforth Corridor^{xv} but the study was subsequently “put on hold, pending direction from the new Council following the 2010 municipal election.”^{xvi} On May 30, 2013 six City Councillors requested that City staff “include plans to resume work on Bloor Street bike lanes, including restarting the Environmental Assessment, in the Transportation Services 2014 budget and workplan.”^{xvii} The item will be considered at the September 20, 2013 Public Works and Infrastructure Committee.

Timeline



Lessons

The nature of the MCEA classification system is to streamline reconstruction and maintenance projects where there will be minimal changes to the road's motor vehicle capacity through Schedule A and A+. While active transportation may have had an increased opportunity to be included through Schedule B and C's consideration of alternative designs and mandatory public consultation, these Schedules would have been more costly and time consuming to follow. By classifying a project as a Schedule A or A+, the potential for the public or other agencies to request a change in classification was not possible. Given the current nature of the MCEA manual in streamlining projects that minimize changes to the roadway, the classification of an MCEA is a critical juncture for the implementation of active transportation facilities. Classifying a project as Schedule A or A+ precludes the consideration of design alternatives, detailed accounts of environmental impacts, and public involvement that is required in higher-graded schedules. The level of public interest is discussed as factoring the schedule classification in the MCEA manual (MEA, 2011, Section A.2.1.1), but this appears to have been overlooked in the Bloor Street case.

Innovative financing tools can overcome austere municipal financial conditions and help to implement active transportation infrastructure. In this instance, the City benefited from a substantial upgrade to the pedestrian realm worth over \$25 million, while expecting to recoup the majority of the cost through a special levy on the local area. The businesses in the area benefit from increased visitor traffic, particularly pedestrians, and property owners from increased property values. Similar special levies have been used in other cities to fund specific projects such as burying overhead utilities,^{xviii} but widespread use to fund active transportation projects has thus far not been observed. Future application of such financing tools and studies as to their impact on property values could help to improve local area buy-in to financing active transportation.

Public-private agreements can confuse and prevent public engagement in the planning process, reducing the opportunity to advocate for active transportation infrastructure. In this case, a privileged position was given by the City to the BIA, a consortium of private property owners and tenants, organized into a quasi-private body through their association with the City. Confusion over the nature of the BIA's obligations to the public was evidenced by the MOE initially describing them as a private body, despite their position as being created by City Council. Nonetheless, plans were drafted in consultation with the BIA and its architects that did not consider bicycle needs, concerns which may have been better represented had there been greater occasion for consultation with community members, interested parties, or residents.

Replacement or upgrades of infrastructure and utilities can provide an opportunity for the implementation of active transportation facilities. Street reconstruction occurs approximately every 20 years (TAC, 1999), providing a rare and cost effective time to include active transportation in the reconstruction process. Coordination between municipalities, stakeholders, and utility providers may allow for collaboration in the improvement of streetscapes and the implementation of active transportation facilities.

Contact

<p>Councillor Pam McConnell Toronto Centre-Rosedale, Ward 28</p> <p>Phone: 416-392-7916 councillor_mcconnell@toronto.ca</p>	<p>Bloor-Yorkville BIA 55 Bloor St W Suite 220 Toronto, ON M4W 1A5</p> <p>Mon-Fri: 8:30am - 5:00pm Tel: 416.928.3553 Fax: 416.928.2034 Email: bybia@bloor-yorkville.com</p>
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^{ix} Canada (Director of Investigation and Research) v. Southam Inc., [1997] 1 S.C.R. 748

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- ^{xvi} Cyclometer, June 2011. *Bloor-Danforth Bikeway Environmental Assessment Study*. Available on-line: <http://www.toronto.ca/cycling/cyclometer/newsletter/2011-06.htm>
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