

April 17th, 2024

**Attn:**

Council Meeting <councilmeeting@toronto.ca>,  
 Mayor Chow <mayor\_chow@toronto.ca>,  
 Councillor Saxe <Councillor\_Saxe@toronto.ca>,  
 Councillor Crisanti <councillor\_crisanti@toronto.ca>,  
 Councillor Holyday <councillor\_holyday@toronto.ca>,  
 Councillor Bravo <Councillor\_Bravo@toronto.ca>;  
 Councillor Fletcher <councillor\_fletcher@toronto.ca>,  
 Councillor Malik <Councillor\_Malik@toronto.ca>;  
 Councillor Perks <Councillor\_Perks@toronto.ca>,  
 Councillor Morley <councillor\_morley@toronto.ca>,  
 Councillor Nunziata <councillor\_nunziata@toronto.ca>,  
 Councillor Pasternak <councillor\_pasternak@toronto.ca>,  
 Councillor Perruzza <councillor\_perruzza@toronto.ca>,  
 Councillor Colle <councillor\_colle8@toronto.ca>,  
 Councillor Malik <councillor\_malik@toronto.ca>,  
 Councillor Matlow <councillor\_matlow@toronto.ca>,  
 Councillor Moise <Councillor\_Moise@toronto.ca>,  
 Councillor Fletcher <councillor\_fletcher@toronto.ca>,  
 Councillor Robinson <councillor\_robinson@toronto.ca>,  
 Councillor Burnside <councillor\_burnside@toronto.ca>,  
 Councillor Carroll <councillor\_carroll@toronto.ca>,  
 Councillor Cheng <councillor\_cheng@toronto.ca>,  
 Councillor Bradford <councillor\_bradford@toronto.ca>,  
 Councillor Kandavel <councillor\_kandavel@toronto.ca>,  
 Councillor Thompson <councillor\_thompson@toronto.ca>,  
 Councillor Mantas <councillor\_mantas@toronto.ca>,  
 Councillor Myers <councillor\_myers@toronto.ca>,  
 Councillor Ainslie <councillor\_ainslie@toronto.ca>,  
 Councillor McKelvie <councillor\_mckelvie@toronto.ca>,  
 Toronto East York Community Council <TEYCC@toronto.ca>,  
 The ARA <info@TheARA.org>,  
 Aviva Pelt <Aviva.Pelt@toronto.ca>,  
 Oren Tamir <Oren.Tamir@toronto.ca>,  
 Dalton Road Residents' Group <DaltonRoadResidents@gmail.com>,

and

Lourdes Bettencourt <Lourdes.Bettencourt@toronto.ca>, Tel. 416-392-1147  
 Committee Secretary, Toronto and East York Community Council  
 Executive Committee

**RE:** THE VOTE ON APRIL 17<sup>th</sup>, 2024

Dear Mayor Chow, City Counsellors, City stuff, neighbors, colleagues:

I am writing to oppose the 171-175 Lowther Ave./Dalton Road Proposal and to oppose the rezoning of the area for these reasons:

1. Insufficient information
2. Lack of reasonability & Breach of duty of fairness
3. Excessive financial exposure of the City
4. Reputational risk for the Councillors

### **1. Insufficient information**

I hear that the developers have submitted only shadow studies which were limited to document direct obstructions in direct sunlight, that is, in a straight line from the Sun. That is what a shadow is. However, my understanding is that no study has been done in respect to the effect that new construction would have on the neighbors in terms of blocking the sky, and blocking indirect light. As a result, the City is making a decision without this vital piece of information.

#### **It is a decision to be made in the darkness, pun intended.**

Please observe the photos in FIGs 1, 2 and 3 in the following pages, and the associated captions.

From the figures it is clear that the new project will not only produce a direct shadow obstructing a direct line from the Sun on the 190 Lowther Ave units, but will completely surmise in darkness those units which don't have any other windows than on the Western side, by blocking any indirect light, by blocking the sky 24/7, permanently.

One additional fact, not shown in the figures, is that a tall building is being planned to be build on top of the Church at 188 Lowther Ave., directly on the East of the units of 190 Lowther Ave. The two planned constructions will **box-in** the units of 190 Lowther Ave., in an unacceptable manner.

Casting a shadow is already bad, but completely blocking the sky should be the brightest of the **RED LINES** for a project. While one can argue that nobody has an absolute right to direct sunlight, the same it is not true about indirect sunlight. Those with more expertise than me in architecture, urban planning and mental health can advise you on the specific standards, and side effects of having a city without buildings surmised in darkness, without access to indirect light, and the skylight blocked.

### **2. Lack of reasonability & Breach of duty of fairness**

When the units in 190 Lowther Ave were approved, and built, the plan contemplated a very small access to indirect light and sky, and had the legitimate expectation that this little access to light will be respected, and that the are will not be rezoned in a way the would block

their small access to light. Subsequent buyers and occupiers of the units, such as myself, also have this legitimate expectation.

Lawyers among you know that, according to the Supreme Court, administrative decisions must be reasonable. I submit to you that making a decision without a study on the effects of indirect light and blockage of the sky is patently unreasonable.

Furthermore, the government owes citizens a duty of fairness. I submit to you that ignoring the current information I am providing, and proceeding with the blocking the little of indirect light and sky from the 190 Lowther units breaches that duty of fairness. The 190 Lowther project would never had been approved in the current design if there was any expectation that tall towers will block the sky in the future.

### **3. Excessive financial exposure of the City**

If you refuse to hear this warning, you are exposing the City to a possible claim for the tort of unlawful administrative action for the damages of the market value of the properties and possible personal injuries. You will be exposing the City to a risk for million of dollars. Such risk cannot be justified just to avoid the small risk of paying a few thousands of costs to the lawyers of the developer, in case of a successful appeal.

I submit to you that the City has a duty of care towards the residents of 190 Lowther not to surmise them in darkness and lack of indirect light (not to be conflated with shadows from direct sunlight). I refer to the appellate case of *Paradis Honey Ltd. v. Canada (Attorney General)*, 2015 FCA 89 (CanLII), [2016] 1 FCR 446, where it was held:

“Monetary relief based on public law principles qualifies as the sort of novel claim that should not be struck on a motion to strike.”

### **4. Reputational risk for the Councillors**

Furthermore, you Councillors risk having your name associated with committing an architectural monstrosity by blocking the light and the sky of the units of 190 Lowther Ave. It would be the majority using their powers to vote in oppression of the minority of 190 Lowther Ave. In a democratic city, nobody should be in danger of having the sky completely blocked by construction.

Javier Groshaus, LL.B., LL.M., Ph.D., LSO Paralegal  
190C Lowther Ave,  
647-570-0237  
groshaus@yorku.ca



**FIG. 1:** Aerial view of 190 Lowther, units A to G and the “no-letter” unit. The Western wall of 190 Lowther (no letter unit blocks the Eastern side of units A, B, C and D, preventing any Western window for units A to D.



**FIG 2:** View from the Western window of 190C Lowther Ave. No sky visible.  
(see next pages)

**FIG 3 (a,b,c): (next pages):**

Oblique view from the Western window of 190C Lowther Ave.

The sky visible only over a narrow solid angle, which will completely be blocked by the new construction.





