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Transcript of Public Hearing 4462

Date: August 7, 2018

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, :
GLENWOOD ACADEMY, :
Special Use request in the :
F-Farming District for a :
private-pay alcoholism and : Petition No. 4462
substance abuse treatment :
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 II
St. Charles, Illinois
Tuesday, August 7, 2018
7:43 p.m.

Job No.: 198561
Pages: 130 - 254
Reported by: Paula M. Quetsch, CSR, RPR

1 PUBLIC HEARING, held at the location of:

2

3 KANE COUNTY CIRCUIT COURT CLERK -

4 BRANCH COURT

5 530 South Randall Road

6 St. Charles, Illinois 60174

7 (630) 232-3495

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11 Before Paula M. Quetsch, a Certified Shorthand

12 Reporter, Registered Professional Reporter, and a

13 Notary Public in and for the State of Illinois.

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1 PRESENT:

2 WENDY MELGIN, Chairwoman

3 TRACY ARIS, Member

4 MARC FALK, Member

5 MARY LAKE, Member

6 MARGUERITE MILLEN, Member

7

8 ON BEHALF OF THE APPLICANT MAXXAM PARTNERS, LLC:

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6 Wayne, Illinois 60184

7 (630) 377-7372

8

9

10 ALSO PRESENT:

11 MARK VANKERKHOFF, Zoning Enforcing Officer

12 KEITH BERKHOUT, Secretary

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1 P R O C E E D I N G S

2 CHAIRWOMAN MELGIN: Hello. I want to have
3 your attention, please. We're missing one Board
4 member who is still at the National Night Out. He
5 was leading something in South Elgin, and he said
6 he's going to be about 20 minutes late. So we're
7 going to wait for him because we need to have a
8 quorum. So hopefully he will be showing up soon.

9 (A recess was taken from 7:29 p.m. to
10 7:43 p.m.)

11 CHAIRWOMAN MELGIN: Thank you. I'd like
12 to call the meeting to order.

13 Keith, would you do roll call.

14 MR. BERKHOUT: Aris.

15 MEMBER ARIS: Here.

16 MR. BERKHOUT: Falk.

17 MEMBER FALK: Present.

18 MR. BERKHOUT: Lake.

19 MEMBER LAKE: Here.

20 MR. BERKHOUT: Melgin.

21 CHAIRWOMAN MELGIN: Here.

22 MR. BERKHOUT: Millen.

23 MEMBER MILLEN: Here.

24 MR. BERKHOUT: Barbosa.

1 (No response.)

2 CHAIRWOMAN MELGIN: Okay. We'll do the
3 Pledge of Allegiance.

4 (The Pledge of Allegiance was recited.)

5 CHAIRWOMAN MELGIN: Welcome back and --
6 welcome back to the people who were here last
7 week, and welcome to the people who are attending
8 the first time tonight.

9 This is a continuation of the hearing on
10 the Petition 4262 [sic] for special use in the
11 F-Farming District for private-pay alcoholism and
12 substance abuse treatment center. The hearing,
13 like I said, was last week on August 1st. We were
14 unable to complete the hearing, so we continued it
15 to tonight. The continuation also hopefully gave
16 everyone time to review some of the exhibits that
17 were put on the County's website, and those were
18 the exhibits to the proposed consent decree, and
19 we marked them as Exhibit 1 by this Board on the 1st.

20 The ZBA Hearing Exhibit 1 consists of a
21 proposed consent decree and Exhibits 1 through 7 of
22 that consent decree, a copy of all the exhibits
23 marked by this Board, including the Zoning Board
24 Hearing Exhibit 1 was made available on the County

1 ZBA petition website under Petition 4464 on
2 August 2nd. So right after the hearing on the
3 1st they put the exhibits on the website.

4 So on August 1st a motion was made to
5 enter Maxxam's April 27th, 2017, agreement with
6 the Fox River & Countryside Fire Rescue District
7 as an exhibit. The motion failed due to a lack of
8 a second. Since then the agreement was circulated
9 and given to us Board members for consideration.

10 At this time do I have a motion to enter
11 the April 27, 2017, agreement between Maxxam and
12 the fire rescue district as an exhibit?

13 (No response.)

14 CHAIRWOMAN MELGIN: Hearing none, this
15 agreement will not be entered as an exhibit.

16 So tonight we're going to continue where
17 we left off on public comment. As a reminder, we
18 ask people to sign the sign-up sheet. I'll call
19 it in order. It just makes it a lot easier for
20 everyone to know when they're going to be called
21 up, and we know who is speaking.

22 Again, I want to remind you that we
23 reviewed the previous record in Petition 4362.
24 All of us were here last week on the 1st; we heard

1 the evidence, argument, public comment, so we
2 appreciate not repeating previously made evidence
3 or comments.

4 So to ensure that everyone who wishes to
5 speak has an opportunity to do so, we hope that
6 each speaker will again limit your comments to
7 between three and five minutes. The court reporter
8 again is on a different side tonight. She's
9 present taking down everything everyone says.
10 That will be part of the transcript, and that
11 transcript will be available to the County Board
12 with this Board's recommendation.

13 MEMBER LAKE: We're on Petition 4462.

14 CHAIRWOMAN MELGIN: 4462 and previous
15 record on Petition 4364. Correction made.

16 So I think we are ready to start public
17 comment.

18 The first speaker, Kenneth Siercks.
19 Didn't you speak last week.

20 MR. SIERCKS: I did.

21 CHAIRWOMAN MELGIN: Are we going to hear
22 the same testimony that you provided?

23 MR. SIERCKS: You're not.

24 So I'm Kenneth Siercks. I live at

1 6N715 Longacre Drive.

2 MR. SHEPRO: Is the microphone on?

3 MR. SIERCKS: Kenneth Siercks. I live at
4 6N715 Longacre Drive. I did speak last week, and
5 I just wanted -- the similar comment is that I'm
6 opposed to this.

7 I took the time to review all the things.
8 I'm a little bit newer to the neighborhood; I've
9 only been here a year. And looking at all the
10 pros and cons of everything that's involved in
11 this whole thing, I got a little concerned about,
12 you know, it almost seems like our mind has
13 already been made up, and the vote that we may
14 take tonight may or may not even be considered for
15 the vote that's going to take place next week in
16 determining the payout, and this is going to go
17 move forward, and it's going to happen no matter
18 what we do or say tonight.

19 I saw an interesting suggestion, which was
20 to help eliminate the pressure for the fire
21 department and the police department is that if
22 they had their own on-site ambulance so that they
23 could just basically get in the bus and go to the
24 hospital kind of thing. So that might help

1 alleviate it, and their own security to support
2 that kind of thing. And that was one of the
3 reasons that one of the other Board members had
4 voted it down.

5 You know, and I went there today and
6 actually made the left-hand turn myself and
7 calculated the limited sight distance of 200 feet,
8 and the speed, and the time, reaction time that if
9 someone is coming from the other direction to
10 realize that -- you know, you only have a few
11 seconds when you're doing that. It's pretty
12 concerning.

13 I wasn't here in 1989 when they originally
14 set all this up. So looking at everything and
15 considering everything, I'm still opposed to it.
16 So that's all I've got.

17 CHAIRWOMAN MELGIN: Thank you.

18 Next speaker, John Bover.

19 AUDIENCE MEMBER: I'm sorry. I signed the
20 wrong document. I was not prepared to speak
21 tonight. I thought it was just an attendance
22 sheet.

23 CHAIRWOMAN MELGIN: That's fine.

24 Jennifer and Ty Walikonis. Was I at least

1 close?

2 MS. WALIKONIS: Sort of. It's Walikonis.
3 I am a physician and I live at 8N466 Crawford
4 Road, so not too far, and my concern is about the
5 ground runoff.

6 It's going -- if it's going to be such a
7 full facility of 120 patients plus, I can pretty
8 much guess that all those patients are going to be
9 on medication, which they need, but the ground
10 runoff -- do you guys realize that a lot of the
11 psychotropic medications, the benzodiazapines, the
12 antipsychotic medications, all those get excreted
13 in the urine and the feces, and that's going to
14 get in the groundwater?

15 My big concern is then us neighbors -- am
16 I going to be drinking somebody else's Prozac?
17 Because I have a well, also.

18 So please take that in your consideration.
19 Thank you.

20 CHAIRWOMAN MELGIN: Thank you:
21 Maureen Zwier.

22 MS. ZWIER: I'm Maureen Zwier,
23 41N660 Fox Bend Drive. I did speak last week, but
24 I have some more information.

1 Thank you for letting me speak again
2 tonight. After doing some more research, I found
3 many more studies proving that pharmaceuticals end
4 up in drinking water.

5 One such study is Pharmaceuticals and
6 Endocrine Disrupting Compounds in U.S. Drinking
7 Water. The study was performed by Applied
8 Research and Development Center, Southern Nevada
9 Water Authority. The study was published in the
10 Journal of Environmental Sciences 2009, Volume 43,
11 pages 597 to 603.

12 The National Institute of Environmental
13 Health Sciences defines EDCs, or endocrine
14 disrupting compounds as, quote, "chemicals that
15 may interfere with the body's endocrine system and
16 produce adverse developmental reproductive,
17 neurological, and immune affects in both humans
18 and wildlife."

19 "Source water, finished drinking water,
20 and distribution system water" a/k/a tap water
21 "from 19 U.S. water utilities was analyzed for
22 51 compounds between 2006 and 2007." The 51 drugs
23 tested include fluoxetine, a widely prescribed
24 anti-depressant known more commonly as Prozac,

1 meprobamate, an antianxiety medication, and
2 Risperdal, an antipsychotic. All three drugs may
3 be prescribed for detox and rehab patients.

4 The results of the study showed that
5 meprobamate, the antianxiety medication, was found
6 in 16 source water samples. The drug was still
7 present in 14 of the 16 finished drinking water
8 samples and 11 of the 16 tap water samples.

9 Three source water samples contained Prozac. Two
10 of the three finished drinking water samples still
11 contained Prozac, and one of the three tap water
12 samples still contained Prozac. Risperdal, the
13 antipsychotic, was found in one tap water sample.

14 We already know the septic process does
15 not remove pharmaceuticals from human waste. Now,
16 imagine what the concentration of these drugs will
17 be from septic waste that will be sprayed at this
18 detox rehab facility. Imagine the spray that will
19 contain these drugs contaminating the water system
20 Mr. Tyrrell mentioned last week. Imagine the
21 outrage the residents of this county will have if
22 you approve this facility knowing these results.

23 Combine the presence of EDCs in water, the
24 potential harm the EDCs can cause, the presence of

1 them in drinking water, the extremely hazardous
2 road conditions, and the extremely limited
3 emergency response capabilities. Any one of these
4 factors is enough to deny the zoning request. I
5 hope that all of these factors compel the ZBA to
6 reject Maxxam's request. Thank you very much.

7 CHAIRWOMAN MELGIN: Thank you.

8 (Applause.)

9 CHAIRWOMAN MELGIN: Next speaker is
10 Edward Fiala.

11 MR. FIALA: Thank you. My name is Ed Fiala.
12 I'm a 20-year resident of the Fox Mill subdivision
13 in Campton Hills.

14 Quick question for the Board. How many of
15 you live in an area with a functioning fire
16 department? Do you take for granted that when you
17 call 911 an ambulance or a fire truck will show up
18 in a timely manner? I, too, used to take for
19 granted that emergency services were a given
20 anywhere in Kane County. I was wrong.

21 My area of Kane County is served by the
22 Fox River & Countryside Fire Rescue District. We
23 used to be served by the award winning and
24 outstanding St. Charles Fire District, a fire

1 department with the best possible rating. Our fire
2 district under the direction of the enormously
3 inept James Gaffney severed the contract my
4 district had with St. Charles and decided to
5 create a physical district of their own. We now
6 have a fire district with an insurance rating
7 slightly above that of a bucket brigade.

8 My Fox River & Countryside Fire District
9 is both broke and broken. Did this Board know
10 that the finances in my fire district are so dire
11 that the department cannot afford to adequately
12 staff or equip to serve my community? Last month
13 alone the firehouse near my home was closed for
14 several days due lack of staff and money. You
15 heard me right, the fire department was closed.

16 If your home was burning or your loved one
17 had a heart attack on those inconvenient closed
18 days, the response to your emergency came from a
19 distant station, adding greatly to the response,
20 or should we call it lack of response time. The
21 district finances are so dire that they are
22 considering closing stations on a rolling basis
23 regularly to reduce costs.

24 Let's talk about response times for a

1 moment. The American Heart Association's
2 scientific position is that brain death begins
3 somewhere between four and six minutes after
4 someone experiences a cardiac arrest. Cardiac
5 arrest can be reversed if treated within a few
6 minutes with an electric shock. Studies have
7 shown that a victim's chance of survival is
8 reduced by 10 percent with every passing minute.

9 The average response time for my fire
10 district is nearly eight minutes. This is
11 obtainable from the fire district's own website.
12 And that is if you are lucky enough to have had
13 your heart attack on a day when the fire station
14 is open.

15 The department's own website states that
16 the recommended standard requires that staffing
17 for advanced life support emergency medical
18 response must include a minimum of two members
19 trained as paramedics. Additionally the standard
20 requires an additional two trained providers being
21 EMTs. Therefore, four personnel, according to the
22 district's own website, should respond to these
23 incidents. Responding personnel must arrive
24 within the recommended response time. That

1 recommended response time is four minutes.

2 The department itself has admitted they
3 don't have the personnel or equipment to come
4 close to that recommended standard. And as you
5 can see, we have a broke and broken fire department.
6 And now Mr. Marco wants to put Maxxam with all of
7 its hundreds of customers all with increased need
8 of medical attention and increased need for
9 emergency medical services within my broken fire
10 district. To put it bluntly, Mr. Marco's business,
11 if approved, will kill people.

12 Our fire district admits it cannot handle
13 today's demands and certainly cannot handle the
14 increased burden of servicing in any manner
15 Mr. Marco's proposed facility. Every additional
16 EMS run to Maxxam will mean some resident within
17 my fire district will have to wait longer for
18 assistance. When seconds count, the Maxxam
19 facility will guarantee that you will have to wait
20 for many more minutes for help to come. If your
21 loved one is choking on a hot dog, experiencing
22 anaphylactic shock due to a food allergy, or
23 having a heart attack, they will die because of
24 the increased response time. This is not

1 hyperbole; this is a fact. Maxxam should be
2 located where EMS, emergency medical services, are
3 taken for granted, not where competent EMS is a
4 distant memory as where I live now.

5 I have read many comments online that talk
6 about other communities with similar facilities to
7 the Maxxam proposal and how those facilities
8 integrate well with those towns. The difference
9 is those facilities work well because they are
10 located where there is a functioning fire
11 department.

12 The people in my fire district do not have
13 such a luxury. Perhaps Mr. Marco doesn't care
14 about his customers and that they won't have
15 emergency medical services if located in the Fox
16 River district, but I can tell you that I care
17 about my family and my community's well-being, and
18 the safety of my family and my community are at
19 odds with Mr. Marco's business plan.

20 Your decision on this matter has many
21 different considerations. I understand. But it
22 truly comes down to one thing and one thing only.
23 This is simply a public safety issue. Your Board
24 has been given a very noble mission, and that

1 mission is to protect first and foremost the
2 public safety.

3 There is nothing noble whatsoever about
4 putting hundreds of Maxxam customers in a fire
5 district that cannot possibly protect them when
6 they may need it most. There is certainly nothing
7 noble about Mr. Marco and his investors putting my
8 family and community at risk in order to make a
9 few bucks.

10 This is the time we need our elected
11 officials to stand up and do what is clearly the
12 right thing. Please defend the safety and
13 well-being of my family and my community and say
14 no Maxxam.

15 Thank you for giving me this time to speak
16 today, and thank you all for your service to my
17 county.

18 CHAIRWOMAN MELGIN: Thank you.

19 (Applause.)

20 MR. SHEPRO: Madam Chairman, may I
21 cross-examine this witness?

22 MR. LULVES: It's up to you.

23 CHAIRWOMAN MELGIN: Sure.

24 Do I need to swear him in?

1 AUDIENCE MEMBER: You don't cross-examine
2 in a public hearing.

3 MEMBER LAKE: But we're being lenient.

4 MEMBER ARIS: Let's ask, would you be able
5 to answer additional questions?

6 MR. FIALA: I'm not certain who the
7 gentleman is or who he represents.

8 MR. SHEPRO: If you had been here before,
9 you would know my name is Ken Shepro, attorney for
10 the Fox River & Countryside Fire District.

11 That's all right. I'll make my argument
12 at a later time. There's no reason to encumber
13 Mr. Fiala.

14 MR. FIALA: Thank you.

15 CHAIRWOMAN MELGIN: Okay. Sharon O'Brien.

16 MS. O'BRIEN: I just have to say -- I'm
17 Sharon O'Brien from 6N464 Crestwood Drive in
18 Campton Hills.

19 And I just want to -- I'm just kind of
20 taken back. I really didn't think that that kind
21 of incensing comment was appropriate. We're here
22 in good faith, and people who sit back there can't
23 see faces, and it's very difficult to remember all
24 the faces that have come to this meeting.

1 So I realize you're an attorney, and
2 attorneys tend to have reputations for being a
3 little gruff, but you don't have to do that to
4 anyone here. We have our homes and our families
5 at stake.

6 (Applause.)

7 MS. O'BRIEN: Thank you for the opportunity
8 to speak. I have been in this neighborhood for
9 25 years and -- you know, so I've seen a lot of
10 change. I also want to say that I became disabled
11 2 1/2 years ago and am on some very, very nasty
12 medications and understand withdrawals. Because
13 some of the medicine I'm on, if I'm even two hours
14 late, it's sheer hell. And, therefore, I have
15 thought long and hard about people who are
16 addicted to drugs and why they fall back and
17 return. Because the withdrawals are just awful.

18 So I do have a very deep sympathy for the
19 people who would be in this facility. But that
20 said, one of the things that concerns me greatly
21 is that, you know, there's been a couple of votes
22 on this, and I don't know that I really want an
23 answer, but I want you to think about this. I
24 don't understand why we come and vote and then our

1 votes are just tossed aside.

2 I mean, I thought that when we come to
3 vote that, you know, the votes counted, and I just
4 don't understand why we're here today. Nor do I
5 understand why people use -- and abuse, I should
6 say, the Americans with Disabilities Act. I
7 believe that, you know, this is something that
8 happens in business a lot, and I just think it's
9 really unfair, and it goes to character when
10 people do this.

11 And I really strongly believe that the
12 case here, if it were presented in court, you
13 know, with the septic system, the wells, the fire
14 district, and what we're experiencing today -- I
15 have had to use ambulance service a few times, and
16 my neighbors, I have a couple of neighbors who
17 have some illness, as well, that requires
18 ambulance service, and the response time is not
19 what it should be. So there is already a real
20 medical issue here that has nothing to do with not
21 wanting these people here; it has to do with the
22 realities of what we're facing.

23 And by the way, we live in a state where
24 we are the highest taxed, and I know we can't take

1 any more. We just can't take any more taxes.
2 We're talking about as -- just to restate, the
3 cost of just the whole septic system in general
4 and the police and fire department, but the other
5 thing is the cost of this road construction that's
6 going to have to take place.

7 And I'm wondering, you know, if by some
8 chance the Court would rule that we have, you
9 know, committed some offense against the Americans
10 with Disability Act, which I would hope a judge
11 would actually see is not the case, but if we did
12 lose, okay, has anyone looked at the numbers on
13 what we would have to pay these people versus the
14 cost of, you know, what we're going to have to do
15 to address the police and the well issues, you
16 know, the fire district issues, the road development
17 that would have to take place?

18 I know that developers have had to actually
19 pay some of the cost in order to get approval to
20 build, you know, some of these housing developments,
21 and I wonder if anything has been really presented
22 in terms of, you know, have they brought forth
23 what they would be willing to do to help the
24 community to address all of those costs, or are we

1 just going to let them say that we're abusing ADA
2 and start suing people.

3 I just have to say there is no
4 discrimination here. There's real impact to health
5 and welfare of the neighborhood. There's real
6 impact to the people who you would be putting in
7 this facility. These people are coming there,
8 they're people who need medical attention, there
9 are emergencies in these facilities, and what are
10 you going to do, knowingly build this place with
11 the full awareness that they may die before an
12 ambulance can come?

13 And the other thing is -- and the final
14 point I have is, okay, so when I end up -- let's
15 say the facility is built, and I end up not
16 getting the ambulance to my house and end up even
17 further damaged from a health perspective. What
18 is my recourse going to be? What is my recourse
19 going to be when my home cannot provide for me the
20 move to a smaller house that can better -- that I
21 can, you know, be better housed with my disability
22 and the deterioration of my medical -- you know,
23 am I going to be able to sue and recoup what has
24 knowingly been put in that, you know, we fully

1 expected that people are going to die in our
2 community?

3 So those are just some of my thoughts and
4 questions that I'm looking to get answered. I
5 don't know that they can be answered here, but I
6 just -- I just really don't think that there is
7 any malice here. It's true concern and I hope
8 that you all take that into consideration.

9 It's a great facility. I used to volunteer
10 there, and it is really -- it's a very interesting
11 place for you to consider; it's just that there's a
12 lot missing, and you're not doing your patients any
13 good because we are already having problems here.

14 But I want you to know that some people in
15 the community who are opposed really do understand
16 what you're trying to accomplish and wish you
17 well. Thank you.

18 CHAIRWOMAN MELGIN: Thank you.

19 (Applause.)

20 CHAIRWOMAN MELGIN: Mark Holstein.

21 MR. HOLSTEIN: Mark Holstein, I live at
22 6N865 Palomino. And, again, thank you guys for
23 going through this whole process for the second
24 time. Just wondering if there might be a

1 third time.

2 About three weeks ago I ran into a Marine.
3 I was at the Salvation Army actually on 7th giving
4 out food and he came in, and after conversation I
5 found out he had \$7 until the end of the month, and
6 he had to walk five miles to his house. I took
7 him home; on the way I found out that he was an
8 alcoholic, and the only person in his family to
9 talk to him was his one sister.

10 So I took him over to the place and got
11 him some work for a couple of days. The third day
12 he disappeared. Went over to his house and
13 actually went into his place and found his door
14 open, his dog was outside. He was gone. And he
15 disappeared then for two days.

16 So I started calling all these people he
17 gave me. He gave me the Veteran's Administration
18 person that he's being taken care of; he gave me
19 his Marine counselor; he gave me his sister. And
20 yet the bottom line is the poor guy has been in
21 two overnight 7- to 30-day rehab places and has
22 not been successful in kicking his habits, which
23 is a sad thing because he's a smart kid, 38 years
24 old, the experiences that he had in Afghanistan

1 would just -- it's almost a shame to say I'm
2 American that they put nine guys in a situation
3 like that. I mean, it was absolutely horrible.

4 But the bottom line was I also then -- I
5 said, okay, we're going to get this guy some help;
6 we're going to get him into another unit. So I
7 called one, two, three, four, five, six, seven,
8 eight, nine places that the VA gave me for drug
9 and alcohol abuse problems in-home, they take him
10 in, and they all had a waiting list. You can't
11 get into any of them. They all are jammed.

12 And what came out of this whole thing is
13 that for minor drug abusers and for people that
14 have addictions, you know, everybody is trying to
15 be compassionate and I completely agree, and they
16 put a sign at these homes -- wouldn't you guys
17 agree with that, isn't that correct? -- to try to
18 help them kick the habit. So I've got to know
19 that this place is a good place probably, and it's
20 going to be filled up immediately.

21 A couple of things that he told me that I
22 think are the biggest concern for me and my
23 grandkids is that Jimmy says, "One of the reasons
24 I don't get cured is because there's alcohol in

1 the facilities available; there's drugs in the
2 facility available." And I said, "How can that
3 be? This is like where you're supposed to get
4 well." And he said to me, "Are there drugs in
5 prison?" He says, "Is there alcohol in prison?
6 Don't you think that's a little more secure than
7 these places that I go?" So it happens.

8 So his explanation, one of the reasons
9 that guys -- and women, I guess -- don't get cured
10 is that it's not a perfect environment, that they
11 still get what they need to stay, you know,
12 unhealthy and be sick.

13 So anyway -- and then he said, "Where do
14 you think that stuff comes from?" I'm like, "I
15 don't know." He says, "Well, it comes in all over
16 the place," and he named a few instances where
17 people are working there, low-paid people can pick
18 up a couple grand a week. What do you think is
19 going to happen? They may have a little bag they
20 give to somebody while they're in their room. He
21 went through a number of scenarios.

22 And we kept talking and probably the
23 biggest problem is that all of a sudden there's a
24 lot of drug dealers -- mostly drug dealers but

1 they also get into the alcohol -- that come to
2 this facility because there's like hundreds of
3 addicts and hundreds of drunks in one place. You
4 don't have to stand on a curb and wait for a car
5 to go buy to sell your package; you've got them
6 all there.

7 He said a lot of times what happens is
8 some of the people that were there end up being
9 the people doing the selling because now they've
10 got people they know on the inside, and they go
11 back and they make a few dollars.

12 So my concern, although I was heartbroken --
13 this kid, I talked to his sister, you know, I mean,
14 he was put in barbed wire on a road to somebody --
15 outside a car every two miles, and the only thing
16 they had was wire. That's all they had. And they
17 were supposed to stop the Afghans from going down
18 this road and putting in IODs, and the only
19 protection they had was this barbed wire fencing.
20 I mean, he served our country. I think he had
21 some PTSD or whatever they call it. He was a guy
22 in charge of eight guys. I mean, I was all about
23 doing everything I could to help this guy.

24 But then they tell me, you know, the

1 difference between enabling somebody like this and
2 helping is very, very close. And then my wife
3 wouldn't let me bring him anymore because she
4 heard he had such problems. So when he comes back
5 to me with a certification he's been through one of
6 these programs, we're going to sit down and talk,
7 and hopefully I can help him.

8 So my concern is all of what everybody says.
9 Plus, I think it could be a real serious issue for
10 crime and for kids in the neighborhood, you know,
11 stuff like that.

12 You seem to be agreeing with everything
13 I say.

14 MR. TABET: I appreciate your sincerity
15 and I do have a response when it's our time. But
16 thank you very much.

17 MR. HOLSTEIN: That's it. Thank you
18 very much.

19 CHAIRWOMAN MELGIN: Thank you.

20 (Applause.)

21 CHAIRWOMAN MELGIN: Ed and Patty
22 Schreiber.

23 MR. SCHREIBER: Good evening and thank you
24 for the opportunity to address the Board.

1 As evidenced by our first speaker this
2 evening, there does appear to be some confusion
3 among the general public as to just what this
4 proposed consent decree represents, and I just
5 want to point out for the benefit of this gentleman
6 and other individuals who might have such confusion
7 that it is not a finding by the Federal Court or
8 an expression of the Court's opinion nor is the
9 Court encouraging you to vote one way or the other.
10 Rather, the consent decree is a settlement proposal
11 constructed by our State's Attorney Joe McMahon
12 and his staff and the plaintiffs in this case. If
13 accepted by you and the County Board, the Court
14 merely agrees to maintain supervision over the
15 implementation of the agreement. The Court
16 expresses no opinion as to how your vote -- or how
17 you should vote or as to the merits of the case.

18 I would now ask your indulgence if I just
19 go over the three-minute mark just a little bit.
20 I think what I'm about to say is important and
21 relevant to your decision.

22 As to the substance of the proposed decree,
23 based on the known evidence as well as the
24 statements and admissions made by Mr. McMahon

1 himself, this is a very bad deal for Kane County.
2 It's even worse than the two prior proposals that
3 were previously rejected by the County.

4 This is, in my opinion, less a settlement
5 than a complete capitulation, and though it truly
6 saddens me to say this, there are sound reasons
7 you should be skeptical of information provided by
8 Mr. McMahon, and I'll address a few of those.

9 Until very recently the citizens of Kane
10 County had been largely kept in the dark as to the
11 status of this lawsuit filed against them. When
12 Mr. McMahon does discuss this with the County
13 Board, he typically calls the Board into executive
14 session which means out of the prying members of
15 the public and members of the press and admonishes
16 Board members that they must keep his statements
17 confidential. As a retired Kane County judge and
18 career litigator, I agree that would make sense if
19 he was discussing trial strategy or a litigation
20 plan. However, it does not appear that a trial or
21 a defense was ever a consideration.

22 It's been a year since this lawsuit was
23 filed, and I've seen no evidence of the serious
24 pursuit of discovery or preparation for trial

1 beyond the routine exchange of documents required
2 by the Court. Not a single deposition has been
3 taken. Nor has Mr. McMahon vigorously pursued a
4 motion to dismiss this meritless lawsuit. As every
5 litigator knows, the very best settlements come to
6 those who are thoroughly prepared for trial.

7 This past May I heard rumors that not only
8 was this lawsuit alive and well but close to
9 settlement, so I placed a phone call to Mr. McMahon
10 who not only denied that he was close to
11 settlement but agreed that the 20 public hearings
12 had shown Maxxam Partners to be untrustworthy. He
13 also agreed that they had failed to demonstrate
14 competence to operate a Class 4 drug treatment
15 facility. Despite his own strongly negative view
16 of the Maxxam operation, Mr. McMahon admitted that
17 no depositions had been taken, none. Not even of
18 Mr. Marco, the principal of Maxxam.

19 I was stunned. So I discussed this with a
20 number of people, including Van Richards, a
21 retired Kane County attorney who testified before
22 you last week. Between us Van and I have close to
23 100 years of litigation experience, and we both
24 concluded that this needed a closer look. So

1 thereafter we personally met with Mr. McMahon at
2 his office where he again denied this suit was
3 near settlement. I believe his exact words were,
4 "We are a long way from settlement."

5 He also reconfirmed that Maxxam had failed to
6 demonstrate competence or qualification to operate a
7 Class 4 drug treatment facility. In fact, he told
8 us he would love to personally depose Mr. Marco,
9 whom he found to be of questionable character and
10 untruthful. However, he acknowledged that no such
11 deposition had been taken.

12 When we asked if we could see a copy of
13 the billing statement of Mr. Bersani, the Itasca
14 attorney who was hired to defend us, we asked to
15 see that so we could get an idea of what Mr. Bersani
16 was doing to generate a \$400,000 legal bill, but
17 it did not appear that any defense was being
18 mounted. As we now expected, Mr. McMahon declined
19 to allow us to review that statement and declined
20 to divulge much of anything regarding our defense.

21 Despite Mr. McMahon's assurances to the
22 contrary, Mr. Richards and I continued to hear
23 settlement buzz, so Mr. Richards filed a Freedom
24 of Information Act request asking the State's

1 Attorney's office for the billing statement, and
2 another interested citizen obtained a partial copy
3 of the court docket on this case.

4 The State's Attorney's office responded by
5 submitting a substantially blacked-out copy of the
6 billing statement, but from those two documents
7 which we can show you we determined that contrary
8 to what Mr. McMahon told us, settlement discussions
9 had long been underway, and shortly thereafter
10 Mr. McMahon and County Board Member John Hoscheit
11 began preparing the Board in executive session for
12 the settlement proposal.

13 CHAIRWOMAN MELGIN: Mr. Schreiber, do you
14 have much more to get to?

15 MR. SCHREIBER: No, I don't.

16 CHAIRWOMAN MELGIN: I just want to make a
17 point that we're not here today to discuss the
18 pending litigation or potential settlement. We're
19 here to take comment on the petition.

20 MR. SCHREIBER: I understand your position
21 but I think it is important, and I think that we
22 as a community have been left in the dark, and I
23 assume that you, the panel, is just as much in the
24 dark as we are. So I promise you I won't be more

1 than about two more minutes.

2 CHAIRWOMAN MELGIN: But I want to encourage
3 you, those are comments to the County Board, not
4 to the Zoning Board that is here to hear comments
5 on the petition. The County Board is the body
6 that will -- you know, would be for the settlement
7 and the litigation.

8 MR. SCHREIBER: Here's the problem with
9 that. I've reviewed some of the decree, and the
10 Zoning Board has to sign off on it, so you are, in
11 fact, involved in the decision-making process.

12 So I'm telling you -- I don't mean to be
13 impolite. I'm trying to be informational. So I
14 think it's important for you, I think it's
15 important to the community, and because you would
16 have to sign off on this decree, I would just ask
17 if I could have approximately two to three more
18 minutes.

19 CHAIRWOMAN MELGIN: Okay. Go ahead.

20 (Applause.)

21 MR. SCHREIBER: It's interesting that
22 Mr. McMahon chose Mr. Hoscheit, who appears to
23 favor Maxxam, to accompany him to the settlement
24 discussions and not County Board Barb Wojnicki

1 whose district would be most severely impacted by
2 the statement.

3 So when Mr. McMahon told Mr. Richards and
4 myself that a settlement was not brewing, that was
5 clearly not true. Now Mr. McMahon wants you to go
6 along and accept this capitulation because he
7 fears a large verdict if you don't. This should
8 be a defensible case, but according to the
9 Daily Herald, Mr. McMahon suggested if you don't
10 accept his settlement, it would ensure Travelers
11 might walk.

12 Well, Travelers bears some responsibility
13 here. They have done a very poor job of overseeing
14 this litigation. As our insurer they have a
15 fiduciary duty to provide a reasonable defense.
16 As litigants, we are entitled to a zealous
17 defense, but it seems as we have been provided
18 with no defense.

19 I submit that the real danger here is not
20 Travelers who will walk but that the settlement
21 of this case will set a dangerous precedent and
22 expose this county to future liability not just
23 from future developers or residents whose fire and
24 rescue district will be compromised but from

1 patrons of an institution our own State's Attorney
2 found to be deceptive and likely incompetent,
3 patients who would be going through detox and being
4 administered methadone 9 miles and 20 minutes or
5 more from the closest hospital assuming an
6 ambulance is even available.

7 Finally -- and I promise I'm almost done.
8 Finally, I'd like to briefly touch on the
9 allegations of discrimination which go to the
10 heart of plaintiff's case. To say that this
11 county or the community adjacent to the property
12 in question discriminates against the disabled is
13 untrue, unfair, and insulting especially coming
14 from the Plaintiff Glenwood who for many years was
15 the beneficiary of this county's generosity and
16 community support. The same county they now
17 vilify provided very favorable bonds which allowed
18 them to operate and has been the home of a school
19 for boys for more than 20 years with little or no
20 opposition.

21 As plaintiffs admit in the first couple
22 pages of their complaint, Glenwood was a residential
23 school for at-risk young men who came from families
24 in distress in gang-plagued neighborhoods. This

1 community in which it is located is a community of
2 demonstrated tolerance for people going through
3 difficult times. The discrimination counts are
4 without merit and should be the subject of a motion
5 to dismiss. As to the claim for loss of business,
6 that is pure speculation. Maxxam has absolutely
7 no experience in drug treatment, they have no
8 patients, no business model, and no ability to
9 show their capacity to operate, much less operate
10 at a profit.

11 Other than the fear factor presented by
12 our State's Attorney, absolutely nothing has been
13 presented after more than 20 hearings that would
14 warrant a change of your denial. Thank you.

15 (Applause.)

16 CHAIRWOMAN MELGIN: Okay. Thank you.
17 Mike Tyrrell.

18 MR. TYRRELL: I'll pass.

19 CHAIRWOMAN MELGIN: You spoke last week.
20 Thank you.

21 Dean Perle. Dean P-e-r-l-e, Empire Road.

22 (No response.)

23 CHAIRWOMAN MELGIN: Okay. Is there anyone
24 else here that didn't sign in but would like to

1 make a comment?

2 Okay.

3 MS. HARTMANN: I signed in.

4 MR. VANKERKHOFF: Okay. Come on up.

5 CHAIRWOMAN MELGIN: What's your name? I'm
6 not sure I have it on the list.

7 MS. HARTMANN: Pat Hartmann.

8 CHAIRWOMAN MELGIN: Oh, you did sign it
9 and I checked you off. I'm sorry.

10 MS. HARTMANN: Good evening. I'm
11 Pat Hartmann. I live at 8N316 Dittman Road, Elgin.

12 My husband Ron and I have lived on our
13 family-owned farm for 56 years in south Plato
14 Township. We've both been around the neighborhood
15 over 70 years. We are central to Kane County. We
16 are an area of homes in a semirural countryside,
17 rural farms and farmland, forest preserves. We
18 are Campton and Plato Townships and the municipality
19 of Campton Hills.

20 It takes courage, honesty, and integrity
21 on your part to make tough decisions the right
22 way. Your upcoming decision regarding a special
23 use permit for a special use here will be
24 difficult, but please do not let politics, money,

1 or special interests cloud your thinking.

2 We are here to give you our reasons why
3 you should vote no to Maxxam Partners' request for
4 a special use permit for the Glenwood School
5 property.

6 The Kane County zoning ordinance states
7 that each of the six requirements must be met in
8 order to issue a special use permit. The special
9 use for Glenwood School which is an open campus
10 would be detrimental to the public health, safety,
11 morals, comfort, and general welfare both to the
12 neighboring area and to the planned patients,
13 as well.

14 Addiction treatment centers should be an
15 all-inclusive building for the safety and
16 well-being of the recovering patients, not an open
17 campus of many separate buildings in a four-season
18 climate.

19 There are environmental concerns, as well.
20 Glenwood School has well and septic for water
21 treatment. It's located in an area that has many
22 springs, ponds, and wetlands. With drugs coming
23 in for treatment and drugs eliminated after
24 treatment, there's concern about water quality and

1 its effect on the area. This is a headwater area
2 for Stony Creek which starts at our farm, which
3 leads to Otter Creek, on to Ferson Creek.

4 The special use would be injurious to the
5 use and enjoyment of other property owners in the
6 immediate area. Forest preserves are meant for
7 conservation, study, citizen enjoyment, not for
8 buffers for private for-profit businesses. A
9 special use of this type, which is detox and
10 substance abuse rehab, is not suitable in the
11 midst of an area of existing homes and farms.

12 Rehabilitation and detox facilities with patients
13 who are disabled should be located on or near a
14 medical campus where they can receive appropriate
15 medical health if needed and where there is
16 adequate community services such as fire, and
17 emergency, and paramedic services, and police
18 departments.

19 Property values would likely be diminished
20 and impaired within the area. A study was
21 presented at previous hearings that showed an 8 to
22 17 percent drop in values for the properties
23 located in close proximity to such facilities.

24 Normal and orderly development of

1 surrounding property would be impeded. The
2 proposed use of the Glenwood property does not fit
3 the vision of the local community to maintain its
4 semirural character environment and preserve its
5 character.

6 Access roads from main highways are rural,
7 curvy, and a long distance from hospitals and
8 community services such as police and emergency
9 services which are limited in this well.

10 Community services for the local citizens would
11 also be compromised if a facility of this proposed
12 size was allowed in the area.

13 Do remember Kane County has six requirements
14 that must be met for special use. These aren't
15 suggestions; they aren't guidelines; they are
16 requirements. The requirements have not been met.

17 Kane County's 2040 plan and zoning ordinance
18 also marks this parcel as an F-1 Farming zone and
19 states it should be used for educational, cultural,
20 or scientific purposes. This request does not
21 meet those definitions of use, either.

22 We all understand that facilities of this
23 type are needed, but they should be sited
24 appropriate for their needs. A semirural/rural

1 location in an established community without
2 suitable community services, many rural roads, and
3 a location far from a hospital and medical
4 facilities is not an appropriate location for a
5 facility of this type. Please honor and follow
6 your zoning ordinance, your 2040 plan, and your
7 six requirements that this -- that must be met for
8 special use.

9 We the farmers, the neighbors, the
10 residents of central Kane County ask you to vote
11 no to the special use request for Maxxam Partners.
12 Thank you.

13 (Applause.)

14 MR. HANUS: Hi. My name is Mike Hanus.
15 My wife Susan and I have lived at 6N487 Crestwood
16 Drive for 29 years. I don't have any prepared
17 remarks, but I want to relate an incident that
18 occurred on June 29th that illustrates the issue
19 with the Fox River & Countryside fire department.

20 On that date my wife suffered a severe
21 back injury that required me to call 911, and it
22 was approximately -- we live 2 1/2 miles from that
23 station, Station No. 2 I think they call it. It
24 was approximately 20 minutes before a truck or an

1 ambulance pulled into my driveway. Had this been
2 a severe life-threatening situation, the outcome
3 would have been a lot different.

4 It's nothing against the fire department.
5 They did the best they could, but because one of
6 their ambulances -- the only ambulance in that
7 area at the time was servicing another call, they
8 explained to us that they were delayed because of
9 that. So this is happening now, and it's not
10 going to get any better when Maxxam, if Maxxam
11 goes ahead and implements their facility.

12 Also, I had one other question. The
13 gentleman that talked about the veteran that had
14 the problem, I think he was trying to illustrate
15 that a facility like that can provide an inroad to
16 increased crime in the form of drug selling and
17 unsavory people in the area, and I think I agree
18 with him, and that's one of our concerns, also, too.

19 Thank you very much for your time.

20 CHAIRWOMAN MELGIN: Thank you.

21 (Applause.)

22 CHAIRWOMAN MELGIN: Is there anyone else
23 in the public that wishes to speak?

24 Mr. Carrara.

1 MR. CARRARA: Yes. Thank you, Madam Chair.

2 I had a number of questions on the
3 exhibits that were added after the public hearing
4 yesterday for the petitioner. So is the
5 petitioner here to answer the questions on the
6 exhibits.

7 MR. LIGUORI: Yes.

8 MR. CARRARA: Can you please swear in the
9 witness?

10 (Whereupon, Attorneys Tabet and Liguori
11 were duly sworn.)

12 MR. CARRARA: Thank you.

13 MR. TABET: And we should correct the
14 record, the exhibits weren't added yesterday.
15 They were added June 16th and August 1st or 2nd.

16 MR. CARRARA: I apologize. It was after
17 the beginning of our first hearing.

18 MR. SHEPRO: Could we have the name of the
19 witness for the record?

20 MR. TABET: Caesar Tabet and Chris Liguori.

21 MR. CARRARA: Thank you. Whichever one of
22 you would like to answer, I appreciate it.

23 CAESAR TABET,
24 having been duly sworn, testified as follows:

1 EXAMINATION BY COUNSEL FOR THE OBJECTOR

2 BY MR. CARRARA:

3 Q As part of the consent decree there was --
4 one of the exhibits was the proposed ordinance
5 which bears a date on the County's website of
6 July 12th, 2018. While it appears this ordinance
7 is preordained, I'd just like to ask you a few
8 questions about it.

9 On page 3 of the ordinance, paragraph 4
10 states that, "A special use permit to operate the
11 private-pay alcoholism and substance abuse
12 treatment facility on the property is hereby
13 granted to Maxxam."

14 Is that a condition that the petitioner is
15 agreeing to, that it will be a private-pay
16 facility?

17 A The conditions are set forth in the
18 consent decree, and the conditions are contained
19 at pages 5 through --

20 AUDIENCE MEMBER: Can't hear.

21 MR. TABET: Can everyone hear me?

22 AUDIENCE MEMBER: Yes.

23 MR. TABET: Sorry about that.

24 AUDIENCE MEMBER: No problem.

1 A (Continuing.) The conditions are set
2 forth in the written consent decree at pages 8 --
3 I'm sorry -- pages 5 through 8, and they're
4 numbered 1 through 17.

5 Q Do those listed conditions -- which are
6 also in exhibits to the ordinance which is attached
7 to the consent decree -- do those conditions you
8 feel not include the provision of paragraph 4 which
9 says a special use to operate a private-pay
10 alcoholism and substance abuse treatment facility
11 is not enforceable? So it can be a nonprivate-pay
12 facility.

13 A Well, I think you're asking two different
14 questions. It's a little bit confusing.

15 Q Let me do a better job to ask it. First,
16 on our agenda tonight it says the request is for a
17 private-pay facility. On the public notice it
18 says it's for a private-pay facility. The zoning
19 ordinance says it's going to be a private-pay
20 facility. But your conditions do not limit it to
21 a private-pay facility. So what will the facility
22 be, private-pay or both private-pay and public-pay?

23 A Well, the application and petition is for
24 a private-pay facility. The conditions in the

1 consent decree do not specifically say it's a
2 private-pay facility only. To do that would be
3 illegal and discriminatory and barred by Federal law.

4 So to answer your question, the conditions
5 do not contain an express requirement that it is
6 only a private-pay facility and if somebody comes
7 there who can't pay will be turned away or rejected.

8 Q So, again, I'm not trying to argue with
9 you. So it's your legal opinion that it will also
10 be public pay?

11 A No. It's not my legal opinion that it
12 will also be public pay.

13 Q Okay. In one of the conditions, Condition
14 No. 13 there's reference to a number of
15 requirements as to the sizing and population
16 ability of the facility. Then one of the exhibits
17 to the agreement and consent decree and the
18 ordinance is the site plan for Maxxam Partners.

19 The site plan identifies eight patient
20 lodges; is that correct?

21 A I think it's nine patient lodges, but it
22 identifies what it identifies, either eight or
23 nine residence halls.

24 Q Yeah, I'm sorry; I'm just reading off your

1 legend.

2 So using the criteria in Condition No. 13,
3 how many patients can get into the patient lodges
4 on your site plan?

5 A The number of patients that can get into
6 the existing patient lodges on the site plan will
7 be determined by the applicable State licensing
8 requirements and occupancy requirements that are
9 set forth in different sections of the consent
10 decree, including the section that you cite,
11 Section 13, the specific reference to the
12 Department of Illinois Human Services Code Section
13 71 Ill. App 2060. And the section is 100 pages
14 long, but it contains detailed Illinois licensing
15 occupiers requirements that must be complied with
16 before a permit is even issued and before the
17 facility is even off the ground and other
18 conditions in the consent decree, including, for
19 example, as I said in my opening statement,
20 Condition 1 at page 5 that says, quote, "Maxxam
21 and the facility shall obtain all necessary
22 licenses from the State of Illinois prior to the
23 start of operation." That includes licenses
24 regarding qualifications. If we're not qualified,

1 we're not going to get a license.

2 MR. CARRARA: Ms. Chairwoman, I asked him
3 a simple question, what is the number. I
4 understand they have to comply with them.

5 Q Paragraph 13 says, "Maxxam shall comply with
6 the code spacing requirements including, A, a
7 minimum of 80 square feet is provided in a single
8 bedroom; B, 60 feet is provided in a bedroom in a
9 multiple-bedroom with no more than four beds per
10 room; and C, no bunk beds will be used for any
11 detox patient."

12 Have you done the calculation of how many
13 patients will fit under that code section?

14 A We have not done that calculation because
15 that calculation is something that will be done by
16 an expert authorized by Illinois law by the
17 Department of Human Services under the code that
18 is cited at Condition 13.

19 CHAIRWOMAN MELGIN: So the answer is no,
20 so if you want to move on.

21 Q So as part of the pro forma that the
22 petitioner prepared, it didn't determine how many
23 patients it could fit in the facility to run its
24 financial numbers?

1 A I think that there --

2 Q And if you don't know, sir, please don't
3 speak if you don't know.

4 A Well, let me answer your question this
5 way. I don't know about the pro forma that it's
6 run, but I can tell you this, that the consent
7 decree -- if your question is, what is the number
8 of people that can occupy the facility, the answer
9 is that it would be illegal and probably
10 unenforceable to put a maximum cap now as a matter
11 of the zoning law.

12 Q I didn't ask for a maximum cap, sir. I
13 just want to know the number.

14 A Let me answer your question -- okay? --
15 in fairness; okay?

16 The consent decree contains specific
17 provisions that directly apply to the number of
18 people who can occupy the facility. Those
19 restrictions and limitations are at Condition 13 at
20 page 7 that specifically cite to the applicable
21 code regulations of the Department of Human
22 Services and Condition 1 at page 5 regarding all
23 required licenses before the start of operations
24 under Federal, Illinois, and local laws and

1 regulations, and Condition 3, the special use applies
2 to the existing buildings, and Condition 4, with
3 respect to any potential new buildings, the consent
4 decree says, quote, "The parties shall comply with
5 all applicable review and approval procedures in
6 the Kane County zoning ordinance," end quote.

7 So to summarize, I cannot sit here today
8 because I'm not an authorized expert under Illinois
9 law that is specifically tasked with the
10 responsibility of enforcing the Illinois Department
11 of Human Services regulations regarding occupancy
12 of this type of facility.

13 So it's impossible to say whether the number
14 will be 25, or 75, or 120, or 140, whatever is
15 permitted under occupancy.

16 I can also say this. The Department of
17 Human Resources regulations provide in mandatory
18 language that there will be routine inspections,
19 routine inspections by the experts who are
20 authorized to regulate these facilities. It's not
21 a Zoning Board issue, it's an expert in mental
22 healthcare on a routine basis. They are the
23 experts who will be determining occupancy.

24 Q In your initial application it was an

1 application for a 120-bed facility. Would you
2 agree with that?

3 A No, it was an application that described a
4 facility that would be 120 beds. It did not contain
5 a maximum limit of 120 beds.

6 Q The expert reports that you submitted
7 again into evidence, were they based upon that
8 120 number, or were they based on the Federal --
9 excuse me -- the State statute that you're reading
10 in paragraph 13?

11 A They were based on a concern, an overall
12 concern for the public health, welfare, and safety
13 of the patients and the community.

14 Q So none of the experts used the 120 when
15 they testified here as to the number that they
16 were using when they did their reports?

17 A The truth is I think that they used 120 in
18 some instances in their reports as a proxy for an
19 approximation of the number of patients that would
20 be there. It's not a maximum limit under all
21 circumstances.

22 I cannot sit here and say with all certainty
23 to what extent the facility will have occupancy in
24 3 years, 5 years, 10 years. What I can say is the

1 consent decree specifically says that it will be
2 operated consistent with all requirements of
3 public health, safety, and welfare that's the
4 condition -- it's a threshold Condition No. 1, and
5 if at any time -- if at any time under any
6 circumstance there is a concern, or a threat, or a
7 risk to public health, welfare, or safety, there's
8 a specific remedy, enforcement remedy in the
9 consent decree.

10 And as I did in my opening statement --
11 and there's no dispute about this now, none
12 whatsoever -- Section 3C, page 5, "The conditions
13 of approval are intended to ensure that the
14 operation of the approved special use is
15 beneficial to and does not negatively impact the
16 health, safety, and general welfare of Kane
17 County's residents," end quote, period, hard stop.

18 That is a specific statement in the
19 conditions of approval in the Federal Court
20 consent decree. If at any time during the history
21 of this facility there is any concern about public
22 health, welfare, or safety, the consent decree
23 provides a mandatory specific mechanism to raise
24 that issue, as I said in my opening statement at

1 Section 5B at page 9 and to have that issue
2 resolved among the parties, and if they fail, the
3 Federal Court.

4 CHAIRWOMAN MELGIN: Okay. Thank you.
5 You'll have closing comments, also.

6 Q Could you do me a favor? Could you read
7 the next sentence on that provision you just tried
8 to quote?

9 CHAIRWOMAN MELGIN: Starting with "The
10 extent"?

11 MR. CARRARA: Yes.

12 A Yes. I mean, anyone can read it. I can
13 paraphrase it.

14 Q I'd rather you read it for the audience so
15 they can hear it.

16 A Sure. This is the next sentence after
17 public health --

18 Q "To the extent."

19 A "To the extent any of the conditions
20 conflict with or are in contravention of any
21 Kane County ordinance in existence as of the date
22 of this decree or any State of Illinois law, State
23 of Illinois license and operation requirements of
24 Department of Human Services, Division of

1 Alcoholism and Substance Abuse Treatment and
2 Intervention licenses, found at 77 Ill. Adm. Code,
3 Subchapter D, Part 2060, the code or Federal law,
4 the condition is invalid and shall not be
5 enforced."

6 That sentence --

7 Q I understand what you read, sir. I just
8 wanted you to read it. I'll ask you the question.
9 Thank you.

10 So is it fair to say, then, that if after
11 a special use is approved by the County Board
12 pursuant to this consent decree and the settlement
13 agreement -- by the way, the settlement agreement
14 is not attached as an exhibit, is it?

15 A I'm sorry; I lost the question.

16 Q I apologize. I was just thinking that --
17 I saw a note I had earlier when you were reading
18 something. All the exhibits aren't attached to
19 the website, are they? The settlement agreement
20 between you and the County which is an exhibit
21 referenced in the consent decree, is that an
22 exhibit that's been provided to everyone?

23 A I believe that all the exhibits have been
24 attached. If the settlement agreement is not,

1 it's something between Kane County -- the
2 defendant and their lawyers.

3 MR. LULVES: Counsel, if I could break in,
4 the settlement agreement is not attached. The
5 County Board has not approved the settlement
6 agreement at this point. Therefore, there is not
7 an attached settlement agreement because the
8 County Board hasn't deliberated on that yet.

9 MR. CARRARA: Okay. The only reason I say
10 that is that it says the proposed ordinance is
11 subject to the terms and conditions of the
12 settlement agreement and the consent decree. So I
13 just wanted to make sure there's no other conditions
14 in the settlement agreement that could impact this
15 use that the ZBA has not been made aware of, but
16 thank you for answering that.

17 Q So is it fair to say, then, if after a
18 special use is -- again, assuming for a
19 hypothetical it's approved by the County Board --
20 who -- could the fire protection district be one
21 to seek relief that there's diminution in the
22 health, safety? Could a private citizen do that?
23 Who has to be the one to petition the Court that
24 there's been a breach of this consent decree?

1 A Well, you know as a lawyer licensed to
2 practice law in Illinois as well as I do that
3 anyone can seek to intervene in a case or petition
4 the Court for relief under a Federal Court consent
5 decree.

6 Q Thank you.

7 A You've done that in your career, and I've
8 done it in mine.

9 MR. CARRARA: I just wanted everybody to
10 be aware that. Thank you. I have no other
11 questions.

12 MR. TABET: Could I actually answer the
13 question that you didn't let me answer before?

14 CHAIRWOMAN MELGIN: Go ahead.

15 MR. TABET: The first paragraph in
16 Section 3C, I know the Zoning Board has reviewed
17 this carefully, and I hope that the community
18 members have read that carefully, because it
19 specifically details all of the concerns and
20 potential future risks that you've articulated, in
21 fairness. And it says as a threshold matter first
22 principles, Point No. 1, "The purpose of the
23 consent decree is to ensure public health, safety,
24 and general welfare," period, hard stop. That's

1 the purpose.

2 If in the future there's any potential
3 problem, a pollution problem, an occupancy problem,
4 any issue that's been raised, the consent decree
5 provides that the purpose is to ensure public
6 health, safety, and general welfare. Anyone can
7 petition, number one.

8 Number two, the consent decree lists
9 17 specific conditions and limitations, and to the
10 extent that any of those conditions or limitations
11 are inconsistent with or conflict with any Kane
12 County ordinance, or rule, or regulation, or State
13 law or regulation, or Federal law, the condition
14 is invalid. And the law in Kane County, a Kane
15 County ordinance, a State requirement, licensing
16 requirement, or Federal law controls, all designed
17 to ensure public health, safety, and welfare.

18 CHAIRWOMAN MELGIN: Okay. Thank you.

19 MR. CARRARA: One follow-up to that, just
20 to his answer.

21 Q Sir, is it both Glenwood and Maxxam's
22 position that the approval of a special use after
23 hearing the most recent testimony from the fire
24 protection district will not have a negative

1 impact on the health, safety, and welfare?

2 A Yes. That is a position of Maxxam, and if
3 in the future -- we're speculating now about what
4 might happen down the road at some future time.
5 And if there's a problem down the road which we
6 don't know about -- we're speculating. We're
7 saying, please let it get off the ground so that
8 we can operate it consistent with public health,
9 safety, and welfare.

10 If in the future there's a potential problem,
11 there's a specific remedy for it specifically set
12 forth in the consent decree.

13 I'd also say Glenwood's lawyer is here and
14 should identify herself for the record, if that's
15 appropriate, and can respond on behalf of Glenwood.

16 MR. CARRARA: I have one additional question.
17 I didn't realize Glenwood had counsel here. I had
18 asked a question of the State's Attorney earlier
19 today, and I didn't get a response.

20 The question was, is there a written
21 contract between Maxxam and Glenwood for the sale
22 or purchase of the property currently in place?

23 MR. LIGUORI: The answer to that is yes,
24 there is.

1 MR. CARRARA: Thank you.

2 MR. SHEPRO: Madam Chair, I have a few
3 questions if I might.

4 CHAIRWOMAN MELGIN: How many questions do
5 you have?

6 MR. SHEPRO: I don't know. Not hundreds,
7 not dozens.

8 MEMBER ARIS: Is there a time limit for
9 questions?

10 MR. SHEPRO: Are you asking me?

11 MEMBER ARIS: You know, usually it's
12 three to five minutes. So are you planning on
13 going over more than five minutes?

14 MR. SHEPRO: I don't think so.

15 MEMBER ARIS: Because it's 9:00.

16 MR. SHEPRO: I don't think so but I'm sure
17 you'll cut me off if you think I've gone too long.

18 EXAMINATION BY COUNSEL FOR THE FOX RIVER &

19 COUNTRYSIDE FIRE PROTECTION DISTRICT

20 BY MR. SHEPRO:

21 Q My first question is, with regard to that
22 second sentence of C, conditions of approval,
23 would you agree that that is a statement of the
24 law and would be applicable even if that sentence

1 were not in the decree?

2 A No.

3 Q You would not?

4 A No.

5 Q Okay. With respect to the -- you were
6 asked some questions by Mr. Carrara about the
7 original application, and if I understood your
8 testimony, it was that there was a number but that
9 that was not intended to be a maximum number, the
10 125 [sic] beds. Was that your testimony?

11 A I think generally that was the testimony.
12 Generally. I mean, it was more expansive than
13 that but yes.

14 Q So my question, did -- can you point to
15 any testimony by any of the experts that testified
16 on behalf of Maxxam at either of the two previous
17 application hearings that stated that their opinions
18 applied to occupancy in excess of 125 beds?

19 A Yes, I think that all of the experts,
20 based on my review, and all the other evidence was
21 all designed to make one central point, which is
22 it is the intent of the facility to be run
23 specifically consistent with the public health,
24 welfare, and safety at all times, and the patient

1 health, safety, and welfare at all times.

2 And there's a notion -- some people have a
3 notion that that means that for all time the
4 number of people have to be frozen at 60, or the
5 number has to be frozen at 90, or the number has
6 to be frozen at 125. And really good lawyers for
7 Kane County as I understand it said there's a
8 question about whether that's illegal as a zoning
9 matter and unenforceable as a zoning matter.
10 There were really good lawyers who said you cannot
11 not enforce a provision like that because it's
12 discriminatory, and it's not a zoning of expertise,
13 it's a matter of medical health professionals'
14 expertise.

15 MR. SHEPRO: I'm going to move to strike
16 the answer as not responsive to my question. This
17 is his closing argument.

18 CHAIRWOMAN MELGIN: You're going to have
19 the chance for closing argument. He asked you the
20 same question before, is 120 beds -- was that the
21 previous maximum occupancy?

22 MR. LIGUORI: I can add a little bit of
23 light on that. That was not the maximum occupancy.
24 In fact, if you look at the application, specifically

1 Section 2 on page 3, it details what the development
2 request is, 2.0.

3 And what it says is, "Applicant requests
4 the following development approval," and A says,
5 "Applicant requests a special use to operate the
6 subject property as an alcoholism and substance
7 abuse treatment facility in accordance with the
8 ordinances and analysis outlined in Section 2.1 of
9 this rider of the materials incorporated in
10 Section 3 hereof."

11 So there is no bed limit in the actual
12 development request.

13 Q Is it your testimony then that the 125 beds
14 was never advanced by the applicants as something
15 that was the intention for the site? I'm looking
16 particularly at the prior rider to the application
17 for the special use which says, "Applicant's
18 proposed use, Section 1.4: Applicant proposes to
19 use the existing buildings and infrastructure on
20 the subject property for a 120-bed exclusively
21 private-pay alcohol and substance abuse treatment
22 facility."

23 MR. LIGUORI: Yeah. So --

24 MR. CARRARA: He was answering the

1 questions, sir.

2 MR. SHEPRO: Yeah. Can we just have one
3 person at a time answer the question?

4 A I would like to answer the question, and
5 the answer is -- apparently you're reading from
6 some section where Maxxam stated that its plan at
7 a particular period of time was to have 120 beds
8 or 125 beds. And I think that if you're reading
9 correctly, I'm not going to dispute that.

10 I'm answering a different question which
11 is are we freezing now as a condition for all
12 time, in perpetuity that the facility will be
13 limited to 120 beds? What I'm saying is no, the
14 consent decree does not do that. The consent
15 decree has other protections and limitations on
16 occupancy that are consistent with Federal and
17 State law.

18 MR. SHEPRO: But, again, you're answering
19 a question that I didn't ask.

20 CHAIRWOMAN MELGIN: That's true.

21 MR. TABET: Okay.

22 MEMBER FALK: So you just want to know if
23 there's 120 beds maximum or what is that number?

24 MR. SHEPRO: Our point is that this

1 application was submitted, and testimony submitted
2 to this Board, that I don't think there's a single
3 person in this room that did not believe that that
4 was their request was for 120 beds.

5 Now, I happen to agree with counsel that I
6 don't think that the County Board could have
7 imposed a limit, but nevertheless, the testimony
8 that was presented was all predicated on the
9 120 beds, and they have not added any new
10 testimony. And, frankly, to say -- again, now I'm
11 getting into argument, but the suggestion that
12 there are protections because they have agreed
13 that conditions which are in here, they're saying,
14 well, if any of these conditions turn out to be
15 illegal, then they're not enforceable. But he
16 doesn't want to tell us what he thinks --

17 BY MR. SHEPRO:

18 Q I'll ask you, Counsel, are there any
19 conditions that are in this proposed consent
20 decree that your client believes are unenforceable
21 and invalid?

22 A The answer is no. We believe that all the
23 conditions are specifically valid and enforceable.

24 MR. SHEPRO: That's all I have.

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1 CHAIRWOMAN MELGIN: Okay. Thank you.

2 I think at this time we're going take a
3 recess of 10 minutes. So back at 9:15.

4 (Recess taken, 9:06 p.m. to 9:20 p.m.)

5 CHAIRWOMAN MELGIN: All right. I think
6 we're going to get started again. I think we're
7 going to get started, if you could please take
8 your seats.

9 All right. Thank you. Are there any
10 other members of the public who wish to speak who
11 haven't had the opportunity to do so?

12 (No response.)

13 CHAIRWOMAN MELGIN: Seeing none, I'm going
14 to close the public comment part of this hearing.

15 At this time we're going to have closing
16 statements. Given the time at 9:20 and the amount
17 of what we still have to go through, I'm going to
18 ask each closer to try to remain within five
19 minutes for closing statements.

20 I'm going to start with the local units of
21 government if any unit of local government wants
22 to make a statement.

23 MR. VANKERKHOFF: Madam Chair, if staff
24 could request that the attorney for Glenwood

1 identify herself for the record, please.

2 CHAIRWOMAN MELGIN: Yes. I forgot.

3 Thank you.

4 MS. ROSENBLUTH: Adrienne Rosenbluth.

5 CHAIRWOMAN MELGIN: Could you spell it?

6 MS. ROSENBLUTH: A-d-r-i-a-n-n-e and then
7 R-o-s-e-n-b-l-u-t-h.

8 CHAIRWOMAN MELGIN: Thank you.

9 Are there any local government bodies who
10 want to make a closing statement?

11 MR. SHEPRO: Good evening. Again,
12 Kenneth Shepro for the Fox River & Countryside
13 Fire District.

14 I suppose I would begin by stating my
15 continued disappointment that with all the
16 testimony and so forth that you've heard, you put
17 in the record and that you put in the record from
18 prior hearings you still don't seem to be able to
19 bring yourself to admit the agreement we've
20 reached with the applicant after the close of the
21 last hearing and which in their complaint filed in
22 Federal Court they have utterly repudiated. I
23 must confess that I do not understand why that is
24 not deemed to be worth the trouble of adding to

1 the record in this case.

2 Well, I think what you've heard over these
3 two nights of hearings is less important than what
4 you didn't hear. You did not hear any new evidence
5 from the petitioners even though -- and I think it
6 was clarified at the very end of the evening by
7 some of the questions that got asked.

8 Their application references a 120-bed
9 facility. Now, it may be that that was never a
10 valid restriction. Nevertheless, all of the
11 testimony that was produced at the prior hearings
12 was predicated on the 120. You read the record;
13 you know what they say. There was not a single
14 witness that said on behalf of the applicant, by
15 the way, there could be more than 120 beds.

16 I think that's a fatal defect right there,
17 and even if legally they were correct in now
18 saying, "Well, really we weren't bound by that," I
19 think it is an appalling fraud on this Board and
20 on the public to have proceeded with those
21 hearings on that assumption and now say, "Oh, well
22 it was never a valid, enforceable condition."

23 Similarly, the condition that they read to
24 you about this is for the good of the public, you

1 know, I guess we who practice in the area would
2 say that's a lot of self-serving rhetoric, but as
3 they say in their second sentence, none of this
4 matters because if any condition is later determined
5 to be no good it's not enforceable. Again, you
6 don't need to put that in a decree; that's the
7 statement of the law. A condition is unenforceable
8 is unenforceable whether you agree that it is or not.

9 So we've heard a lot about the consent
10 decree, and while the lawsuit itself is not the
11 subject of this hearing, I think the consent decree
12 is quite clearly part of it. And, again, there's
13 been no due process afforded to the residents or
14 the units of government because this is a new
15 application. They didn't have to do it that way,
16 but they chose to do so.

17 So they have brought a new application with
18 new conditions, and it is demonstrably and by their
19 own admission different than the application that
20 they submitted previously. And yet they don't seem
21 to believe that they have any obligation to present
22 any evidence with respect to the new provisions
23 and new conditions, and I do not see how they can
24 legally comply with the requirements of the Kane

1 County zoning ordinance when they do not present
2 any such testimony.

3 All right. So now we've got some of the
4 specific provisions in the decree that I just want
5 to briefly comment on.

6 All right. Well, jumping around a little
7 bit, Section 6 was apparently rung from Maxxam only
8 after tough negotiations, and that's the one that
9 says Maxxam agrees that they will install a
10 security system that is acceptable to Maxxam's
11 consultant. Wow, that must have been really tough
12 to get them to agree to that.

13 Then we have --

14 MR. TABET: Your Honor, may I object.

15 CHAIRWOMAN MELGIN: Let him finish his
16 closing statement. And audience, please keep your
17 comments.

18 MR. SHEPRO: That's all right.

19 Then we have the Community Foundation of
20 the Fox Valley. You'll recall during the entire
21 hearing the only questions that Maxxam asked
22 anybody were to ask my fire chief if he didn't
23 expect to get a whole bunch of money from the
24 Community Foundation of the Fox Valley, and I

1 couldn't help but think that somehow they had the
2 idea that that was somehow connected with the fire
3 district which, of course, it is not. And frankly,
4 compared to what they had promised us under the
5 agreement, even if we got all of the \$15,000 a
6 year, that wouldn't even begin to allow us to hire
7 back any of the personnel for more than about a
8 day or two.

9 Again, we now learn for the first time
10 that they believe that there is no limit on the
11 number of people that they can have. Although, I
12 think you could calculate it out a maximum based
13 on simple occupancy rules, but they have declined
14 to do that.

15 What else could we talk about? Again, the
16 ordinance which is purportedly an exhibit to the
17 settlement agreement we are told hasn't been
18 submitted even though that is supposedly an
19 integral part of the application because it either
20 doesn't exist or it hasn't been passed by the
21 County Board.

22 Well, then why are we here? We don't know
23 what that ordinance is going to say.

24 I guess I could go on and on, but it seems

1 to me that we never had adequate disclosures under
2 the County zoning ordinance as to who the parties
3 in interest are. I think that is a fatal defect.
4 And if this is intended to be a zoning hearing as
5 opposed to just a settlement agreement hearing,
6 then they have failed to meet any of the minimum
7 requirements to prove a case.

8 That's no different than the first two
9 applications, but this time we're talking about
10 the settlement of a lawsuit and, although we
11 haven't heard about it in this room because it's
12 not part of the land use, the payment of
13 substantial sums of money. And I still can't help
14 but recall the testimony of Mr. Marco when he
15 finally showed up at the last hearing, and his
16 response to every question that was asked was, "I
17 respectfully decline to answer, and I refer you to
18 the record."

19 So tonight, ladies and gentlemen, I would
20 ask that you refer to the record, and you will
21 find it sorely lacking.

22 Thank you.

23 CHAIRWOMAN MELGIN: Thank you, Mr. Shepro.

24 (Applause.)

1 CHAIRWOMAN MELGIN: Are there any other
2 units of government who wish to make a statement?

3 (No response.)

4 CHAIRWOMAN MELGIN: Adjacent property
5 owners, land owners who received notice?

6 MR. CARRARA: Thank you, Madam Chairwoman.

7 You heard a number of references today
8 that you are here and you are charged under the
9 ordinance to determine whether the petitioner by
10 clear evidence has proven the six special-use
11 factors. You are not here, as your retired Judge
12 Schreiber discussed, to discuss the facts or the
13 allegations in the lawsuit. That's not before
14 you. What you are here to see is whether they
15 have proven those factors.

16 Twice previously it was determined that
17 they had not. Yet they filed an application, and
18 the only new testimony that they elicited was zero.
19 They didn't provide you any new testimony under
20 oath. You heard an opening statement which was
21 nothing but an opening statement, not under oath,
22 cannot be considered by you as evidence by the
23 petitioner.

24 The new evidence you heard was from the

1 fire protection district. Unfortunately, the
2 condition of the fire protection district has gone
3 down considerably since the last time this Board
4 denied their application. And with all due
5 respect to the petitioner's attorney, I'm not sure
6 how someone can stand here with a straight face
7 and say the operation or the opening of a 120-bed
8 or even more, up to potentially 260 under our
9 rough math of how many people could fit in those
10 living conditions under the State code how that
11 won't have an impact on the health and safety of
12 the residents.

13 Their own expert in the underlying case said
14 23 out of 24 Level 4 detox facilities are
15 collocated next to a hospital. Why is that?
16 Because these patients need difficult medical
17 treatment. They need to be to it quickly in case
18 there's an emergency. So they should be concerned
19 about their own patients and the level of concern
20 they should have for them and their safety if one
21 of their patients needs help.

22 Additionally, you may recall their real
23 estate expert under my cross-examination Mr. MaRous
24 initially when he did his report for the Kiva

1 location said this location was not appropriate
2 for a medically intensive use. Yet when
3 Mr. MaRous came back for the petitioner, the same
4 report except for that one provision of his
5 paragraph was removed from his current report.
6 Under questioning when I asked him why that was, I
7 think you heard his comment was, "I don't recall."

8 They have failed to show you how this
9 facility will not have a negative impact on the
10 health, welfare, and safety. There are six more
11 factors. In the past we used to have them up on
12 the board so everybody could see them but we don't
13 have them, but there's a number of other factors
14 that they don't have -- sorry?

15 MEMBER FALK: We can put them up.

16 MR. CARRARA: Thank you.

17 There's a number of other special use
18 factors that have also been failed to show by
19 clear evidence that they satisfy.

20 Their own traffic expert said he was never
21 asked to do a full traffic evaluation on the
22 facility. He was given a hypothetical staffing
23 level and asked to do trip generation counts on
24 the staffing level. We don't know what that

1 hypothetical staffing level was on. I guess one
2 could assume it may have been on a 120-patient
3 facility as they requested in their application or
4 it couldn't have been, but I suspect it wasn't
5 more than the 120.

6 By the way, I'd also agree with the
7 petitioner that in theory maybe there is a Federal
8 judge out there at some point that would say after
9 a trial that putting in a cap for zoning would be
10 potentially discriminatory. However, there's
11 nothing that would prevent the petitioner from
12 agreeing to that condition. They could agree to
13 cap their patient load should they care about the
14 health, safety, and welfare of the citizenry.
15 They could agree to that but they've chosen not
16 to. In fact, it sounds like the petitioner this
17 evening has even gone one farther to something
18 unknown.

19 And, again, with all due respect, if
20 you're sitting here today, and you're going to
21 believe that Maxxam never did a determination of
22 how many people it could fit into a facility it
23 was going to pay \$10 million to purchase, they
24 were just going to guess at some point in the

1 future, that's ridiculous. They know how many
2 people. They just don't want to tell you, the ZBA
3 how many people can fit in there because you know
4 it's going to be more than you want to here, and
5 it's going to have a bigger impact on the health
6 and safety of the citizenry.

7 Lastly, I will refer you again to the prior
8 failures of this application, no new testimony by
9 them. The only new thing is exhibits -- excuse
10 me, a consent decree, which by the way we believe
11 is flawed procedurally because no exhibits were
12 attached prior to the opening of the public
13 hearing, so nobody knew what it was. So we consider
14 that to be a procedural defect, but I'll let your
15 State's Attorney deal that.

16 So again, I ask each of you today to
17 follow the special use factors, not the threats of
18 Federal litigation and deny this application.
19 Thank you.

20 (Applause.)

21 CHAIRWOMAN MELGIN: Thank you. Okay.
22 Petitioner's closing statement, five minutes.

23 MR. TABET: Yes. Thank you. With your
24 permission I'd like to split the closing between

1 myself and Chris Liguori.

2 May it please the Kane County Zoning Board
3 of Appeals and all of its members, we have
4 carefully listened to all of the concerns of the
5 community and the lawyers. We've carefully
6 considered and listened to all of those concerns.
7 The concerns are serious; we respect them; we take
8 them seriously.

9 At the beginning of the proceeding, we
10 said that all of the concerns are addressed by the
11 consent decree. All of the concerns are carefully
12 addressed by a careful and complete reading of the
13 consent decree, and what we said is true. What we
14 said is truthful; the consent decree does
15 carefully consider and address all of those
16 concerns.

17 The concerns fall into three broad
18 categories. The first category is potential
19 future problems sometime down the road, like, for
20 example, a potential future resource drain on the
21 fire district, or a potential future problem with
22 traffic, or a potential pollution issue down the
23 road -- that's a potential that Mr. Liguori will
24 address. There are many potential future risks.

1 All of those potentials are future potential
2 risks, and second, the consent decree has specific
3 provisions to detail exactly what happens if they
4 materialize. But the question for you is, well,
5 what happens if they don't materialize.

6 Right now you're speculating on a potential
7 future, and if we all did that every time we came
8 before you, we would never accomplish anything.
9 Any of us, if you think about it carefully, what
10 would happen if all of us thought that we can't do
11 something in the future because there's a potential
12 future possible risk?

13 What you do then is you anticipate the
14 possibility, and you agree to a mechanism to
15 resolve it if, in fact, it happens in the future.
16 But if it doesn't, you have a vacant facility that
17 will generate massive tax revenue, income tax,
18 employment tax, real estate tax -- and by the way,
19 the real estate taxes aren't frozen; there's no
20 special agreement. It's over \$300,000 a year
21 based on 2014 tax valuation, and if there's a
22 reassessment, and it's fair and appropriate, and
23 the real estate taxes go up, it will be paid.

24 All the taxes will be paid. 80 to 120 new

1 jobs, no dispute, that's undisputed in the record.
2 Over \$250,000 to the schools in Kane County,
3 undisputed in the record, and that's based on
4 2014 taxes. They're not frozen in the future.

5 Counsel talks about a potential drain on
6 fire district resources. Well, wait a minute.
7 We're not responsible for the economic problem now
8 facing the fire district. We didn't cause that
9 problem. Hopefully the referendum in November will
10 be passed, but we didn't cause that problem. And,
11 by the way, in the consent decree there's a
12 specific provision, Condition 17 that specifically
13 says we will pay all of the fees and charges based
14 on the then existing fee structure from the forest
15 district. We will pay them for all those transfer
16 charges. It's Condition 17. I'm paraphrasing.

17 That's the first category, potential future
18 risks. The second category -- and I believe this
19 was the president of Campton Hills so powerfully
20 and eloquently said that we haven't talked with
21 him, and if that's true, I apologize, we should
22 talk with him. But the consent decree, please
23 read it carefully. It contains an important
24 provision that nobody commented on that before we

1 begin operations we have to file a written
2 certificate of compliance with all the conditions.
3 It's at page 5, Section 3C, second paragraph. In
4 the form of compliance, like a Sarbanes-Oxley or
5 something similar, it's attached as Exhibit 4, and
6 we have to do that every year on the anniversary
7 on the facility. And it's public; everybody in
8 the community has a right to see it. It will be
9 posted. There is mandatory communication that's
10 spelled out in the consent decree.

11 And then, finally, there's an issue about
12 the environmental concerns. Again, my partner
13 Chris Liguori will address that.

14 Finally, one final point. Ask yourself,
15 if we start the facility and there are no potential
16 future problems, we operate it the way we intend
17 to operate it consistent with public health,
18 safety, and welfare, what happens? 80 to 120 jobs,
19 real estate taxes well in excess of \$300,000 in
20 the first year alone, income taxes, all other
21 taxes and revenue, a state-of-the-art, top-shelf
22 facility in the community.

23 What happens if we start the facility and
24 in the future there is a potential problem,

1 traffic, resources, something else? There's a
2 specific mechanism to address it if that happens
3 in the future. What happens if we don't start the
4 facility? It's vacant, no taxes, potential risks
5 or problems, no employment, and all the other
6 problems.

7 All we're saying is let us start. We will
8 comply with the licensing requirements before we
9 open. We will be a good corporate citizen, pay
10 all our taxes, and when we come back and file our
11 regular reporting, I think everybody's potential
12 concerns about future risks will not exist, and if
13 they do, they can raise them carefully and
14 efficiently. Thank you.

15 MR. LIGUORI: Chris Liguori. I just
16 wanted to address one safety issue that we've heard
17 a lot about through the course of the two nights
18 that we've been here, and that concerns the
19 environmental issue and the treatment of the
20 wastewater.

21 I think it's an important issue. I think
22 that the residents are rightly concerned about it,
23 but I think a lot of their views are based on
24 facts that maybe are misunderstood, or maybe there

1 isn't a good understanding of how this wastewater
2 system works. I know it's part of the factors of
3 public safety, and so we thought it would behoove
4 us if we took a minute to address it very briefly.

5 Glenwood's wastewater system is called a
6 land treatment system. There are various types of
7 systems. This is called a land treatment system.
8 It's constructed by Sheaffer & Roland. It is
9 considered to be the industry standard for this
10 type of system.

11 How does the system work? It pretreats
12 wastewater in deep aerated treatment cells for a
13 minimum of 30 days. I say a minimum of 30 days
14 because, as we know, at some point in time some of
15 that wastewater is used for irrigation purposes.
16 In the wintertime you can't irrigate, so over the
17 winter months that water is treated for even a
18 longer period of time.

19 The advantage of a land treatment system,
20 which the IEPA refers to as a zero discharge system,
21 is that there is no direct discharge; there is no
22 direct discharge of any wastewater to any surface
23 or groundwater. That's really important here.

24 So when we talk about risk, in our view

1 and in our expert's view who has submitted at
2 least two reports in these proceedings, the risk
3 is nonexistent or it's minimal because there is
4 nothing being discharged directly into the
5 groundwater or the water supply. The irrigation
6 system that this uses is designed for the roots,
7 the roots that are being irrigated to absorb the
8 nutrients in the wastewater.

9 MR. CARRARA: I have to object. This is
10 all new evidence. They refused to bring their
11 expert and have him testify under cross-examination.

12 CHAIRWOMAN MELGIN: Actually, we had a
13 whole description of the wastewater treatment back
14 in the last petition.

15 MR. CARRARA: Well, we got a five-page
16 synopsis. We did not get any of the details of
17 facts he's trying to elicit.

18 CHAIRWOMAN MELGIN: It's pretty much
19 the same.

20 MR. LIGUORI: I believe it's right in the
21 report.

22 MR. SHEPRO: Which was not subject to
23 cross-examination.

24 MR. LIGUORI: So what we would say --

1 Mr. Tabet talked about potential problems and
2 speculation. There is no evidence that we are
3 aware of that says that anything that's irrigated
4 makes it past the root system, there's nothing.

5 Now, what is the advantage of that? Well,
6 that's superior. It's superior to other systems
7 that directly discharge wastewater into potable
8 water, like, for example, the advanced sewage
9 treatment plant in St. Charles. That water is
10 treated for eight hours -- not 30 days --
11 eight hours, and then it's put into the Fox River,
12 which is a water supply for this community. These
13 wells are monitored quarterly in accordance with
14 the environmental safety regulations. Those are
15 at 415 ILCS 50/1, and in particular 50/9 talks
16 about the monitoring requirement.

17 That section of the code is incorporated
18 directly into Condition 12 of the consent decree.
19 So once again, the parties through the consent
20 decree have deferred to the experts who are
21 responsible for ensuring a safe environment to
22 comply with their standards.

23 Of course, the IEPA can tell us what to
24 monitor for. So if, for example, I think one

1 witness -- or one resident testified about what
2 people monitor for. The IEPA certainly has the
3 authority if it wants to require us to monitor for
4 pharmaceutical waste within human waste, and we're
5 required to do that by law, and we're also required
6 to do it by the consent decree in Condition 12.

7 In addition, we are required to provide
8 the quarterly reports to the County within 30 days
9 of their being received, and they also can be
10 FOIA'd and sent to the EPA by the community.

11 So there's nothing that's being hidden
12 here; there's nothing that we're not trying to
13 accommodate. To the contrary, just like the other
14 conditions, this consent decree is designed to
15 ensure a safe operation of this facility, and for
16 those reasons in addition, we think we satisfied
17 the six factors required by the ordinance.

18 Thank you.

19 CHAIRWOMAN MELGIN: Okay. Thank you.

20 At this time I'm going to close the
21 hearing. Do I have a motion?

22 MEMBER ARIS: I move we close the public
23 hearing.

24 MEMBER MILLEN: I'll second it.

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Conducted on August 7, 2018

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1 CHAIRWOMAN MELGIN: So moved the hearing
2 is closed. Take a vote. All in favor.

3 (Ayes heard.)

4 CHAIRWOMAN MELGIN: Moved -- I'm still
5 thinking about the wastewater treatment system.

6 So at this time the Board will deliberate
7 on the factor. Is there a motion concerning the
8 petition?

9 MEMBER ARIS: I move that we approve
10 Petition 4462.

11 AUDIENCE MEMBER: Can't hear.

12 MEMBER ARIS: Sorry. I make the motion to
13 approve Petition 4426 as modified by the conditions
14 outlined in the proposed consent decree.

15 CHAIRWOMAN MELGIN: A second?

16 MEMBER MILLEN: Second.

17 CHAIRWOMAN MELGIN: All in favor?

18 MEMBER ARIS: We need discussion.

19 CHAIRWOMAN MELGIN: That's why I told
20 people to be patient because I am not an attorney
21 but filling in for a very competent attorney and a
22 very competent judge who is usually in this seat.

23 So, Mark, you put the slides up for the
24 zoning six factors?

1 MR. VANKERKHOFF: Thank you, Blair. The
2 factors are up on the screen for your reference.
3 We'll start with A and B for you to have a
4 discussion on and cycle through the slides as you
5 move onto other ones.

6 CHAIRWOMAN MELGIN: Okay. I'm opening it
7 up for discussion.

8 MEMBER LAKE: So we read the factors for
9 the matter of record?

10 CHAIRWOMAN MELGIN: The first factor is
11 that "The establishment, maintenance, or operations
12 of the special use will not be unreasonably
13 detrimental to or endanger the public health,
14 safety, morals, comfort, or general welfare."

15 Does somebody want to start the
16 discussion?

17 (No response.)

18 CHAIRWOMAN MELGIN: Well, I would like to
19 first start on -- there are several things that
20 have really caught my attention after reading the
21 petition again, the rider that was provided, and
22 the conditions in the consent decree.

23 And one of the issues that has come up is
24 the number of beds, the number of occupancy.

1 Because the amount of patients or people who are
2 going to live at that facility, that has an impact
3 on some of these other things that have come up.
4 It's how many potential ambulance calls could
5 there be; it would have an impact on the sewage
6 treatment system; it would have an impact on
7 traffic.

8 So there's a couple things -- to me that's
9 kind of important on how large this facility is
10 going to be and how many people are going to be
11 there. And when you read the petition, there's
12 all these adjectives calling this an upscale,
13 luxury facility. So I would think that if it was
14 going to be that, it wouldn't be packed with
15 people. On the other hand, we don't know.

16 Another issue there is there's a medical
17 director, and in the petition it says that the
18 medical director -- that it has to be a physician
19 and has to meet with each patient on a daily
20 basis. So to me is how many people is one
21 director going to be able to meet with.

22 In the petition it was a full-time medical
23 director. Now it's 30 hours a week. So there's
24 a -- I have a concern about just how the number of

1 people in this facility could impact all these
2 other factors.

3 And when you're talking about wastewater
4 treatment systems, that wastewater treatment
5 system in St. Charles has a permit that has limits
6 that they discharge. This type of system is
7 irrigation, and water does make it past the root.
8 That's why there's nitrate solution; that's why
9 there's other types of contaminants in the
10 groundwater because they make it past the root
11 system. These are well-drained soils; there's not
12 a drainage issue, so there is a potential for
13 contaminants to reach groundwater. Whether it
14 impacts people's wells, that's another issue.

15 The other thing that you mentioned was
16 this potential for future risk. You know, I agree
17 a lot of this in any development is speculative at
18 some point. Any project that I look at that's
19 going to be new, whether it be a mine, or a
20 development, or a hospital, they're looking at the
21 potential impacts of that project. But you also
22 have a lot of data to look at and a lot of
23 information on that to try to assess how much risk
24 that there will be.

1 So going through this petition again, and
2 looking at the rider, and looking at the conditions
3 in the consent decree, I just have some concerns
4 with some of the issues that I've seen.

5 Would somebody else like to --

6 MEMBER FALK: I think I'd like to speak.

7 It began where the petitioner said that
8 for the record everything stands, and they are
9 going to go with the record.

10 When you talk about Point A, which is one
11 of the zoning requirements, unreasonably detrimental
12 or a danger to public health, safety, morals,
13 comfort, and general welfare, the person that we
14 were able to question for a brief moment never
15 really answered any of our questions, and I have
16 issues with that because they weren't very
17 difficult questions, and I think that he should
18 have come forth.

19 So I don't know his competency because we
20 never got our arms around it. We could never
21 understand where he was coming from at any given
22 point. There were a lot of "No comment."

23 Another point that I wrote down was the
24 calls. I couldn't get my arms around whether it

1 was going to be 10 calls for the year, or 110, or
2 1,000. We never could determine that. And I just
3 couldn't get my arms around the comfort of this
4 facility with the leadership and person that was --
5 we were questioning.

6 So I'm having a hard time rationalizing
7 around that and getting my arms around that, and
8 that's a big point because, you know, obviously,
9 you've heard a lot of people. It's not that
10 they're against the facility; it's more that
11 they're trying to understand what's really in
12 front of them.

13 Because the questions and the complexity
14 of this issue, we really don't have all the
15 questions answered. So it's hard for me
16 personally to talk about that and, you know, I
17 think that, you know, the travel patterns, I think
18 we could never understand that. The Fox River
19 deal that was cut apparently, I don't understand
20 that. I mean, there's just a lot of questions
21 that I still have.

22 So to say that it's not going to affect
23 public health or safety I have huge issues with.

24 CHAIRWOMAN MELGIN: The other thing on the

1 speculation of potential future risks, now
2 according to the consent decree this runs with the
3 land. So that's a little bit more speculative
4 where the special use will go if Maxxam doesn't
5 develop it. This will run with the land, so that
6 is a fairly large uncertainty.

7 MEMBER MILLEN: Okay. I'll have a few
8 things to say.

9 CHAIRWOMAN MELGIN: Could you turn your
10 microphone on?

11 MEMBER MILLEN: Okay. As concerning the
12 six items to prove that they will meet all these
13 requirements, I think the only way you can prove
14 it is by doing it, seeing what happens in the
15 future. There was a school here for almost 20 years
16 that operated very successfully. And I know
17 you're all afraid and worried, we hear a lot of
18 that, but until it happens, should we be afraid?
19 No, I don't think so.

20 As far as drugs in the groundwater, there's
21 maybe what, 200 people. We have 8,000 people in
22 Campton Hills, and probably a good share of them
23 are taking antidepressants or anxiety pills. So
24 that's another issue I didn't see as --

1 CHAIRWOMAN MELGIN: Please respect the
2 person speaking here.

3 MEMBER MILLEN: It's not going to --
4 apparently not going to interfere with development
5 in the area because someone said there's a
6 450-unit development going in just across the
7 street. It's not easy to find. It would be a
8 nice calming atmosphere that rehab facilities
9 should have. So for those points I'll probably
10 vote for it.

11 CHAIRWOMAN MELGIN: Okay. Thank you,
12 Molly.

13 MEMBER ARIS: I have a few comments just
14 on the first point.

15 MR. VANKERKHOFF: Tracy, microphone.

16 MEMBER ARIS: Sorry.

17 I have a few points just on the first
18 item. I realize that the goal posts for this
19 issue have moved in five years. Luckily I've only
20 been exposed to it for a year. However, I know
21 that the business case changes, I understand that
22 treatment options are changing, what's getting
23 recommended. I know that the opioid epidemic is
24 not getting any better.

1 So I recognize that fact. I'm not saying
2 whether it's good or bad; I'm just recognizing the
3 fact that this is a fluid and changing situation,
4 and how that impacts land use is why we're here.

5 I'm not here to discuss the legal
6 implications of the consent decree because I did
7 not go to law school. And I understand that's a
8 concern for folks, but this is not the forum nor
9 would I feel confident to address that.

10 The things that I do feel confident that I
11 am still very concerned about are the
12 environmental issues, and I think most people who
13 have spoken have brought that issue up. And we
14 can talk about, you know, land treatment systems
15 and all of those things. I didn't hear any data
16 that said X number of clinics use this form of a
17 treatment system in a rural setting, and I am a
18 big believer in data. Having worked in a large
19 manufacturing company for many years and having
20 been submitted to going to black belt training for
21 Six Sigma, I believe that data is something that
22 builds public confidence.

23 And in our last session last year we put
24 on a condition and the staff recommended it to us

1 that the petitioner provide water test results for
2 monitoring wells and spray irrigation discharges
3 both testing for pharmaceuticals on an annual
4 basis. And I understand, you are doing what the
5 State of Illinois has asked you to do, but I also
6 know that the State may not be exactly up to date
7 on those things and also that the State probably
8 doesn't have the resources to come and check every
9 single facility. And as a potentially future new
10 member of the community from a business and also
11 from a good neighborly perspective, I think that
12 that is something that's just a no-brainer. You do
13 that, you get the data, we talk about the data, and
14 it either says yep, it's working, or no, it isn't.

15 I realize I can't change the consent
16 decree, but if I got my vote, that would be the
17 one thing I would add to the consent decree
18 because it's just the right thing to do and it
19 builds confidence. You know, I'd want it if you
20 were putting the treatment facility on the east
21 side of the river over in St. Charles; I would
22 still ask for that.

23 I have a strong -- I have a strong moral
24 feeling about groundwater, and we are blessed to

1 live on the Fox River, and we are blessed that we
2 have water resources for our businesses and for
3 our farmers, and we all have a responsibility to
4 keep it clean, and I think we need to do more than
5 the minimum that the law asks.

6 The only other issue, I understand that --
7 this has been very difficult because the consent
8 decree is different than our normal petitions, and
9 we have had to factor in other things that we don't
10 normally deal with or that I even knew anything
11 about until about four weeks ago.

12 I do think that there's something better
13 we can do in regards to fire and police. And I
14 don't know what that is, but I know that Chief Nixon
15 was very eloquent in talking about the issues that
16 are being faced.

17 And I know the City of Elgin just approved
18 a 450-unit subdivision 4.7 miles from the existing
19 facility, and they're just going to, you know,
20 have other people help them if they don't have
21 resources. So that kind of -- that goes to your
22 point of, you know, we just want to be treated
23 like everybody else.

24 But, you know, we're getting density in a

1 place that we never had density, and you're asking
2 us to give you a permanent special use that went
3 with an academy educational facility for at-risk
4 youth. And this is still a special use that does
5 apply in that area -- I mean, I believe that the
6 use you're asking for fits within that issue, but
7 I think we need to come up with something unique
8 that kind of helps make that a reality versus
9 waiting, hoping something doesn't happen or seeing
10 how bad the issue gets and then going back through
11 the court system or, you know, we start having
12 lawsuits happen again.

13 And I realize with consent decrees it's a
14 Federal enforcement, but I think that we're all
15 smart enough to know that if we come up with
16 something that doesn't make everybody completely
17 unhappy, but we can try it and get some data on
18 it, that goes a long way to actually making a
19 business viable and allowing the people who run it
20 to focus on those patients and not on, "I have to
21 go meet with this person to talk about ambulances"
22 or "I've got the newspaper breathing down my neck
23 because, you know, we've had X number of issues."

24 So for that first point those are kind of

1 the things I'm honing in on. I know I can't make
2 a motion to say I'd like you to do X, but I'd
3 really like you to go back and think about it
4 again. I know you spent a lot of time in
5 discussions, I know none of us were a part of
6 that, but I have a chance to say my piece and I'm
7 saying it now. Thank you.

8 MEMBER LAKE: I do think that it's
9 unfortunate that we're coming back under these
10 conditions, but I do have to say for reading
11 through everything that we left behind us in
12 February of 2017, and looking at what has been
13 brought to us as what's now called 4462, the other
14 consent decree, that we left our meetings regarding
15 Maxxam concerned about ambiguities and lack of
16 clarity on how some things would be replied to.
17 One thing that I am coming to realize is that by
18 way of the consent decree we actually have some
19 answers that we didn't have in February of 2017.

20 I went on the record as a no vote. At
21 this particular moment yet I'm not decided whether
22 I'm yes or no. I have to actually -- I still sit
23 here and deliberate everything because of the
24 concerns that I personally was facing that I put

1 out there in front of us on February 21st of 2017.

2 One, a concern of the conditions of the
3 road, which is one that is here, as well. But
4 then I ask myself -- that's been reviewed by KDOT.
5 KDOT has put a report on file that there is no
6 change to that road that needs to happen in order
7 to accommodate this facility.

8 It's still unfortunate that it's two lanes,
9 and it's a rural setting, and there's emergency
10 vehicles that may be involved. But there's
11 emergency vehicles that are involved now in just
12 the Campton Hills service that go down those same
13 roadways. So I'm perplexed about which way to
14 measure that because the studies are anywhere from
15 500 to 300 and unknown beds. So there's a new
16 ambiguity in there because we thought we were
17 talking about 120 beds. So that kind of throws a
18 little bit of a wrench in the works when you're
19 talking about traffic patterns and formulas. That
20 became unclear to me.

21 The other concern that I had was that we
22 weren't -- actually, I believe the concern is that
23 we weren't knowledgeable enough to know how to
24 trust the standards of 2060, but we're really not

1 here to be the authorities on 2060. I think what
2 I came to tell myself on that one is I have to be
3 able to trust that there are things in place for
4 the measurement of performance and the allowance
5 of business procedures based on that performance.
6 I work in an environment where we are measured
7 against certain performances, and you have to
8 abide by the certain performances, or you simply
9 cannot go any further. So there is a bit of trust
10 and a reduction of speculation.

11 So other than saying all of this, I really
12 don't have a final conclusion. I'd like to
13 continue to deliberate as a group through all of
14 A through F and kind of see what pans out.

15 CHAIRWOMAN MELGIN: Does anybody have
16 anything to say?

17 (No response.)

18 CHAIRWOMAN MELGIN: There were a couple of
19 things that I noticed, and it has to do with sort
20 of the safety.

21 In some of the expert reports in the
22 petition the expert talked about state-of-the-art
23 security system, that there would be video cameras,
24 that there'd be thermal imaging cameras, that

1 there'd be 24-hour security, and now the consent
2 decree is Maxxam's experts will determine what
3 level of security is needed. So -- and then there
4 will be a fence, sort of a perimeter fence that
5 kind of just marks the outline of the property.

6 And the other part on the public health,
7 the safety, the comfort, general welfare, again,
8 I'm going to the number of people that will be
9 present at this facility and how much that would
10 impact the surrounding area. I don't know it but
11 I think it would cause -- if it's not causing the
12 fire district's problems right now, it certainly
13 could distribute those problems with emergency
14 response at the facility.

15 And traffic. I drive Silver Glen -- I
16 mean, I live in Campton. I drive Silver Glen a
17 lot. I'm not sure the infrastructure of that
18 road, delivery trucks and vehicles that are more
19 than the normal rural traffic, you know, there
20 might need to be some infrastructure. There was
21 talk about a left-turn lane, no left-turn lane,
22 that sort of thing.

23 So I think we can just keep going through
24 these unless somebody has -- that first factor is

1 a big one. You know, it's a very high bar, and I
2 had the same issue the last time.

3 MEMBER LAKE: We as a group did.

4 CHAIRWOMAN MELGIN: Yes. So the second
5 factor is that "The special use will not be
6 injurious to the use and enjoyment of other
7 property in the immediate vicinity and for the
8 purposes already permitted not substantially
9 diminish and impair property values within the
10 neighborhood."

11 So we had a lot of expert testimony that
12 we read on this topic. Does anybody have anything
13 to add on this?

14 MEMBER LAKE: In regards to B, I kind of
15 go where I believe we were in our last hearing,
16 and that is that there really wasn't anything to
17 further put out there on the table in regards to
18 this particular one.

19 It is a facility that is -- I'm going to
20 call it barriers rather than buffers. Somebody
21 has used the term buffer, and I've also read that
22 it is not intended to be consider as buffered. So
23 it is in the middle of -- other than the water
24 tower, we don't really see this facility from any

1 of the surrounding area. I believe there was one
2 homeowner that said they could see it from their
3 second-story window. That may have been the last
4 series of discussions from the community, not this
5 one. But that's the only time that I heard it
6 referenced that we could see anything other than
7 the water tower.

8 CHAIRWOMAN MELGIN: Anybody else?

9 MEMBER FALK: I just think it's speculative.
10 I don't think that you can really say whether it's
11 going to impair values or not until it actually
12 occurs, so I don't think that there's --

13 AUDIENCE MEMBER: Could you use the
14 microphone, please?

15 MEMBER FALK: Sorry.

16 I don't know that you can really determine
17 whether it's going to impair or not impair until
18 it actually occurs. I think that there's certain
19 parts in just my personal view that yes, I probably
20 wouldn't want to live close to a facility if it
21 was butting up to my property line. But, you
22 know, again, you buy and you understand where
23 you're buying, and I just don't know how you can
24 determine whether it's going to impair or not

1 impair. I think based on what I believe, I think
2 it would be a bigger downturn in value than not
3 but that's just me.

4 CHAIRWOMAN MELGIN: Anybody else?

5 MEMBER MILLEN: I have to agree with Marc.
6 I don't think there's any way to find out what the
7 property values will be up or down because of this.
8 but I personally wouldn't mind living right next
9 to the facility. Better than living next to
10 120 school boys.

11 And bringing up 120, nobody ever brought
12 up the point it could be less than 120. It could
13 be 80.

14 CHAIRWOMAN MELGIN: Well, we did have 96 at
15 one point, too. That really dictates the amount
16 of activity that would occur, the amount of care
17 that those people would need, what the capacity of
18 the wastewater treatment system is, the roads.
19 That is to me sort of a big issue is how many
20 people will be there and what the impact would be
21 on the environment, on the --

22 MEMBER ARIS: It's the biggest unknown.

23 CHAIRWOMAN MELGIN: We know it isn't a
24 prison. We don't think people should be walled

1 in, this is not what we're saying, but a level of
2 security I think for the people inside, too, would
3 be good to have a little bit more clarification.

4 Is that it for this factor?

5 (No response.)

6 CHAIRWOMAN MELGIN: Okay. The next factor
7 is C, that "The establishment of the special use
8 will not impede the normal and orderly development
9 and improvement of surrounding property for uses
10 permitted in the district."

11 MEMBER MILLEN: I don't think there was
12 much to be said with all the development that's
13 going on there now --

14 CHAIRWOMAN MELGIN: Your mic, Molly.

15 MEMBER MILLEN: I think that one we don't
16 have to spend much time on. With all the
17 development that's going on there it's apparently
18 not hurting the surrounding area.

19 CHAIRWOMAN MELGIN: The one on McDonald
20 and Corron Road at the City of Elgin. So I think
21 the zoning for the Village of Campton Hills and
22 Elgin kind of take care of this factor.

23 MEMBER ARIS: I think it would also be
24 different if this was the first time we were

1 discussing a special use, but as the property has
2 had a special use, you know, that sort of changes
3 how you look at that. Because if it was pristine
4 farmland and we wanted to build a big facility on
5 it, that's a different question than the question
6 we're facing right now.

7 CHAIRWOMAN MELGIN: Factor D, that "Adequate
8 utility, access roads, drainage and/or other
9 necessary facilities have been or are being
10 provided."

11 MEMBER LAKE: Madam Chair, I go back on
12 that one. The only thing that I really have in
13 record is the KDOT review which says it has done
14 the traffic study and that it is adequate for
15 this use.

16 CHAIRWOMAN MELGIN: Can you put the next
17 factor up there for a second? Okay. You can go
18 back. I just wanted to make sure.

19 So I guess the other necessary facilities
20 would also include a wastewater treatment system.
21 And, again, the capacity of those systems depends
22 on the number of people that are going to be
23 using them.

24 Okay. E is that "Adequate measures have

1 been or will be taken to provide ingress and
2 egress so designed as to minimize traffic
3 congestion in the public streets and roads."

4 I think we've had some comment here about
5 the infrastructure and the ability of the roads to
6 handle large vehicles or more vehicles than is
7 normal for a rural road like Silver Glen and the
8 possibility of a left-turn lane or some other
9 modification to the road that would have better
10 ingress or egress.

11 MEMBER LAKE: The one thing that I can't
12 get past is one of my best childhood memories of
13 living on a rural road was the times that I would
14 ride my bicycle sometimes with my parents,
15 sometimes without, sometimes using my hands,
16 sometimes without. It's just part of growing up
17 in a rural area.

18 But the road as it is with or without
19 Maxxam use is just not a family friendly road.

20 CHAIRWOMAN MELGIN: Yeah, there's not much
21 of a shoulder.

22 Any other comment?

23 (No response.)

24 CHAIRWOMAN MELGIN: That "The special use

1 shall in all other respects conform to the
2 applicable regulations of the district in which it
3 is located, except as such regulations may in each
4 instance be modified by the Kane County Board
5 pursuant to recommendations of the Kane County
6 Zoning Board of Appeals."

7 MEMBER MILLEN: I was just wondering about
8 one thing. There was an item that said all signs
9 are going to be on your property. But isn't there
10 a minimum number of signs or -- in the farm district
11 it's only one 20-square-foot sign. Does your site
12 plan show more signs than that? It's not a big
13 deal. I don't think you're going to put up a
14 billboard or anything.

15 MR. TABET: I think we will comply with
16 all ordinances regarding signs. There is a
17 Condition 16 regarding signs.

18 MEMBER MILLEN: Not putting it on the
19 water tower, yeah.

20 MR. TABET: In addition, we will comply
21 with all ordinances regarding signs or any other
22 ordinance.

23 MEMBER MILLEN: Okay. No. E, I don't --
24 I'm sorry -- I don't remember. There was quite a

1 bit of discussion about ingress and egress. Did
2 you end up with one or two?

3 CHAIRWOMAN MELGIN: Just one.

4 MR. LIGUORI: I believe it's one access
5 point.

6 MEMBER MILLEN: That's what I thought and
7 that didn't change.

8 Okay. Thank you.

9 CHAIRWOMAN MELGIN: Any other questions
10 from the Board?

11 MEMBER ARIS: I heard you say but I guess
12 I'd like you to reiterate it for me that should
13 this special use be approved, and if for some
14 reason either Maxxam or a successor company wants
15 to change something in the facility or do anything
16 different that is not discussed, that clearly the
17 successor company or Maxxam would come back to the
18 Zoning Board to discuss that change, that you're
19 not going to go off to the Federal Court and say,
20 "In the consent decree it allows us to put up
21 another building up on the site, and we don't have
22 to go back to the Zoning Board."

23 Is that correct?

24 MEMBER LAKE: Inclusive of the signs?

1 MEMBER ARIS: Yes.

2 MR. TABET: So I think that's correct. I
3 want to make sure there's no ambiguity, there's
4 100 percent clarity.

5 So in Condition 4 it deals with -- or let
6 me start with Condition 3. It deals with existing
7 buildings, and the special use applies to those
8 existing buildings, number one, period, no
9 question, hard stop.

10 Next, Condition 4 deals with a circumstance
11 potentially in the future if we desire to add new
12 buildings, and it provides, quote, "The parties
13 shall comply with all applicable review and
14 approval procedures in the Kane County zoning
15 ordinance, as well as all applicable Kane County
16 ordinances," and then it goes on.

17 MEMBER ARIS: Right.

18 MR. TABET: So if there -- and, again, I
19 don't want to speculate but, you know, for
20 example, if I want to move a kitchen cabinet or --

21 MEMBER ARIS: Oh, no, no. I'm just --
22 what I'm trying to get is I'll call it an
23 affirmation that if there is a change, you decide
24 you want to put another road going north off the

1 property, or you want to start looking at doing
2 outpatient and increasing your numbers that way
3 versus doing the inpatient which is what is talked
4 about in this existing special use request, if
5 there are what I call changes in business operations
6 as a broad term that you or the successor company
7 will be coming pack to the Zoning Board to say,
8 "Yes, you've granted us this special use for this
9 pristine beautiful piece of property" because you
10 want to have your business in a rural setting, and
11 if there is a change that impacts land use that
12 you will come before this Board and file a request
13 just like everybody else who has a special use in
14 Kane County and come to us and say, "We're planning
15 on doing something different, and we are asking
16 for an update to our special use."

17 MR. TABET: So the answer is yes, I
18 provide that affirmation. If the change is
19 something that would require anybody else who has
20 a special use to come before you, that's all we
21 ask, let us be treated the same as everybody else.

22 MR. LIGUORI: And I can add to that. I
23 believe the zoning ordinance has a section on
24 modifications.

1 MEMBER MILLEN: It does. And your site plan
2 that submitted is what you're going to get, and if
3 you want to make any changes, you're coming back.

4 MR. LIGUORI: The ordinance requires that
5 we come back, and I believe the consent decree
6 requires that we comply with all ordinances.

7 So the answer would be if the ordinance
8 requires it, we would be required to come back.

9 MEMBER ARIS: Because some of the language
10 in the consent decree isn't as specific as we get
11 on a normal petition so that we know exactly what
12 the plan is, how many buildings, how they're being
13 used, you know, how many doors -- you know, the
14 whole thing, what your security system looks like.
15 Because that helps us determine which -- either
16 which zoning group to put a property in or to
17 understand if we're spot zoning or whatever.

18 Because the consent decree is not specific
19 in certain areas what we're asking you is that
20 once you make a decision and it looks like it's a
21 change to all the things that we've talked about
22 in two prior petitions, you know, if all of a
23 sudden it's going to be 300 people, and 150 of
24 them are going to be outpatient -- I'm just saying

1 businesses can change. All I'm saying is I would
2 sure like you to come back to the Zoning
3 Commission because that way not only do we hear
4 it, our meetings are open to the public, and
5 they're communicated, and if people want to weigh
6 in on that, that's why we're here. So that
7 transparency that some people have a concern with,
8 there's an avenue for transparency.

9 CHAIRWOMAN MELGIN: You know, I had a
10 question. She made me think of that when she said
11 outpatient.

12 On No. 5 it says that "Facility shall not
13 provide outpatient treatment of methadone patients
14 or any other outpatient program or service unless
15 it's related to a patient's inpatient continuum
16 of care."

17 So when would an inpatient need outpatient
18 services?

19 MR. LIGUORI: So as I understand it, that's
20 a State licensing issue. As part of your license
21 you are required in certain instances to have a
22 continuing recovery plan, and as part of the
23 discharge criteria there are customary and clinical
24 standards that you have to agree to continue to

1 provide. Just like if you're being discharged
2 from a hospital, you get to come back and make
3 sure that the surgery on your appendix is fine.
4 That's a State licensing requirement.

5 So the consent decree, as we've said
6 repeatedly, models itself after in part the
7 regulations that govern these types of facilities,
8 and that is a particular regulation that we're
9 trying to comply with.

10 CHAIRWOMAN MELGIN: All right. Thank you.

11 MEMBER LAKE: I'd like a staff opinion,
12 Mark, if I could, and that is in relation to what
13 was at one time a signed agreement between the
14 fire department and Maxxam.

15 One of those conditions was that they
16 would actually be paving the access to the water
17 supply. Is that a change that would actually fall
18 within "We're doing something different on our
19 grounds," or is that something nonpermitted
20 outside of radar?

21 MR. VANKERKHOFF: If I understand -- and I
22 want to clarify your question. If they had to
23 pave an area on the facility at the request of the
24 fire district, would that be a change coming back

1 to the Zoning Board? Is that your question?

2 MEMBER LAKE: That is my question.

3 Thank you.

4 MR. VANKERKHOFF: That would be subject to
5 the County storm water ordinance they're adding
6 additional impervious area for that type of work,
7 and construction of the storm water facility is
8 already there, so that would not necessarily
9 create a request for a variation from their
10 site plan.

11 MEMBER LAKE: But there would be a County
12 review in regards to --

13 MR. VANKERKHOFF: Correct. Other County
14 permitting requirements apply.

15 MEMBER LAKE: Okay, thank you.

16 CHAIRWOMAN MELGIN: Any other comments?

17 (No response.)

18 CHAIRWOMAN MELGIN: I found one thing that
19 you said interesting when you said the consent
20 decree requires mandatory communication because I
21 think communication is what has been lacking with
22 these petitions and the amount of outreach to the
23 community.

24 I mean, the first factor in building --

1 assuring that the safety, the welfare, the morals
2 of the community, outreach to the community would
3 have been a really great idea.

4 This facility seems like a good use for
5 something like this, but I don't think that the
6 information and the amount of information to the
7 community, especially the Village of Campton Hills,
8 interaction with the fire department, law
9 enforcement on how -- what the impact to the
10 community would be, how you would mitigate certain
11 impacts, how -- you have an open house and had the
12 community come in and understand how things are
13 run, that would have been -- that would have taken
14 you a long way I think with a lot of these people
15 to explain exactly what Maxxam plans on doing and
16 how they're going to do it.

17 It shouldn't be mandatory communication.
18 You should have been able to want to communicate
19 what was going to happen.

20 MEMBER MILLEN: Can I comment on that, too?
21 I was thinking it was just a real shame that from
22 the very beginning all parties couldn't have sat
23 down and got together on this. There was too much
24 anger, animosity, snobbishness maybe, overconfidence.

1 Nobody got along and it's a shame because this
2 facility needs to be in existence, and the
3 community needs to be protected, and it's just sad
4 that it came to what it did. It cost a lot of
5 money and a lot of time, and they're never going
6 to be happy neighbors probably, get along because
7 of this bad start. And that's too bad.

8 So thank you.

9 CHAIRWOMAN MELGIN: Are we ready to take
10 a vote?

11 MEMBER LAKE: I personally still can't
12 answer A. I'll do my best.

13 MR. BERKHOUT: To confirm, this is a motion
14 to approve the petition made in the affirmative?
15 That's correct?

16 MEMBER MILLEN: Someone made a motion.

17 MEMBER ARIS: I did and you seconded it.

18 MEMBER MILLEN: Oh, yeah.

19 MR. BERKHOUT: Aris.

20 MEMBER ARIS: Yes.

21 MR. BERKHOUT: Millen.

22 MEMBER MILLEN: Yes.

23 MR. BERKHOUT: Falk.

24 MEMBER FALK: No.

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1 MR. BERKHOUT: Lake.

2 MEMBER LAKE: No.

3 MR. BERKHOUT: Melgin.

4 CHAIRWOMAN MELGIN: No.

5 (Applause.)

6 AUDIENCE MEMBER: You did the right thing.

7 AUDIENCE MEMBER: Thank you.

8 MR. VANKERKHOFF: Madam Chairman and for
9 members of the public here, thank you for coming
10 and for your participation.

11 Consideration by the County Board of the
12 zoning petition which is the subject of this
13 public hearing is currently set for 9:45 a.m.
14 Tuesday, August 14th, 2018, in the County Board
15 meeting room, Building A, second floor of the
16 Kane County Government Center located at
17 719 South Batavia Avenue, Geneva, Illinois.

18 Persons in favor of or in opposition to
19 this petition who wish to speak before the County
20 Board must file their intention to do so with the
21 zoning officer of Kane County or the County Board
22 no later than Friday preceding the County Board
23 meeting at which the petition is to be considered.

24 Thank you.

1 CHAIRWOMAN MELGIN: Do I have a motion to
2 adjourn?

3 MEMBER ARIS: I move we adjourn.

4 MEMBER MILLEN: Second.

5 CHAIRWOMAN MELGIN: All in favor.

6 (Ayes heard.)

7 CHAIRWOMAN MELGIN: Meeting adjourned.

8 (Off the record at 10:35 p.m.)
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CERTIFICATE OF SHORTHAND REPORTER

I, Paula M. Quetsch, Certified Shorthand Reporter No. 084-003733, CSR, RPR, 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 9th day of August, 2018.

My commission expires: October 16, 2021



Notary Public in and for the
State of Illinois

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