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Transcript of **Public Hearing Petition No. 4364,**
Volume 6

Date: January 28, 2016

Case: Kane County Zoning Board of Appeals

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BEFORE THE KANE COUNTY ZONING BOARD OF APPEALS

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In Re: :
MAXXAM PARTNERS, LLC :
Special Use request in the :
F Farming District for a :
private-pay alcoholism and :
substance abuse treatment : Petition No. 4364
facility 41W400 Silver Glen :
Road, Section 19, Campton :
Township (08-19-400-004) and :
Section 34, Plato Township :
(05-34-300-032 & 05-34-400-025) :

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PUBLIC HEARING - VOLUME 6
St. Charles, Illinois
Thursday, January 28, 2016
7:00 p.m.

Job No.: 102710
Pages: 809 - 961
Reported by: Paula M. Quetsch, CSR

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Report of proceedings held at the location of:

KANE COUNTY CIRCUIT COURT CLERK -
BRANCH COURT
530 South Randall Road
St. Charles, Illinois 60174
(630) 232-3495

Before Paula M. Quetsch, a Certified Shorthand
Reporter and a Notary Public in and for the State of
Illinois.

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PRESENT:

- JOSEPH WHITE, Chairman
- HAROLD BOWEN, Member
- PENNY CAMERON, Member
- DANIEL HEINRICH, Member
- ROBERT MOGA, Member
- GERALD REGAN, Member
- ROXANNE STOVER, Member

ON BEHALF OF THE APPLICANT MAXXAM PARTNERS, LLC:

- HONORABLE F. KEITH BROWN, ESQUIRE
- ANDREW KOLB, ESQUIRE
- MEYERS & FLOWERS
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- St. Charles, Illinois 60174
- (630) 232-6333

ON BEHALF OF KANE COUNTY:

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- KATHLEEN WATSON, ESQUIRE
- KANE COUNTY STATE'S ATTORNEY JOSEPH MC MAHON
- 37W777 Route 38
- St. Charles, Illinois 60175
- (630) 232-3500

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ON BEHALF OF THE KANE COUNTY BOARD:

PATRICK KINNALLY, ESQUIRE
KINNALLY FLAHERTY KRENTZ LORAN
HODGE & MASUR, PC
2114 Deerpath Road
Aurora, Illinois 60506
(630) 907-0909

ON BEHALF OF THE OBJECTOR:

KEVIN M. CARRARA, ESQUIRE
RATHJE WOODWARD, LLC
300 East Roosevelt Road
Suite 300
Wheaton, Illinois 60187
(630) 668-8500

ALSO PRESENT:

MARK VAN KERKHOFF, Zoning Enforcing Officer
KEITH BERKHOUT, Secretary

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P R O C E E D I N G S

CHAIRMAN WHITE: Everybody please take your seats. I'll call the meeting to order.

Please rise for the pledge.

(The Pledge of Allegiance was recited.)

CHAIRMAN WHITE: Secretary, please call the roll.

MR. BERKHOUT: Bowen.

MEMBER BOWEN: Here.

MR. BERKHOUT: Cameron.

MEMBER CAMERON: Here.

MR. BERKHOUT: Heinrich.

MEMBER HEINRICH: Here.

MR. BERKHOUT: Moga.

MEMBER MOGA: Here.

MR. BERKHOUT: Regan.

MEMBER REGAN: Here.

MR. BERKHOUT: Stover.

MEMBER STOVER: Here.

MR. BERKHOUT: White.

CHAIRMAN WHITE: Present.

We have a quorum for this evening's public hearing.

This is a continuation on Petition No. 4364.

1 The request is for a special use in the F Farming
2 District for a private-pay alcoholism and substance
3 abuse treatment facility. It's located at
4 41W400 Silver Glen Road in Section 19 of Campton
5 Township and Section 34 of Plato Township. The
6 applicant is Glenwood Academy and Maxxam Partners.

7 I'd ask everyone to please silence your cell
8 phones at this time and observe the rules of a
9 courtroom decorum, please, for this evening's
10 proceedings.

11 At the last meeting the petitioner rested
12 his case, so we are now moving forward with the
13 objector's witnesses to bring forward.

14 With that I call Mr. Carrara to present
15 your case.

16 MR. CARRARA: Mr. Chairman, as a matter of
17 housekeeping, if I may. Earlier today I on behalf
18 of the Fox River and Countryside Fire Protection
19 District, the Village of Campton Hills, and Campton
20 Township sent a motion to strike the expert reports
21 of Murer Consultants and Poletti & Associates.

22 I have a copy of that motion here this
23 evening, and I'd like to present it to the Board and
24 all the other parties for a ruling on those matters.

1 CHAIRMAN WHITE: That would be fine.

2 MR. CARRARA: Mr. Chairman, I will defer to
3 you. Obviously, you're just getting that this
4 evening. If you would like to take some time to
5 review that and potentially hear argument or whether
6 the Maxxam parties would like to respond, I would
7 defer to you. We are prepared at this point to at
8 least make some argument on the motion.

9 CHAIRMAN WHITE: Your motion has been filed
10 with the court if I understand this correctly.

11 MR. CARRARA: There really isn't a court. I
12 filed it -- the ZBA, in essence, is who I'm addressing
13 to. I filed it earlier today with Mr. VanKerkhoff
14 as staff and as the I guess the designee as the ZBA.
15 So I have filed it with him, and I've tendered copies
16 to you here this evening, as well as providing e-mail
17 copies to the Maxxam and the State's attorneys.

18 CHAIRMAN WHITE: And your request is for the
19 written documentation that the petitioner has
20 submitted. Is that the way I understand it?

21 MR. CARRARA: Yes, it would be the two expert
22 opinion reports that were submitted as part of the
23 application, one by the Murer company and the other
24 by the Poletti company.

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1 CHAIRMAN WHITE: I'm going to leave this up
2 to the Board if there's a Board member that wishes
3 to move a motion to accept this.

4 MEMBER BOWEN: So moved, Mr. Chairman.

5 MR. BROWN: Is it accepted as far as filing?
6 I would like a chance to argue it.

7 CHAIRMAN WHITE: That would be my question
8 to the Board about the motion. I'm not prepared to
9 debate the subject matter on this this evening.

10 MR. BROWN: What I'd like to do is just make
11 a verbal motion as an objection to this. I do feel
12 it's improper, but if you would have like to have
13 another opportunity to rule on it, we would file a
14 written response at the appropriate time.

15 Obviously, we just got it this afternoon.

16 I think it's very simple. It's very simple
17 in the fact that we've had our witnesses here
18 pursuant to your motion to compel them to be here.
19 They were here on the date that they were required
20 to be here, and the hearing continued to go on. But
21 we did explain that our witnesses could not be here
22 because they had other obligations with other clients.

23 If I'm wrong on this, I think each of the
24 witnesses were here for at least three, if not

1 four of the proceeding, which the record should
2 reflect -- and you've been here -- each one of those
3 hearings lasted until at least 10:00, and we feel
4 that we have complied with that.

5 I think Attorney Kinnally said it best
6 earlier. It's one of those things that you put the
7 weight on it. The fact that they were -- if they
8 want to do something else, but you put the weight on
9 it. It's just something that was not subject to
10 cross-examination, and if you feel that you wish to
11 put lesser weight on that, that's your prerogative.
12 But it is not something -- because it is part of our
13 application, and we've had people available, and we
14 also asked if they had any further questions coming
15 from the Board.

16 If the Board wished to continue to say that
17 we would like to have those people come back here,
18 the Board did not do that in our case in chief. In
19 fact, I mentioned it several times as to, you know,
20 if the Board wanted to hear anything else.

21 We are -- there are many petitions that you
22 have before you where you do not have live witnesses
23 for everything that's put in that application. You
24 probably -- and I defer to your experience -- this

1 is one of the most extensive applications that
2 you've probably come across. I don't think every
3 one is like that.

4 We have flown people in from across the
5 country to be here and at one time -- and maybe
6 Andrew might help me with this -- I think we had
7 seven or eight witnesses here at the hearing which
8 has been going on and on and on.

9 So with all due respect to counsel, I think
10 his motion is inappropriate at this time. I think
11 it's more an argument that you shouldn't give it any
12 weight. That's your prerogative. I think the
13 documents speak for themselves.

14 But if you wish to have us file a written
15 response or if you have any further request of us
16 because you feel it is necessary, we would defer
17 to that.

18 CHAIRMAN WHITE: I'm going to just hold this
19 document to review it, and we'll cover it at a later
20 date. I'm not going to take a motion at this time,
21 but we will act on this either this evening or at
22 the next meeting.

23 MR. KINNALLY: Mr. Chairman, with your
24 permission, could we mark the document for the record?

1 CHAIRMAN WHITE: That would be fine.

2 MR. KINNALLY: I think we're on -- I don't
3 know -- I think the objector was using an A for his.
4 I think it would be A10. I don't want to speak
5 for him.

6 MR. CARRARA: I have other exhibits already
7 marked, so let's be safe, let's just call it A20
8 because I don't think we'll get to that.

9 (Exhibit A20 marked for identification
10 and attached to the transcript.)

11 MR. BROWN: There's another point, too.
12 There's always an opportunity after they're finished
13 calling rebuttal witnesses, and if the Board feels
14 this is necessary to hear -- I'm not sure how much
15 more you want to hear, but we would have an
16 opportunity either, one, as rebuttal, or a request
17 to reopen proofs. But at this point we feel that
18 we've complied with your request with the
19 information that you've requested to have these
20 people here.

21 Thank you.

22 CHAIRMAN WHITE: Thank you.

23 Kevin, with that we'll go ahead and start
24 with your witnesses.

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1 MR. CARRARA: Thank you, Mr. Chairman. I'd
2 like to call Dr. Bennie Waller.

3 CHAIRMAN WHITE: Please remain standing and
4 raise your right hand.

5 (Witness sworn.)

6 CHAIRMAN WHITE: Please state your name and
7 your relationship to this petition for the record.

8 THE WITNESS: Bennie Waller and I am here to
9 testify as to the opinion of value for the proposed
10 facility.

11 CHAIRMAN WHITE: Thank you.

12 MR. CARRARA: Thank you, Mr. Chairman.

13 BENNIE WALLER,
14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION BY COUNSEL FOR THE OBJECTORS
16 BY MR. CARRARA:

17 Q Dr. Waller, what do you do for a living?

18 A I am a professor at Longwood University.

19 Q That is your occupation; correct?

20 A That's what pays the bills, yes, sir.

21 Q Thank you. However, you are being paid for
22 your services and your testimony this evening;
23 correct?

24 A I am.

1 Q Is it also fair to say since you've been
2 retained you've been working on this project since
3 about November?

4 A Mid-November is when I was retained, yes.

5 Q Thank you.

6 Is it true you were asked to review the
7 proposed 120-bed Maxxam alcohol and drug detox
8 facility and provide your expert opinion on whether
9 it will have a substantial impact on property values
10 in the surrounding neighborhood?

11 A It was the request.

12 Q Were you also asked to review and provide
13 your expert opinion on the MaRous valuation report?

14 A I was.

15 Q What position do you hold within the
16 university, sir?

17 A I am a professor and I'm also department
18 chairperson.

19 Q And what department are you the chair of?

20 A Accounting and financial real estate.

21 Q And how long have you been teaching in the
22 finance and real estate area?

23 A Since the early '90s.

24 Q Do you hold any licenses as part of your

1 professional criteria?

2 A I have an appraisal instruction license, as
3 well as I am a licensed real estate salesperson.

4 Q So the first license you mentioned as a --
5 you said an appraiser -- what does that license
6 allow you to do?

7 A You have to have a licensure in I believe
8 every state to become an appraiser and there's
9 education required. I am licensed by the DPOR,
10 which is the regulating body in Virginia, to teach
11 the appraisal classes which will allow someone who
12 successfully completes the course to sit for the
13 license.

14 Q So if someone wants to become an appraiser,
15 you're licensed to teach them on how to do that?

16 A I teach classes that will allow them to
17 qualify for the exam -- to sit for the exam.

18 Q What types of courses do you teach that are
19 related to real estate valuation?

20 A Real estate appraisal, real estate finance,
21 and the principles course, as well.

22 Q What areas of professional research do you
23 specialize in, sir?

24 A Most of my research has been focused on

1 pricing models, real estate pricing models,
2 integration models. Really what that means is what
3 are the factors that really drive home prices,
4 whether it be a broker skill set, or a granite
5 countertop, or an externality.

6 Q And for -- just as a reminder, sir, I'm just
7 an attorney. So I may have to question you on some
8 of the technical phrases you use.

9 You just used a phrase something called an
10 externality. Could you briefly tell the Board what
11 that is?

12 A It is -- appraisers refer to it as external
13 obsolescence. What it is is anything that impacts
14 value that cannot be controlled by the homeowner.

15 Q As part of your professional work, do you --
16 do you give presentations or speak at any
17 professional organizations?

18 A Multiple times a year.

19 I just recently presented at the American
20 Real Estate and Urban Economics conference in
21 San Francisco. I've had several papers on the
22 American Real Estate Society agenda, which is in
23 April in Denver. Also, on two separate occasions I
24 was an invited speaker to speak at the National

1 Appraisal Institute conference, which Mr. MaRous
2 referred to as sort of the governing body for
3 appraisers, and it's a well-respected institute.

4 Q Have you had the opportunity to publish or
5 author any books in this field?

6 A I am a coauthor for Real Estate Finance
7 text, as well as an investment text.

8 Q What are the titles of those?

9 A Real Estate Finance is the full title of the
10 first one, and the second one, it's Investment
11 Decision Analysis -- I'm not -- that's not probably
12 not absolutely correct but Investment Decision
13 Analysis something-something.

14 Q In part of your experience have you
15 published any papers or articles in this area?

16 A I have probably 30 or so articles that have
17 been published and probably hundreds that have been
18 presented, including four papers that were published
19 in The Appraisal Journal, which one again referring
20 to Mr. MaRous' comment about it being a definitive
21 source for practitioners in the real estate
22 appraisal area.

23 Q And I think when you're referring -- we
24 heard on Tuesday from Mr. MaRous that you were the

1 coauthor of published research into the effects of
2 substance abuse treatment centers on property
3 values. Correct?

4 A Correct.

5 Q How did it come about that that article was
6 published?

7 A That article was presented three years ago
8 in April at the American Real Estate conference in
9 an audience much like this. Someone came up to me
10 after the presentation and said -- and I believe it
11 was Norm Miller, who is the editor of the Journal of
12 Sustainable Real Estate, but I wouldn't swear to
13 that. It was somebody affiliated with the journal
14 that said, "Hey, why don't you submit this to our
15 journal." This is a different way to look at
16 sustainable real estate because you have to have a
17 well-functioning real estate market in order for it
18 to be a sustainable market. So we submitted it to
19 the journal.

20 Q Now, on Tuesday you were present in the
21 audience; correct?

22 A Correct.

23 Q And you heard Mr. MaRous testify, and I
24 think it was a fair characterization of that

1 testimony that he didn't agree with the math behind
2 your article. Is that correct?

3 A He did not.

4 Q As part of the publication process, was the
5 research and math behind the results vetted or
6 tested by outside peer groups?

7 A Peer reviewed -- it is peer-reviewed
8 research. So, yes, it was probably reviewed by
9 three different reviewers, as well as the editor of
10 the journal for correctness and conciseness. And it
11 is more than fair to say that if it was a simple
12 math as Mr. MaRous had suggested, it would have been
13 caught in the review process by these well trained
14 PhD's.

15 Q Now, as the -- to give a little bit of the
16 background and history of that article that was
17 published, what data did you review?

18 A Analyst conduction data which comes from the
19 central Virginia area. It probably has 40 or so
20 different characteristics or variables, if you will,
21 square footage, paved driveway, garage, granite
22 countertops, hardwood floors, et cetera, et cetera,
23 et cetera, 200-plus observations that we had,
24 including the address of the properties which

1 allowed us to calculate distances from each
2 individual property to the externality, in this case
3 a rehabilitation center.

4 Q And how many years of data did you review as
5 part of that study?

6 A A decade or so.

7 Q So roughly 10 years?

8 A 10 years, 10, 11 years.

9 Q And how many transactions were included
10 in that?

11 A 200-plus thousand.

12 Q Is that sample size important in the
13 statistical world?

14 A Yes, it is. I mean, from a statistical
15 perspective when you have a large data set, it
16 ensures that some statistical properties that are
17 necessary to run a regression, which is a formality,
18 it ensures that you have those statistical
19 characteristics that are valid. Whereas, with a
20 smaller sample you very well could have skewed data,
21 skewed results.

22 Q Now, you heard Mr. MaRous say that there was
23 a major flaw in the math because if you subtracted
24 something from the other thing, that simply didn't

1 make your results correct. Is that true?

2 A That's the paraphrase.

3 Q Can you explain to the Board why you believe
4 in your expert opinion why Mr. MaRous' efforts to
5 explain that were incorrect?

6 A Well, as I --

7 MR. BROWN: I'm going to make an objection
8 because that's giving him what's in Mr. MaRous'
9 mind, and that is not subject to -- he's not a
10 psychologist or anything. It's subject to his
11 opinion.

12 CHAIRMAN WHITE: Can you rephrase the
13 question, Kevin?

14 MR. CARRARA: Sure.

15 Q Dr. Waller, you heard Mr. MaRous say there
16 was a simple math formula that he used to determine
17 the error in your underlying facts. Can you explain
18 how his use of that simple formula was incorrect?

19 A Well, as I already alluded to, if it was so
20 simple, it would have been caught in the review
21 process.

22 But Mr. MaRous was suggesting you could take
23 one equation that had been run and then run another
24 equation and just sort of do the math between the

1 the two.

2 To try to give an example, let's say that
3 we're looking at the value of properties based on
4 the number of white-collar business professionals
5 that live within an eighth of a mile. We run this
6 regression and it comes back 8 percent using the
7 same numbers from the study.

8 Then we say, okay, let's just look at
9 doctors. We run the same regression; it comes back
10 17 percent. Well, based on the MaRous mathematics,
11 that would mean that only doctors had any impact on
12 the value of the neighborhoods.

13 What about the other business professionals?
14 What about professors; what about dentists; what
15 about lawyers; what about CEOs? It's just
16 ludicrous.

17 Once again, if the math was so simple it
18 would have been caught. It is just absolutely
19 incorrect the application that Mr. MaRous tried
20 to apply.

21 Q Is it fair to say that in a regression
22 analysis he was questioning that there are numerous
23 external factors that you were using as part of the
24 study to determine what that impact potentially may

1 or may not be; correct?

2 A That's right.

3 Q And all those externalities and all the
4 different properties play into the results of the
5 formula?

6 A That's correct.

7 Q So what you're saying is you can't simply
8 just try to isolate the end result, subtract it from
9 another end result, without taking into consideration
10 all the other factors that were within the
11 regression analysis?

12 A That is correct.

13 Q So from a clarification standpoint, I think
14 you heard Mr. MaRous testify that your report
15 determined there was a certain level of impact.
16 What was that level of impact?

17 A For properties located within an eighth of a
18 mile there was an 8 percent impact.

19 Q And then you heard Mr. MaRous also said
20 there was a flaw in your report because in this
21 rural area of Kane County there in his opinion
22 weren't any properties within an eighth of a mile?

23 A That's correct.

24 Q Does the person who represents -- excuse me --

1 who retained you, the Andrzejewskis, does their
2 property directly abut the Maxxam facility?

3 A It does.

4 Q So it directly abuts the Maxxam facility.
5 Is it within the eighth mile?

6 A I would say that's simple math, yes.

7 Q There's properties to the south of the
8 facility, also, isn't there?

9 A Yes.

10 Q Did you review an aerial map and take some
11 dimensions from the Maxxam facility to those
12 properties?

13 A I did. To the left of the -- to the left
14 south of the property it's about 1100 feet, but
15 closer to the center right of the property there are
16 properties located within 660 feet, which is an
17 eighth of a mile property line to property line.

18 Q Now, in terms of the applications of
19 distances, are applications of distances in an urban
20 environment as compared to a rural environment
21 exactly the same?

22 A No. The literature is -- there are lots of
23 factors that go on with externalities, and this
24 particular property really touches on several of them.

1 It's rural and the literature shows that
2 rural areas tend to have larger impacts because in a
3 rural area people are much more likely to consider
4 somebody 2 or 3 miles away as a neighbor. Whereas,
5 in urban areas somebody that's two blocks away
6 wouldn't be considered a neighbor. So there's a lot
7 more informal communication in rural areas than
8 urban areas.

9 Another factor that the literature points to
10 is the closeness. The closer you are to an
11 externality, say the rehab center, the larger the
12 impact is going to be on the property.

13 A third factor, the literature shows that
14 properties that are higher income, i.e., they're not
15 low-income properties, they tend to be impacted more
16 severely than lower income properties.

17 And, finally, the literature plainly shows
18 as the size of the externality increases, i.e., the
19 proposed facility, the impact on the neighboring or
20 nearby properties increases, as well.

21 So there are several factors here taken
22 directly from the literature on externalities that
23 would impact property values in and around this
24 proposed facility.

1 Q Now, in your report that -- excuse me --
2 your article that was published you came to the
3 conclusion that there was an 8 percent impact on the
4 properties; correct?

5 A Within an eighth of a mile, yes, sir.

6 Q So how would you extrapolate that 8 percent
7 to being a substantial impact on property values, if
8 you could, sir?

9 A Well, obviously, every population will
10 determine what the impact is going to be, and each
11 population is different.

12 But the gentleman I think it was on Tuesday
13 who stood up and was talking about his property
14 value and how it may be used for retirement, you
15 know, a 5 percent -- say it's a \$300,000 home,
16 8 percent is \$24,000. Someone on a fixed income --
17 even if you're not on a fixed income, I think that's
18 a lot of money. If you do 5 percent it's 15,000.

19 For most Americans, Chicago or elsewhere,
20 their home is their largest single investment. So
21 it is a significant amount of money for everyone.

22 Q So is it fair to say -- excuse me. Let me
23 ask just ask you this question directly.

24 What is your expert opinion based on your

1 research that you conducted on the impact of the
2 Maxxam facility on surrounding property values?

3 A I believe that there will be between an 8 and
4 17 percent impact. The closer you are to the
5 proposed facility, the larger the impact. The more
6 expensive the property is close to the facility, the
7 larger the impact. And as I already said, the
8 larger the facility, the larger the impact.

9 So depending on property values, that could
10 be significant for higher-priced properties.

11 Q I think that's the first time this evening
12 you mentioned the higher scale, the 17 percent
13 impact; is that correct?

14 A That's correct.

15 Q Now, is the basis in your report of that
16 17 percent based on facilities that treat opiate and
17 heroin addiction?

18 A That is correct.

19 Q Is it your understanding that the Maxxam
20 facility wants to and plans on treating heroin and
21 opiate addiction at that facility as part of its
22 detoxing?

23 A That is my understanding, yes.

24 Q Is it also your understanding that as part

1 of the treatment for opiate addictions, whether
2 that's heroin or others, that one of the commonly
3 used drugs that are used is methadone?

4 A That is my understanding, yes.

5 Q Is it fair to say, then, that you also have
6 an opinion on the potential impact of the Maxxam
7 facility and its methadone detox issues as to
8 surrounding property values?

9 A I do.

10 Q What is that opinion?

11 A I think that as with any externality, risk
12 and/or perceived risk of a facility is going to
13 impact value significantly because of the stigma
14 effect. And I think properties that are located
15 closer to the facility, within a mile are probably
16 going to get hit 15 to 17 percent. Farther from the
17 facility decreasing in amount but still as far out
18 as 3 miles could be impacted in terms of property
19 values.

20 Q Now, you reviewed -- let me take a step back.

21 Did you have any other opinions based on
22 that research on the impact of the Maxxam facility
23 on the neighbors' surrounding property values?

24 A I will follow up and once again refer to the

1 risk or the perceived risk. The literature is very
2 clear that whether it's based on logic or scientific
3 reasoning is irrelevant; it's the perception of risk
4 that is involved, and it is my opinion that there
5 will be quite a few homeowners, typical homeowners
6 that will be concerned about this location of this
7 facility.

8 I believe there will be a stigma associated
9 with it, and when people are coming to town to look
10 at properties, it is likely to drive prices down,
11 which could have a compounding effect on the
12 community. As prices go down, quality of the
13 neighborhood will go down and it's just a process.

14 Q Is it fair to say, sir, that the research
15 and the writings of your published article are based
16 solely on the results of your analysis of the data
17 and not any of the impacts or perceived impacts of
18 the fair housing laws or any of the other issues
19 that are out there?

20 A That is correct.

21 Q So when you're talking -- when you use the
22 word "stigma" or the externality and the perceived
23 risk of this facility, you're talking based on the
24 pricing, not on any of the other unrelated issues of

1 the Fair Housing Act or any of the ADA or disability
2 issues?

3 A I'm talking about the perceived risk of the
4 homeowners, of being fearful of what might happen to
5 them or their family.

6 Q As part of your work, did you also review
7 the report that was prepared by the MaRous Group?

8 A I did.

9 Q Do you have a professional opinion on the
10 MaRous report?

11 A I do.

12 Q What is that opinion?

13 A Mr. MaRous suggested there would be no
14 impact on pricing of nearby properties and I do not
15 agree.

16 Q Let's -- let's work through the MaRous
17 report.

18 Do you agree with his selection of the
19 facility as a basis for his report?

20 A No. The mere fact that it doesn't exist I
21 think is a major flaw in his assessment.

22 Q Does the type of facility also have an impact
23 on your opinion?

24 A It is my understanding that is a youth

1 facility. So when we talk about perceived risk, I
2 would say a typical homeowner would be less fearful
3 of a youth facility than an adult facility that is
4 treating heroin addicts.

5 Q Did you hear anything in Mr. MaRous'
6 testimony on positive externalities when he was
7 discussing his opinion?

8 A I certainly did. Mr. MaRous I think
9 correctly so identified the country club as being a
10 positive externality. It's located right across the
11 street from where the -- what is it? -- Park Ridge
12 facility was located. And, also, there is what
13 appears to be a nice lovely park to the northeast
14 part of that neighborhood, as well.

15 Q Now, the MaRous report also used what type
16 of an analysis to support his decision?

17 A A matched-pair analysis.

18 Q Can you briefly explain what a matched-pair
19 analysis is to the Board?

20 A In theory a matched-pair analysis takes
21 two properties that are virtually identical with the
22 exception of one characteristic, and in Mr. MaRous'
23 assessment that one characteristic was the location
24 of one of the properties being in close proximity to

1 the Park Ridge facility.

2 I think if you were to ask 100 appraisers,
3 they would all agree that in theory this is a great
4 concept, but in practice it's almost impossible to
5 do that. I mean, even two properties located side
6 by side are not identical with the exception of one
7 feature.

8 Q Now, earlier we were talking about your
9 research and the 200-and-some-thousand data points
10 or transactions you looked at, and you said sample
11 size is important. What sample size is Mr. MaRous
12 using?

13 A In each matched pair you only have two, the
14 subject and a comparable property, and it's chosen
15 by the investigator or the appraiser, and it's very,
16 very subjective in terms of which properties are
17 chosen.

18 That area seems to be quite densely populous,
19 so there were multiple properties which could have
20 been chosen to do a matched-pair analysis, and,
21 obviously, there could have been more extensive
22 matched-pair analysis comparison. Instead of these
23 three, he could have done 10 or 15.

24 Q Were there any other problems when you

1 looked at the underlying specific matched pairs that
2 Mr. MaRous used?

3 A Well, there were -- there were multiple
4 characteristic differences between the subject
5 property and the comparable property. In some cases
6 1800 -- I'm pulling from memory but I think one
7 property was 1800 square feet larger than the
8 comparable party. That's not a good comparison in
9 my opinion.

10 To illustrate the subjectivity of this
11 process, when I teach real estate appraisal, I
12 assign a residential appraisal to all my students.
13 I assign the same property to one student and ask
14 them to value this property at the lowest possible
15 value that you can based on the comparable
16 properties that you can find in the area, but you
17 better be willing to -- you better be able to justify
18 to a governing body how you selected these comps.

19 I assign the exact same property to another
20 student, ask them to value it as high as they can
21 based on the comparable properties, but they better
22 be able to defend their selection of comps to a
23 governing body.

24 In the area in which Longwood University is

1 located probably the average house is 200,000; I
2 don't know. But you will have differences between
3 the high and the low \$100,000 plus, and it is well
4 founded based on the comparables that they choose.

5 You can find a property that's the same
6 size, on the same street, or has the same brick
7 exterior. It's easy to find that. And then you
8 start adjusting for the differences. It is an
9 opinion. It is an appraiser's opinion as to how the
10 adjustments are made and it is quite subjective.

11 I mean, the appraisal industry got a
12 pounding in the 2007/2008 economic and financial
13 crisis. They were pounded pretty hard for their
14 exaggerated valuations.

15 Q You also mentioned, I think that the Park
16 Ridge facility was in a densely located area. Is
17 that comparable to the proposed location of the
18 Maxxam facility?

19 A No. That's exactly correct; it is not
20 comparable because of it being a youth facility --
21 or it was a youth facility, as well as the
22 confounding impact of the country club. Mr. MaRous
23 was correct; it did have an impact on those property
24 values located more closely, but he didn't adjust

1 for it, not that I saw in the report. There were no
2 adjustments made for the country club, the park, or
3 any other externalities.

4 Q And then, finally, I believe the third
5 matched-pair analysis that Mr. MaRous performed was
6 located near the proposed Maxxam facility; isn't
7 that correct?

8 A Yes. Yes.

9 Q And do you have any concerns with that
10 valuation that was performed by Mr. MaRous?

11 A The property that Mr. MaRous used as the
12 subject property was on the market only eight days
13 based on the research that I did, suggesting that --
14 you know, I'm not suggesting that he knew the value
15 of the property when he wrote the report, but a
16 property that was only on the market eight days you
17 don't have to wait too long before you do know the
18 value of the property.

19 But I would have no reason to suspect there
20 would be an impact. There is no negative externality
21 there currently.

22 Q And do you know when Mr. MaRous conducted
23 that analysis?

24 A Of the property to the south?

1 Q Yes -- excuse me, sir -- south of the Maxxam
2 facility. Is that what you're referring to?

3 A Yes.

4 Q Okay.

5 A I do not recall.

6 Q Okay.

7 A I do not recall. I'm sorry.

8 Q Did you hear Mr. MaRous testify that the
9 basis for his use of those properties was based on
10 the -- I believe he used a phrase the public
11 awareness of the Maxxam facility?

12 A Yes, I did hear.

13 Q Do you agree that that was a viable
14 externality to use in this analysis?

15 A I do not for a couple of reasons. One, I've
16 already alluded to the fact that for the individual
17 homeowner it is typically their largest single
18 investment. Real estate does not operate in a fluid
19 market like the stock market does. If you want to
20 sell your property, you just can't go out and put it
21 on the NASDAQ and it transacts overnight. It is
22 very liquid; real estate market is very liquid.

23 Also, as we've discussed, the gentleman that
24 was going to use it for retirement, you don't want to

1 sell your asset when property values are low and have
2 to lose the equity that you have in the property.

3 Q In your opinion, taking into consideration
4 the MaRous report, and his selection of the sites,
5 and the data points, do you believe that is a fair
6 characterization of the impacts of the Maxxam
7 facility on surrounding property values?

8 A Let me try and understand the question. Do
9 I believe Mr. MaRous' valuation of the properties?

10 Q Sure. I apologize, Mr. Waller. That was a
11 bad question. Let me try to ask it to you again.

12 Do you believe that the MaRous opinion that
13 there will not be a negative impact on surrounding
14 property values is accurate?

15 A I do not. I do think there will be an
16 impact on property values. And, more specifically,
17 I think the four roads, northeast roads, east/west
18 roads seems to be about 1.7 miles east to west and
19 about 1 mile north to south that sort of encompasses
20 this facility, the forest land, and other properties,
21 as well. I think that area will probably be hit the
22 hardest, probably in 10 to 15 percent range.

23 MR. KINNALLY: Mr. Chairman, point of order.

24 Excuse me for interrupting.

1 Could we know what the witness is reading
2 from during his testimony? He appears to be reading
3 from something.

4 THE WITNESS: Would you like a copy?

5 MR. KINNALLY: I just want to know what it is.

6 THE WITNESS: This is all 100 percent included
7 in my report.

8 MR. CARRARA: And I was just going to get to
9 that, Mr. Kinnally, if I may.

10 MR. KINNALLY: I'm sorry.

11 BY MR. CARRARA:

12 Q Sir, did you prepare a written report as
13 part of your work for us?

14 A Yes, sir, I did.

15 MR. CARRARA: If I may, Mr. Chairman, can I
16 pass out copies of the report?

17 CHAIRMAN WHITE: Yes, please.

18 Q Is this your -- what I just handed out to
19 everybody, that your written report you prepared?

20 A It is.

21 Q Did you sign that report, sir?

22 A I did.

23 Q Is your curriculum vitae or your résumé as
24 it is commonly known, is that also included in the

1 report?

2 A Yes, it is.

3 Q Is the information that Mr. Kinnally was
4 referencing to, your talking points, is that all
5 contained within your report that's given to
6 the Board?

7 A Yes. In much more detail than what I
8 have here.

9 MR. CARRARA: Mr. Chairman, I ask that the
10 expert's report be entered into the record. It's
11 listed as Exhibit A11.

12 (Exhibit A11 marked for identification
13 and attached to the transcript.)

14 CHAIRMAN WHITE: Is there a motion?

15 MEMBER STOVER: So moved.

16 CHAIRMAN WHITE: Moved by Ms. Stover,
17 seconded by Mr. Heinrich. All in favor say aye.

18 (Ayes heard.)

19 CHAIRMAN WHITE: Opposed, same sign.

20 (No response.)

21 CHAIRMAN WHITE: Motion carries.

22 MR. CARRARA: Thank you, Mr. Chairman.

23 BY MR. CARRARA:

24 Q Dr. Waller, getting back to where we were,

1 Mr. MaRous testified, I think somewhat extensively
2 yesterday that he thought the reference to the
3 methadone clinics in your report didn't equate or
4 would not equate to the methadone treatment that the
5 Maxxam facility will be doing; is that correct?

6 A I believe so, yes.

7 Q Is it your opinion, sir, that even if you
8 were to take out and accept Mr. MaRous' connotation
9 that there wouldn't be a 17 percent potential impact
10 but it was just the 8 percent impact, do you still
11 consider that to be a substantial impact on
12 surrounding property values?

13 A I do.

14 MR. BROWN: I'm going to object. I think he
15 just mischaracterized Mr. MaRous' conclusion. You
16 can refer to your own memory in regards to that, but
17 that was not his testimony.

18 MEMBER STOVER: His testimony was 0 to 1.

19 MR. BROWN: Thank you. That's what I
20 heard, too.

21 MR. CARRARA: And that was after the math
22 that he tried to perform; correct?

23 MR. BROWN: Just so we can move on. His math
24 was good. It's just his conclusions we disagreed

1 with. Thank you.

2 MR. CARRARA: Mr. Chairman, I have nothing
3 further of the witness, and I tender him to the
4 Board and others for examination.

5 CHAIRMAN WHITE: Do the Board members have
6 any questions at this time?

7 MEMBER STOVER: I do.

8 CHAIRMAN WHITE: Go ahead, Ms. Stover.

9 First of all, you talked about Mr. MaRous'
10 math when he took the methadone clinics out of there
11 because there were 36 looked at, and then there were
12 18 of them which is exactly half, and he had a math
13 equation that he did to get down to that 0 to 1.

14 So you disagreed with his math. What would
15 your math be?

16 THE WITNESS: In order to correctly consider
17 only the nonmethadone clinics, you would reestimate
18 the model and control for the nonmethadone clinics.
19 It would be another regression equation that would
20 be estimated in order to --

21 MEMBER STOVER: Do you know what that
22 equation -- I mean, could you enlighten us? Because
23 you had talked about external things when you were
24 talking about housing that were wild and varied,

1 but when we're talking about drug and alcohol
2 treatment with or without methadone clinics, that's
3 two very specific things with not much that's very
4 widely different.

5 So what would your math equation be?

6 THE WITNESS: Well, I would have to estimate
7 it. I don't have a computer and data with me here
8 in Chicago but that could be estimated.

9 MEMBER STOVER: Another question. You said
10 you taught appraisal. How often are you out in the
11 field appraising?

12 THE WITNESS: I'm not a field appraiser.

13 MEMBER STOVER: Okay. And you also talked
14 about appraisers being very different and subjective
15 in their opinions from one to the other. As a
16 realtor for 21 years, that's not been my experience
17 in the last 5 years or 10 years since the downfall.
18 Their guidelines in the state of Illinois are really
19 extraordinarily strict.

20 I'm talking about not being able to go over
21 a highway and have to use -- they have to bracket;
22 they have to have one higher, one lower; they have
23 to have some in the same area; they have to -- so
24 many foreclosures they have to use.

1 So I see appraisers come in really, really,
2 really close to each other around here because of
3 the State laws and what it's become. Is it
4 different where you're from maybe?

5 THE WITNESS: No, I don't believe it is.
6 But I would still suggest to you that in a populous
7 area there are plenty of comparables from which to
8 select above and below, and I would also suggest
9 that I don't believe -- nobody, whether -- if you
10 were a broker, I'm sure you did DPOs and competitive
11 market analysis, but no two brokers would have the
12 same opinion of value.

13 MEMBER STOVER: They were pretty close. I
14 would say they're pretty close.

15 THE WITNESS: Well, it also suggests that
16 most appraisals in the past come within 1 percent of
17 the asking price.

18 MEMBER STOVER: I don't know if that's true
19 in the last 10 years since the bubble burst, but we
20 could argue that all night long.

21 You said, also, that you thought -- you kept
22 referring to literature. The literature says about
23 rural, the literature says, the literature says.
24 What literature were you talking about?

1 THE WITNESS: The externality literature. I
2 think I have about 40 reports referenced in my
3 report or studies that talk about externalities.

4 To give an example of some, power lines,
5 landfills, drug rehab facilities, sex offenders. As
6 a broker, sex offenders, that's something that has
7 really gotten a lot of attention lately in the real
8 estate field because it is an externality that
9 impacts home value, and the homeowner can do nothing
10 about it.

11 MEMBER STOVER: Okay. Then, also, you
12 mentioned about a rural area being very different as
13 far as how far it would be from a facility, and you
14 mentioned because these are neighbors that know each
15 other or, you know, are closer because of the nature
16 of being out there. I'm just wondering, so how far
17 out in a rural area would you say then is affected
18 by this facility that's right there as it pertains
19 to the sale of the home only?

20 THE WITNESS: I believe that properties within
21 a mile are going to be severely impacted by value.

22 MEMBER STOVER: How many times in your career
23 have you done appraisals on similar facilities in
24 rural areas in the United States?

1 THE WITNESS: Well, zero.

2 MEMBER STOVER: Okay. Just a couple more.

3 THE WITNESS: Okay.

4 MEMBER STOVER: You mentioned the size of
5 the property having an impact. Did you mean the
6 size of the property in acreage or amount of beds?

7 THE WITNESS: Both.

8 MEMBER STOVER: Okay. No further questions.

9 CHAIRMAN WHITE: Any other Board members
10 have questions?

11 (No response.)

12 CHAIRMAN WHITE: Petitioner.

13 CROSS-EXAMINATION BY COUNSEL FOR THE PETITIONER

14 BY MR. KOLB:

15 Q Good evening, Mr. Waller.

16 We understand that the exercise here is for
17 each of the opposing viewpoints to present an expert
18 and to let the Zoning Board weigh the credibility of
19 the experts' opinions.

20 You looked at Mr. MaRous' background as part
21 of his expert report?

22 A I did.

23 Q And you saw that he had performed \$50 billion
24 worth of primary real estate investment appraisals?

1 A I don't recall. But if you're looking for
2 me to say his vitae is impressive, it is.

3 Q Mr. MaRous has performed real estate appraisals
4 all over Illinois, including many properties around
5 Interstate 355, the O'Hare International Airport
6 expansion, Midway International Airport expansion,
7 McCormick Place expansion, and I think he was
8 embarrassed to admit that he had 40 years'
9 experience in our community.

10 Are you a licensed real estate appraiser in
11 Illinois?

12 A I am not.

13 Q Have you ever appraised as a licensed real
14 estate appraiser any piece of property in our state?

15 A No, I have not.

16 Q And that would include our county?

17 A It would include your state.

18 Q I'm a resident of Kane County. Have you
19 ever appraised any property in our county?

20 A I believe Kane County is in Illinois, so no.

21 Q Now, you teach. You're an academic; correct?

22 A I am.

23 Q When is the last time you performed a real
24 estate appraisal as an appraiser anywhere as a

1 licensed real estate appraiser?

2 A For a fee I haven't.

3 Q Do you currently hold a license as a real
4 estate appraiser?

5 A Not as an appraiser but as an instructor of
6 appraisal.

7 Q So there are those that do and those that
8 teach.

9 A That's what the saying says.

10 (Murmurs from the audience.)

11 Q In your opinion, in your opinion you
12 authored two texts that you thought were relevant,
13 and I think you indicated one text was related to
14 finance, and the other was related to investment
15 decision analysis; correct?

16 A That's correct.

17 Q You coauthored those texts?

18 A I did.

19 Q What are the names of those texts?

20 A Real Estate Finance with Kolbe, Greer, and
21 Waller, and Investment Decision Analysis with Kolbe,
22 Greer, and Waller.

23 Q What sections did you author of those texts?

24 A I worked on the entire text on both, no

1 particular section.

2 Q Now, there's a misconception that MaRous
3 believes there's a mathematical error in your
4 report. Is that your understanding, that he
5 believes there's a mathematical miscalculation in
6 the report that you have submitted?

7 A I don't believe he considered it to be a
8 mathematical miscalculation. He just tried to do
9 some backdoor math to prove that there would be no
10 impact.

11 Q So am I correct -- help me understand this.
12 There are 36 facilities that were studied in your
13 report. And by the report I'm referring to the
14 report entitled "Not In My Back Yard," a theme we
15 hear, "The Effect of Substance Abuse Treatment
16 Facilities on Property Values." That's the report
17 I'm referring to.

18 A Yes.

19 Q And there were 36 facilities studied with
20 that report; correct?

21 A I believe that's correct.

22 Q And half of those facilities were methadone
23 facilities?

24 A About half. I don't have that in front of

1 me but --

2 Q Am I correct that Table 80 -- excuse me --
3 Table 80 on page -- Exhibit 4 on page 80, rather,
4 did I misinterpret that that page indicates a
5 negative 17.4 percent diminution of value with
6 respect to the methadone clinics studied in your
7 study?

8 A I don't have it in front of me but that
9 sounds correct, yes.

10 Q Would you like to see it?

11 A No.

12 Q Okay. And am I correct that your report
13 shows that of the remaining half of the facilities
14 there is less than 1 percent of a diminution of
15 value?

16 A No, that is not correct.

17 Q Am I correct that the entire diminution of
18 value for all 36 facilities was a negative 8 percent?

19 A 7.7, I believe, to be precise.

20 Q But out of that 7.7 percent, those that
21 represented methadone clinics pulled the value down
22 by 17.4 percent; correct?

23 A The properties located near the methadone
24 facilities were more severely impacted.

1 Q Were my numbers correct in that question?

2 A Your numbers were correct.

3 Q Now, I assume you walked the property where
4 the proposed facility is to be located.

5 A I have not.

6 Q Are you generally familiar with walking the
7 surrounding property around the facility?

8 A I am not familiar with it, no.

9 Q So do you still feel comfortable giving the
10 opinion regarding the diminution in value without
11 having seen the property?

12 A I -- yes, I am.

13 MR. BROWN: I'm going to just ask real quick
14 while he's looking at that.

15 CROSS-EXAMINATION BY COUNSEL FOR THE PETITIONER
16 BY MR. BROWN:

17 Q You would agree that when you make a
18 presumption that leads to a conclusion and your
19 presumptions are important has a direct relationship
20 to your conclusion? Would you agree with that?

21 A Generally speaking, yes.

22 Q So on page 64 of your report you stated that
23 in these types of clinics, "People frequently leave
24 or administratively are discharged before successful

1 completion." Did you write that?

2 A I referenced --

3 MR. KINNALLY: Point of order. What page 6
4 and what exhibit, please?

5 MR. BROWN: I'm sorry.

6 MR. KINNALLY: Are we talking about J21, or
7 are we talking about his report that was just
8 identified by Mr. Kolb?

9 MR. BROWN: I believe it's J21, "Not In My
10 Back Yard."

11 MR. KINNALLY: Thank you. I just wanted to
12 get on the same page with you. Thank you.

13 MR. BROWN: I'm sorry.

14 MR. KINNALLY: It's okay.

15 CHAIRMAN WHITE: What page?

16 MR. BROWN: Page 64.

17 MR. KINNALLY: Exhibit J21, Mr. Chairman.

18 MR. CARRARA: Mr. Chairman, if he's going to
19 be asked specific questions, would the witness like
20 a copy of the report?

21 CHAIRMAN WHITE: Would you like a copy?

22 THE WITNESS: Yes, please.

23 CHAIRMAN WHITE: Can someone provide him
24 with a copy?

1 Is that the correct document that you're
2 looking at, Mr. Waller?

3 THE WITNESS: Is it the article that you're
4 referencing?

5 BY MR. BROWN:

6 Q Directing your attention to the third
7 paragraph, first sentence where it says, "One
8 consequence of locating drug and alcohol
9 rehabilitation centers in residential areas is that
10 patients in substance abuse treatment programs
11 frequently leave or are administratively discharged
12 before successful completion"; correct? Is that
13 what you wrote?

14 A Yes -- well, I am paraphrasing Schaefer 2012.

15 Q But is that one of the presumptions you used
16 in making this report? Because that's on the first
17 page. Is that a presumption that you're using in
18 your conclusions?

19 A That is -- this is a factor but not a unique
20 factor.

21 Q So when you use that factor, was that the
22 assumption that when people leave these clinics,
23 they just walk right outside there?

24 A No such assumption, no, sir.

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1 Q What is your assumption for that sentence?

2 A I'm referencing the literature of Schaefer.

3 Q Okay. So does it make a difference to you
4 that the people when they would leave this particular
5 clinic are not allowed just to walk off, that they
6 are taken in a car and taken to another location and
7 not anywhere around? True? I mean, is that a
8 factor?

9 A It is not a factor.

10 Q Why is it not a factor for you to consider?

11 A I believe that it is the stigma, the fear
12 that the homeowners associate with the facility.

13 Q Do you feel like a facility like a hospital
14 like Mayo Clinic has a negative impact on residential
15 values, Rush Hospital in the Chicago?

16 A I have no opinion about Rush Hospital in
17 Chicago, but commercial facilities many times do
18 have a negative externality on residential properties.

19 Q All right. So much of this is based upon
20 perceptions even though they may not be true?

21 A That is true.

22 Q Another -- in that same paragraph you stated
23 that, "Families will often not offer any form of
24 financial support, and the addict will have no way --

1 have to fend for himself or herself." You stated
2 that -- that's in there and you're taking that from
3 another report, but the fact that this is a for-
4 profit and is considered what would be a high end
5 for people who would have substantial resources,
6 that -- in other words, the type of clinic we're
7 talking about here, that would not apply for that
8 sentence; would you agree with me?

9 A I cannot put myself into the typical
10 homeowner's body and assume how they feel about it.

11 Q Excuse me. That's not what I'm asking.

12 My question is that presumption you made
13 which led to your conclusion, do you agree with
14 that? I'm just asking you, is that the type of --
15 do you consider that factor when reviewing this
16 facility?

17 A I would think the more safe the typical
18 homeowner feels, the less likely of an impact.

19 Q That's not my question. Do you want me to
20 read it back? I can have the court reporter read it
21 back. I mean, I'd like you just to answer my
22 question.

23 A Okay. Why don't you try it again.

24 MR. BROWN: Will the court reporter read it

1 back, please?

2 MR. KINNALLY: Well, that ought to be
3 directed to the Chairman.

4 MR. BROWN: Oh, I'm sorry. You are so
5 right. I would ask the Chairman that the court
6 reporter read it back.

7 CHAIRMAN WHITE: I'm going to ask you to
8 rephrase your question so the witness better
9 understands what you're trying to get to.

10 MR. BROWN: Okay. I will go back to it.

11 BY MR. BROWN:

12 Q When I read the sentence, "In other words, the
13 family will often not offer any form of financial
14 support, and the addict will have no -- will have to
15 fend for himself or herself," the report states
16 that; correct? Do you find that to be a factor in
17 your analysis of this facility understanding that it
18 is a for-profit, not taking any public aid, any
19 other type of resources, and it's a for-profit which
20 has been looked at as a high-end facility? Is that
21 a factor that you would consider?

22 A No.

23 Q Thank you.

24 You also talked about -- I'm going to go to the

1 next sentence. "In addition to having a substance
2 abuse disorder and possibly dual diagnosis, those
3 who relapse and leave treatment prior to completion
4 often have limited job skills and perhaps even a
5 criminal record, factors that may make employment a
6 challenge." That's your next sentence.

7 A I would like to clear up, this is --

8 Q Just a second -- I'm sorry -- I'll rephrase it.

9 That's a sentence that's in your report?

10 Yes or no, please.

11 A This is an academic paper.

12 MR. BROWN: Excuse me. I would like the
13 chairman to have him just answer the question.
14 He'll have an attorney that can bring this back up.

15 CHAIRMAN WHITE: He just asked if --

16 Q It calls for a yes or no. Is that in your
17 report?

18 A It is in my academic paper.

19 Q All right. Is that a factor that you
20 considered in making your opinions here today?

21 A No.

22 Q So then when it gets to the next sentence,
23 "Plus, as a practical matter, nearby neighbors may
24 have valid concerns that the presence of a treatment

1 center will be accompanied by additional unemployment
2 or even homeless addicts on the street near the area
3 in which the treatment center is located. This
4 perception of elevated risk in these areas may then
5 be reflected in the marketplace or nearby real
6 estate." Did you write that, sir? Yes or no,
7 that's all I'm asking.

8 A It is in my academic paper.

9 Q Would you also agree with me that since this
10 is not an outpatient facility, and this is also a
11 facility in which when people want to leave they're
12 going to be given a car to leave the premises that
13 that sentence is not applicable to this property?

14 A If those factors are correct, yes, I agree.

15 CROSS-EXAMINATION BY COUNSEL FOR THE PETITIONER
16 BY MR. KOLB:

17 Q Dr. Waller, you are aware that the standard
18 for a special use is that the special use "will not
19 be injurious to the use and enjoyment of the
20 property in the immediate vicinity for the purposes
21 already permitted nor substantially diminish or
22 impair properties within the neighborhood," and it's
23 your testimony here that there will be an impairment
24 of property values between 8 and 17 percent, and you

1 believe, although contrary to your data, that that's
2 substantial.

3 Can I ask whether you've heard this statement
4 before: "While a number of neighboring property
5 owners have testified as to their concern that
6 property values will be diminished, the weight of
7 the evidence from the competent market analysis is
8 to the contrary. One realtor, who is a neighbor,
9 testified that the facility would negatively reflect
10 property values and their ability to sell homes.
11 However, this plan commission finds that the weight
12 of the evidence is directly to the contrary." Have
13 you ever heard of that finding before?

14 A I do not recognize that, no.

15 Q Have you ever reviewed the findings of the
16 plan commission of the Village of Campton Hills when
17 they determined the same exact standard?

18 A No, I have not.

19 Q Were you aware that Campton Hills in reviewing
20 this matter found no diminishment of impact on
21 property values?

22 MR. CARRARA: I would object because Campton
23 Hills has not done anything but object to the Maxxam
24 facility. That was a prior facility by prior

1 operators that's not related.

2 CHAIRMAN WHITE: I would agree with that.
3 You just read some documentation from someplace.
4 What was your source?

5 MR. CARRARA: It was a text from his client,
6 I believe.

7 MR. KOLB: It was the minutes from the plan
8 commission produced by the Village of Campton Hills
9 in FOIA responses.

10 MR. BROWN: We would be glad to make that
11 part of the record at a later point so you can read
12 what the findings were.

13 MR. KOLB: The purpose of my question was to
14 determine if he factored Campton Hills into his
15 analysis.

16 CHAIRMAN WHITE: Campton Hills as a village?

17 MR. KOLB: The findings as a prior
18 applicant.

19 CHAIRMAN WHITE: I don't think that has any
20 standing here today. Move on with your questions.

21 MR. BROWN: Brief moment.

22 CROSS-EXAMINATION BY COUNSEL FOR THE PETITIONER

23 BY MR. BROWN:

24 Q When you made your opinions as to the eighth

1 of a mile, you were talking property lines, not
2 building structures; correct -- or actually, you
3 don't know anything about how far the building
4 structures are on this property away from other
5 homes; is that fair to say?

6 A That's not fair to say. I've used GIS to
7 determine within a relative very close degree of
8 accuracy that the property building to building as
9 well as property lines.

10 Typically, to answer your question, though,
11 geocodes are typically centered in the -- centered
12 to the property in the center of the property.

13 Q Well, can you tell me for certain that when
14 you did the geocode that that was where -- because
15 this is a 120-acre piece of property; correct?

16 A That's correct.

17 Q It's not a big square or big circle; true?

18 A Yes. That's correct.

19 Q And since you've never -- I know you said
20 you've stated you've never been out there. You
21 don't even have an opinion, then, as is to if there
22 are other properties that can see the property from
23 their home? You have no way to say yes or no to
24 that question, correct, if they can see the

1 buildings from their homes?

2 A They're -- in preparing for this I read that
3 some of the homes from the second story could see
4 the facility. I don't recollect exactly what
5 document that was, but I've not been out there and
6 walked the property.

7 Q Okay. But in your own personal observations,
8 you have nothing that you could say -- that's based
9 upon something that you read; correct?

10 A Personal observation I have not.

11 Q All right. So when you do the measurement,
12 though, yours was not necessarily measuring from the
13 building structures to another structure on the
14 premises; is that fair to say?

15 A That is fair to say the geocodes are -- you
16 take an address -- what is it? -- 41W400 if I'm
17 pulling from memory correctly, and you invert it to --
18 or convert it to a geo latitude/longitude.

19 Q So, basically, you're just taking the center
20 of the property from the wherever the site is at the
21 center of the property was --

22 A That is --

23 Q -- and that's how you based your opinion, not
24 going out there surveying this yourself; correct?

1 A I was not hired to survey the property.

2 Q You would agree that a park is a positive
3 influence on a community?

4 A Typically.

5 Q And would you say that this facility has a
6 parklike forest preserve-type atmosphere there?

7 Well, it's on 120 acres; correct?

8 A It is.

9 Q And there are some parks that are smaller
10 than 120 acres?

11 A Certainly, most are.

12 MR. BROWN: We have no further questions.

13 CHAIRMAN WHITE: All right. Thank you.

14 Does the County have any questions at
15 this time?

16 MR. KINNALLY: I've got a couple with your
17 permission.

18 CHAIRMAN WHITE: Turn your mic on, Pat.

19 CROSS-EXAMINATION BY COUNSEL FOR THE COUNTY

20 BY MR. KINNALLY:

21 Q Mr. Waller, my name is Pat Kinnally, and I
22 appreciate you coming here tonight and giving us
23 your opinion on this.

24 My first question is, did you look at

1 Poletti's report?

2 MR. CARRARA: Mr. Chairman, he's not here to
3 opine on the Poletti report.

4 MR. KINNALLY: I didn't ask him that. I
5 asked him if he looked at it, not whether he had an
6 opinion about it.

7 A I did.

8 Q Okay. And did you review it?

9 A I read it.

10 Q Why did you do that?

11 A It was in the material provided to me.

12 Q Okay. What other material was provided to
13 you besides the Poletti report?

14 A The two main -- the complaint or the -- the
15 alleged complaint from the lawyers, as well as
16 MaRous and Poletti.

17 Q And were you able to analyze what type of
18 model Poletti used in reaching his opinion in that
19 report?

20 A Yes.

21 Q And can you tell the Board what type of
22 model that was, Doctor?

23 MR. CARRARA: Again, Mr. Chairman, I object.
24 He's not here to testify as to the Poletti report,

1 and we stand on our motion to strike the Poletti
2 report, and we don't want to get caught in a
3 conflict where we have given testimony on a report
4 that we're seeking to have stricken.

5 If Mr. Kinnally wants to have Mr. Poletti
6 come here, he under the motion to compel could do
7 that, and he could testify to that. Our expert is
8 here only to opine on the two things he has
9 testified to here today.

10 MR. KINNALLY: My purpose, Mr. Chairman, is
11 not to ask him about Mr. Poletti's opinions. My
12 purpose is to ask him about the model that
13 Mr. Poletti used with respect to the opinions
14 reached in the report which is already in evidence.

15 MR. BROWN: Actually, if I may add this,
16 too. The fact that he read it and it was for this
17 purpose is subject to cross-examination. It was
18 something that he considered. So that's fair game.
19 Just because he wants to limit it -- it goes to the
20 weight of his testimony. It's not being offered for
21 the truth of the matter asserted as to the Poletti
22 report.

23 CHAIRMAN WHITE: I'll allow the questioning,
24 but keep it to the point.

1 MR. KINNALLY: I will.

2 BY MR. KINNALLY:

3 Q What type of model did they use, Doctor?

4 A Difference in means approach.

5 Q And is that called a hedonic model?

6 A It is not.

7 Q Is it called a retrogression model?

8 A No, it is not.

9 Q What model did you use in your report?

10 A I used a three-stage least squares

11 regression model.

12 Q And that's the report that you testified
13 about in your academic paper, J21; is that right?

14 A Yes, sir.

15 Q You didn't prepare a report on this
16 particular property like you did in your paper J21,
17 did you?

18 A I don't understand.

19 Q Well, did you do a report with respect to
20 data that you obtained like you did in the paper
21 that you did, J21, for this particular facility?

22 A I did not include regression tables in the
23 report.

24 Q Well, you didn't even retrieve any data like

1 the 200,000 properties that you referenced in the
2 J21 report with respect to this facility; isn't
3 that true?

4 A The proposed facility?

5 Q Yes.

6 A That is correct.

7 Q And as I understand your testimony, your
8 testimony is with respect to Criterion B that this
9 will have an adverse impact on the prices of real
10 estate next to the facility. True?

11 A True.

12 Q And the other opinion you have is criticism
13 of the MaRous report. Those are your two opinions;
14 right?

15 A Yes.

16 Q You were retained in November. Tell the
17 Board how much time you spent working on the report
18 that you gave us tonight.

19 A I don't have a time sheet in front of me,
20 but I would probably say close to 100 hours.

21 Q So from November up until tonight you spent
22 approximately 100 hours in studying this problem; is
23 that right?

24 A Yes, sir.

1 Q And how much do you get paid for that?

2 MR. CARRARA: Mr. Chairman, I'm not sure
3 that's appropriate.

4 MR. KINNALLY: It is appropriate.

5 MR. CARRARA: The other witnesses were not
6 asked to disclose their compensation.

7 MR. BROWN: Can I just say something? Can I
8 weigh in on this?

9 The fact that they weren't asked doesn't
10 make it not admissible. Anytime someone gets paid
11 to do something, it goes to the credibility and
12 weight. Because someone is being paid it means that
13 they have a reason for --

14 MR. CARRARA: Mr. Chairman.

15 MR. BROWN: Excuse me. This is my objection.

16 MR. CARRARA: Sorry.

17 MR. BROWN: It goes to the weight and the
18 fact that they were paid. You can consider that.
19 It's not -- and it is something that is normally
20 brought up for expert witnesses. The fact that they
21 didn't ask the question does not mean it's not a
22 good question.

23 CHAIRMAN WHITE: I'm satisfied with the
24 answer that he was paid to prepare the report. I

1 don't need to know an exact number.

2 MR. KINNALLY: All right. Thank you. One
3 final question.

4 BY MR. KINNALLY:

5 Q You did another report in 2010 with respect
6 to the location of sex offenders in a residential
7 area; is that true, sir?

8 A That is.

9 Q And in that report you used a similar model
10 to the model you employed in the report that you
11 did -- or the academic paper that you did, J21; is
12 that right, sir?

13 A Correct.

14 Q And in the report in 2010, which is called
15 "Estimating the Effect of Crime Risk on Property
16 Values and Time on Market: Evidence From Megan's
17 Law in Virginia" --

18 MR. KINNALLY: Which I have a copy of for
19 the Commission if you want it.

20 Q -- your conclusion was that there was an
21 8 percent diminution in value with respect to the
22 properties within 1/8th of a mile of where a sex
23 offender lived; is that true?

24 A I would -- I cannot recall from memory.

1 Q All right. Well, let me read this to you.

2 A 10.3 percent sticks out in my mind.

3 Q Well, let me -- I'm sorry this is not --
4 I'll give you a copy of it.

5 MR. KINNALLY: Could you give him that,
6 please?

7 These pages are not numbered, so I'm sorry,
8 but it's Conclusion No. 8, if you'll turn to that
9 with me, please. It's about that far down, Doctor.

10 CHAIRMAN WHITE: And what is this document
11 that you're reading from, Mr. Kinnally?

12 MR. KINNALLY: The document is called
13 "Estimating the Effect of Crime Risk on Property
14 Values and Time on Market: Evidence From Megan's
15 Law in Virginia." It's on his curriculum vitae, and
16 I believe it's his third article, and this is from
17 the SSRN Electronic Journal May 2010 and it's called
18 "Research."

19 BY MR. KINNALLY:

20 Q Do you have that conclusion?

21 A I do -- well, I'd like to point out that
22 this was a working copy. This is not the final copy
23 that was published in Real Estate Economics, which I
24 believe was 2015, 2014 maybe.

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1 Q Okay. Well, you wrote this; right?

2 A I was a coauthor.

3 Q Right. My question is pretty simple. You
4 vouch for this; this is work that you did, no doubt,
5 Doctor?

6 A Included in, yes.

7 Q Okay. My question is, did you make the
8 following statement under Conclusion No. 8: "We
9 estimate that a sex offender residence located
10 within 0.1 mile lowers a nearby home's price but as
11 much as 8 percent and lengthens its time on the
12 market by 92 days on average"? Isn't that true what
13 you wrote there?

14 A Yes. That's correct.

15 Q And that percentage, 8 percent is the same
16 percentage that is the lower part of the diminution
17 in value that you testified this facility will have
18 on nearby residences in Kane County; isn't that
19 true, Doctor?

20 A Yes.

21 Q Can you tell the Board if that is
22 coincidental or --

23 A I'd be glad to.

24 Q That's what I wanted to find out.

1 A This data set comes from a totally different
2 MLS than the data that this property comes from.

3 Q Okay. And that's the difference?

4 A Well, I certainly -- I can't imagine you're
5 questioning the credibility that we just made these
6 numbers up --

7 Q I didn't ask you that, Doctor.

8 A -- and they're similar by coincidence.

9 Q I asked you why they were coincidental. I
10 don't know. I didn't ask you to defend it. I just
11 asked a question.

12 A The data is the data, and that is what we
13 report. This is not story time; it's research.

14 MR. KINNALLY: I understand it's not story
15 time, Doctor. This is not story time here, either.

16 Thank you. I have no further questions.

17 CHAIRMAN WHITE: Any Board members have any
18 questions at this time?

19 (No response.)

20 CHAIRMAN WHITE: Rebuttal, Mr. Carrara?

21 MR. CARRARA: Very briefly.

22 REDIRECT EXAMINATION BY COUNSEL FOR THE OBJECTOR

23 BY MR. CARRARA:

24 Q The study just handed to you, was that the

1 final published data numbers?

2 A It was not.

3 Q So the reference that Mr. Kinnally made was
4 just a working draft, and the final numbers were
5 different than that; correct?

6 A I do believe so, yes.

7 MR. CARRARA: Thank you. That's all I have.

8 CHAIRMAN WHITE: Any other questions?

9 MEMBER STOVER: I had one. You didn't --
10 you didn't speak to one thing that I was hoping that
11 you could speak to.

12 Do you know the difference between the
13 stigma on a vacant, empty facility as it compares to
14 a facility of a private drug rehabilitative --

15 THE WITNESS: I do not know the numbers. A
16 vacant property that was run down, though, would be
17 considered a negative externality.

18 MEMBER STOVER: Okay. Thank you.

19 CHAIRMAN WHITE: Any other questions?

20 (No response.)

21 CHAIRMAN WHITE: Is there anyone in the
22 audience, unit of government that wishes to question
23 this witness?

24 (No response.)

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1 CHAIRMAN WHITE: Not seeing anyone -- do you
2 have a question for the witness, sir.

3 MR. WILLARD: Yes.

4 CHAIRMAN WHITE: I'll allow one question.

5 MR. WILLARD: One question.

6 CHAIRMAN WHITE: Go ahead.

7 MR. WILLARD: If you had -- if I had a home,
8 let's say two-story home --

9 CHAIRMAN WHITE: Sir, you need to speak into
10 the mic, and I need a name and an address, please.

11 MR. WILLARD: Jack Willard, 6N789 Longacre
12 Drive. I live approximately less than an eighth of
13 a mile from the facility. Do I need to be sworn in?

14 CHAIRMAN WHITE: No. As long as it's a
15 question, not an opinion.

16 MR. WILLARD: It's a question.

17 CROSS-EXAMINATION BY AUDIENCE MEMBER

18 BY MR. WILLARD:

19 Q If I have a home and it's sitting there like
20 one-eighth of a mile from this facility and there's
21 another home that's 5 miles away identical to my
22 house, someone is going to come and look at these
23 houses -- and the same price. Which one is that guy
24 going to take? Which one of you Board members would

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1 take my house?

2 MR. BROWN: Can I just say that calls for
3 speculation.

4 MR. WILLARD: That's right. But that's what
5 happens in this community.

6 CHAIRMAN WHITE: Sir, you're excused.

7 MR. WILLARD: You're welcome.

8 CHAIRMAN WHITE: Please go back to your seat.

9 MR. WILLARD: You're welcome.

10 CHAIRMAN WHITE: Does the witness have an
11 answer to the question that was presented?

12 A It's a hypothetical that I would like
13 to avoid.

14 CHAIRMAN WHITE: Thank you.

15 Anyone else?

16 (No response.)

17 CHAIRMAN WHITE: So if there's not other
18 questions from Board members, the witness is
19 excused.

20 (Witness excused.)

21 ///

22 ///

23 ///

24 ///

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1 CHAIRMAN WHITE: I've got about 25 after,
2 and it's been requested that we take a break at this
3 time so I'll go ahead and break. Let's take about
4 probably a 10-minute break.

5 (Recess taken, 8:21 p.m. to 8:39 p.m.)

6 MR. KOLB: I'd like to apologize from a
7 comment regarding teaching.

8 My wife is a music teacher. I teach at
9 Elgin Community College, and the question didn't
10 need to be asked. I apologize.

11 (Applause.)

12 CHAIRMAN WHITE: Thank you.

13 We've got some business matters to take care
14 of right at this moment before we get to more
15 witnesses.

16 There was a notice of motion submitted by
17 Mr. Carrara at the beginning of the hearing, and
18 I'll take a motion at this time to place it on file.

19 MEMBER BOWEN: So moved, Mr. Chairman.

20 CHAIRMAN WHITE: Moved by Mr. Bowen.

21 MEMBER HEINRICH: Second.

22 CHAIRMAN WHITE: Seconded by Mr. Heinrich.

23 All those in favor say aye.

24 (Ayes heard.)

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1 CHAIRMAN WHITE: Opposed, same sign.

2 (No response.)

3 CHAIRMAN WHITE: Motion carries.

4 And then I'll turn the podium over to
5 Mr. VanKerkhoff. He has a statement to read from
6 the sheriff's office.

7 MR. VAN KERKHOFF: Good evening, Mr. Chairman.
8 Yes, this is on request of our Kane County sheriff,
9 Don Kramer.

10 Yesterday, Wednesday, January 27th, at
11 2:35 p.m. he sent me an e-mail copied to Chairman
12 Lauzen and Division of Transportation Director
13 Carl Schoedel regarding the Maxxam petition, and at
14 his request I'm just going to read it verbatim into
15 the record.

16 "Dear Mark, I've been following the public
17 hearings on the Maxxam petition, and I believe I
18 have to make my position as sheriff and public
19 safety advocate known.

20 "My statement concerning Maxxam from an
21 earlier e-mail, I see the facility" -- and I'm
22 quoting his -- the text from that earlier e-mail --
23 "I see the facility being used in a similar fashion
24 as before focusing on helping remove a client from

1 their previous environment and assisting in their
2 rehabilitation to become a better person. I do not
3 foresee a rise in crime or call load at the facility
4 that the sheriff's office would not be able to
5 handle.

6 "This was narrowly worded to answer the
7 direct question of sheriff's office capability in
8 responding to calls for service at the Glenwood
9 property. I related and still believe that the
10 office is in the position to handle the call load.

11 "What is being addressed at the Maxxam
12 public hearings is to what extent the call load will
13 have on the sheriff's office resources. I believe
14 the facility will require between 100 and 300 combined
15 responses from police and EMS. The surrounding area
16 will see an increase in emergency responses that in
17 many cases will require 'lights and sirens.'

18 "The sheriff's office handles over 30,000 calls
19 for service each year, and a 300-call increase is
20 about a 1 percent increase.

21 "Once again, I believe the sheriff's office
22 has adequate resources to address the increase in
23 call load, but the surrounding partners, Campton
24 Hills PD, Kane County Forest Preserve police, and

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1 Fox River Countryside Fire and Rescue also need to
2 be considered as a piece of the equation in the
3 response from public safety.

4 "I'm requesting that the above paragraph be
5 entered into the record at the next public hearing.
6 I also request that this e-mail be forwarded to
7 Joe White. Sincerely, Donald D. Kramer, Sheriff of
8 Kane County."

9 I did forward this to Chairman White, as
10 well as to the petitioner and to Mr. Carrara. Today
11 I realized that this had not been included from the
12 sheriff to the jurisdictions noted in the e-mail, so
13 I forwarded this also on to the Village of Campton
14 Hills, Fox River Countryside Fire Protection District,
15 and the Kane County forest preserve district.

16 Thank you, Mr. Chairman.

17 CHAIRMAN WHITE: Thank you. The Board
18 members should all have a copy of the document. Is
19 there a motion to place it on file?

20 MEMBER BOWEN: So moved, Mr. Chairman.

21 CHAIRMAN WHITE: Moved by Mr. Bowen.

22 MEMBER STOVER: Second.

23 CHAIRMAN WHITE: Seconded by Ms. Stover.

24 All in favor say aye.

1 (Ayes heard.)

2 CHAIRMAN WHITE: Opposed, same sign.

3 (No response.)

4 CHAIRMAN WHITE: Motion carries.

5 MR. BROWN: Can I just make a comment about
6 the document?

7 CHAIRMAN WHITE: You may.

8 MR. BROWN: We do respect that the sheriff --
9 especially where he stated that he has the ability
10 to handle the calls here. But it should be noted --
11 and obviously we've been talking about what weight
12 you give certain evidence -- that there's no
13 statistical basis, there's no real basis outside of
14 the fact he said that number, and he is not here for
15 cross-examination, and we would respectfully say
16 that you should give it its appropriate weight as
17 you look at the rest of the evidence in the record.

18 CHAIRMAN WHITE: So noted.

19 MR. BROWN: Thank you.

20 CHAIRMAN WHITE: Mr. Carrara, do you have
21 another witness?

22 MR. CARRARA: I do, Mr. Chairman. I call
23 Joseph Abel.

24 CHAIRMAN WHITE: Please remain standing and

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1 raise your right hand.

2 (Witness sworn.)

3 CHAIRMAN WHITE: Please state your name and
4 your relationship to this petition.

5 THE WITNESS: Joseph H. Abel, A-b-e-l,
6 planning zoning and economic development consultant
7 hired by the attorney to give testimony in this case.

8 CHAIRMAN WHITE: Thank you.

9 JOSEPH H. ABEL,
10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION BY COUNSEL FOR THE OBJECTOR
12 BY MR. CARRARA:

13 Q Mr. Abel, just for a point of clarification,
14 you were retained not by my law firm; correct? You
15 were retained by the Andrzejewskis?

16 A Yes.

17 Q Thank you.

18 A That's who the retainer went to.

19 Q Sir, where did you attend college?

20 A University of Illinois at Champaign-Urbana.

21 Q And what is your degree in?

22 A City and regional planning with a minor in
23 architecture.

24 Q Do you hold any professional designations?

1 A Did you want me to complete my education?

2 Q I'm sorry. Yes -- I apologize -- I was
3 momentarily distracted.

4 A As I said, I have a degree in city and
5 regional planning from University of Illinois with a
6 minor in architecture. I've done graduate work at
7 the University of Chicago in urban studies, and I
8 completed the accreditation as an economic development
9 professional which required four summers at the
10 University of Oklahoma, plus a thesis.

11 So that is the extent of my education.

12 Q Thank you, Joe.

13 Do you hold any professional designations?

14 A I'm a member of the American Institute of
15 Certified Planners.

16 Q And if you could for the Board, could you
17 explain what that group is?

18 A The American Society of Certified Planners
19 is the professional group for those professionals
20 involved in city and regional planning, urban studies.
21 Almost all planning and zoning-type issues either
22 fall within a consulting formation in terms of
23 employment or planners who are employed by government,
24 either municipalities, counties, states, regions,

1 things of that nature.

2 Q Have you held any positions within that group?

3 A Yes. I've been president of the Chicago
4 metro section of the American Certified Planners and
5 also the Illinois state president for AICP.

6 MR. CARRARA: Mr. Chairman, if I may, I'd
7 like to tender Mr. Abel's CV to the ZBA.

8 CHAIRMAN WHITE: That'd be fine. This is
9 Exhibit A8. Is there a motion to place this in
10 the file?

11 MEMBER CAMERON: I'll move.

12 CHAIRMAN WHITE: Moved by Ms. Cameron,
13 seconded by Ms. Stover. All those in favor say aye.

14 (Ayes heard.)

15 CHAIRMAN WHITE: Opposed, same sign.

16 (No response.)

17 CHAIRMAN WHITE: Motion carries.

18 (Exhibit A8 marked for identification and
19 retained by the Board.)

20 BY MR. CARRARA:

21 Q Joe, we've handed out your curriculum vitae,
22 but can you briefly take us through your experience
23 in the land planning arena?

24 A Yes. I started as a planner -- well, I

1 actually worked with the City of Chicago during
2 summer programs when I was in school. That was with
3 the Chicago Community Conservation Board doing
4 neighborhood conservation plans.

5 My first real employment was with the Lake
6 County Regional Planning Commission in Waukegan,
7 Illinois. I was there for approximately three years
8 and worked on the first land use plan, transportation
9 plan that was developed. Lake County is probably
10 one of the forerunners in the development of county
11 planning.

12 After leaving the Lake County Regional Plan
13 Commission I worked with the firm Carl Gardner &
14 Associates in Chicago, at that time probably the
15 leading consulting firm in the Chicago area.
16 Although, they did work throughout the United
17 States, but I was primarily assigned to Illinois.

18 I started specializing because I had been
19 with DuPage -- I mean with Lake County. I was put
20 in charge of county planning but also did municipal
21 work, and I prepared the first comprehensive plans
22 and zoning ordinances for Grundy County, Iroquois,
23 Kankakee County, and Kendall County. I also did a
24 number of municipal projects, including Gary,

1 Deerfield, Fox River Grove, Morris, Illinois.

2 I was on the design team actually that
3 prepared the plan for Paul Butler for the community
4 of Oak Brook. So our firm was the land use planner
5 that put the whole plan together for the Village of
6 Oak Brook, and I think most of you are familiar with
7 that successful plan as it is today.

8 I think based on the work that I did in
9 Oak Brook and other municipalities and counties, in
10 1970 I was asked to leave the firm and interview --
11 leave to take the job with DuPage County. DuPage
12 County went through a program at the time where they
13 were the fastest growing county in the state of
14 Illinois and the second fastest growing in the
15 country. They needed to develop a plan and a new
16 zoning ordinance. They interviewed a number of
17 people, and I was fortunate enough to be selected.

18 So I stayed with DuPage County for 17 years.
19 I started heading the planning department, but by
20 the end of the 17 years I was in charge of the county
21 development department which included approximately
22 40 staff, and I was in charge of planning, building,
23 zoning, economic development, community development
24 block grant, and transportation planning totally

1 under my control as the director of the county
2 development department. I also served as the
3 director of the DuPage County Regional Planning
4 Commission, and I was also secretary to the Zoning
5 Board of Appeals.

6 Then in '87 I was contacted by the Harold
7 Washington administration and asked to head the new
8 economic development commission for the City of
9 Chicago. I was with the economic development
10 commission for five years, partially under Mayor
11 Washington and partially under Mayor Orr.

12 After that -- I guaranteed three years and I
13 stayed five from '87 to '92. In '92 I started my
14 own firm and have been doing that ever since. And
15 my clients include municipalities, counties; do a
16 lot of condemnation work for the State of Illinois;
17 do site planning, comprehensive plans, zoning, just
18 about everything that a consulting firm delves in,
19 planning, zoning, and economic development.

20 And that's about it.

21 Q As part of that work, have you been a part
22 of the drafting and implementation of zoning
23 ordinances for any of the surrounding counties?

24 A Yes. Well, Grundy is now part of the

1 metropolitan area. So I developed the first
2 comprehensive plan and zoning ordinance for Grundy
3 County. I did the zoning ordinance and comprehensive
4 plan for Kendall, and most importantly prepared the
5 first comprehensive plan for DuPage County. They
6 had never had a plan. Unfortunately, they were the
7 last county to go into planning, but we quickly rose
8 to probably having the best program in the region
9 equal with Kane County. We worked very closely with
10 Kane since we were neighbors, and we really had to
11 consider our growth together.

12 But the comprehensive plan for DuPage County
13 was unique in that we were told that it was for the
14 entire county, not just unincorporated area, all
15 32 municipalities. That's the reason it took us
16 seven years to prepare it. The County Board
17 chairman's instructions were, "Do not come back with
18 a plan until all 32 municipalities sign off in
19 agreement with the plan you prepared." So that was
20 probably one of the most unique plans in the area in
21 that it covered the entire county border to border,
22 all municipalities. All municipalities did sign off
23 on it.

24 So then once the plan was completed, the

1 County wanted to implement that plan, and the best
2 way to implement the plan is to add a new zoning
3 ordinance. So I did completely rewrite, do a
4 comprehensive revision of the DuPage County zoning
5 ordinance. I should say for the attorneys in the
6 room, all the planning standards for the zoning
7 ordinance, not the legal parts of the zoning
8 ordinance.

9 Q Have you had the opportunity in preparing to
10 testify here to review the Kane County ordinance?

11 A Oh, yes.

12 Q Have you had the opportunity to review the
13 application and documents online from the Maxxam
14 facility?

15 A Yes.

16 Q Have you been in attendance at all the
17 hearings, public hearings since they've started for
18 this application?

19 A Unfortunately, yes. Reminds me of the
20 Ground Hog Day movie.

21 Q I believe there's a number of people here
22 who would agree with you, Mr. Abel.

23 Are you prepared to provide your professional
24 opinions as to the Maxxam application?

1 A Yes.

2 Q Do you have an opinion on whether this
3 application should be being processed as a
4 special use?

5 A Yes.

6 Q What is that opinion?

7 A Basically -- and I have testified even at the
8 hearing on the appeal -- it is my professional
9 opinion that because the zoning ordinance does not
10 specifically list the alcohol and drug abuse treatment
11 facilities as a permitted or special use in any
12 district that it should follow what I feel from a
13 professional standpoint -- and I previously
14 testified to this, that this should have followed
15 the zoning ordinance Section 5.15 which requires a
16 staff study and analysis of this particular use.

17 And after that thorough study, which
18 probably would have eliminated 75 percent of this
19 public hearing, it would have been translated into a
20 text amendment. That text amendment would have
21 carefully defined the use because there's different
22 parameters for this kind of facility, would have
23 defined specifically what zoning classifications it
24 could be appropriately located in either as a

1 permitted or special use, and it would have set
2 standards that have to be met for this particular
3 kind of unique use that, again, would assist the
4 Zoning Board in making the decision if it was a
5 special use and would have never had to get to the
6 zoning board if it were a permitted use in some
7 district, but we won't know that because the study
8 was never done.

9 So, again, the basis of my whole analysis is
10 that this should have gone through a text amendment
11 and then have an applicant apply for the zoning in
12 the appropriate location or go for a text amendment.

13 Q Is -- when there's a new or unlisted use in
14 an ordinance, is it your opinion that it's generally
15 good land planning to take the time to do that text
16 amendment and properly study?

17 A It's my professional opinion and that's what
18 I did for 17 years with the county especially
19 because of the fact that we were the fastest growing
20 county in the State of Illinois and, as I said, one
21 of the fastest -- point of reference, when I started
22 with the county it was 250,000, and when I left we
23 were almost 900,000.

24 So we had tremendous growth in that period,

1 and many, many new uses came before the Zoning Board
2 of Appeals. I was the secretary and went to every
3 zoning hearing during that 17 years. They were
4 every Thursday night and sometimes special nights.

5 So we had many, many new uses that came in,
6 and the first thing that they would do, if it's not
7 on the list, they would turn it over to our staff to
8 do a thorough analysis, do a text amendment, and
9 then tell the applicant to apply for either the
10 special use or the zoning.

11 As you know, a zoning ordinance has to make
12 a place for every use. We found that out. So you
13 have to accommodate every use there is, and as new
14 uses come in, that's the appropriate way to do it.

15 I mentioned in my previous testimony that a
16 good example of it was a case I was involved in in
17 Carol Stream where they had in their ordinance
18 automobile service stations. But one of these new
19 unique truck terminals that provide housing, and
20 recreation, everything came into the community, and
21 they didn't have a provision for it.

22 Staff did a study, included it into a
23 particular district, and then the applicant went and
24 did it. The hearing went through I think one or

1 two nights even. Though it was very contentious,
2 the study was there, and everybody knew what the
3 standards were and didn't have to go through trying
4 to make up rules as part of the zoning hearing.

5 So, again, that's what has led to this
6 hearing being very lengthy is that there's an awful
7 lot of standards and rule setting and everything
8 going on here that probably should have been done at
9 a staff level.

10 Q You heard testimony that the Maxxam facility,
11 if approved, will be licensed by the State of
12 Illinois; correct?

13 A Correct.

14 Q You've also heard testimony that the Maxxam
15 facility will be specifically dispensing controlled
16 substances to its clients as part of that licensing?

17 A Yes.

18 Q To prepare your testimony, in reviewing the
19 zoning ordinance did you look at the use definitions?

20 A Yes.

21 Q Did you come across any definition that deals
22 with where controlled substances can be dispensed?

23 A Yes. I'd have to go to the zoning ordinance.

24 MR. CARRARA: If I can, Mr. Chairman, I have

1 a copy of I believe what he's going to look at, if I
2 may pass it out to the members.

3 A (Continuing.) It's on page 16 of the
4 amended 8/20/14 zoning ordinance. And as I was
5 going through the ordinance, since I prepared so
6 many zoning ordinances I'm always careful to make
7 sure I go to the definitions sections and check
8 everything out, and then if I can't find it in the
9 definition, then I usually go to Webster's
10 dictionary.

11 In this particular instance I found a
12 definition called "Use Interim for Dispensing of
13 Controlled Substances License by the State of
14 Illinois." It says, "An interim use that may be
15 granted on zoning lots in the RB, B1, and B3
16 specifically for the dispensing of controlled
17 substances licensed by the State of Illinois."

18 So that sort of led me to the conclusion
19 that it's possible that the RB, B1, and B3 probably
20 would be reasonable locations even for the proposed
21 use, especially when I went in and looked at the
22 other uses allowed in that district, which include
23 clinics, and boarding facilities, and things of that
24 nature.

1 So it probably would -- it would probably
2 lead the staff to at least start looking in those
3 directions as they're contemplating appropriate
4 locations for the proposed use.

5 MR. CARRARA: Mr. Chairman, I'd ask that
6 Exhibit A15, which is page 16 out of the zoning
7 ordinance which Mr. Abel just read be made a part of
8 the record, please.

9 CHAIRMAN WHITE: Is there a motion to
10 accept it?

11 THE WITNESS: And, obviously, this use is
12 not permitted in the F District.

13 MEMBER HEINRICH: So moved.

14 CHAIRMAN WHITE: Moved by Mr. Heinrich,
15 seconded by Ms. Cameron. All in favor say aye.

16 (Ayes heard.)

17 CHAIRMAN WHITE: Opposed, same sign.

18 (No response.)

19 CHAIRMAN WHITE: Motion carries.

20 (Exhibit A15 marked for identification
21 and retained by the Board.)

22 BY MR. CARRARA:

23 Q In your review of Exhibit A15, in that
24 definition do you see any language that restricts

1 that only to medical marijuana dispensaries?

2 A No.

3 Q It's open to any facility that dispenses
4 controlled substances licensed by the State of
5 Illinois; correct?

6 A That is correct.

7 Q And I think when the Chair was trying to get
8 a motion you mentioned that the location of the
9 Maxxam facility -- is it located in one of those
10 zoning classifications listed in A15?

11 A No. It's in the F Farming district.

12 Q Do you have an opinion on whether siting the
13 proposed Maxxam facility in the farm district will
14 set any kind of precedent if the ordinance isn't
15 changed?

16 A Well, it set a precedent for this type of
17 facility to be located in the F Farming district, yes.

18 Q As part of your preparation tonight, did you
19 have the opportunity to review the special use
20 standards that are required to be proven as part of
21 this application?

22 A Yes. They're normal standards found in
23 almost all ordinances.

24 Q If you could, Mr. Abel, could you please

1 take us through the standards and give us your
2 professional opinion on each one of those and
3 whether you believe Maxxam has provided support to --
4 for the approval of that special use standard?

5 If you can, Mr. Abel, I can read the
6 standards for you if you don't want to locate them
7 in the ordinance?

8 A I've got them in the ordinance on page 23.

9 CHAIRMAN WHITE: Just for point of
10 clarification, they're in the current version of the
11 ordinance listed on page 24 under Section 4.1-2.

12 MR. CARRARA: Thank you, Mr. Chairman.

13 THE WITNESS: Mine must be from the old one.

14 BY MR. CARRARA:

15 Q So let us know when you're on page 24,
16 Mr. Abel.

17 A Okay.

18 Q Let's start with sub-A, "The establishment,
19 maintenance, or operation of the special use will
20 not be unreasonably detrimental to or endanger the
21 public health, safety, morals, comfort, or general
22 welfare." Do you have an expert on that standard?

23 A Yes. We've heard an awful lot of testimony,
24 and I've seen reports stating that from the

1 standpoint, you know, of safety we're talking about
2 not only police protection, and fire protection, and
3 things of that nature, services, but from a planning
4 standpoint I always put a lot of emphasis in almost
5 all the cases I testify in on general welfare.

6 In this particular instance, because we're
7 dealing with an estate area -- and I thought it was
8 interesting in terms of looking at both Mr. MaRous'
9 testimony and Mr. Lannert, the planner, both of them
10 emphasized in their reports the fact that this is an
11 estate area, within a 2-mile radius Mr. MaRous said
12 it's almost exclusively open space and residential,
13 and Mr. Lannert said within a mile-and-a-half he
14 said was open space and farming. I don't know why
15 within a mile-and-a-half he left out residential,
16 but that is the character of this particular area.
17 So there are not a number of uses in this area that
18 would tend to change what I call the lifestyle.

19 So you're dealing with a very unique area
20 carved out in this particular location that is
21 farming, estate-type residential on large lots.
22 And the minute you introduce something of this
23 magnitude -- and, also, it's unique and sensitive.
24 Now, I heard the word perception, and there's no

1 doubt about it that perception falls in there, also.

2 But in terms of general welfare, if you
3 think about -- again, everybody talks about safety,
4 morals, the health, and things of that nature. But
5 when you come down to comfort and especially general
6 welfare, what you're talking about is -- it's
7 happiness; it's a sense of well-being. That's what
8 people get when they live in this particular area,
9 and you can see why there is this concern for a use
10 that's entirely different, does have problems
11 associated with it.

12 I was surprised at, again, the amount of
13 security that's being provided. It has to be
14 provided for a reason. Some of it is to sort of
15 satisfy the public, but I think some of it is for
16 real, that there is the opportunity for people to
17 just get up and want to leave just because they are
18 in a state of mind that most of us are not used to
19 dealing with. And there may be opportunities for
20 people who want to enter the property to bring
21 something to the residents that are staying there
22 from 30 to 90 days.

23 So this whole idea of safety, general
24 welfare, comfort all goes back to my feeling in

1 terms of all the cases I've worked on, especially
2 this whole idea of not my back yard, those are very
3 difficult issues to deal with.

4 In this particular instance the intensity of
5 what's going in -- everybody talks about the fact
6 that this site is -- what is it? -- 120 acres.
7 There's only one reason it's 120 acres, and that's
8 because of the Sheaffer system. Jack Sheaffer and I
9 developed -- I helped Jack develop that system, so
10 I'm very familiar with it. He was the first one in
11 Ludington, Michigan, and we were going to do a large
12 one in DuPage County, but our public works department
13 didn't go along with it.

14 So keep in mind that over 50 percent --
15 52 percent, as I recall, of the site is there
16 because of the Sheaffer system. The intensity, the
17 120 people that are -- that are going to be there,
18 the 80 to 120 employees, all of the vehicles coming
19 into -- the meal preparation for a facility of this
20 size. This isn't some little corner store. This is
21 a facility that's going to provide recreation.

22 I think in my analysis I compared it almost
23 to a resort. These people are coming there; they're
24 going to be taken care of very carefully, but they

1 have to be maintained; they have to be housed; they
2 have to be -- they have to stay clean; they have to
3 have laundry. All of these services are above and
4 beyond what you would normally find in an estate
5 area like this.

6 We'll get into the comprehensive plan later
7 because the comprehensive plan has some ideas of
8 where a facility like this should be, also. But
9 that's my feeling is I don't think it meets the test
10 of not having a negative impact on especially the
11 welfare, general welfare, and the safety, and the
12 comfort of the people living in the area.

13 Q Thank you, Mr. Abel. Let's move to B, that
14 the special use will not be injurious to the use and
15 enjoyment of the property in the immediate vicinity
16 for the purposes already permitted nor substantially
17 diminish and impair property values within the
18 neighborhood. Do you have an opinion on that
19 standard, sir?

20 A Right. From a planning stand point. I'm
21 not an appraiser, so I'm not going to get into the
22 percentages of diminution in value and things of
23 that nature.

24 But, again, this is an area that has been

1 designated on the comprehensive plan for a specific
2 use, not a hospital, not a nursing home or
3 convalescent facility, and, again, the proposed use
4 is out of character and goes contrary to the trend
5 in development.

6 It was, again, interesting in both the
7 Lannert report he talks clearly about the trend of
8 development and indicated that this was okay because
9 the area in the long run will be controlled by
10 Campton Hills.

11 Well, Campton Hills is very specific in
12 terms of keeping this area -- in fact, they turned
13 down a facility like this. But they're very specific
14 about keeping this area as open space and estate-
15 type development.

16 I became painfully aware of that fact
17 because I did represent the developer that brought
18 all the land into Elgin to the north and to the
19 east. So we didn't get into my familiarity with the
20 property, but that was my first time getting
21 involved in this area in a very great detail, spent
22 a lot of time on the subject property and all of the
23 property surrounding this because this is a very,
24 very large PUD that was brought into Elgin.

1 So I do feel that the planning, the trend in
2 development, and the use of this property is not in
3 conformance with Campton Hills, and they are the
4 ones that probably in the future will control this
5 property more than the County. And Mr. Lannert says
6 that, also.

7 Q Earlier I think we all received information
8 that the Sheriff's office is now anticipating the
9 calls of lights and sirens could be anywhere from
10 100 to 300. Do you think that has any potential
11 impact on the surrounding neighborhood and the
12 welfare, as well as the other factors?

13 A It all adds to the land use intensity. What
14 we're talking about here is a very, very low density
15 part of Kane County, and anytime you introduce, as I
16 said, all the service vehicles, everything that's
17 associated with this use which is compacted on only
18 42 percent or 48 percent of the site, not the whole
19 120 acres, that is going to have an impact.

20 I was also interested in him saying that a
21 lot of the calls would require not the quiet runs
22 but the normal lights and sound associated with
23 emergency vehicles.

24 So those are all things that are not

1 associated with the lifestyle that individuals in
2 this particular area have come to respect and desire.

3 I heard one lady at one of the first
4 hearings talk about the lifestyle in this area and
5 how neighborhoods get together and things of that
6 nature, and I sat there and I thought, man, she's
7 giving my testimony.

8 Q The next standard -- I think we've gone
9 through B and C -- is D. It's the adequate utility
10 access road, drainage, and/or other necessary
11 facilities have been or are being provided.

12 Now, earlier, Mr. Abel, you referenced
13 something called a Sheaffer system. For some of us
14 sitting here, we may not know what a Sheaffer system
15 is. Could you explain what that is?

16 A It's a land treatment facility, and I
17 wouldn't even call it -- you're either going to have
18 a municipal service, you're going to have a septic
19 tank, or you're going to have the land treatment.
20 And, basically, I was fortunate in this area, I
21 worked on the very first one at Hamilton Lakes in
22 Itasca.

23 We had plans to bring in a huge economic
24 development. Then we found out that Itasca's sewer

1 and water system couldn't handle it, and so Jack
2 came in and we worked on getting that annexed into
3 the Village of Itasca. If you go down 355, you can
4 see the big Hamilton Lakes development. That was
5 originally done under the Sheaffer system.

6 And, basically, the sewage comes into one
7 area, it's extremely deep, it's covered with water,
8 and all of the action takes place below grade.

9 One thing we found out is that there's very
10 little sludge. I think after 10 years we went back
11 and sent some divers down there, and there was very
12 little in the way of sludge. So it's really
13 unbelievably good. And then the water, the clean
14 water that comes off is then irrigated, and that's
15 why you need the open space.

16 Mill Creek here in Kane County has also
17 successfully used the process. So it's an accepted
18 process but it is -- it does use a lot of land. So
19 normally you will use a clustering technique. So if
20 you could have 100 houses on the property, you would
21 put those 100 houses on just 50 acres and use the
22 50 that they would have been on. So they'd be on
23 slightly smaller lots.

24 So, usually, it's planned development, but

1 it's a unique system and could be used for
2 residential purposes very easily on the subject
3 property.

4 Q At the very beginning at these public
5 hearings, the staff read their report, and there
6 were a number of concerns that were identified by
7 the health department and other County departments
8 as to certain permits, reports, and the like for the
9 Sheaffer system.

10 To your knowledge, have you heard any
11 testimony here that those County concerns by the
12 other departments staffs had been addressed by the
13 Maxxam applicant?

14 A No, I don't know.

15 Q Let's move on to paragraph E, adequate
16 measure have been -- excuse me -- adequate measures
17 have been or will be taken to provide ingress and
18 egress so designated as to minimize traffic
19 congestion in the public streets and roads.

20 You were mentioning earlier a number of
21 things about delivery trucks and the like. In your
22 review of the traffic report identified by the
23 applicant, did they take into any consideration the
24 food service and all the other linen services and

1 the like that would be running this facility?

2 A I didn't see any but that's not to say that
3 they didn't include it in their figures. They didn't
4 break it out. Normally in a facility like this,
5 where, as I said, it's like a resort -- well, it's
6 an all-inclusive facility, all-inclusive resort --
7 you are going to have those kinds of facilities. I
8 was more concerned about the increase in traffic.

9 It's a long -- it's a half-mile road through
10 the forest preserve. It does go in fairly close
11 proximity to the residential development directly to
12 the west, but, again, with proper -- I don't even
13 know -- I don't think the traffic would be enough to
14 require deceleration lanes or anything.

15 So I think in terms of being able to handle
16 the traffic there is no problem. It's the increase
17 in intensity of the traffic that's going to affect
18 the surrounding areas.

19 Q Is it also safe to say that the estimated
20 sheriff call volumes of 100 to 300 on these two-lane
21 roads will also impact that standard?

22 A Well, yeah. The sheriff may be taking into
23 consideration not only the calls directly on the
24 property, but he could be taking into consideration

1 the fact that you've got more traffic. You do have
2 trucks coming in and out, and there may be more
3 accidents associated with traffic going to this
4 facility, to and from, that adds to his burden.

5 So I haven't seen his report, but I'm sure
6 he probably took both internal and external effects
7 into consideration. Whereas, I don't think the
8 traffic consultant did.

9 Q Then the last standard is F. It's the
10 special use shall in all other respects conform to
11 the applicable regulations of the district in which
12 it's located except as such regulations may in each
13 instance be modified by the County Board pursuant to
14 the recommendation of the Zoning Board of Appeals.

15 Are you aware, has the applicant -- are they
16 seeking any variations or deviations from any
17 standards?

18 A No. That's the big problem here is they're --
19 the County hasn't identified this use, as I said, in
20 terms of where it should be, what kind of standards.
21 So it's almost like a fishing expedition going on
22 here. Problems come up and they say, "Well, we'll
23 satisfy that; we'll have more security, or we'll
24 have more cameras; we'll have more of this, that."

1 I think it's going to be interesting to see the
2 conditions that are applied to this use if and when
3 it's approved.

4 But that's the biggest fallacy with F is
5 that we really don't know what we're talking about.
6 There was not a study. There should have been a
7 text amendment -- I keep going back to that -- and
8 then there would be an appropriate way for Item F to
9 be approached.

10 Q In your review of the application, did you
11 see any request for relief from the use you identified
12 in Exhibit A15 that limited dispensing controlled
13 substances only in the RB, B1, or B3 districts?

14 A No.

15 Q Do you have a professional opinion on how the
16 Maxxam application interacts with the 2040 land plan?

17 A Yes.

18 Q What is that opinion?

19 A I went through the 2040 plan in some detail,
20 and I've been -- as I said, both the DuPage County
21 land that I worked on for 17 years and also the
22 earlier versions of the Kane County plan I was very
23 familiar with because we did work almost hand in
24 glove together through those years. Your County

1 planning director from Kane and myself plus the
2 others used to meet on a monthly basis and make sure
3 that everything we did was coordinated especially
4 between Kane and DuPage.

5 So I'm familiar with the plan, followed it
6 through all its iterations. And in looking at the
7 2040 plan, it was interesting that even though
8 plans are generalized, there was a specific
9 recommendation for the subject property, and the
10 specific recommendation for the property is
11 institutional/private open space.

12 Q Joe, let me stop you there. I'm going to
13 hand out the definition so the ZBA can see what
14 you're referring to.

15 A Yeah. I have it.

16 (Exhibit A3 marked for identification and
17 retained by the Board.)

18 CHAIRMAN WHITE: Is there a motion by the
19 Board to accept Exhibit A3?

20 MEMBER BOWEN: So moved, Mr. Chairman.

21 CHAIRMAN WHITE: Moved by Mr. Bowen,
22 seconded by Mr. Regan. All in favor say aye.

23 (Ayes heard.)

24 CHAIRMAN WHITE: Opposed, same sign.

1 (No response.)

2 CHAIRMAN WHITE: Motion carries.

3 MR. CARRARA: Thank you, Mr. Chairman.

4 BY MR. CARRARA:

5 Q Joe, I believe you were referring to on
6 Exhibit A3 the institutional/private open space
7 designation. Is that what you were --

8 A Well, I started with the 2040 land use plan.
9 It's the document in the report that gives a
10 designation for all the properties in Kane County.

11 So it ranges from open space, to agricultural,
12 to rural residential, business industrial. So it's
13 the actual map itself, and that's what's significant
14 about the map is that it's a large area. This is
15 only 110 acres, yet it specifically has its own
16 classification, which I said is the institutional
17 private open space.

18 I then went to the text that accompanies the
19 map, and, again, in bold heading institutional private
20 open space it goes into detail, which is rather
21 unique. But, again, this is a very well-thought-out
22 plan that's been developed over the last 50 years.
23 So you would expect that it would have this kind of
24 specific designation.

1 It reads, "This category includes a number
2 of private and institutional property ownership.
3 Representative areas are the McGraw Wildlife
4 Foundation, Fermi National Accelerator Laboratory,
5 Mooseheart, and the various youth camps. Although
6 these areas may not be generally accessible to the
7 public, they do provide a number of ecological
8 functions, and the plan recommends connecting them
9 to other open space and green infrastructure areas
10 when feasible."

11 That's the other interesting thing about
12 this property is it's now been implemented by the
13 forest preserve districts to start carrying out this
14 provision, implementing what's considered for
15 this area.

16 "These lands include areas providing visual
17 open space and community separation, preserving
18 important woodlands and wetlands, protecting critical
19 wildlife habitats, and offering important scientific,
20 cultural, and educational opportunities to the
21 residents of Kane County. It is important that the
22 County communicate with the various owners of these
23 lands regarding their proper maintenance and
24 management."

1 In line with that I also looked at the
2 definition in Webster's, and their definition of
3 institutional --

4 Q Joe, if you could, you need to speak into
5 the mic, please.

6 A Webster's definition of institutional is
7 something that serves to instruct and of a public
8 nature.

9 So pretty much it fits in with what the
10 planning commission had come up with in terms of a
11 definition and in terms of it being instructional
12 public use and then tying in with the entire open
13 space-type trend in development that's taking place
14 in this entire area.

15 Q Anywhere in that definition of institutional
16 private open space did you see any reference to a
17 private, for-profit drug and alcohol detoxification
18 center?

19 A No. And not hospitals or nursing homes,
20 either.

21 Q As part of your review, did -- were you
22 asked to look at the MaRous report and the facility
23 he looked at from a land planning perspective in
24 Park Ridge, Illinois?

1 A Yes.

2 Q And if you could --

3 MR. CARRARA: Blair -- I'm sorry -- could
4 you put that exhibit up?

5 CHAIRMAN WHITE: Is there a motion to place
6 this into the file?

7 MEMBER STOVER: So moved.

8 CHAIRMAN WHITE: Moved by Ms. Stover,
9 seconded by Mr. Heinrich. All in favor say aye.

10 (Ayes heard.)

11 CHAIRMAN WHITE: Opposed, same sign.

12 (No response.)

13 CHAIRMAN WHITE: Motion carries.

14 BY MR. CARRARA:

15 Q From a land planning standard, Mr. Abel,
16 could you explain to us what this area represents?

17 A Yes. This areas represents the 11 acres in
18 Park Ridge that Mr. MaRous used as a comparison to
19 the subject property in terms of their being equal.

20 The 11-acre site was used primarily, as I
21 checked the record, for youths; I think the ages of
22 12 to 18, so totally dissimilar to the proposed use.

23 As you can see, there's a different
24 lifestyle in this area than if you put up an aerial

1 photograph -- I think the aerial that Mr. Lannert
2 used where he did his 1 1/2 mile radius and then had
3 had the colors of whose jurisdiction it is, if you
4 had those two side by side -- and as I sit here I
5 wish I had done that -- you could see that there is
6 no similarity between this location in Park Ridge
7 and the proposed location in Kane County area.

8 These are people who are used to traffic.
9 You can see off to the left-hand side -- or the
10 right-hand side, I just pick up a little bit of the
11 commercial on Oakton Street. Oakton is an
12 unbelievably heavily trafficked street. The streets
13 on both sides on the east and west are heavily
14 trafficked streets, as is Howard Street and the
15 streets to the south and north.

16 So you have an entirely different environment
17 here in terms of the expectations and perceptions of
18 what people are willing to live with.

19 The one thing I found of interest, though,
20 was -- and I was surprised that Mr. MaRous used
21 this -- is that when I pulled up the aerial
22 photograph, if you look under the dots, you will see
23 that there are some little white patches. All of
24 the two-story buildings that were housing these

1 girls have been completely demolished, and this site
2 is in the process of being redeveloped into a park.

3 Now, I called the park district and asked
4 them, how long has the process been going on to turn
5 this facility for the girls for drug addiction been
6 in the works. And this was actually approved by a
7 community referendum to buy this property back in
8 2013, and she said this had been going on for quite
9 some time.

10 So I don't think you can use this as a
11 matched pair because the people that were living
12 there or anyone buying it would be completely aware
13 of the fact that this was going to be a park, not
14 any kind of a drug facility. So you have to take
15 that into consideration, also, that the community
16 was totally aware, and now they did pass a major
17 referendum in 2013, and slowly but surely it's not
18 being converted to park purposes, and one of the
19 buildings will be retained for administration.

20 So it really is completely different, and
21 that's why I think -- I'm not talking about the
22 present proposed facility, but at least in this
23 instance I don't think it's fair to say that the
24 value stayed high because it was a drug facility. I

1 think the adjoining properties stayed high because
2 they knew ultimately they were going to have a
3 beautiful park in their back yard.

4 So those are some of the things that came
5 out of looking at, doing analysis of a surrounding
6 land use, character of the area, trend in
7 development in this exhibit.

8 I did have one thing. You cut me short on the
9 comprehensive plan. Or are you coming back to it?

10 Q I was going to come back to it.

11 A Okay.

12 Q But, please, go ahead, Mr. Abel.

13 A Okay. Again, the comprehensive plan, if you
14 read it in more detail and go through talks about
15 the fact that there are certain corridors where
16 development of this type of intensity, something
17 that would be housing 120 people, would have all
18 these services associated with it and everything and
19 really talks about it being in two major areas and
20 specifically lists medical in the text. And that's
21 the Randall/Orchard Road corridor and also the
22 Illinois 47 corridor.

23 And it talks about it makes sense from a
24 smart growth standpoint -- and there's a whole

1 section on smart growth that talks about preserving
2 open space, mixed use, keeping facilities such as
3 the one that's being proposed which does fall in the
4 medical category, hospitals, and nursing homes in
5 areas where there's adequate transportation, close
6 proximity to housing so that you can cut the
7 distances down.

8 So the plan does really, really emphasize
9 smart growth. And smart growth -- one of the things
10 that it doesn't suggest is leapfrogging out into an
11 area like this with a use that's counter to the
12 trend in development. It really emphasizes keeping
13 uses like this, medical and things of that nature,
14 within the built-up areas, especially in the
15 municipalities where there are complete municipal
16 services.

17 So in a nutshell that pretty much takes care
18 of the comprehensive plan and, again, why it didn't
19 designate it for a medical facility.

20 Q Thank you, Mr. Abel.

21 Just to kind of touch base on this because I
22 believe I forgot to ask you these questions earlier,
23 and I think you've heard them asked of all the
24 experts in one way or the other, you are being paid

1 as an expert witness; correct?

2 A Yes.

3 Q And you serve as an expert witness for both
4 applicants and objectors; you just don't only
5 represent objectors trying to stop development or
6 growth or anything like that; correct?

7 A I represent objectors when their objection
8 is correct, and I represent developers when their
9 proposal is appropriate, yes.

10 Q Thank you.

11 At any point in time during this process,
12 did anybody ever come to you and say, "We want your
13 opinion to be that the Maxxam facility is not
14 appropriate"?

15 A No. And anybody that knows me over the last
16 50 years, that's my strength is my credibility.
17 There's nobody that's been ever able to find out
18 that I did something like that.

19 MR. CARRARA: Thank you. That's all the
20 questions I have, Mr. Chairman.

21 CHAIRMAN WHITE: Thank you.

22 Board members have any questions of the
23 witness?

24 Ms. Stover.

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1 MEMBER STOVER: Can I first ask a question
2 just for clarification? Because I wasn't paying
3 attention very well.

4 We entered into the record A15. A15 is
5 page 16 of the Appendix B Zoning. And Appendix B
6 Zoning, these are -- these are for the purpose of
7 this ordinance -- it says "Certain terms and words
8 are hereby defined as follows."

9 So we're using page 16 or to the letter U
10 for use, special interim use and so forth. So
11 they're using the cultivation of controlled
12 substances, and then on to that is interim for
13 dispensing. This appendix is for definitions sort
14 of only. So I'm just wondering why you're entering
15 that because I didn't understand.

16 MR. CARRARA: Sure. Back in 2014 you as a
17 Board decided to amend the zoning ordinance and allow
18 the dispensing of controlled substances licensed by
19 the State of Illinois only in three specific zoning
20 classifications. That is the RB, the B1 and B3, not
21 in the Farming district. You've defined where uses
22 can -- controlled substances can be dispensed and
23 under what land use designation.

24 MEMBER STOVER: All right. I understand. I

1 don't know if I agree with that. I think they were
2 talking about our new marijuana substance on that.

3 MR. CARRARA: That may be true. And, again --
4 I'm not trying to argue with you on that but --

5 MEMBER STOVER: Right.

6 MR. CARRARA: -- nowhere is it solely
7 limited to --

8 MEMBER STOVER: Right. But --

9 MR. CARRARA: -- the controlled substance of
10 medical marijuana.

11 MEMBER STOVER: -- that was in there for the
12 marijuana, and I didn't know how we made that into
13 the hospital or to the home.

14 The next question was for you -- I'm sorry --
15 I don't know where I'm at there.

16 As land planner, you said that you thought
17 that this was not congruent with the development of
18 the area. With that having already been developed
19 into all of those buildings and those facilities
20 that are, you know, the kitchens and the housing,
21 the places they'll sleep, that's already been
22 developed into that. So I'm not sure, does that
23 weigh on your decision at all about anything,
24 something sitting there vacant that's already pretty

1 much the same type of use?

2 THE WITNESS: I think your staff must have
3 taken that into consideration, too. So I go back to
4 the comprehensive plan. Kane County development
5 department staff knew those buildings were there,
6 and yet they still are stating that it should be
7 used for something more in line with open space and
8 what examples they gave, not for a drug treatment
9 facility.

10 There's always -- I deal -- almost
11 20, 30 percent of my cases are redevelopment. Case
12 in point, that was a very nice facility in Park Ridge,
13 well-located, and I wish I had left the underlying
14 photo, which at the present you will see the
15 bulldozers out there. Those -- and they were nice
16 two-story structures -- have all been totally
17 removed, and they're redeveloping it for open space.

18 So it's possible that the -- those barracks
19 that are there, there's eight barracks on the site
20 that they were going to use, they could just as
21 easily be demolished as anything. I mean, we have
22 tear-downs of homes, and I see beautiful homes torn
23 down and bigger homes put up. Whether it's
24 commercial, residential, institutional, there's

1 always redevelopment.

2 I mean, the Campton Hills plan shows this
3 area probably keeping it large-lot estate, and with
4 the Sheaffer system that could be done. And the
5 building -- if there's one building that's good
6 there it could become a recreational amenity for the
7 residential development.

8 No, I wouldn't say just because there are
9 some structures there -- that school was there for a
10 long time, and I remember walking it when we did the
11 big Elgin project. There's nothing as far as I'm
12 concerned from my professional opinion and projects
13 I've been involved in, there's nothing sacrosanct
14 about that development in terms of being capable of
15 redevelopment.

16 MEMBER STOVER: Just a couple more.

17 Did you read the wastewater treatment study
18 that was done on that property most recently?

19 THE WITNESS: No.

20 MEMBER STOVER: Because in the annual report
21 it calls for -- in the conclusion it says it's fully
22 operational and in good maintenance, and it has
23 500 PE water supply and 1100 PE with the wastewater
24 treatment. Were you aware of that?

1 THE WITNESS: I assume that if somebody were
2 going to redevelop it, that's a real plus,
3 especially a residential development.

4 As I said, we studied the Sheaffer system in
5 Hamilton Lakes, and that's all commercial, offices,
6 heavy uses, restaurants, the whole bit, hotels.
7 There was no problem with that after 10 years, so
8 I'm sure the Sheaffer system that's there will
9 accommodate any redevelopment that would be
10 contemplated.

11 MEMBER STOVER: Just one more question I had
12 for you.

13 You talked about the appropriate time to --
14 or you talked about uses and being put within the
15 ordinance. First, were you aware in 15.5 that we
16 talk about that specifically? "The nonlisted uses
17 which are approved shall be added to the appropriate
18 use list at the time of the periodic update and
19 revision."

20 My point being, I'm 17 years on this board;
21 there are several things that come before us for a
22 special use permit, and as they come before us, you
23 know, and they repeatedly come before us, it's
24 always been our way to say, "It's time to look at

1 this and add it to the text."

2 So, you know, I think this is the first time
3 a facility like this has come before this zoning
4 board, so I'm pretty sure in the periodic updating
5 that revision may be made.

6 THE WITNESS: That's not the time to do it.
7 That's why you're here as long as you are.

8 5.15, you didn't read the whole thing. It
9 says, "The enforcing officer may allow land uses
10 which though not contained by name in the zoning
11 district list where permitted or special uses are
12 deemed to be similar in nature. However, such
13 nonlisted uses shall not be approved until the
14 application for such use has been reviewed by the
15 County development staff and a favorable report has
16 been received."

17 That's the report I'm telling you that Carol
18 Stream did when I was giving my testimony and I --

19 MEMBER STOVER: I'm just commenting to the
20 last sentence that says, "The nonlisted uses which
21 are approved shall be added to the appropriate use
22 list at the time of periodic update and revision."
23 I think that's been the way we've done it forever.

24 THE WITNESS: But you've done it without the

1 public involved. You're telling me you did it
2 without a public hearing? You amended your zoning
3 ordinance without -- I've been doing this for almost
4 40 years. I have never --

5 (Applause.)

6 MEMBER STOVER: No, that's not what I'm
7 saying. I think --

8 THE WITNESS: I have never seen a system
9 like this where you can go ahead and prepare a text
10 amendment and slip in into the ordinance without the
11 public knowing about it.

12 CHAIRMAN WHITE: This is out of order.

13 MR. KINNALLY: This is out of order.

14 THE WITNESS: She asked a question.

15 MR. KINNALLY: This is out of order.

16 MEMBER STOVER: I guess I wasn't clear. The
17 public's been very involved. So we would never slip
18 anything into a text without the public being
19 involved.

20 THE WITNESS: No, but that's what you were
21 reading to me that that's what should be done, and
22 I'm saying that I would never as a professional
23 condone doing that, doing a text amendment without
24 having a public hearing. I just was --

1 MEMBER STOVER: I actually was saying the
2 same thing.

3 THE WITNESS: Okay. I agree with you then.

4 MEMBER STOVER: I'm saying the same thing.
5 What I'm saying is typically when we see things come
6 before us, we would suggest to our planners that
7 they do just that, you know, it's time to look at
8 this and add that within the special use. However,
9 if we did that with every special use that came
10 before us, we'd never pass one thing ever.

11 THE WITNESS: But not every special use,
12 just the ones that aren't defined in your zoning
13 ordinance. I tried to make that clear, only uses
14 that are not specifically defined in any district in
15 your zoning ordinance. So I'm sorry I misunderstood
16 your question.

17 CHAIRMAN WHITE: Okay. Let's move on.

18 Any other Board members have questions?

19 (No response.)

20 CHAIRMAN WHITE: Is the petitioner prepared?

21 CROSS-EXAMINATION BY COUNSEL FOR THE PETITIONER

22 BY MR. KOLB:

23 Q Good evening.

24 A Good evening.

1 Q Is it safe to characterize your opinions
2 here tonight as zoning opinions?

3 A Pardon?

4 Q Your opinions here tonight are primarily
5 zoning opinions?

6 A Planning and zoning.

7 Q Planning and zoning. Now, you appeared
8 before in proceedings involving the applicant's
9 petition in the context of testimony regarding an
10 appeal. Do you recall being here before and
11 testifying?

12 A Yes.

13 Q And I think you gave the opinion that
14 5.15 applied and that this public hearing should not
15 have occurred at all. Was that basically your
16 opinion?

17 A No. I think the opinion at that time was
18 that there was a proper way to do it, and that was
19 to have the staff do a study, come up with all the
20 things that we're discussing at this public hearing,
21 and determine what is the proper terminology, what's
22 the proper -- what are the proper zoning districts
23 of a use of this type should be located in, where
24 should it be permitted, and where should it be a

1 special use.

2 There are some zoning experts who believe --
3 and this comes out especially with adult uses --
4 that there should be a permitted use location for
5 every use. If you've ever followed the adult uses,
6 you'll know most communities made them special uses,
7 and then the courts said no, there has to be a place
8 where they're permitted.

9 Q Mr. Abel, in layman's terms, were you saying
10 that essentially the County should have gone to
11 revise its code before allowing the applicant to
12 proceed?

13 A I think that would have been a proper way to
14 do it, to study and determine where are the best
15 locations.

16 You relied on similar and that's where I
17 took exception is I don't think this is similar to a
18 hospital or to a nursing home. In my testimony I
19 said I felt it was probably closer to an
20 all-inclusive resort because of the types of things
21 that go on. They're staying there; they're fed;
22 they're housed; there's all kinds of therapy; there's
23 athletics. It's quite a facility. Where is the
24 appropriate location for it, that's all I was saying.

1 Q So putting the issue of similarity aside for
2 a second, procedurally, it was your opinion earlier
3 during the administrative review process that this
4 hearing should not have occurred and that the County
5 should have stopped it, taken the time to amend its
6 own ordinances to add perhaps a text amendment of
7 its own and have that be the procedure that would
8 take place and not allow the applicant to proceed
9 for a special use similar to an existing land use
10 under the code? Wasn't that your opinion?

11 A That's not my opinion. I was reading from
12 the zoning ordinance. You have zoning ordinances
13 that state that that's the way it's supposed to be
14 done. It's under general provisions.

15 So if you understand zoning, you start with
16 the general provisions. General provisions then
17 takes you to interpretation of use lists.

18 Q I understand.

19 A Then when you go to the interpretation, I
20 read to you verbatim, "Such nonlisted uses shall not
21 be approved until the application for such use has
22 been reviewed by the County development department
23 staff and a favorable report has been received."

24 So that's all I testified to. I just

1 thought that the County should follow its zoning
2 ordinance. It's not my interpretation; it's the
3 County's ordinance.

4 Q Well, we're here to weigh the credibility of
5 a lot of your zoning opinions tonight, the Board is,
6 and I just want to first point out that your first
7 opinion is that this proceeding should not have
8 occurred and that Mr. VanKerkhoff had somehow made a
9 mistake in your opinion, if I remember your
10 testimony, in not stopping -- in not making a
11 recommendation that the public hearing proceed, and
12 instead the staff should have -- under Section 5.15
13 should have received a favorable report from the
14 zoning enforcement officer; Mr. VanKerkhoff should
15 have prepared a favorable enforcement officer's
16 report followed by the relevant text amendment.

17 Procedurally is that what you think should
18 have been done here?

19 A I testified to that at the last hearing.
20 Again, the Zoning Board did not go along with it,
21 and so we are here this evening on a special use.

22 Q But you're aware that there was an appeal;
23 correct?

24 A Yes. And the appeal is over with. I don't

1 know why we're talking about the appeal. We're here
2 tonight for a special use for a specific use that
3 was ruled as being similar and that's it.

4 My testimony is -- has to do with the
5 factors for this specific use you are presenting and
6 how it fits into the comprehensive plan. I don't
7 want to talk about the previous hearing; it's over
8 with. You know, I was on the losing side.

9 Q That's what I want the Zoning Board to
10 understand. Were you aware that the matter was
11 litigated and that the lawsuit was dismissed?

12 A Once I testified at this level I don't know
13 what happened after that. All I know is that --

14 Q You were determined to be incorrect?

15 MR. CARRARA: No, that's a
16 mischaracterization. The lawsuit was dismissed,
17 correct, but that has been appealed to the Second
18 District Appellate Court, so it's still ongoing.

19 MR. KOLB: I wasn't aware of that. You
20 appealed it to the Second District?

21 MR. CARRARA: Yes, you should have received
22 notice of the appeal.

23 MR. KOLB: We did not receive that, but
24 regardless --

1 MR. CARRARA: Regardless --

2 MR. KOLB: We'll go to the Second District
3 then after we get done with the Circuit Court.

4 BY MR. BROWN:

5 Q Regardless of that issue, I just wanted to
6 point that out that it's your opinion today that we
7 should be in the context of a text amendment and not
8 here; is that what you're saying?

9 A That was my opinion then and it's my opinion
10 now, but that's not the total extent of my
11 testimony. My testimony deals with the standards
12 and with the comprehensive plan.

13 Q Now, you testified a lot about how this
14 particular use as an alcoholism and substance abuse
15 treatment facility does not in your view fit the
16 estate lifestyle, large-lot estate lifestyle;
17 correct?

18 A Correct.

19 Q And I remember you saying that because
20 there's going to be increased traffic as a result of
21 laundry and food services, trucks, and things like
22 that it just doesn't fit with the overall estate
23 lifestyle. Did I characterize that correctly?

24 A It's not a residential use, correct, and

1 it's not in compliance with the comprehensive plan.

2 That's what my testimony was.

3 Q Now, the property is located in the F Farming
4 District; correct?

5 A Yes.

6 Q Under Section 8-1-2(dd) permitted uses
7 include other uses similar to those permitted as
8 special uses; correct?

9 A Yes.

10 Q And under Section 8-1-2(a) of the
11 Kane County Zoning Ordinance, the enumerated special
12 uses in the F Farming District include by cross
13 reference all of the special uses permitted in the
14 R1 district; correct?

15 A Correct.

16 Q And am I not correct that in the R1 district
17 the following are enumerated special uses expressly
18 permitted, hospitals, for instance, nursing homes,
19 and convalescent centers; correct?

20 A Yes.

21 Q Am I not correct that hospitals, nursing
22 homes, and convalescent centers similarly would use
23 food service and have truck volume say they were to
24 be built in those locations?

1 A They have some characteristics but, again,
2 they are not -- if you look up the definition of a
3 hospital --

4 Q Can you answer the question, sir? It's a
5 yes-or-no question.

6 A No, it's not. Why don't you repeat the
7 question?

8 Q Am I incorrect that hospitals, nursing
9 homes, or convalescent centers similarly use food
10 trucks and laundry trucks that --

11 A Oh, that's just your question. Yeah.

12 Q If I can finish my question.

13 A Everybody uses trucks, yeah.

14 Q Do you know anything about the volume of
15 food trucks or laundry trucks as between a nursing
16 home, convalescent center, and hospital and the
17 applicant's facility?

18 A No. But they're all of greater content than
19 you would find in an estate farming area. That's
20 pretty easy to figure out.

21 Q But you testified earlier that these uses
22 are already allowed in the estate farming area.

23 A They're, yes. But each location has to --
24 because they're special uses they're not guaranteed.

1 There's no guarantee with any special use that you're
2 going to get it when you go to the hearing just
3 because it's in the use list. The only use that you
4 can get for sure is a permitted use, and hospitals
5 are not permitted and neither are nursing. They're
6 special uses because they're unique.

7 Q You testified -- and let me understand your
8 zoning opinion that you gave with respect to
9 controlled substances.

10 Is it your opinion under the use definition
11 as Roxanne had pointed out -- Ms. Stover -- that the
12 applicant would need a variance in order -- another
13 text amendment or another development entitlement in
14 order to dispense controlled substances?

15 A All I testified to was that those districts
16 allow --

17 Q It's a yes-or-no question, sir.

18 MR. KOLB: I move to strike the additional
19 testimony and ask the witness on cross-examination
20 to answer the question. Every one of the questions
21 I ask results in a dissertation. It's a simple
22 question.

23 THE WITNESS: There's nothing simple about
24 this. Ask the question again and I'll answer it yes

1 or no if I think it's appropriate to just do a yes
2 or no.

3 Q My question is this: You provided testimony
4 regarding Appendix B having a use definition, and
5 I'm asking you if you believe one way or another
6 whether the applicant was obligated to apply for
7 additional zoning entitlements, a variance, or a
8 text amendment in order to dispense controlled
9 substances.

10 A I don't think so.

11 Q Isn't it true that a nursing home, or a
12 convalescent center, or a hospital also would
13 dispense controlled substances?

14 A Yes.

15 Q Are you aware that the Glenwood Academy
16 itself dispensed controlled substances?

17 A No.

18 Q Are you saying you're not aware of it?

19 A I was not aware of it.

20 Q If you became aware of that under this code,
21 would you consider it to be a code violation?

22 A I'm not sure about that.

23 Q You have no opinion as to whether the
24 Glenwood Academy dispensing controlled substances

1 would be a violation of the Kane County Zoning
2 Ordinance?

3 MR. CARRARA: Mr. Chairman, this ordinance
4 was just put in place last year. I believe the
5 facility that Mr. Kolb is referencing closed
6 numerous years ago well before this restriction was
7 put in place.

8 MR. KOLB: Let's assume the code existed
9 back then.

10 MR. CARRARA: Calls for a hypothetical.

11 MR. KOLB: A very good one. Let's ask him
12 to answer the question.

13 MR. CARRARA: Mr. Chairman, could you please
14 rule on the objection? Mr. Kolb is trying to bully
15 the witness.

16 (Murmurs from the audience.)

17 CHAIRMAN WHITE: Let's have the audience
18 come to order.

19 You need to rephrase your question, Andrew.

20 BY MR. KOLB:

21 Q You provided testimony that Park Ridge had
22 essentially bulldozed its location for -- that
23 previously was an alcoholism and substance abuse
24 treatment facility, outpatient or inpatient, I can't

1 recall which, but the point was that it was a better
2 use to have it turned into a park; was that your
3 testimony?

4 A Yes.

5 Q Do you have knowledge of the replacement
6 value of the buildings that currently sit on the
7 Glenwood Academy site?

8 A No.

9 Q Do you have any estimation of what it would
10 cost to rebuild those buildings in their current
11 configuration?

12 A Why would you rebuild them?

13 Q Well, it seems to be your opinion that
14 there's a more appropriate land use for that site in
15 accordance with the Kane County land use plan and in
16 accordance with the zoning ordinances would be to
17 replace the buildings with some other more
18 compatible use like estate residential or a park
19 use. Is that what you're saying?

20 A No. The comprehensive plan doesn't say
21 that, either. It just suggests institutional/open
22 space. If a use could come in and use the
23 configuration that's there, fine. If not, as
24 similar to the drawing -- the aerial you saw there,

1 the buildings could be demolished.

2 I mean, I would say many of the projects I
3 deal with involve demolition of old or obsolete
4 buildings. I'm not here to redevelop the property.
5 I'm here to say that the proposed use is in conflict
6 with the comprehensive plan and is not in keeping
7 with the trend and character of the surrounding area.

8 Q Okay. So there's approximately 20 to
9 \$40 million in buildings that are sitting there
10 depending on who you want to talk to on those values.

11 (Murmurs from the audience.)

12 MR. CARRARA: Mr. Chairman, I believe he's
13 just giving testimony. There's no evidence to
14 support any of this. He's just giving testimony he
15 wants to hear.

16 CHAIRMAN WHITE: What's the question of the
17 witness?

18 BY MR. KOLB:

19 Q My question is this: What would be the
20 optimum use you would want to see for that property?

21 A I wasn't hired to do that. I have to rely
22 on the comprehensive plan, and the comprehensive
23 plan does not state that this is a good location for
24 a hospital or a nursing home. Nothing in the

1 comprehensive plan led me to that conclusion. The
2 conclusion was it belongs in a municipality, in one
3 of the growth corridors, things of that nature. I
4 saw nothing and as I said there's a whole chapter on
5 smart growth. Smart growth would not take a
6 facility of that magnitude and put it out into an
7 estate area. It just goes contrary to good sound
8 planning.

9 So that's what I've testified to. Now, I
10 did take the lead from the question about dispensing
11 of drugs being in the RB, the B1, and the B3.
12 Somewhere along the line the County is even thinking
13 that those are good locations for this kind of
14 facility.

15 So the study that I said maybe should have
16 been done might have come to that conclusion, and we
17 wouldn't even be here tonight.

18 Q Back to the question I asked. You had said
19 that the location where the facility is located,
20 it's not suited for this intense of a use. Did I
21 understand that?

22 A In terms of the comprehensive plan, that's
23 correct.

24 Q Well, would you say that with respect to a

1 hospital, as well?

2 A Yes. Comprehensive plan -- as I said, the
3 comprehensive plan, what was unique about it, it
4 focuses in on this particular piece of property.
5 Most comprehensive plans when I've had a problem,
6 attorneys will say, well, the plan is generalized.

7 This is not generalized. This is a specific
8 designation, and then it's backed up by all this
9 other theory that goes into what makes the
10 comprehensive plan, the smart growth, open space
11 preservation.

12 I have a couple of other sections that I
13 have outlined here that are in the comprehensive
14 plan that lead to the same conclusion, and this is
15 contrary to the trend in development, character of
16 the area. And then the plan goes on to put a lot of
17 emphasis on the adjoining municipality, and the
18 adjoining municipality has pretty much spoken by
19 having turned a similar type use down in the past.

20 So it's all coming in my mind from a zoning
21 standpoint that this is not an appropriate use for
22 the subject property.

23 Q Even though it may be zoned -- you're
24 basically saying a hospital is an inappropriate use

1 for the subject property, as well, according to the
2 comprehensive plan?

3 A Yes.

4 Q So you're basically saying that the zoning
5 ordinance directly contradicts the comprehensive plan?

6 A The zoning ordinance has a list. It does
7 not say that every special use in that list is
8 appropriate in a particular site. That's why it has
9 to go it through a public hearing.

10 Read the definition of what a special use
11 is. There's a section in the ordinance, and it says
12 that these are -- there are unique uses that are not
13 appropriate in every district, and that's why you
14 have the public hearing.

15 So just because it listed hospitals doesn't
16 mean that a hospital has to go on this property.

17 Q Is it your contention that special uses can
18 be prohibited as opposed to just conditioned?

19 A Yes. I've seen special uses denied.

20 Q Based on the use itself, not based on the
21 inability to satisfy a standard?

22 A Well, if you're smart you'll make sure --
23 any board that I've worked with I'd make sure that
24 they wrote a report that backed it up that it

1 doesn't meet the standards, correct.

2 Q But you've seen a special use denied
3 strictly because it doesn't comply with the
4 long-term comprehensive plan for the municipality or
5 county?

6 A Not totally on that but it's part testimony
7 that's usually presented in every zoning case. A
8 comprehensive plan -- in fact, many of them add on
9 standards that it's in compliance with the
10 comprehensive plan.

11 Q Have you reviewed the Murer opinion
12 regarding similarity?

13 A I think I've looked at it, yes, when we were
14 in the previous hearing.

15 Q Do you have opinions regarding that, that
16 opinion from Murer?

17 A Regarding that it's a hospital or something?

18 Q Do you recall the opinion?

19 A No.

20 MR. CARRARA: Mr. Chairman, again, he was
21 not brought here to opine on the similarity of a
22 hospital and nor did he give that opinion in any of
23 his testimony here in prior cross-examination.

24 MR. KOLB: He sure did. He made a lot of

1 analogy to a hospital, and a nursing home, and a
2 convalescent center which are all three permitted
3 uses, and the applicant is arguing that its proposed
4 use is similar, and I think he's opened the box.

5 CHAIRMAN WHITE: I'm going to agree with
6 that. I believe that the similarity question does
7 apply in this case.

8 BY MR. KOLB:

9 Q What were your opinions with respect to your
10 review of the Murer opinion regarding similarity?

11 A I didn't rely on that report at all. I
12 relied on such things as the Kane County definition.

13 Q What was your --

14 A I --

15 MR. KOLB: I'd like to strike that. He's
16 not answering the question I asked.

17 Q The question I asked was, do you have an
18 opinion regarding your review of the Murer opinion
19 regarding similarity? Yes or no.

20 A And I said no. I relied on my own research.

21 MR. KOLB: Nothing further.

22 CHAIRMAN WHITE: Thank you.

23 Does the County have any questions for the
24 witness?

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1 MR. KINNALLY: I can be brief I hope.

2 CROSS-EXAMINATION BY COUNSEL FOR THE COUNTY

3 BY MR. KINNALLY:

4 Q Mr. Abel, when were you retained in this
5 case by the objector?

6 A Sometime in the fall.

7 Q Okay. That would be the fall of '15?

8 A Yes.

9 Q And you've worked on this project for your
10 client up until tonight; is that right?

11 A Correct.

12 Q How many hours have you spent on doing the
13 work for your client in coming to these hearings?
14 Can you tell the Board approximately?

15 A I have to go back and check my time sheets.

16 Q Okay. But just give us a general number.
17 Is it more than 100 hours?

18 A No.

19 Q Is it 50 hours?

20 A I probably have had 50 hours of public
21 hearing.

22 Q Okay. So it's more than 50 hours. So it's
23 somewhere between 50 and 100?

24 A Yes. I analyzed all --

1 Q I didn't ask you about what you analyzed;
2 I'm asking the time spent.

3 A I was trying to come up with an estimate.
4 You asked for an estimate. It's going to be between
5 50 and 100 hours, yes.

6 Q Thank you.

7 During that period of time, you came up with
8 the opinions that you expressed here tonight?

9 A Some of them are opinions that I have
10 expressed for years. They're planning principles.

11 Q Thank you.

12 Where is your report? Did you do a report?

13 A No. I did for the first hearing but not
14 for this.

15 Q But no report for us tonight?

16 A No.

17 Q Okay. Now, you expressed opinions, as I
18 understand it, on every one of the criteria in the
19 zoning ordinance with respect to special uses.

20 A Yes.

21 Q And you're an authority on every one of
22 those criteria?

23 A I think I was careful to say on the one
24 dealing with value that I'm not an appraiser.

1 CHAIRMAN WHITE: Joe, could you speak into
2 the mic, please.

3 A (Continuing.) And I gave it from a planning
4 standpoint, not from an appraiser's standpoint, but
5 I did give an opinion, yes.

6 Q Okay. Now, one of the opinions that
7 somebody asked you was were there any deviations
8 that the applicant sought with respect to their
9 application. Do you recall that testimony?

10 A I think so, yes.

11 Q And was it your testimony that they did not
12 seek any deviations?

13 A I remember looking at the advertised
14 publication. I didn't think there was a variation
15 asked for.

16 Q Well, a deviation can be something different
17 than a variation; would you agree with me?

18 A They didn't ask for a planned development.
19 In my practice deviations are only allowed as part
20 of a land development. This is not a planned
21 development.

22 Q Okay. What about the Fair Housing Act; does
23 that require a deviation from normal zoning, in your
24 opinion?

1 A I'm not involved in the Fair Housing Act.

2 Q Isn't that part of this ordinance?

3 A Yes. But it didn't have anything to do with
4 my opinion.

5 Q Are you an authority on that?

6 A No.

7 Q Do you know what a reasonable accommodation is?

8 A Generally.

9 Q Can you tell the Board in your opinion what
10 that -- in your experience what that means?

11 A No. I don't -- I don't think I can
12 verbalize that.

13 Q That's fine.

14 Now, just one final area here.

15 Exhibit A3 that Mr. Carrara gave, do you
16 have that in front of you? That's the excerpt from
17 the 2040 plan. It's right in front of you there.

18 A Yes.

19 Q Do you have that? Isn't it fair to say that
20 the 2040 plan is talking about existing uses?
21 That's what it's describing in the 2040 plan, does
22 it not?

23 A I don't quite understand.

24 Q Well, look at the first entry on the top

1 of the page. Doesn't it say "Existing public open
2 space"? Isn't that what it says, those four words?

3 A This category includes a number of private
4 and institutional property ownership.

5 Q I understand that. My point is, doesn't it
6 say at the top there "Existing public open space"?
7 Isn't that what it says, those four words?

8 A Oh, at the very top?

9 Q Yes.

10 A Yes.

11 Q So what is described in the 2040 plan is the
12 existing public open space, whether it be
13 institutional or private open space; is that true?

14 A No, that's not the way I read it. There's a
15 category on existing public open space. Then
16 there's a separate item on institutional and private
17 open space, and then there's a separate one on
18 proposed open space.

19 Q Well, you referenced the map, did you not?

20 A Yes.

21 Q And the map says it was from 2012, does
22 it not?

23 A That says it's institutional private
24 open space.

1 Q Doesn't the map indicate in the booklet that
2 you referenced that you brought here tonight that
3 it's from 2012?

4 A Well, yes.

5 Q Thank you.

6 A This is a continuing process.

7 Q I'm not here to argue that point. I want
8 you to tell us -- are you familiar with the
9 Mooseheart facility in Batavia?

10 A Somewhat.

11 Q Okay. And the Mooseheart facility is one of
12 the institutional and private open space indicated
13 in the comprehensive plan; would you agree with that?

14 A Yes.

15 Q Doesn't it say that?

16 A Yes.

17 Q That's a residential facility, is it not?

18 A Yes.

19 CHAIRMAN WHITE: Joe, I need to get you to
20 speak directly into the microphone.

21 THE WITNESS: Yes. Thank you.

22 Q So Mooseheart, a residential facility in the
23 comprehensive plan was an institutional use; correct?

24 A It's listed, yes.

1 Q And the substance abuse facility that's
2 proposed here is also a residential facility; isn't
3 that true?

4 A It's more than that.

5 Q But it is. It is a residential facility.
6 People are going to live; right?

7 A For 30 to 90 days, yes.

8 Q So that is a concept in the comprehensive
9 plan that is consistent with the substance abuse
10 facility because it's residential; true?

11 A No. I don't agree with that.

12 MR. KINNALLY: Okay. That's all I have.
13 Thank you.

14 CHAIRMAN WHITE: Okay. Thank you.

15 Any rebuttal?

16 (No response.)

17 CHAIRMAN WHITE: Anyone in the audience that
18 wishes to question this witness?

19 (No response.)

20 CHAIRMAN WHITE: I'm not seeing anyone
21 approach the podium.

22 Due to the time -- do any Board members have
23 any other questions of this witness?

24 (No response.)

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1 CHAIRMAN WHITE: Okay. The witness is
2 dismissed then.

3 THE WITNESS: Thank you.

4 (Witness excused.)

5 CHAIRMAN WHITE: I've got quarter after
6 10:00, so I think we'll call the hearing at this
7 point in time and ask for a motion to continue from
8 the Board, and the next scheduled meeting is
9 February 1st at 7:00 at this location.

10 Is there such a motion?

11 MEMBER HEINRICH: So moved.

12 CHAIRMAN WHITE: Moved by Mr. Heinrich,
13 seconded by Mr. Stover. All in favor say aye.

14 (Ayes heard.)

15 CHAIRMAN WHITE: Opposed, same sign.

16 (No response.)

17 MR. CARRARA: Mr. Chairman, if I may. I
18 have a public hearing in the city of Wheaton on
19 Monday the 1st. I will do my best to try to have
20 somebody cover, but I just wanted to let you know if
21 you may need something from me, I may not be
22 available on the 1st.

23 CHAIRMAN WHITE: Do you have any other
24 witnesses to bring forward?

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MR. CARRARA: I have no other witnesses.

CHAIRMAN WHITE: All right. I understand that the fire protection district wished to present testimony. Is Mr. Shepro still here? Are you going to request -- are you going to request the ability to bring a witness forward?

MR. SHEPRO: On the 1st we will have a witness, yes.

CHAIRMAN WHITE: Okay. Thank you. That's all for this evening.

(Off the record at 10:17 p.m.)


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CERTIFICATE OF SHORTHAND REPORTER

I, Paula M. Quetsch, Certified Shorthand Reporter No. 084-003733, CSR, and a Notary Public in and for the County of Kane, State of Illinois, the officer before whom the foregoing proceedings were taken, do certify that the foregoing transcript is a true and correct record of the proceedings, that said proceedings were taken by me stenographically and thereafter reduced to typewriting under my supervision, and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 3rd day of February, 2016.

My commission expires: October 16, 2017



Notary Public in and for the
State of Illinois

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