**Objection Erf 1021:**

**AMENDMENT OF LAND USE SCHEME: ERF 1021 MELVILLE: LOCAL AUTHORITY NOTICE 235 OF 2019**

**OUR CLIENT: MELVILLE RESIDENTS’ ASSOCIATION**

1.    We act herein on the instructions of the Melville Residents’ Association (‘our client’).

2.    Notice has been given in the abovementioned Local Authority Notice 235 of 2019 in the Provincial Gazette, which notice was published on 20 and 27 February 2019, respectively, of an application to amend the land use scheme in operation in respect of Erf 1021 Melville.

3.    The application is for the amendment of the land use scheme in operation from ‘Residential 1’ to ‘Business 3’.

4.    Our client has instructed us to lodge a written objection on its behalf against the said application for amendment, which we hereby do.

5.    The grounds for objection, *inter alia*, are:

5.1.      The notices of the application which appeared in the Gazette on 20 and 27 February 2019 in terms of section 21(a) of the By-Law are defective and invalid as:

5.1.1.      They call for objections to be lodged by 6 March 2019 which is less than the 28 days required by section 21(2)(e) of the By-Law;

5.1.2.          It does not set out the nature and general purpose of the application as required by section 21(2)(e) of the By-Law. The reference to business purposes is wrong and misleading

5.2.      Our client is an association representing a large number of owners and occupants of residential properties in Melville, of which some are in close proximity to the application property. Our client acts in the public interest and in the interests of residents in Melville who are directly being impacted upon by the land use applied for.

5.3.      The zoning of ‘Business 3’ applied for allow as primary rights the use of the property for shops, offices, restaurants, drycleaners and launderettes in terms of the City of Johannesburg Land Use Scheme, 2018 (‘the Scheme’). ‘Business purposes’ is not a primary right under a ‘Business 3’ zoning. The notice in the Gazette referred to above is therefore wrong and misleading where it indicates that the ‘application purpose’ is ‘business purposes’.

5.4.      A copy of the application was not available for inspection as required by section 21(2)(e) when a representative of our client attended to inspect the application. It is assumed that this erf is intended to be used in conjunction with Erf 879 Melville as a restaurant. Our clients’ right to supplement this objection when the file can be inspected, is and remain reserved.

5.5.      The applicant has failed to comply with the requirements of section 5(3) of the By-Law in that it failed to address need, reasonableness, desirability and public interest in that:

5.5.1.        No word is mentioned of the illegal restaurant business that has been conducted for a few years on this erf and on Erf 879;

5.5.2.        The lack of space to provide the prescribed number of parking bays for the erf;

6.    It is the view of our client that the application is without merit and is not reasonable and in the public interest.

7.    Kindly acknowledge receipt hereof and give us timeous notice of any hearing that may be held.

**Ojection Erf 879:**

**AMENDMENT OF LAND USE SCHEME: ERF 879 MELVILLE: LOCAL AUTHORITY NOTICE 228 OF 2019**

**OUR CLIENT: MELVILLE RESIDENTS’ ASSOCIATION**

**1.    We act herein on the instructions of the Melville Residents’ Association (‘our client’).**

**2.    Notice has been given in the abovementioned Local Authority Notice 228 of 2019 I the Provincial Gazette, which notice was published on 20 and 27 February 2019, respectively, of an application to amend the land use scheme in operation in respect of Erf 879 Melville.**

**3.    The application is for the amendment of the land use scheme in operation from ‘Special 1’ to ‘Business 3’.**

**4.    Our client has instructed us to lodge a written objection on its behalf against the said application for amendment, which we hereby do.**

**5.    The grounds for objection, *inter alia*, are:**

**5.1.      The notices of the application which appeared in the Gazette on 20 and 27 February 2019 in terms of section 21(a) of the By-Law are defective and invalid as:**

**5.1.1.        The call for objections to be lodged by 6 March 2019 is less than the 28 days required by section 21(2)(e) of the By-Law;**

**5.1.2.        It does not set out the nature and general purpose of the application as required by section 21(2)(e) of the By-Law. The reference to business purposes is wrong and misleading.**

**5.2.      Our client is an association representing a large number of owners and occupants of residential properties in Melville, of which some are in close proximity to the application property. Our client acts in the public interest and in the interests of residents in Melville who will be directly impacted upon by the land use applied for.**

**5.3.      The zoning of ‘Business 3’ applied for allow as primary rights the use of the property for shops, offices, restaurants, drycleaners and launderettes in terms of the City of Johannesburg Land Use Scheme, 2018 (‘the Scheme’). ‘Business purposes’ is not a primary right under a ‘Business 3’ zoning. The notice in the Gazette referred to above is therefore wrong and misleading where it indicates that the ‘application purpose’ is ‘business purposes’ and a gallery.**

**5.4.      The application has failed to comply with the requirements of section 5(3) of the By-Law in that it failed to address need, reasonableness, desirability and public interest in that:**

**5.4.1.        No word is mentioned of the illegal restaurant business that has been conducted for a few years on Erf 879;**

**5.4.2.        There is a lack of space to provide the prescribed number of parking bays for the erf;**

**5.4.3.        The existing zoning of offices and art gallery constitutes the acceptable buffer uses referred to in the RSDF. There has been no change in policy or circumstances from the date of refusal of the previous application for a restaurant.**

**5.4.4.        The reliance on a title condition which makes reference to a hotel and bar business is without legal merit as the principle applies that the more restrictive of the land use scheme or the title conditions will prevail. In this matter the land use scheme is the more restrictive and its provisions prevail.**

**5.4.5.        The reliance on the reputation of the chef of the illegal restaurant is irrelevant. The land use rights attach to the property and the merit of the user is irrelevant.**

**6.    It is the view of our client that the application is without merit and is not reasonable and in the public interest.**

**7.    Kindly acknowledge receipt hereof and give us timeous notice of any hearing that may be held.**