



CAMPTON TOWNSHIP

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St. Charles, Illinois 60175
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Fax: (630) 387-1068
www.camptontownship.com

November 13, 2015

Development Department
Keith Berkhout
Building and Zoning Division
719 Batavia Ave.
Geneva, IL 60134

Re: Glenwood School (Maxxam Partners, LLC) Special Use for a private-pay alcoholism and substance abuse treatment facility

Dear Mr. Berkhout:

This is in response to your letter dated October 15, 2015 regarding the above mentioned Special Use for Glenwood School. The Campton Township Board and Campton Township Planning Commission reviewed the Special Use request and oppose the Special Use Permit.

Attached is Resolution No. 2015-1, A Resolution Opposing Maxxam Partners, LLC Petition to Kane County for Special Use Permit unanimously passed by the Campton Township Board of Trustees.

In addition, attached are Campton Township Planning Commission meeting minutes of November 5, 2015 and "Exhibit A" Addendum to Campton Township Planning Commission meeting minutes of November 5, 2015, both are a true and correct copy of agenda item 8.c. approved and passed by the Campton Township Board at its meeting of November 10, 2015.

If you have any questions concerning this recommendation please contact the Township office via 630-387-1016 or supervisor@camptontownship.com.

Sincerely,

John M. Kuper
Supervisor

Attest:

Richard Johansen, Clerk

Enclosures

TOWNSHIP OF CAMPTON

A RESOLUTION OPPOSING MAXXAM PARTNERS, LLC
PETITION TO KANE COUNTY FOR SPECIAL USE PERMIT

WHEREAS, in August of 2015, Maxxam Partner, LLC ("**Maxxam**") filed petition No. 4364 ("**Maxxam Petition**") requesting that the County of Kane ("**County**") approve a Special Use Permit to allow it to use and operate a private-pay alcoholism and substance abuse treatment facility ("**Facility**") on property located at 41W400 Silver Glen Road in unincorporated Kane County and zoned in the F Farming District ("**Property**"); and

WHEREAS, the County had originally scheduled Maxxam's petition for zoning board of appeals ("**ZBA**") on November 17, 2015, at 7:00 p.m., though has now cancelled this meeting as of November 10, 2015; and

WHEREAS, the County sent notice to the Township of Campton ("**Township**") regarding the proposed hearing on Maxxam's petition, which notice was dated October 15, 2015 (Exhibit "**A**"); and

WHEREAS, in its notice, the County provided the Township with 30 days notice to provide comments, recommendations, or suggestions to the County on the Maxxam Petition and, although the original November 17 meeting has now been cancelled, it is unclear to the Township whether the 30-day comment period to the County will either be waived or extended, thus compelling the Township to act as if the deadline still existed; and

WHEREAS, however, the Township did not receive the County's notice until October 26, 2015, more than one-third of the response time having elapsed and providing little time for the Township Board to carefully review Maxxam's request for relief and provide comments on the Maxxam Petition, there being only one Township Board of Trustees ("**Township Board**") meeting before the ZBA hearing; and

WHEREAS, the County was not willing to waive its minor conflict of interest that it had with the Township's attorney, and that other lawyers in the area offered concerns that the County would similarly not waive their minor conflicts either, the County essentially limiting the Township's ability to seek adequate counsel and legal representation in this matter within the remaining time allotted; and

WHEREAS, notwithstanding the late notice and other impediments imposed on the Township by the County in this matter, the Township Board desires to adopt and present to the County a formal resolution of the Township Board to oppose the Maxxam Petition based upon (i) the County's failure to follow its own Zoning Ordinance procedures for approving "similar"

use, (ii) Maxxam filing an application for the wrong form of zoning relief, (iii) Maxxam's proposed facility not complying with either the standards set forth in the Campton Township Comprehensive Land Use Plan or the County Zoning Ordinance for granting special use permit, and (iv) further points enumerated below;

THEREFORE, BE IT RESOLVED BY THE SUPERVISOR AND BOARD OF TRUSTEES OF THE TOWNSHIP OF CAMPTON, KANE COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1. The recitals listed above are incorporated into this Resolution as if fully set forth in this Section 1.

SECTION 2. The Township Board agrees with the opinions offered by Ms. Julie A. Tappendorf (Ancel Glink et al, attached Exhibit "B") and Mr. Carrara (Rathje & Woodward, LLC, attached Exhibit "C") that a Special Use Permit within a F District is not allowable and that the current process is contrary to Kane County's own Zoning Ordinance.

SECTION 3. Furthermore, and unless otherwise noted, the Township Board concurs in-full with the Village of Campton Hills' ("Village") November 3, 2015 resolution ("Village Resolution") and herein adopts it as if its own (attached, Exhibit "D"). This being said, should conflict occur between the Township and Village Resolutions, the contents of the Township Resolution shall take precedence in this Resolution over the Village Resolution and remain the Township's official position regarding the Maxxam Petition.

SECTION 4. Documents included in support of the Maxxam Petition¹ examined zoning maps for the Village and Elgin though neglected to review or consider Campton Township's Comprehensive Land Use Plan, first passed in December 2000, revised in 2006, and most recently revised again September 2015.

SECTION 5. The Township Board opposes the Maxxam Petition because the Zoning Officer and County have failed to either perform or provide independent analyses or any of the basic investigations required through the zoning process². As examples, it has neither conducted nor provided any independent data regarding impact on comfort or general welfare of residents, nor has it conducted/provided independent studies related to the potential impact on property values, emergency services, or general safety. In other words, the County has abrogated its duty in this matter and can neither meaningfully nor independently answer any of the concerns that are required as part of a Public Hearing³ RE Special Uses. In its rush to move this matter forward, the County has also denied key participants like the Village and Township time to conduct our own independent assessment of these matters or have these materials reviewed by expert witnesses. In short, the County has artificially restricted local government

¹ Poletti & Associates, A REAL ESTATE STUDY FOR THE PROPOSED ALCOHOLISM AND SUBSTANCE ABUSE TREATMENT FACILITY UNINCORPORATED KANE COUNTY, ILLINOIS, , June 2015

² Appendix B of the Kane County Zoning Ordinance, page 17, Section 4.2-4 m, Rules

³ Appendix B of the Kane County Zoning Ordinance, page 23, Section 4.8-2 a-f, Public Hearing

participation and, by doing so, undermined its own credibility as a fair arbiter of the Zoning process, only staying the process when necessitated through appeal.

As examples, though not limiting the Township's concerns to these issues alone, the County should validate items and provide supporting evidence for the following through independent means (i.e., without input from the petitioner):

- The MaROUSE & COMPANY⁴ report (not attached, though part of the Petition) used a dissimilar site for comparison to the proposed Maxxam Partners' model. The Park Ridge Youth Campus (now closed) was never established to treat drug or alcohol addiction, nor did it accept detox residents of any classification, nor was it ever licensed to administer drugs to manage these effects. It housed emotionally troubled young girls between the ages of 12-18.

QUESTION: What is the impact of using dissimilar sites in any comparison RE assessing the potential impact on real estate values near the Property?

- The Real Estate Study prepared by Poletti & Associates⁵ (not attached, though part of the Maxxam Petition) fails to mention that Timberline Knolls is located amongst high-density housing, heavy industrial sites, and a major highway. Similar to the Park Ridge Youth Center, the Rosecrance Center that was used in this study serves juveniles and is located near a major highway and amongst an area with historically depressed property values. In other words, it would appear that the impact on the surrounding properties from the Timberline and Rosecrance facilities have a completely different price point sensitivity to them due to the high density and industrial natures of the areas surrounding them.

QUESTION: When multiple perceived detrimental factors surround a given facility – i.e., when a facility is located near high-density housing, major highways, scrap yards, and industrial sites – how is the impact of any one single factor distinguished from the high volume of other perceived negative factors nearby? How is this then applied to real estate near the Property which is void of any of the these perceived negative factors?

- The proposed Facility is planned to be 20-50% larger than any of the facilities used in the above mentioned impact studies and, unlike the comparisons offered, will both detoxify and treat adults for addiction to alcohol and/or opiates.

QUESTION: Would not these elements, singularly and combined, make any comparison between them and the proposed Maxxam Facility baseless? Does the impact on

⁴ MaROUS & COMPANY, Market Impact Analysis, Proposed Alcoholism and Substance Abuse Treatment Facility, 41W400 Silver Glen Road, Unincorporated St. Charles, Illinois 60175, August 20, 2015

⁵Poletti & Associates, A REAL ESTATE STUDY FOR THE PROPOSED ALCOHOLISM AND SUBSTANCE ABUSE TREATMENT FACILITY UNINCORPORATED KANE COUNTY, ILLINOIS, June 2015

surrounding real estate increase in either a linear or exponential manner with the increase in size of the Facility or scale of services offered?

SECTION 6. The County has neglected its own past precedent in zoning. Only two facilities in unincorporated Kane County offer nursing home, rehabilitation, or a variety of short-to-long-term managed care services⁶. Both of these were specifically and purposefully zoned as Planned Urban Development (PUD), vs. having been ushered in under Special Use Permit. Unlike any of the proposed rationale for the Facility's purpose being "similar" to other allowable uses under Special Use, the two facilities referenced were specifically stated as allowed under Special Use Permit.⁷

q. "Monasteries, nunneries, religious retreats, **nursing and convalescent homes, assisted living facilities**, boarding schools and orphanages."

In other words, smaller, less intensive facilities than those being proposed by Maxxam underwent a greater amount of public planning and adherence to the zoning process than is being afforded here with the current Maxxam Petition.

SECTION 7. The Township opposes the Property as being unsuited for the purpose intended by Maxxam. Per the Murer Consultants Memorandum⁸, twenty-two facilities in Illinois of the type proposed are co-located and affiliated with a hospital. "...Only one existing non-hospital facility is licensed by the Division of Alcoholism and Substance Abuse in Illinois to provide Level IV detoxification services: Cornell Interventions, Woodridge IL." It needs stating that Cornell Interventions (zoned B2 and surrounded by shopping) is located 4.9 miles from Advocate Good Samaritan Hospital ("**Advocate**") – less than half the distance from the proposed Maxxam site to either Delnor or Sherman Hospitals. Woodridge, having a higher population density, is also served by numerous ambulance and other emergency services via more-direct double-lane roads between emergency services, Cornell Interventions, and the hospital. In fact, Darien-Woodridge Fire Protection Station 88 is only 0.8 miles from Cornell Interventions and could be there to provide ambulance and emergency medical services in less than 3 minutes. Two other stations can provide backup support, each within less than 10 minutes. In comparison, the proposed Maxxam site would be served by Fox River & Countryside Fire/Rescue District at a distance of 4.5 miles (8 minutes) via single-lane roads, the majority of the trip along no-passing zones. Backup services to the primary responders would be 20 minutes or more should those initial emergency services be occupied; however, even under the best of circumstances, the total response time for callout to Maxxam and then to a hospital is at-least 3-times greater than exists for Cornell Interventions to Advocate and would lack coordinated backup support. Such time commitments would place patients, emergency service

⁶ Greenfields of Geneva (<http://www.greenfieldsofgeneva.org/>) and Marklund Hyde Center (<http://www.marklund.org/>)

⁷ Appendix B of the Kane County Zoning Ordinance, page 46, Section 8.1-2 q, Special Uses. **BOLD** added for emphasis

⁸ Murer Consultant, Inc., page 5, June 17, 2105 Memorandum to Maxxam Partners, on record as part of the petition filed with Kane County

providers, and roadway patrons in potential jeopardy as well as compromise local emergency services through extended callout times. None of these concerns were addressed in the KLOA Summary Traffic Evaluation Memorandum⁹ that was provided with Maxxam's Petition.

SECTION 8. The Township maintains the above listed Sections, objects to the Maxxam Petition, and believe it should be rejected. Furthermore, the Township requests any further pursuit for rezoning by Maxxam Partners should (at minimum) follow the regular (non Special Use) process for zoning change requests. Should a large facility of this type (serving a non-local, transient, and medically vulnerable population) be permitted within the County, the Township requests that it be affiliated with and co-located adjacent to a hospital – as is the practice for an overwhelming majority of addiction facilities that detox patients on-site in the State of Illinois.

SECTION 9. Unless otherwise stipulated above, all ordinances, resolutions, and other documents in conflict herewith are hereby repealed to the extent of the conflict.

SECTION 10. This Resolution shall be in full force and effect from after its passage and approval in the manner provided by law.

Passed this 10th day of November, 2015 by roll call vote:

	AYES	NAYES	ABSENT	ABSTAIN
Trustee Joseph Miller	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Elizabeth Murphy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Tom Stutesman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Victoria Vandiver	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Supervisor John Kupar	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

APPROVED THIS 10TH DAY OF NOVEMBER, 2015

John Kupar, Supervisor

(SEAL)

ATTEST: Richard Johansen, Township Clerk

⁹ KLOA - Kenig, Lindgren, O'Hare, Abona, Inc.: Summary Traffic Evaluation, Proposed Alcoholism and Substance Abuse Treatment Facility, Unincorporated Kane County, Illinois, June 22, 2015

COUNTY OF KANE

Exhibit "A"

DEVELOPMENT DEPARTMENT
Building and Community Services Division
Mark D. VanKerkhoff, AIA, Director
Building Officer



County Government Center
719 Batavia Avenue
Geneva, Illinois 60134
Phone: (630) 232-3480
Fax: (630) 232-3411
Website: www.co.kane.il.us

October 15, 2015

via certified mail

CAMPTON TOWNSHIP SUPERVISOR
43W870 EMPIRE RD.
ST CHARLES, IL 60175

RE: GLENWOOD SCHOOL (MAXXAN PARTNERS, LLC)
Reason: SPECIAL USE FOR A PRIVATE-PAY ALCOHOLISM AND SUBSTANCE ABUSE
TREATMENT FACILITY

Dear CAMPTON TOWNSHIP SUPERVISOR,

Enclosed for your information is a copy of the referenced petition filed recently with the Kane County Zoning Board of Appeals. If you have any comments, recommendations or suggestions, please submit them in writing to this office within 30 days of the above date.

Sincerely,

KANE COUNTY DEVELOPMENT DEPARTMENT

A handwritten signature in black ink, appearing to read "Keith Berkhout", is written over a horizontal line.

Keith Berkhout
Building & Zoning Division

Enclosure



DIAMOND BUSH
DI CIANNI
& KRAFFT/ETTER

A Professional Corporation
140 South Dearborn Street, Suite 600
Chicago, IL 60603
www.ancelglink.com

Julie A. Tappendorf
jtappendorf@ancelglink.com
(P) 312.604.9182
(F) 312.782.0943

October 23, 2015

Via Email: vankerkhoffmark@co.kane.il.us

Mark VanKerkhoff, Director & Zoning Enforcing Officer
Kane County Development and Community Services Dept.
719 S. Batavia Ave., Building A
Geneva, IL 60134

Re: Maxxam Partners, LLC – Special Use Permit Petition No. 4364

Dear Mr. VanKerkhoff:

I serve as the Village Attorney for Campton Hills. The Village Board has asked that I send a letter to the County regarding zoning petition 4364. We ask that you include this letter as part of the application file and the record of the County's hearing on this petition.

According to the application filed by Maxxam Partners, LLC ("**Maxxam**") in late August, Maxxam is requesting that the County approve a special use permit to allow it to use and operate a residential substance abuse treatment facility ("**Facility**") on property located at 41 W400 Silver Glen Road in unincorporated Kane County and zoned in the F Farming District ("**Property**").

As you know, the Facility is not listed as a permitted or special use in the F District. Consequently, Maxxam has applied for a special use permit for the Facility under section 25-8-1-2(DD). That provision states as follows:

DD. Other uses similar to those permitted herein as special uses.

Section 25-8-1-2(DD) does not identify who is responsible for determining what uses are "similar" to the listed special uses or how "similar" uses are to be determined. However, section 25-5-15 of the Zoning Ordinance does:

25-5-15: INTERPRETATION OF USE LISTS:

The enforcing officer may allow land uses which, though not contained by name in a zoning district list of permitted or special uses, are deemed to be similar in nature and clearly compatible with the listed uses. However, such nonlisted uses shall not be approved until the application for such use has been reviewed by the county development department staff and a favorable report has been received by the enforcing officer. The nonlisted uses which are approved shall be added to the appropriate use list at the time of periodic updating and revision.

According to this section, before a use can be deemed "similar" to the listed special uses in the F District, 3 things must happen. First, the county development department staff must review the application for the proposed use. Second, staff must transmit a favorable report to the enforcing officer. Third, only after receipt of the favorable report from staff can the enforcing officer approve adding the nonlisted "similar" use to the special use list in the respective zoning district (in this case, the F-District). Thus, until the enforcing officer has approved the Facility as a

ANCEL, GLINK, DIAMOND, BUSH, DICIANNI & KRAFTHEFER, P.C.
October 23, 2015
Page 2

nonlisted “similar” use, Maxxam’s petition for approval of a special use for the Facility cannot and should not be scheduled for hearing. The Facility is simply not an authorized special use in the F-District because you (as the enforcing officer) have not yet approved it as a similar use.

At our meeting on October 7, 2015, the Village asked if you (the enforcing officer) had approved the proposed Facility as a “similar” use under section 25-8-1-2(DD). You responded that no such determination had been made by you or County staff. Rather, you stated that County staff was simply forwarding the petition to the ZBA, and that the ZBA would be responsible for determining whether the use was a “similar” use.¹

However, the County’s Zoning Ordinance places the responsibility for approving a “similar” use with you (the enforcing officer) not the ZBA. That approval can only happen after a favorable report has been forwarded to you (the enforcing officer) from community development staff. By transmitting Maxxam’s petition to the ZBA without first approving the Facility as a “similar” use, the County has violated its own ordinance procedures.

It is the Village’s position that the County violated its own Zoning Ordinance in scheduling Maxxam’s special use petition for a public hearing without first going through the proper procedure for approving the addition of a nonlisted “similar” special use to the F District regulations. As a result, the ZBA has no authority to hear Maxxam’s petition for a special use that (i) is not listed in the Zoning Ordinance as a special use or (ii) has not yet been approved as a “similar” nonlisted use pursuant to 25-5-15. By skipping a necessary step in the process, the County calls into question all future proceedings on Maxxam’s petition and exposes the County to the risk of a procedural challenge to any future decision on that petition.²

We would also like to express our disappointment that County staff did not contact the Village when it scheduled Maxxam’s petition for a meeting on November 17, 2015. At our meeting on October 7th, we were assured that you would keep the Village informed of future proceedings. Instead, we had to learn about the meeting while researching another County petition.

If you have any questions about this letter, please contact me.

Sincerely,



Julie A. Tappendorf

cc: Village President and Board of Trustees, Village of Campton Hills
Village Administrator, Village of Campton Hills
4845-4808-1193, v. 1

¹ If your position has changed, and you have since issued the required approval, please forward a copy of that determination to me.

² It is not clear why County staff skipped this necessary step in the process. Maybe County staff believes that if it does not put its approval or determination in writing, it can somehow avoid a formal appeal of that decision, as authorized by 25-4-2-3?

Exhibit "C"



630-668-8500
FAX: 630-668-9218
kcarrara@rathjewoodward.com
Direct: 630-510-4924

October 2, 2015

Via E-mail Transmittal and
U.S. First Class Mail
vankerkhoffmark@co.kane.il.us

Mark VanKerkhoff, AIA
Director
Kane County Development and
Community Services Department
719 S. Batavia Avenue, Building A
Geneva, IL 60134

RE: Maxxam Partners, LLC Special Use Application

Dear Mr. VanKerkhoff:

The undersigned represents Joline T. Andrzejewski, as Trustee of the Joline T. Andrzejewski Trust #2004 and Abram Andrzejewski. This letter shall serve as partial response to the materials submitted by Maxxam Partners, LLC with its application for a special use permit for its proposed residential substance abuse treatment facility (the "Facility") to be constructed on the site of the former Glenwood Academy (the "Parcel"), located in unincorporated Kane County on a Farming/Agricultural Zoned Parcel. We ask that this response be made part of the application file. For purposes of preparing this response, we have reviewed Maxxam Partners' special use permit application (the "Application"), their three expert opinions offered in support of their Application (the "Opinions"), and applicable local, state, and federal law.

The proposed use outline in the Application requires an Amendment to the Kane County Zoning Ordinance or an Amendment to the Kane County Zoning Map. For the reasons explained in this letter, it would be improper for the County to allow the Applications to be processed as a Special Use. As a review of case law, facts in the Application, standing Illinois legislation, and existing regulatory laws show, the Facility is not substantially similar to any special use in the F zoning district.

The appropriate course of considering the proposed use of this Farming/Agricultural Zoned parcel would be for the County to initiate an amendment to its zoning code to 1) define this type of use; 2) identify what zoning districts are best suited for the use; and, 3) identify what conditions are necessary to protect the public health, safety and welfare in considering the proposed Facility and other similar facilities that will be proposed in the future.

ANALYSIS

I. The Facility Does Not Fit Within Any Special Use Defined In The Kane County Zoning Ordinance.

The Kane County Zoning Ordinance (“K.C.Z.O.”) does not contemplate the use of land for residential substance abuse treatment facilities such as the Facility. That is true with respect to all zoning districts, including the F Zoning District (Farming/Agricultural District) in which the Parcel is located. In the K.C.Z.O., there is a specific list of defined “special uses” that may be permitted in a zoning district with specific approval from the County. The Facility does not fit within the definition of any listed special use for any zoning district. Under Illinois zoning law, “[s]ince a special use permit allows property owners or developers to use their land in an express exception to the zoning code, the application must prove that the property falls squarely within that exception.” *Shipp v. County of Kankakee*, 345 Ill. App. 3d 250, 253 (3d Dist. 2003). Because Maxxam Partners clearly cannot provide such proof in their Application, the Application should not be processed as a special use.

II. The Facility Is Not Sufficiently Similar To Any Use Defined In The Kane County Zoning Ordinance.

The Opinions argue that the Facility should be granted a special use permit under Section 5.15, which states that the County Zoning Enforcement Officer “may allow land-uses which, though not contained by name in a zoning district list of permitted or special uses, are deemed to be similar in nature and clearly compatible with the listed uses.” K.C.Z.O. § 5.15. They also point to Section 8.1-2, which allows as a special use in the F Zoning District “[o]ther uses similar to those permitted herein as special uses.” K.C.Z.O. § 8.1-2(dd).

There is no specific set of factors listed in K.C.Z.O. that the Enforcement Officer should or must consider with respect to non-listed uses, other than those that are generally applicable to zoning decisions. “However, such non-listed uses shall not be approved until the application for such use has been reviewed by the County Development Department staff and a favorable report has been received by the Enforcing Officer.” *Id.*

The allowance of a non-listed use ultimately has much the same effect as a text amendment, but without the orderly public policy analysis, study, and planning that typically attend the proposal and passage of a K.C.Z.O. text amendment. The K.C.Z.O. states that “non-listed uses which are approved shall be added to the appropriate use list at the time of period updating and revision”. In the meantime, allowance of the proposed special use on this parcel would create a precedent for a similar use on any parcel bordering R1 zoned properties and for all parcels in the F1 Farming and Agricultural zoned districts. Establishing such a precedent, which might apply across the wide swaths of Kane County for uses similar to the Applicants, in an unplanned and ad-hoc manner is unwise and inconsistent with the typically orderly and deliberative land use planning process of Kane County. As such, the standards and considerations applicable to text amendments should be applicable to the consideration of non-listed uses.

The Opinions attempt to shoe-horn the Facility into one of the specifically defined special uses permitted in F Zoning Districts, so that it may be considered sufficiently “similar.” The Opinions focus on the “hospital” and “nursing and convalescent home” special uses, but the Facility should not be considered sufficiently “similar” to either type of use. If the Facility is “similar” to any type of defined special use, it is most analogous to a “clinic” or a “group home.”

A. The Facility Is Fundamentally Different Than A Hospital.

First, under the K.C.Z.O., a “hospital” is “an institution open to the public in which patients or injured persons are given medical treatment or surgical care; or for the care of contagious diseases.” K.C.Z.O. § 3.1. One fundamental difference between the Facility and a “hospital” is immediately apparent right from that definition: a “hospital” is “[a]n institution *open to the public*.” As Illinois law recognizes, “[h]ospitals, whether privately or publicly owned, are institutions *operated largely for the benefit of the community* by the care and treatment of bed patients.” *City of Champaign v. Roseman*, 15 Ill. 2d 363, 366 (1958) (emphasis added). The “luxury treatment” Facility described in the Application, on the other hand, is not intended to be open to the public but open to only “certain members of the public” as explained by Murer Consultants, Inc.

Second, the definition of “hospital” in the K.C.Z.O. – unlike the definition of “group home” – does not contemplate the residential nature of the Facility. According to data compiled by the federal Center For Disease Control and Prevention, the average hospital stay is 4.8 days. Centers for Disease Control and Prevention, FastStats: Hospital Inpatient Care, *National Hospital Discharge Survey: 2010 Table, Number and Rate of Hospital Discharges*, http://www.cdc.gov/nchs/data/nhds/1general/2010gen1_agesexalos.pdf. Data supplied by the Petitioner in their Application indicates that “The average stay will be between 30 to 90 days.” The residential nature of the proposed Facility with stays potentially 625% or 1,875% longer than the average hospital stay makes it clearly distinct and dissimilar from a hospital.

Third, existing Illinois law recognizes that substance abuse treatment facilities and hospitals are different. The legislature was clear when they set forth hospitals are regulated under the Hospital Licensing Act. 210 ILCS 85/3(A)(5); and substance abuse treatment facilities are regulated under the Alcoholism and Other Drug Abuse and Dependency Act. 20 ILCS 301/15-5. Further, hospitals are exempt from the licensure requirements of the Alcoholism and Other Drug Abuse and Dependency Act only to the extent that their substance abuse treatment services “are covered within the scope of the Hospital Licensing Act.” 20 ILCS 301/15-5.

While hospitals and substance abuse treatment facilities may have some overlap in services, the luxury and largely nonpublic nature of the proposed Facility, its provision of services such as meditation, yoga, massages, personal trainers and Zumba classes to a residential clientele, and the clearly disparate treatment of such a Facility under Illinois law and our state’s regulatory framework do not permit it to be considered “similar in nature and clearly compatible.”

B. The Facility Is Fundamentally Different Than A Nursing Home.

The K.C.Z.O. defines a “nursing and convalescent home” as “a building and premises for the care of sick, infirm, aged, or injured persons to be housed; or a place of rest for those who are bedfast or need considerable nursing care, but not including hospitals, assisted living facilities or group homes.” K.C.Z.O. § 3.1. Illinois law is clear that a substance abuse treatment facility is also fundamentally different than a nursing home.

First, the Illinois Supreme Court has acknowledged that nursing homes are distinct from detoxification and recovery centers. In *Parella v. Leyden Family Service & Mental Health Center*, 79 Ill. 2d 493, 498 (1980), the court considered whether a special use ordinance permitting a nursing and convalescence home also authorized the owner to establish a detoxification center on the property. *Id.* Although the court noted that both nursing homes and detoxification centers were dedicated to “the rehabilitation of a sick human being in mind and body or both,” it found that the detoxification center was functionally and operationally different than the nursing home use. *Id.* at 500 (“it is clear that there is no similarity between the operation of the facility as a convalescence or nursing home under the permitted special use permit and the operation of a detoxification center.”). Accordingly, the Court held that the special use permit allowing for the establishment and operation of a nursing home did not also allow for the operation of a detoxification center. *Id.*

Second, Illinois’ regulatory structure also reflects the reality that substance abuse treatment facilities and nursing home facilities are fundamentally different. The two types of facilities are subject to distinct sets of regulations administered by different state agencies. Nursing homes are licensed and regulated by the Illinois Department of Public Health in accordance with the Nursing Home Care Act. *See* 210 ILCS 45/1-101 *et seq.* In contrast, as explained above, substance abuse treatment facilities are licensed and regulated by the Illinois Department of Alcoholism and Substance Abuse pursuant to the Alcoholism and Other Drug Abuse and Dependency Act. *See* 20 ILCS 301/1-1 *et seq.*

Nursing homes are subject to different reporting and compliance requirements than rehabilitation and recovery centers. These reporting and compliance requirements provide both their residents and nearby property owners with certain protections not afforded under the law to the neighbors of drug and alcohol rehab centers. For example, nursing homes are required to conduct mandatory background checks for all patients. 210 ILCS 45/2-201.5. No such requirement exists for rehabilitation centers. In addition, nursing home administrators are subject to testing and licensure requirements on topics specific to nursing facilities. 210 ILCS 45/3-117. From a regulatory standpoint, these two types of facilities are clearly treated as distinct and therefore subjects them to different rules and requirements.

C. The Facility Is Most Similar To A Clinic Or A Group Home.

Two uses conspicuously absent from the analyses in the Opinions are “clinic” and “group home because they are not permitted uses in the underlying F district.” K.C.Z.O. § 3.1. However, those are the two defined uses that the Facility most closely resembles.

A “clinic” is “an individual or organization offering medical, psychological and/or dental services.” K.C.Z.O. § 3.1. Clinics are a permitted use in the RB Zoning District. K.C.Z.O. § 10.1(c). Further, the RB Zoning District permits “mixed use” properties – *i.e.*, “[a] building under one ownership which contains dwellings either located above the ground floor or to the rear of the building and permitted restricted business uses, per this ordinance, located on the ground floor or to the front of the building.” K.C.Z.O. § 10.1(h). In fact, Illinois case law already holds that a methadone clinic falls within an ordinance permitting use of land for “[o]ffices of professional persons such as physicians, dentists, health practitioners (but not including veterinarians), attorneys, architects and engineers, and including out-patient medical and dental clinics, but not hospitals.” *Vill. of Maywood v. Health, Inc.*, 104 Ill. App. 3d 948, 953 (1st Dist. 1982). It is easy to see how a mixed use property in an RB Zoning District could accommodate a residential substance abuse treatment facility.

A “group home” is “a dwelling occupied by no more than eight (8) persons with a handicap as the word ‘handicap’ is defined in the Federal Fair Housing Act.” K.C.Z.O. § 3.1. That, based on the information provided in the Application, is what the Facility will be: a set of “group homes.” However, one issue for the Facility is that the definition limits the occupants of a single group home to no more than eight in number. The Facility as described appears to contemplate more than eight persons per dwelling.

A second issue for the Facility, and for the County, is that the K.C.Z.O. does not identify in which zoning districts group homes may be established or whether such homes are permitted uses or special uses. Instead, it states that “[n]o section, clause or provision of this Ordinance is intended, nor shall be construed, to be contrary to the Federal Fair Housing Act as amended. (42 USC 3601 *et seq.*), including but not limited to those provisions contained in the Federal Fair Housing Act which may apply to ‘group homes’ as defined herein.” K.C.Z.O. § 5.3(b). Thus, implying that group homes are allowed uses to the extent necessary for compliance with the federal Fair Housing Act (“FHA”). The lack of clarity concerning the appropriate locations for group homes in Kane County could lead to a patchwork of inconsistent (and incompatible) uses that defeats the County’s thorough master planning efforts.

III. The Federal Fair Housing Act Does Not Require The Issuance Of A Special Use Permit For The Facility.

Despite the consideration that must be paid to applicable federal anti-discrimination laws, the FHA does not require that the Application be granted. The Meyers & Flowers and Holland & Knight Opinions are incorrect in arguing that the County will be “required” to grant the Application and accept the Facility as a special use of the Parcel so as to make a “reasonable accommodation” required under the FHA. In fact, the goal of the FHA is “equal opportunity,” and

The “equal opportunity” element limits the accommodation duty so that not every rule that creates a general inconvenience or expense to the disabled needs to be modified. Instead, the statute requires only accommodations necessary to ameliorate the effect of the plaintiff's disability so that she may compete equally with the non-disabled in the housing market. We have enforced this limitation by asking whether the rule in question, if left unmodified, hurts handicapped people *by reason of their handicap*, rather than by virtue of what they have in common with other people, such as a limited amount of money to spend on housing.

Wis. Cmty. Serv., Inc. v. City of Milwaukee, 465 F.3d 737, 749 (7th Cir. 2006) (emphasis in original; quotations and citations omitted); 42 U.S.C. § 3604(f)(3)(B).

The “mere fact” that a substance abuse treatment facility does not fit within the definitions of allowable uses in a zoning district “does not automatically require a reasonable accommodation. The accommodation sought must be related to the disability: the FHA does not grant protected classes carte blanche in determining where they can live in total disregard of local zoning codes.” *Advocacy & Res. Ctr. v. Town of Chazy*, 62 F. Supp. 2d 686, 689 (N.D.N.Y. 1999)(emphasis added). Accordingly, for example, “an accommodation should not extend a preference to handicapped residents relative to other residents, as opposed to affording them equal opportunity and accommodations that go beyond affording a handicapped tenant an equal opportunity to use and enjoy a dwelling are not required by the [FHA].” *Sporn v. Ocean Colony Condo. Ass’n*, 173 F. Supp. 2d 244, 250 (D.N.J. 2001) (quotations omitted; alteration adopted).

The Opinions incorrectly imply that denying the Application will automatically result in a violation of the FHA. Under federal anti-discrimination laws, in order to prove a reasonable accommodation claim in the context of a zoning dispute, “a plaintiff must prove that: (1) a modification of the enforcement of a local government's zoning code is necessary because plaintiff's disability is what causes his deprivation of the activities, services, or benefits desired; and (2) such modification is reasonable in that it is both efficacious and proportional to the costs to implement it.” *Daveri Dev. Group, LLC v. Vill. of Wheeling*, 934 F. Supp. 2d 987, 1005 (N.D. Ill. 2013) (discussing the ADA) (quotations omitted). Further, if the plaintiff meets that burden, “a defendant may show that a modification to its policy is unreasonable if it is so at odds with the purpose behind the rule that it would be a fundamental and unreasonable change. It is necessary that the court take into consideration all of the costs to both parties.” *Id.* (quotations and citations omitted; alteration adopted).

Importantly, there is no requirement that when the County must make a “reasonable accommodation,” it is limited to consideration of the accommodation requested by the Applicant. Under the FHA, the County may not “refus[e] to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.” 42 U.S.C.A. § 3604(f)(3)(B). The County may choose what accommodation to make, as long as such accommodation is “reasonable.” *See Corp. of Episcopal Church in Utah v. W. Valley City*, 119 F. Supp. 2d 1215, 1222 (D. Utah 2000). As such, if an accommodation to ameliorate the handicap suffered by the intended clients of the Facility is necessary, the County does have options as to such accommodation. For example, depending on the exact circumstances, the County to fulfill its obligation of providing a reasonable accommodation could consider a permit for a mixed use clinic property in an RB Zoning District. Alternatively, the County could fulfill its requirements by considering a permit for a group home or homes in any zoning district. A third entirely appropriate and reasonable accommodation by the County might be the consideration of a text amendment to the K.C.Z.O. that specially addresses residential substance abuse treatment facilities within the County’s zoning plan. It is important to recognize that there is no obligation of the County under the FHA or ADA to grant this *particular* application for a special use, and that there are multiple viable options that are more orderly and consistent with the County’s existing zoning ordinance and long history of deliberative and consistent land use planning.

IV. The Kane County 2040 Plan

A text amendment is likely the most appropriate course of action because, despite the K.C.Z.O.’s failure to address residential substance abuse treatment facilities and other rehabilitation center uses, the Kane County 2040 Plan places a priority on preventing alcohol abuse. (*See* 2040 Plan p. 79.) The plan also establishes a policy to “[c]reate environments that prevent excessive consumption of alcohol.” (2040 Plan p. 98.) Notably, this policy is also identified as the first priority in Kane County’s 2012 – 2016 Health Improvement Plan, which is directly incorporated into the Kane County 2040 Plan. (*See* Exec. Summary, 2012-2016 Health Improv. Plan p. 6.) Beyond identifying substance abuse prevention as a policy goal, the Plan also identifies where health care uses should be located: within the Randall / Orchard Road corridor. (2040 Plan p. 215)

Notably, the 2040 Plan designates the future use of the Parcel as “Institutional / Private Open Space.” (*See* 2040 Plan, 2040 Land Use Map) The Plan states that the Parcel is intended to provide “important scientific, cultural and educational opportunities to the residents of Kane County.” (2040 Plan p. 221) Health care, medical or rehabilitation uses are not contemplated in this future land use designation. The consideration of a text amendment would allow the County the opportunity to reasonably accommodate the Facility and other rehabilitation and treatment centers within its larger planning framework and avoid further struggles over this issue in the future.

CONCLUSION

In conclusion, the Facility is not a permitted or special use in the F Zoning District. A review of case law, standing legislation and regulatory treatment, and the facts of the Petitioner's own Application show that a special use permit cannot be processed under the hospital or nursing home exceptions. Under the current K.C.Z.O., the proposed use would most accurately be defined as a mixed use clinic, but this use is not permitted on an F District parcel and would require a rezoning of the Parcel to a Restricted Business Zoning District. Because the K.C.Z.O. does not contemplate residential substance abuse treatment facilities in any defined use, the County should consider initiating a text amendment to the zoning regulations to address such facilities. The amendment should identify: (1) in what zoning districts such facilities may be established; (2) whether such facilities will be allowed as a permitted or special use; and (3) what conditions should be applied to such facilities to protect the public health, safety and welfare. A comprehensive analysis of the external impacts generated by such facilities should be conducted to ensure the County accounts for the impacts of not just this Facility, but for the many other similar proposals that will likely be forthcoming based on decisions made on the current Application.

Very truly yours,

RATHJE & WOODWARD, LLC



Kevin M. Carrara

KMC/lb

cc: Mr. J. Lulves, Assistant Kane State's Attorney
Client

**Village of Campton Hills
Memorandum**

To: Village President and Board of Trustees
From: Jennifer Johnsen, Village Administrator
Subject: Resolution Opposing Maxxam Partners, LLC Petition
Date: October 29, 2015

On October 26, 2015, the Village received the attached petition and public hearing notice for a special use petition filed by Maxxam Partners, LLC for a private-pay alcoholism and substance abuse treatment facility to be located at the former Glenwood Academy (41W400 Silver Glen Road). The letter was dated October 15, 2015 and provided the Village will 30 days to respond with comments. The public hearing is scheduled for November 17, 2015.

Due to the shortened period of time for review and comment and the upcoming public hearing, President Blecker, Attorney Tappendorf, and I decided it was best to draft the attached resolution opposing the petition based upon the Village Board's previous discussion and direction regarding the zoning process. This resolution is in lieu of the comment letter that the Village frequently submits in response to Kane County for special use petitions within 1.5 miles of the Village's jurisdiction. Please note, as this resolution is in response to a special use petition, the resolution does not affect the vote required by the Kane County Board for approval.

The resolution contains the following four parts as summarized below and contained within the recitals and the related sections of the resolution:

1. Opposition to the special use public hearing process as the County's Enforcing Officer has not made a determination on whether the proposed use is similar to any of the special uses in the F-Farming District as required by the County's Zoning Ordinance.
2. Opposition to the special use process as the appropriate zoning relief was not applied for given that 1) the proposed use is not similar to any of the permitted special uses in the F-Farming District and 2) the proposed use is not consistent with the underlying purpose and intent of the F – Farming District.
3. Opposition to the approval of a special use permit as the proposed use does not meet the special use permit standards identified in the County's Zoning Ordinance.
4. Proposed conditions on the special use permit if the County chooses to proceed with the special use approval process despite the procedural defects identified by the Village. These conditions were extracted from the list of zoning-related conditions developed by the Village for the KIVA petition previously filed with the Village. The conditions are being proposed at this time as this will be the Village's only opportunity to comment on the special use petition if the County proceeds with the special use process.

Action Requested: Discussion and consideration of a Resolution Opposing a Petition to Kane County for a Special Use Permit submitted by Maxxam Partners, LLC for the property formerly known as Glenwood Academy (41W400 Silver Glen Road)

Attachments: Resolution Opposing Maxxam Partners, LLC Petition to Kane County for a Special Use Permit

Special Use Petition Filed by Maxxam Partners, LLC

VILLAGE OF CAMPTON HILLS

**A RESOLUTION OPPOSING MAXXAM PARTNERS, LLC
PETITION TO KANE COUNTY FOR A SPECIAL USE PERMIT**

WHEREAS, in August of 2015, Maxxam Partners, LLC ("**Maxxam**") filed Petition No. 4364 ("**Maxxam Petition**") requesting that the County approve a special use permit to allow it to use and operate a private-pay alcoholism and substance abuse treatment facility ("**Facility**") on property located at 41W400 Silver Glen Road in unincorporated Kane County and zoned in the F Farming District ("**Property**"); and

WHEREAS, the County has scheduled Maxxam's petition for a zoning board of appeals ("**ZBA**") hearing on November 17, 2015, at 7:00 p.m.; and

WHEREAS, the County sent a notice to the Village of Campton Hills regarding the proposed hearing on Maxxam's petition, which notice was dated October 15, 2015; and

WHEREAS, in its notice, the County provided the Village with 30 days to provide comments to the County on the Maxxam Petition; and

WHEREAS, however, the Village did not receive the County's notice until October 26, 2015, providing little time to the Village Board to carefully review Maxxam's request for relief and provide comments on the Maxxam Petition, there being only one Village Board meeting before the ZBA hearing; and

WHEREAS, notwithstanding the late notice, the Village Board desires to adopt and present to the County a formal resolution of the Village Board to oppose the Maxxam Petition based upon (i) the County's failure to follow its own Zoning Ordinance procedures for approving a "similar" use, (ii) Maxxam filing an application for the wrong form of zoning relief, and (iii) Maxxam's proposed Facility not complying with the standards set forth in the County Zoning Ordinance for granting a special use permit, as discussed more fully in this Resolution; and

WHEREAS, because the Facility is not listed as a permitted or special use in the F District, Maxxam applied for a special use permit for the Facility under section 25-8-1-2(DD) which states as follows:

DD. Other uses similar to those permitted herein as special uses.

WHEREAS, Section 25-8-1-2(DD) does not identify who is responsible for determining what uses are "similar" to the listed special uses or how "similar" uses are to be determined; and

WHEREAS, however, section 25-5-15 of the Zoning Ordinance does identify the person responsible for making such determination:

25-5-15: INTERPRETATION OF USE LISTS:

The enforcing officer may allow land uses which, though not contained by name in a zoning district list of permitted or special uses, are deemed to be similar in nature and clearly compatible with the listed uses. However, such nonlisted uses shall not be approved until the application for such use has been reviewed by the county development department staff and a favorable report has been received by the enforcing officer. The nonlisted uses which are approved shall be added to the appropriate use list at the time of periodic updating and revision.

WHEREAS, according to section 25-5-15, before a use can be deemed “similar” to the listed special uses in the F District, the following three things must happen:

1. County development department staff must review the application for the proposed use.
2. County staff must transmit a favorable report to the enforcing officer.
3. After receipt of the favorable report from staff, the enforcing officer must approve adding the nonlisted “similar” use to the special use list in the respective zoning district (in this case, the F-District); and

WHEREAS, thus, until the enforcing officer has approved the Facility as a nonlisted “similar” use, Maxxam’s petition for approval of a special use for the Facility cannot and should not be scheduled for hearing because the Facility is simply not an authorized special use in the F-District until the enforcing officer has approved it as a similar use; and

WHEREAS, it is the Village’s understanding through conversations with the Director of the Kane County Development and Community Services Department (who also serves as the County’s enforcing officer), that no such determination has been made and the ZBA would be responsible for determining whether the Facility was a “similar” use to listed special uses in the F District; and

WHEREAS, however, according to the County’s own Zoning Ordinance, the responsibility for approving a “similar” use is the enforcing officer’s not the ZBA; and

WHEREAS, it is the Village’s position that the County violated its own Zoning Ordinance in scheduling Maxxam’s special use petition for a public hearing without first going through the proper procedure for approving the addition of a nonlisted “similar” special use to the F District regulations; and

WHEREAS, as a result, the ZBA has no authority to hear Maxxam’s petition for a special use that (i) is not listed in the Zoning Ordinance as a special use or (ii) has not yet been approved as a “similar” nonlisted use pursuant to section 25-5-15; and

WHEREAS, by skipping a necessary step in the process, the County calls into question all future proceedings on Maxxam’s petition and exposes the County to the risk of a procedural challenge to any future decision on that petition; and

WHEREAS, even if the County had followed its Zoning Ordinance and the enforcing officer had made the determination that the Facility was a “similar” use to one of the listed special use permits authorized in the F District prior to scheduling this for a ZBA hearing, it is the Village’s position that this determination (had it happened) would not be consistent with Illinois zoning law because the proposed Facility is not a “similar” use to any of the listed special uses in the F District (including a hospital); and

WHEREAS, as an initial matter, it is not clear *what* listed special use the Facility would be deemed similar to since County staff has not made the required determination; and

WHEREAS, the Maxxam Petition suggests that the proposed Facility is similar to a hospital or a nursing and convalescent home; however, as discussed above, it is County staff that must make the determination as to whether the Facility is “similar” to a listed special use in the F District, not Maxxam; and

WHEREAS, in any event, an alcoholism and substance abuse treatment facility is not similar to a hospital or a nursing and convalescent home for a number of reasons, including the following:

1. The definition of a “hospital” under the County’s Zoning Ordinance does not contemplate the type of residency proposed by the Maxxam Facility.
2. Alcoholism and substance abuse treatment facilities, hospitals, and nursing homes are all regulated under completely different statutes under Illinois law.
3. Illinois courts have acknowledged that nursing homes are distinct from substance abuse facilities. *See Patella v. Leyden Family Service & Mental Health Center*, 79 Ill.2d 493 (1980).
4. Nursing homes are subject to different reporting and compliance requirements under Illinois law, including special testing and licensure requirements.

WHEREAS, because the Facility is not a “similar” use to any of the listed special uses in the F District (including hospitals or nursing and convalescent homes), Maxxam should have applied for a text amendment to add an alcoholism and substance abuse treatment facility as an authorized special use permit in the F District; and

WHEREAS, even if Maxxam had applied for a text amendment to add an alcoholism and substance abuse treatment facility as an authorized special use permit in the F District, it is the Village’s position that this proposed use is not consistent with the underlying purpose and intent of an agricultural zoning district such as the F District nor is the use consistent with Kane County’s 2040 Plan, which would be more appropriately addressed through a rezoning of the Property to a more appropriate zoning district; and

WHEREAS, if Maxxam had applied for the appropriate form of relief, the Village and other taxing bodies and neighboring property owners would have had additional legal rights to object to the zoning amendment (including the right to protest a zoning amendment under section 25-4-7-3 of the Zoning Ordinance and triggering a super majority vote of the County Board to

approve the requested relief) that are not available because Maxxam did not file for the appropriate zoning relief for its proposed Facility; and

WHEREAS, even if the County had followed its own ordinances and Maxxam had applied for the appropriate zoning relief, it is the Village's position that the proposed Facility simply does not meet the standards for granting a special use permit as set forth in Section 25-4-8-2 of the County's Zoning Ordinance; and

WHEREAS, specifically the proposed Facility does not meet the standard that provides that the establishment, maintenance or operation of the special use will not be unreasonably detrimental to or endanger the public health, safety, morals, comfort or general welfare; and

WHEREAS, further, the proposed Facility does not meet the standard that it will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood; and

WHEREAS, in addition, the proposed Facility does not meet the standard that it will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.

THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF CAMPTON HILLS, KANE COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1. The recitals listed above are incorporated into this Resolution as if fully set forth in this Section 1.

SECTION 2. The Village Board opposes the Maxxam Petition because the County did not follow its own Zoning Ordinance in processing the application and scheduling it for a public hearing. Specifically, the Zoning Enforcing Officer did not approve adding an alcoholism and substance abuse treatment facility as a special use in the F District, a prerequisite to scheduling and holding a public hearing on a "similar" use application. Because the procedure involved in processing the Maxxam Petition is flawed, the ZBA has no authority to hear or make a recommendation on Maxxam's request for a special use permit for its proposed Facility.

SECTION 3. The Village Board also opposes the Maxxam Petition because Maxxam failed to apply for the appropriate relief in the form of a text amendment to add the Facility as an authorized special use in the F-Farming District. Because a private pay-alcoholism and substance treatment facility is not a "similar" use to any listed special use in the F District, is not consistent with the underlying purpose and intent of an agricultural zoning district such as the F District, and is inconsistent with Kane County's 2040 Plan, Maxxam's request for approval of the Facility would be more properly addressed through a rezoning of the Property to a more appropriate zoning district. As a result, the Maxxam Petition should not move forward to the ZBA for hearing or recommendation, as the requested relief is not appropriate to authorize the proposed Facility.

SECTION 4. Even if the County had followed its Zoning Ordinance in processing the Maxxam Petition and Maxxam had applied for the appropriate zoning relief, the Village Board opposes the Maxxam Petition because the Petition for the proposed Facility does not meet the special use permit standards set forth in Section 25-4-8-2 of the County Zoning Ordinance. The ZBA should find that the proposed Facility does not meet all of the required standards and recommend that the County Board deny the requested special use.

SECTION 5. In the event that the County chooses to ignore the procedural defects in scheduling the Maxxam Petition for a hearing before the ZBA prior to approving a private-pay alcoholism and substance abuse treatment facility as a “similar” use and the inappropriate zoning relief requested by Maxxam, and finds that the proposed Facility meets each and every one of the standards for a special use permit set forth in Section 25-4-8-2 of the County Zoning Ordinance, the Village of Campton Hills strongly encourages that the County consider imposing substantial conditions on the Facility, including but not limited to, the proposed conditions listed in **Exhibit A** of this Resolution. The Village’s proposal of conditions on any County approval of the Facility is not, and should not be interpreted as, a withdrawal of the Village’s position (set forth in sections 2, 3, and 4) that the County’s process is in violation of the County’s Zoning Ordinance, Maxxam has applied for the wrong zoning relief, and the Facility does not meet the standards for granting a special use permit in the County’s Zoning Ordinance

SECTION 6. All ordinances, resolutions, and other documents in conflict herewith are hereby repealed to the extent of the conflict.

SECTION 7. This Resolution shall be in full force and effect from after its passage and approval in the manner provided by law.

Passed this ____ day of _____, 2015 by roll call vote:

	AYES	NAYES	ABSENT	ABSTAIN
Trustee Laura Andersen	_____	_____	_____	_____
Trustee Susan George	_____	_____	_____	_____
Trustee James McKelvie	_____	_____	_____	_____
Trustee Mike Millette	_____	_____	_____	_____
Trustee Michael O’Dwyer	_____	_____	_____	_____
Trustee Michael Tyrrell	_____	_____	_____	_____
President Harry Blecker	_____	_____	_____	_____

APPROVED THIS _____ DAY OF _____, 2015

Harry Blecker, Village President

(SEAL)

ATTEST:

Nicholas Girka, Village Clerk

Exhibit A

Proposed Conditions on Special Use Approval

1. The maximum number of patients at the Facility at any one time shall be limited to 96.
2. Prior to occupancy, a black metal fence with a minimum of 6' in height shall be installed on or near the boundary of the entire Property.
3. A state-of-the-art campus security system shall be installed, maintained, and monitored by personnel trained in security measures, and security personnel will be maintained on staff 24 hours per day when clients are present on the Property.
4. Exterior lighting fixtures upon replacement of existing fixtures or upon installation of new fixtures shall be full cut-off and have a color temperature of less than 3,000 Kelvin, provided that such fixtures do not compromise security as determined by the security system provider.
5. The Operator shall not accept state or federal funding for, or related to, the Property, which in any way inhibits the compliance with special use conditions.
6. Wetlands on the Property shall be delineated and protected in perpetuity by conservation easements, donation to a public body, or other appropriate means.
7. The Operator shall develop a process of communication with the Campton Hills Police Department to ensure effective enforcement and intervention in the event of incidents occurring on the Property to which the Campton Hills Police Department responds.
8. The construction of additional buildings and accessory structures shall be limited under the special use permit to preserve the integrity of the open space.
9. The Operator agrees to maintain, at all times, the staffing levels required by the Illinois Department of Alcohol and Substance Abuse and all other applicable licensing authorities.
10. All signage related to the proposed use shall be restricted to the Property. Further, such signage or advertising shall not be placed on the water tower located on the Property.
11. The special use permit shall run for five years and shall require a public hearing for renewal for an additional five-year term.

COUNTY OF KANE

DEVELOPMENT DEPARTMENT
Building and Community Services Division
Mark D. VanKerkhoff, AIA, Director
Building Officer



County Government Center
719 Batavia Avenue
Geneva, Illinois 60134
Phone: (630) 232-3480
Fax: (630) 232-3411
Website: www.co.kane.il.us

October 15, 2015

via certified mail

CAMPTON HILLS MUNICIPAL CLERK
40W115 CAMPTON CROSSINGS DR UB
CAMPTON HILLS, IL 60175

RE: GLENWOOD SCHOOL (MAXXAN PARTNERS, LLC)
Reason: SPECIAL USE FOR A PRIVATE-PAY ALCOHOLISM AND SUBSTANCE ABUSE
TREATMENT FACILITY

Dear CAMPTON HILLS MUNICIPAL CLERK,

Enclosed for your information is a copy of the referenced petition filed recently with the Kane County Zoning Board of Appeals. If you have any comments, recommendations or suggestions, please submit them in writing to this office within 30 days of the above date.

Sincerely,

KANE COUNTY DEVELOPMENT DEPARTMENT

A handwritten signature in black ink, appearing to read "Keith Berkhout", is written over a horizontal line.

Keith Berkhout
Building & Zoning Division

Enclosure

Received
10/26/2015
JK

**Campton Township
Planning Commission
Meeting Minutes**
November 5th, 2015—7:00pm
Campton Township Community Center,
5N082 Old LaFox Road, St. Charles, Illinois 60175

1. Call to Order

Chairman Rich Gornick called the meeting to order at 7:10pm

Attendee Name	Title	Status	Arrived
Shawn Clark	Commissioner	Present	
Rich Gornick	Chairman	Present	
Kim Haag	Commissioner	Present	
Ron Petrucci	Commissioner	Present	
Todd Williams	Commissioner	Present	

2. The Pledge of Allegiance was observed.

3. Roll Call

- a. All present in person or absent as recorded above.
- b. Citizens also present included Barbara Wojnicki and John Pree.

4. Approval of Minutes

- a. Minutes of September 30th 2015 meeting were reviewed. A motion was made to accept them by Todd Williams, seconded by Rich Gornick. Voice vote was called and they were approved by unanimous consent.

5. Citizens Comments

- a. None offered at this time.

6. Old Business

- a. Chairman reported on presentation of the Planning Commission's recommendations relative to the Kane County Country Market and our suggested changes to the Campton Township Comprehensive Land Plan to the Township Board. Rich Gornick indicated that the Campton Township Board did accept our recommendations relative to the Kane County Market and changes to the Comprehensive Plan.

7. New Business

- a. Review of Maxxam Partners, LLC petition 4364 to Kane County for issuance of a special use permit to allow Maxxam's conversion of the dormant Glenwood School property to accommodate a residential alcohol and substance abuse treatment facility. The Planning Commission developed the following list of

observations, suggestions and comments to be presented to the Campton Township Board for their consideration as a result of our review of this plan, inclusive of the public comments we received:

- i. The County will need to determine that there is a method in place to assure that Maxxam Partners, LLC (Maxxam) is held to whatever plan they have presented, if they are granted their special use permit.

While the applicant has stated (that it) "...does not have any immediate need or intent to construct additional buildings..." Maxxam has also indicated during an initial meeting with Kane County staff that they may develop plans to expand in the future.

- ii. Our Planning Commission recognizes the need for this property to be put to valuable use rather than continue to deteriorate. However, we are aware that there have been at least two other entities interested in redeveloping this property.

Both of these suitors seemed to have had intended uses more consistent with the rural trend and character that Campton Township's constituents are dedicated to preserving, and into which our citizens have heavily invested. However, it appears that both of those interested parties were not successful in progressing their negotiations with the current owner.

- iii. Questions were raised about the willingness of Maxxam (and Kane County itself) to follow the prescribed process for County consideration. Kane County appears to be allowing Maxxam to circumvent the County's approval process by failing to require that the Maxxam proposal be reviewed by the County's development department staff for recommendation to the enforcing officer...who would then present the staff findings to the Zoning Board for consideration for special use (as stated in the attorney Tappendorf's letter to Mark VanKerkhoff dated October 23rd, 2015).

As we understand it, the County's own procedure prescribes that the County must create a text amendment to the zoning ordinance in order to grant this special use. This process would also trigger the requirement of a $\frac{3}{4}$ majority of the 24 board members. Most important, this prescribed process will better enable input from the citizen stakeholders who have, and continue to, vociferously oppose this project's permitting under special use.

- iv. A citizen pointed out that whether or not our township residents' fears are supported by historical data and information available relative to similar facilities, their fears are indeed "real" in the sense that they are their fears.
- v. The health and safety issues that our residents believe will be associated with this project as it is proposed are not adequately addressed within the documents that Maxxam has presented. In fact, Maxxam itself is on record freely admitting that "walk-outs" also known as "incompatible stays" of drug and alcohol addicted patients do occur, albeit rarely.
- vi. Maxxam's plans for security provided by internal and third party personnel and their intention to have policies relative to patient screening and control do not appear to be adequate to insure our

citizens' quiet enjoyment of their private and public properties adjacent to, and in the vicinity of, this property.

- vii. While these "walk offs" may or may not be properly construed as an escape, the fact that they may indeed occur presents a legitimate security threat in terms of potential crime(s). It is worth noting that many of the people going to these types of facilities are going because of deferred adjudication—basically by court order. In many cases these patients are not merely ill. In addition to their medical issues with substance dependencies, they have already been engaging in criminal conduct. *(Please refer to the attached "Exhibit A" Addendum to Campton Township Planning Commission 11/05/15, for a more robust treatment of this topic.)*
- viii. The fact that the proposed facility will contribute to the tax base—particularly in that it will increase the Central Community School District 301's revenue base *without* increasing its student load is indeed an attractive attribute of this special use. However, other non 501(c)(3) uses of this property would *also* provide these advantages without the many disadvantages the proposed special use engenders.
- ix. We believe that the demand upon police, fire and EMS services can reasonably be expected to be disproportionate to the projected increase in tax revenue that this project will create.

There is no plan in place to address such resource deficits in our community's existing health & safety manpower and infrastructure from any source—let alone any plan in place to assure that such deficits will be appropriately born by the commercial enterprise that creates those shortfalls.

For these reasons, among others, we suggest that this type of facility might be better supported by the municipal services and infrastructure readily available in a more urban area.

- x. The Meissner-Corron Forest Preserve constitutes the majority of the land abutting the existing site. This public resource is comprised of 640 acres of some of the most botanically significant land in the entire area. Its wetland's and other wild areas include more than 50 species of native plants including the extremely rare species of Indian Paint Brush, Michigan Lily and White Orchid.

It is reasonable to assume that the general public will be reticent to use this unique Township and County resource, given the real and perceived safety concerns imbued by the proposed special use. If this special use is permitted, this resource that is in fact owned by the public is unlikely to be enjoyed by those very constituents to whom it belongs.

- xi. While "development" may or may not be "constrained" by Maxxam's proposed use (per Maxxam's claim in their proposal), our community's free enjoyment of the adjacent Forest Preserve—and in many cases their own private properties—is certainly going to be affected, according to our residents' stated safety concerns. The fundamental tenants that are stated in the Forest Preserve's mission including "...recreation, education and pleasure of all of its citizens..." are clearly going to be negatively impacted.

- b. A motion was made by Rich Gornick to hold a vote on whether we will simply forward our observations, suggestions and comments to the Campton Township Board or we will hold a vote to recommend encouraging or discouraging the Maxxam request for special use. The motion was seconded by Todd Williams.

The voice vote was called it was agreed by unanimous consent to hold a vote on the recommendation.

- c. A motion was made by Rich Gornick to vote on whether to recommend encouragement of Maxxam's special use request. The motion was seconded by Shawn Clark. A voice vote was called resulting in a decision to discourage support of Maxxam's request for approval of special use:

Attendee Name	Vote
Shawn Clark	Nay
Rich Gornick	Aye
Kim Haag	Nay
Ron Petrucci	Nay
Todd Williams	Aye

8. Adjournment

- a. A motion was made by Rich Gornick to adjourn the meeting and seconded by Todd Williams. The voice vote was taken with unanimous support. The meeting was adjourned at 9:41pm.

"Exhibit A"
Addendum to Campton Township Planning Commission
meeting minutes 11/05/15

Maxxam Partners Application for Special Use

As a part of the Application for Special Use, Maxxam submitted a RIDER TO APPLICATION FOR SPECIAL USE. On page 9 of the Rider, Maxxam states:

"In support of the position that the proposed use will not be detrimental to or endanger public health, safety, morals, comfort or general welfare, Applicant hereby submits the expert opinion letter of John H. Curtiss, President of The Retreat, a nonprofit residential alcoholism and substance abuse treatment facility located in Wayzata, Minnesota (Tab #18). . Mr. Curtiss has 35-years of operational experience and his letter addresses possible concerns that may arise from the County Board and/or community.

Mr. Curtiss, states that incomplete stays, voluntary discharges, and "walk-outs" are rare for high-end alcoholism and substance abuse treatment facilities. Mr. Curtiss, states that in his experience those who choose to invest in an expensive treatment program are highly motivated to complete the program successfully and are thus unlikely to leave prematurely.

In the case of Applicant's facility, should a patient choose to leave the facility prior to completing the program, Applicant will provide a private car service to transport the patient from the facility to a pre-designated location selected by the patient prior to admission." The Rider asserts that the proposed use "will not be detriment to or endanger public health, safety, morals, comfort or general welfare".

To support this assertion Mr. John H. Curtiss, President of the Retreat, a nonprofit residential treatment facility states that "...incomplete stays, voluntary discharges, and "walk-outs" are rare for high-end alcoholism and substance abuse treatment facilities. "

As Mr. Curtiss states, patients seeking treatment do leave the facility, although it may be rare, he acknowledges in his statements that it does occur. The fact that substance abuse patients do escape from treatment facilities, we must acknowledge that there is a safety risk to township citizens.

Because of this risk, the proposal appears to contradict the Objectives and Goals outlined in the Campton Township Comprehensive Land Use Plan. Specifically the "Overall Land Use and Open Space" and "Public Safety" and "Special Use" provisions outlined below:

A. Overall Land Use and Open Space

Maintain the rural trend and character of Campton Township.

Campton Township offers a unique environment in the Chicago metropolitan area. With larger lot sizes combined with vast open spaces and a quiet, peaceful, and safe semi-rural environment, the Township is an exception to the substantial suburban sprawl around us...

5. Public Safety

As the township population has increased, the demand for public safety services such as fire protection, police, and ambulance/rescue resources has also grown. The preservation of a quiet, safe, secure, and peaceful rural environment as a guiding value for well planned development in the Township, the impact of proposed residential or commercial land use should be carefully considered.

G. Special Use

It is recognized however, that there are certain uses which, because of their unique characteristics, cannot be properly classified in any particular district or districts, without consideration, in each case, of the impact of those uses upon neighboring land and of the public need for the particular use in the particular location.

To provide for the location of special classes of uses which are deemed desirable for public welfare within a given district or districts, but which are potentially incompatible with the aforementioned Campton Township Comprehensive Plan's objectives and goals.

The special use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish or impair property values within the neighborhood.