Transcript of Public Hearing 4462

Date: August 7, 2018
Case: Kane County Zoning Board of Appeals
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
PUBLIC HEARING, held at the location of:

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

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

WENDY MELGIN, Chairwoman
TRACY ARIS, Member
MARC FALK, Member
MARY LAKE, Member
MARGUERITE MILLEN, Member

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ON BEHALF OF FOX RIVER & COUNTRYSIDE
FIRE RESCUE DISTRICT:

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ALSO PRESENT:
MARK VANKERKHOFF, Zoning Enforcing Officer
KEITH BERKHOUT, Secretary
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CHAIRWOMAN MELGIN: Hello. I want to have your attention, please. We're missing one Board member who is still at the National Night Out. He was leading something in South Elgin, and he said he's going to be about 20 minutes late. So we're going to wait for him because we need to have a quorum. So hopefully he will be showing up soon.

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

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

Keith, would you do roll call.

MR. BERKHOUT: Aris.

MEMBER ARIS: Here.

MR. BERKHOUT: Falk.

MEMBER FALK: Present.

MR. BERKHOUT: Lake.

MEMBER LAKE: Here.

MR. BERKHOUT: Millen.

CHAIRWOMAN MELGIN: Here.

MR. BERKHOUT: Barbosa.
(No response.)

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

(The Pledge of Allegiance was recited.)

CHAIRWOMAN MELGIN: Welcome back and --

welcome back to the people who were here last week, and welcome to the people who are attending the first time tonight.

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

The ZBA Hearing Exhibit 1 consists of a proposed consent decree and Exhibits 1 through 7 of that consent decree, a copy of all the exhibits marked by this Board, including the Zoning Board Hearing Exhibit 1 was made available on the County
ZBA petition website under Petition 4464 on August 2nd. So right after the hearing on the 1st they put the exhibits on the website.

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

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

(No response.)

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

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

Again, I want to remind you that we reviewed the previous record in Petition 4362. All of us were here last week on the 1st; we heard
the evidence, argument, public comment, so we appreciate not repeating previously made evidence or comments.

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

MEMBER LAKE: We're on Petition 4462.

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

So I think we are ready to start public comment.

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

MR. SIERCKS: I did.

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

MR. SIERCKS: You're not.

So I'm Kenneth Siercks. I live at
MR. SHEPRO: Is the microphone on?

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

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

I saw an interesting suggestion, which was to help eliminate the pressure for the fire department and the police department is that if they had their own on-site ambulance so that they could just basically get in the bus and go to the hospital kind of thing. So that might help
alleviate it, and their own security to support that kind of thing. And that was one of the reasons that one of the other Board members had voted it down.

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

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

CHAIRWOMAN MELGIN: Thank you.

Next speaker, John Bover.

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

CHAIRWOMAN MELGIN: That's fine.

Jennifer and Ty Walikonis. Was I at least
close?


I am a physician and I live at 8N466 Crawford Road, so not too far, and my concern is about the ground runoff.

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

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

So please take that in your consideration.

Thank you.

CHAIRWOMAN MELGIN: Thank you:

Maureen Zwier.

MS. ZWIER: I'm Maureen Zwier,

41N660 Fox Bend Drive. I did speak last week, but I have some more information.
Thank you for letting me speak again tonight. After doing some more research, I found many more studies proving that pharmaceuticals end up in drinking water.

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

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

"Source water, finished drinking water, and distribution system water" a/k/a tap water "from 19 U.S. water utilities was analyzed for 51 compounds between 2006 and 2007." The 51 drugs tested include fluoxetine, a widely prescribed anti-depressant known more commonly as Prozac,
meprobamate, an antianxiety medication, and
Risperdal, an antipsychotic. All three drugs may
be prescribed for detox and rehab patients.

The results of the study showed that
meprobamate, the antianxiety medication, was found
in 16 source water samples. The drug was still
present in 14 of the 16 finished drinking water
samples and 11 of the 16 tap water samples.
Three source water samples contained Prozac. Two
of the three finished drinking water samples still
contained Prozac, and one of the three tap water
samples still contained Prozac. Risperdal, the
antipsychotic, was found in one tap water sample.

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

Combine the presence of EDCs in water, the
potential harm the EDCs can cause, the presence of
them in drinking water, the extremely hazardous
road conditions, and the extremely limited
emergency response capabilities. Any one of these
factors is enough to deny the zoning request. I
hope that all of these factors compel the ZBA to
reject Maxxam's request. Thank you very much.

CHAIRWOMAN MELGIN: Thank you.

(Applause.)

CHAIRWOMAN MELGIN: Next speaker is
Edward Fiala.

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

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

My area of Kane County is served by the
Fox River & Countryside Fire Rescue District. We
used to be served by the award winning and
outstanding St. Charles Fire District, a fire
department with the best possible rating. Our fire
district under the direction of the enormously
inept James Gaffney severed the contract my
district had with St. Charles and decided to
create a physical district of their own. We now
have a fire district with an insurance rating
slightly above that of a bucket brigade.

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

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

Let's talk about response times for a
moment. The American Heart Association's scientific position is that brain death begins somewhere between four and six minutes after someone experiences a cardiac arrest. Cardiac arrest can be reversed if treated within a few minutes with an electric shock. Studies have shown that a victim's chance of survival is reduced by 10 percent with every passing minute.

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

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

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

   Our fire district admits it cannot handle
today's demands and certainly cannot handle the
increased burden of servicing in any manner
Mr. Marco's proposed facility. Every additional
EMS run to Maxxam will mean some resident within
my fire district will have to wait longer for
assistance. When seconds count, the Maxxam
facility will guarantee that you will have to wait
for many more minutes for help to come. If your
loved one is choking on a hot dog, experiencing
anaphylactic shock due to a food allergy, or
having a heart attack, they will die because of
the increased response time. This is not
hyperbole; this is a fact. Maxxam should be
located where EMS, emergency medical services, are
taken for granted, not where competent EMS is a
distant memory as where I live now.

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

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

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

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

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

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

CHAIRWOMAN MELGIN: Thank you.

(Applause.)

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

MR. LULVES: It's up to you.

CHAIRWOMAN MELGIN: Sure.

Do I need to swear him in?
AUDIENCE MEMBER: You don't cross-examine in a public hearing.

MEMBER LAKE: But we're being lenient.

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

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

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

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

MR. FIALA: Thank you.

CHAIRWOMAN MELGIN: Okay. Sharon O'Brien.

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

And I just want to -- I'm just kind of taken back. I really didn't think that that kind of incensing comment was appropriate. We're here in good faith, and people who sit back there can't see faces, and it's very difficult to remember all the faces that have come to this meeting.
So I realize you're an attorney, and attorneys tend to have reputations for being a little gruff, but you don't have to do that to anyone here. We have our homes and our families at stake.

(Applause.)

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

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

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

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

And by the way, we live in a state where we are the highest taxed, and I know we can't take
any more. We just can't take any more taxes.

We're talking about as -- just to restate, the
cost of just the whole septic system in general
and the police and fire department, but the other
thing is the cost of this road construction that's
going to have to take place.

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

I know that developers have had to actually
pay some of the cost in order to get approval to
build, you know, some of these housing developments,
and I wonder if anything has been really presented
in terms of, you know, have they brought forth
what they would be willing to do to help the
community to address all of those costs, or are we
just going to let them say that we're abusing ADA
and start suing people.

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

And the other thing is -- and the final
point I have is, okay, so when I end up -- let's
say the facility is built, and I end up not
going the ambulance to my house and end up even
further damaged from a health perspective. What
is my recourse going to be? What is my recourse
going to be when my home cannot provide for me the
move to a smaller house that can better -- that I
can, you know, be better housed with my disability
and the deterioration of my medical -- you know,
am I going to be able to sue and recoup what has
knowingly been put in that, you know, we fully
expected that people are going to die in our community?

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

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

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

CHAIRWOMAN MELGIN: Thank you.

(Applause.)

CHAIRWOMAN MELGIN: Mark Holstein.

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

About three weeks ago I ran into a Marine.

I was at the Salvation Army actually on 7th giving
out food and he came in, and after conversation I
found out he had $7 until the end of the month, and
he had to walk five miles to his house. I took
him home; on the way I found out that he was an
alcoholic, and the only person in his family to
talk to him was his one sister.

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

So I started calling all these people he
gave me. He gave me the Veteran's Administration
person that he's being taken care of; he gave me
his Marine counselor; he gave me his sister. And
yet the bottom line is the poor guy has been in
two overnight 7- to 30-day rehab places and has
not been successful in kicking his habits, which
is a sad thing because he's a smart kid, 38 years
old, the experiences that he had in Afghanistan
would just -- it's almost a shame to say I'm American that they put nine guys in a situation like that. I mean, it was absolutely horrible.

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

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

A couple of things that he told me that I think are the biggest concern for me and my grandkids is that Jimmy says, "One of the reasons I don't get cured is because there's alcohol in
the facilities available; there's drugs in the
facility available." And I said, "How can that
be? This is like where you're supposed to get
well." And he said to me, "Are there drugs in
prison?" He says, "Is there alcohol in prison?
Don't you think that's a little more secure than
these places that I go?" So it happens.

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

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

And we kept talking and probably the
biggest problem is that all of a sudden there's a
lot of drug dealers -- mostly drug dealers but
they also get into the alcohol -- that come to
this facility because there's like hundreds of
addicts and hundreds of drunks in one place. You
don't have to stand on a curb and wait for a car
to go buy to sell your package; you've got them
all there.

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

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

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

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

You seem to be agreeing with everything
I say.

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

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

CHAIRWOMAN MELGIN: Thank you.

(Appause.)

CHAIRWOMAN MELGIN: Ed and Patty
Schreiber.

MR. SCHREIBER: Good evening and thank you
for the opportunity to address the Board.
As evidenced by our first speaker this evening, there does appear to be some confusion among the general public as to just what this proposed consent decree represents, and I just want to point out for the benefit of this gentleman and other individuals who might have such confusion that it is not a finding by the Federal Court or an expression of the Court's opinion nor is the Court encouraging you to vote one way or the other. Rather, the consent decree is a settlement proposal constructed by our State's Attorney Joe McMahon and his staff and the plaintiffs in this case. If accepted by you and the County Board, the Court merely agrees to maintain supervision over the implementation of the agreement. The Court expresses no opinion as to how your vote -- or how you should vote or as to the merits of the case.

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

As to the substance of the proposed decree, based on the known evidence as well as the statements and admissions made by Mr. McMahon
himself, this is a very bad deal for Kane County. It's even worse than the two prior proposals that were previously rejected by the County.

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

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

It's been a year since this lawsuit was filed, and I've seen no evidence of the serious pursuit of discovery or preparation for trial
beyond the routine exchange of documents required by the Court. Not a single deposition has been taken. Nor has Mr. McMahon vigorously pursued a motion to dismiss this meritless lawsuit. As every litigator knows, the very best settlements come to those who are thoroughly prepared for trial.

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

I was stunned. So I discussed this with a number of people, including Van Richards, a retired Kane County attorney who testified before you last week. Between us Van and I have close to 100 years of litigation experience, and we both concluded that this needed a closer look. So
thereafter we personally met with Mr. McMahon at
his office where he again denied this suit was
near settlement. I believe his exact words were,
"We are a long way from settlement."

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

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

Despite Mr. McMahon's assurances to the
contrary, Mr. Richards and I continued to hear
settlement buzz, so Mr. Richards filed a Freedom
of Information Act request asking the State's
Attorney's office for the billing statement, and another interested citizen obtained a partial copy of the court docket on this case.

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

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

MR. SCHREIBER: No, I don't.

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

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

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

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

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

CHAIRWOMAN MELGIN: Okay. Go ahead.

(Applause.)

MR. SCHREIBER: It's interesting that Mr. McMahon chose Mr. Hoscheit, who appears to favor Maxxam, to accompany him to the settlement discussions and not County Board Barb Wojnicki
whose district would be most severely impacted by
the statement.

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

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

I submit that the real danger here is not
Travelers who will walk but that the settlement
of this case will set a dangerous precedent and
expose this county to future liability not just
from future developers or residents whose fire and
rescue district will be compromised but from
patrons of an institution our own State's Attorney found to be deceptive and likely incompetent, patients who would be going through detox and being administered methadone 9 miles and 20 minutes or more from the closest hospital assuming an ambulance is even available.

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

As plaintiffs admit in the first couple pages of their complaint, Glenwood was a residential school for at-risk young men who came from families in distress in gang-plagued neighborhoods. This
community in which it is located is a community of
demonstrated tolerance for people going through
difficult times. The discrimination counts are
without merit and should be the subject of a motion
to dismiss. As to the claim for loss of business,
that is pure speculation. Maxxam has absolutely
no experience in drug treatment, they have no
patients, no business model, and no ability to
show their capacity to operate, much less operate
at a profit.

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

(Appause.)

CHAIRWOMAN MELGIN: Okay. Thank you.

Mike Tyrrell.

MR. TYRRELL: I'll pass.

CHAIRWOMAN MELGIN: You spoke last week.

Thank you.

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

(No response.)

CHAIRWOMAN MELGIN: Okay. Is there anyone
else here that didn't sign in but would like to
make a comment?

Okay.

MS. HARTMANN:  I signed in.

MR. VANKERKHOFF:  Okay.  Come on up.

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

MS. HARTMANN:  Pat Hartmann.

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

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

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

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

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

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

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

There are environmental concerns, as well. Glenwood School has well and septic for water treatment. It's located in an area that has many springs, ponds, and wetlands. With drugs coming in for treatment and drugs eliminated after treatment, there's concern about water quality and
its effect on the area. This is a headwater area for Stony Creek which starts at our farm, which leads to Otter Creek, on to Ferson Creek.

The special use would be injurious to the use and enjoyment of other property owners in the immediate area. Forest preserves are meant for conservation, study, citizen enjoyment, not for buffers for private for-profit businesses. A special use of this type, which is detox and substance abuse rehab, is not suitable in the midst of an area of existing homes and farms. Rehabilitation and detox facilities with patients who are disabled should be located on or near a medical campus where they can receive appropriate medical health if needed and where there is adequate community services such as fire, and emergency, and paramedic services, and police departments.

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

Normal and orderly development of
surrounding property would be impeded. The proposed use of the Glenwood property does not fit the vision of the local community to maintain its semirural character environment and preserve its character.

Access roads from main highways are rural, curvy, and a long distance from hospitals and community services such as police and emergency services which are limited in this well. Community services for the local citizens would also be compromised if a facility of this proposed size was allowed in the area.

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

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

We all understand that facilities of this type are needed, but they should be sited appropriate for their needs. A semirural/rural
location in an established community without suitable community services, many rural roads, and a location far from a hospital and medical facilities is not an appropriate location for a facility of this type. Please honor and follow your zoning ordinance, your 2040 plan, and your six requirements that this -- that must be met for special use.

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

(Appplause.)

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

On that date my wife suffered a severe back injury that required me to call 911, and it was approximately -- we live 2 1/2 miles from that station, Station No. 2 I think they call it. It was approximately 20 minutes before a truck or an
ambulance pulled into my driveway. Had this been a severe life-threatening situation, the outcome would have been a lot different.

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

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

Thank you very much for your time.

CHAIRWOMAN MELGIN: Thank you.

(Applause.)

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

Mr. Carrara.
MR. CARRARA: Yes. Thank you, Madam Chair.

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

MR. LIGUORI: Yes.

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

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

MR. CARRARA: Thank you.

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

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

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

MR. TABET: Caesar Tabet and Chris Liguori.

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

CAESAR TABET,

having been duly sworn, testified as follows:
EXAMINATION BY COUNSEL FOR THE OBJECTOR

BY MR. CARRARA:

Q As part of the consent decree there was --

one of the exhibits was the proposed ordinance

which bears a date on the County's website of

July 12th, 2018. While it appears this ordinance

is preordained, I'd just like to ask you a few

questions about it.

On page 3 of the ordinance, paragraph 4

states that, "A special use permit to operate the

private-pay alcoholism and substance abuse

treatment facility on the property is hereby

granted to Maxxam."

Is that a condition that the petitioner is

agreeing to, that it will be a private-pay

facility?

A The conditions are set forth in the

consent decree, and the conditions are contained

at pages 5 through --

AUDIENCE MEMBER: Can't hear.

MR. TABET: Can everyone hear me?

AUDIENCE MEMBER: Yes.

MR. TABET: Sorry about that.

AUDIENCE MEMBER: No problem.
A (Continuing.) The conditions are set forth in the written consent decree at pages 8 -- I'm sorry -- pages 5 through 8, and they're numbered 1 through 17.

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

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

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

A Well, the application and petition is for a private-pay facility. The conditions in the
consent decree do not specifically say it's a private-pay facility only. To do that would be illegal and discriminatory and barred by Federal law.

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

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

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

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

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

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

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

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

A The number of patients that can get into the existing patient lodges on the site plan will be determined by the applicable State licensing requirements and occupancy requirements that are set forth in different sections of the consent decree, including the section that you cite, Section 13, the specific reference to the Department of Illinois Human Services Code Section 71 Ill. App 2060. And the section is 100 pages long, but it contains detailed Illinois licensing occupies requirements that must be complied with before a permit is even issued and before the facility is even off the ground and other conditions in the consent decree, including, for example, as I said in my opening statement, Condition 1 at page 5 that says, quote, "Maxxam and the facility shall obtain all necessary licenses from the State of Illinois prior to the start of operation." That includes licenses regarding qualifications. If we're not qualified,
MR. CARRARA: Ms. Chairwoman, I asked him a simple question, what is the number. I understand they have to comply with them.

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

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

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

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

Q So as part of the pro forma that the petitioner prepared, it didn't determine how many patients it could fit in the facility to run its financial numbers?
A I think that there --

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

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

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

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

The consent decree contains specific provisions that directly apply to the number of people who can occupy the facility. Those restrictions and limitations are at Condition 13 at page 7 that specifically cite to the applicable code regulations of the Department of Human Services and Condition 1 at page 5 regarding all required licenses before the start of operations under Federal, Illinois, and local laws and
regulations, and Condition 3, the special use applies to the existing buildings, and Condition 4, with respect to any potential new buildings, the consent decree says, quote, "The parties shall comply with all applicable review and approval procedures in the Kane County zoning ordinance," end quote.

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

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

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

Q In your initial application it was an
application for a 120-bed facility. Would you agree with that?

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

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

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

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

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

I cannot sit here and say with all certainty to what extent the facility will have occupancy in 3 years, 5 years, 10 years. What I can say is the
consent decree specifically says that it will be
operated consistent with all requirements of
public health, safety, and welfare that's the
condition -- it's a threshold Condition No. 1, and
if at any time -- if at any time under any
circumstance there is a concern, or a threat, or a
risk to public health, welfare, or safety, there's
a specific remedy, enforcement remedy in the
consent decree.

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

That is a specific statement in the
conditions of approval in the Federal Court
consent decree. If at any time during the history
of this facility there is any concern about public
health, welfare, or safety, the consent decree
provides a mandatory specific mechanism to raise
that issue, as I said in my opening statement at
Section 5B at page 9 and to have that issue resolved among the parties, and if they fail, the Federal Court.

CHAIRWOMAN MELGIN: Okay. Thank you.

You'll have closing comments, also.

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

CHAIRWOMAN MELGIN: Starting with "The extent"?

MR. CARRARA: Yes.

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

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

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

Q "To the extent."

A "To the extent any of the conditions conflict with or are in contravention of any Kane County ordinance in existence as of the date of this decree or any State of Illinois law, State of Illinois license and operation requirements of Department of Human Services, Division of
Alcoholism and Substance Abuse Treatment and
Intervention licenses, found at 77 Ill. Adm. Code,
Subchapter D, Part 2060, the code or Federal law,
the condition is invalid and shall not be
enforced."

That sentence --

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

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

A I'm sorry; I lost the question.

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

A I believe that all the exhibits have been
attached. If the settlement agreement is not,
it's something between Kane County -- the
defendant and their lawyers.

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

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

Q So is it fair to say, then, if after a
special use is -- again, assuming for a
hypothetical it's approved by the County Board --
who -- could the fire protection district be one
to seek relief that there's diminution in the
health, safety? Could a private citizen do that?
Who has to be the one to petition the Court that
there's been a breach of this consent decree?
A Well, you know as a lawyer licensed to
practice law in Illinois as well as I do that
anyone can seek to intervene in a case or petition
the Court for relief under a Federal Court consent
decree.

Q Thank you.

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

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

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

CHAIRWOMAN MELGIN: Go ahead.

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

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

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

    CHAIRWOMAN MELGIN: Okay. Thank you.

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

    Q Sir, is it both Glenwood and Maxxam's position that the approval of a special use after hearing the most recent testimony from the fire protection district will not have a negative
impact on the health, safety, and welfare?

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

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

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

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

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

   MR. LIGUORI: The answer to that is yes,
there is.
MR. CARRARA: Thank you.

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

CHAIRWOMAN MELGIN: How many questions do you have?

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

MEMBER ARIS: Is there a time limit for questions?

MR. SHEPRO: Are you asking me?

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

MR. SHEPRO: I don't think so.

MEMBER ARIS: Because it's 9:00.

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

EXAMINATION BY COUNSEL FOR THE FOX RIVER & COUNTRYSIDE FIRE PROTECTION DISTRICT

BY MR. SHEPRO:

Q My first question is, with regard to that second sentence of C, conditions of approval, would you agree that that is a statement of the law and would be applicable even if that sentence
were not in the decree?

A  No.

Q  You would not?

A  No.

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

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

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

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

And there's a notion -- some people have a notion that that means that for all time the number of people have to be frozen at 60, or the number has to be frozen at 90, or the number has to be frozen at 125. And really good lawyers for Kane County as I understand it said there's a question about whether that's illegal as a zoning matter and unenforceable as a zoning matter.

There were really good lawyers who said you cannot not enforce a provision like that because it's discriminatory, and it's not a zoning of expertise, it's a matter of medical health professionals' expertise.

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

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

MR. LIGUORI: I can add a little bit of light on that. That was not the maximum occupancy. In fact, if you look at the application, specifically
Section 2 on page 3, it details what the development request is, 2.0.

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

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

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

MR. LIGUORI: Yeah. So --

MR. CARRARA: He was answering the
questions, sir.

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

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

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

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

CHAIRWOMAN MELGIN: That's true.

MR. TABET: Okay.

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

MR. SHEPRO: Our point is that this
application was submitted, and testimony submitted
to this Board, that I don't think there's a single
person in this room that did not believe that that
was their request was for 120 beds.

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

BY MR. SHEPRO:

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

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

MR. SHEPRO: That's all I have.
CHAIRWOMAN MELGIN: Okay. Thank you.

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

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

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

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

(No response.)

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

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

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

MR. VANKERKHOFF: Madam Chair, if staff could request that the attorney for Glenwood
identify herself for the record, please.

CHIARWOMAN MELGIN: Yes. I forgot.

Thank you.

MS. ROSENBLUTH: Adrianne Rosenbluth.

CHIARWOMAN MELGIN: Could you spell it?

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

CHIARWOMAN MELGIN: Thank you.

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

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

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

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

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

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

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

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

So they have brought a new application with new conditions, and it is demonstrably and by their own admission different than the application that they submitted previously. And yet they don't seem to believe that they have any obligation to present any evidence with respect to the new provisions and new conditions, and I do not see how they can legally comply with the requirements of the Kane
County zoning ordinance when they do not present any such testimony.

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

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

Then we have --

MR. TABET: Your Honor, may I object.

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

MR. SHEPRO: That's all right.

Then we have the Community Foundation of the Fox Valley. You'll recall during the entire hearing the only questions that Maxxam asked anybody were to ask my fire chief if he didn't expect to get a whole bunch of money from the Community Foundation of the Fox Valley, and I
couldn't help but think that somehow they had the
idea that that was somehow connected with the fire
district which, of course, it is not. And frankly,
compared to what they had promised us under the
agreement, even if we got all of the $15,000 a
year, that wouldn't even begin to allow us to hire
back any of the personnel for more than about a
day or two.

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

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

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

I guess I could go on and on, but it seems
to me that we never had adequate disclosures under
the County zoning ordinance as to who the parties
in interest are. I think that is a fatal defect.
And if this is intended to be a zoning hearing as
opposed to just a settlement agreement hearing,
then they have failed to meet any of the minimum
requirements to prove a case.

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

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

Thank you.

CHAIRWOMAN MELGIN: Thank you, Mr. Shepro.

(Appause.)
CHAIRWOMAN MELGIN: Are there any other units of government who wish to make a statement?
(No response.)

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

MR. CARRARA: Thank you, Madam Chairwoman.

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

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

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

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

Additionally, you may recall their real estate expert under my cross-examination Mr. MaRous initially when he did his report for the Kiva
location said this location was not appropriate
for a medically intensive use. Yet when
Mr. MaRous came back for the petitioner, the same
report except for that one provision of his
paragraph was removed from his current report.
Under questioning when I asked him why that was, I
think you heard his comment was, "I don't recall."

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

MEMBER FALK: We can put them up.

MR. CARRARA: Thank you.

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

Their own traffic expert said he was never
asked to do a full traffic evaluation on the
facility. He was given a hypothetical staffing
level and asked to do trip generation counts on
the staffing level. We don't know what that
hypothetical staffing level was on. I guess one
could assume it may have been on a 120-patient
facility as they requested in their application or
it couldn't have been, but I suspect it wasn't
more than the 120.

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

And, again, with all due respect, if
you're sitting here today, and you're going to
believe that Maxxam never did a determination of
how many people it could fit into a facility it
was going to pay $10 million to purchase, they
were just going to guess at some point in the
future, that's ridiculous. They know how many
people. They just don't want to tell you, the ZBA
how many people can fit in there because you know
it's going to be more than you want to here, and
it's going to have a bigger impact on the health
and safety of the citizenry.

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

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

Thank you.

(Applause.)

CHAIRWOMAN MELGIN: Thank you. Okay.

Petitioner's closing statement, five minutes.

MR. TABET: Yes. Thank you. With your
permission I'd like to split the closing between
myself and Chris Liguori.

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

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

The concerns fall into three broad categories. The first category is potential future problems sometime down the road, like, for example, a potential future resource drain on the fire district, or a potential future problem with traffic, or a potential pollution issue down the road -- that's a potential that Mr. Liguori will address. There are many potential future risks.
All of those potentials are future potential risks, and second, the consent decree has specific provisions to detail exactly what happens if they materialize. But the question for you is, well, what happens if they don't materialize.

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

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

All the taxes will be paid. 80 to 120 new
jobs, no dispute, that's undisputed in the record. Over $250,000 to the schools in Kane County, undisputed in the record, and that's based on 2014 taxes. They're not frozen in the future.

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

That's the first category, potential future risks. The second category -- and I believe this was the president of Campton Hills so powerfully and eloquently said that we haven't talked with him, and if that's true, I apologize, we should talk with him. But the consent decree, please read it carefully. It contains an important provision that nobody commented on that before we
begin operations we have to file a written certificate of compliance with all the conditions. It's at page 5, Section 3C, second paragraph. In the form of compliance, like a Sarbanes-Oxley or something similar, it's attached as Exhibit 4, and we have to do that every year on the anniversary on the facility. And it's public; everybody in the community has a right to see it. It will be posted. There is mandatory communication that's spelled out in the consent decree.

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

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

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

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

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

I think it's an important issue. I think that the residents are rightly concerned about it, but I think a lot of their views are based on facts that maybe are misunderstood, or maybe there
isn't a good understanding of how this wastewater system works. I know it's part of the factors of public safety, and so we thought it would behoove us if we took a minute to address it very briefly.

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

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

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

So when we talk about risk, in our view
and in our expert's view who has submitted at least two reports in these proceedings, the risk is nonexistent or it's minimal because there is nothing being discharged directly into the groundwater or the water supply. The irrigation system that this uses is designed for the roots, the roots that are being irrigated to absorb the nutrients in the wastewater.

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

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

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

CHAIRWOMAN MELGIN: It's pretty much the same.

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

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

MR. LIGUORI: So what we would say --
Mr. Tabet talked about potential problems and speculation. There is no evidence that we are aware of that says that anything that's irrigated makes it past the root system, there's nothing.

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

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

Of course, the IEPA can tell us what to monitor for. So if, for example, I think one
witness -- or one resident testified about what people monitor for. The IEPA certainly has the authority if it wants to require us to monitor for pharmaceutical waste within human waste, and we're required to do that by law, and we're also required to do it by the consent decree in Condition 12.

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

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

Thank you.

CHAIRWOMAN MELGIN: Okay. Thank you.

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

MEMBER ARIS: I move we close the public hearing.

MEMBER MILLEN: I'll second it.
CHAIRWOMAN MELGIN: So moved the hearing is closed. Take a vote. All in favor.

(Ayes heard.)

CHAIRWOMAN MELGIN: Moved -- I'm still thinking about the wastewater treatment system. So at this time the Board will deliberate on the factor. Is there a motion concerning the petition?

MEMBER ARIS: I move that we approve Petition 4462.

AUDIENCE MEMBER: Can't hear.

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

CHAIRWOMAN MELGIN: A second?

MEMBER MILLEN: Second.

CHAIRWOMAN MELGIN: All in favor?

MEMBER ARIS: We need discussion.

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

So, Mark, you put the slides up for the zoning six factors?
MR. VANKERKHOFF: Thank you, Blair. The factors are up on the screen for your reference. We'll start with A and B for you to have a discussion on and cycle through the slides as you move onto other ones.

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

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

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

Does somebody want to start the discussion?

(No response.)

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

And one of the issues that has come up is the number of beds, the number of occupancy.
Because the amount of patients or people who are going to live at that facility, that has an impact on some of these other things that have come up. It's how many potential ambulance calls could there be; it would have an impact on the sewage treatment system; it would have an impact on traffic.

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

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

In the petition it was a full-time medical director. Now it's 30 hours a week. So there's a -- I have a concern about just how the number of
people in this facility could impact all these
other factors.

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

The other thing that you mentioned was
this potential for future risk. You know, I agree
a lot of this in any development is speculative at
some point. Any project that I look at that's
going to be new, whether it be a mine, or a
development, or a hospital, they're looking at the
potential impacts of that project. But you also
have a lot of data to look at and a lot of
information on that to try to assess how much risk
that there will be.
So going through this petition again, and looking at the rider, and looking at the conditions in the consent decree, I just have some concerns with some of the issues that I've seen. Would somebody else like to --

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

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

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

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

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

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

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

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

CHAIRWOMAN MELGIN: The other thing on the
speculation of potential future risks, now
according to the consent decree this runs with the
land. So that's a little bit more speculative
where the special use will go if Maxxam doesn't
develop it. This will run with the land, so that
is a fairly large uncertainty.

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

CHAIRWOMAN MELGIN: Could you turn your
microphone on?

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

As far as drugs in the groundwater, there's
maybe what, 200 people. We have 8,000 people in
Campton Hills, and probably a good share of them
are taking antidepressants or anxiety pills. So
that's another issue I didn't see as --
CHAIRWOMAN MELGIN: Please respect the person speaking here.

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

CHAIRWOMAN MELGIN: Okay. Thank you, Molly.

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

MR. VANKERKHOFF: Tracy, microphone.

MEMBER ARIS: Sorry.

I have a few points just on the first item. I realize that the goal posts for this issue have moved in five years. Luckily I've only been exposed to it for a year. However, I know that the business case changes, I understand that treatment options are changing, what's getting recommended. I know that the opioid epidemic is not getting any better.
So I recognize that fact. I'm not saying whether it's good or bad; I'm just recognizing the fact that this is a fluid and changing situation, and how that impacts land use is why we're here.

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

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

And in our last session last year we put on a condition and the staff recommended it to us
that the petitioner provide water test results for monitoring wells and spray irrigation discharges both testing for pharmaceuticals on an annual basis. And I understand, you are doing what the State of Illinois has asked you to do, but I also know that the State may not be exactly up to date on those things and also that the State probably doesn't have the resources to come and check every single facility. And as a potentially future new member of the community from a business and also from a good neighborly perspective, I think that that is something that's just a no-brainer. You do that, you get the data, we talk about the data, and it either says yep, it's working, or no, it isn't.

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

I have a strong -- I have a strong moral feeling about groundwater, and we are blessed to
live on the Fox River, and we are blessed that we have water resources for our businesses and for our farmers, and we all have a responsibility to keep it clean, and I think we need to do more than the minimum that the law asks.

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

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

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

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

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

So for that first point those are kind of
the things I'm honing in on. I know I can't make
a motion to say I'd like you to do X, but I'd
really like you to go back and think about it
again. I know you spent a lot of time in
discussions, I know none of us were a part of
that, but I have a chance to say my piece and I'm
saying it now. Thank you.

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

I went on the record as a no vote. At
this particular moment yet I'm not decided whether
I'm yes or no. I have to actually -- I still sit
here and deliberate everything because of the
concerns that I personally was facing that I put
out there in front of us on February 21st of 2017.

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

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

The other concern that I had was that we weren't -- actually, I believe the concern is that we weren't knowledgeable enough to know how to trust the standards of 2060, but we're really not
here to be the authorities on 2060. I think what I came to tell myself on that one is I have to be able to trust that there are things in place for the measurement of performance and the allowance of business procedures based on that performance. I work in an environment where we are measured against certain performances, and you have to abide by the certain performances, or you simply cannot go any further. So there is a bit of trust and a reduction of speculation.

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

CHAIRWOMAN MELGIN: Does anybody have anything to say?

(No response.)

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

In some of the expert reports in the petition the expert talked about state-of-the-art security system, that there would be video cameras, that there'd be thermal imaging cameras, that
there'd be 24-hour security, and now the consent decree is Maxxam's experts will determine what level of security is needed. So -- and then there will be a fence, sort of a perimeter fence that kind of just marks the outline of the property.

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

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

So I think we can just keep going through these unless somebody has -- that first factor is
a big one. You know, it's a very high bar, and I had the same issue the last time.

MEMBER LAKE: We as a group did.

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

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

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

It is a facility that is -- I'm going to call it barriers rather than buffers. Somebody has used the term buffer, and I've also read that it is not intended to be consider as buffered. So it is in the middle of -- other than the water tower, we don't really see this facility from any
of the surrounding area. I believe there was one homeowner that said they could see it from their second-story window. That may have been the last series of discussions from the community, not this one. But that's the only time that I heard it referenced that we could see anything other than the water tower.

CHAIRWOMAN MELGIN: Anybody else?

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

AUDIENCE MEMBER: Could you use the microphone, please?

MEMBER FALK: Sorry.

I don't know that you can really determine whether it's going to impair or not impair until it actually occurs. I think that there's certain parts in just my personal view that yes, I probably wouldn't want to live close to a facility if it was butting up to my property line. But, you know, again, you buy and you understand where you're buying, and I just don't know how you can determine whether it's going to impair or not
impair. I think based on what I believe, I think it would be a bigger downturn in value than not but that's just me.

CHAIRWOMAN MELGIN: Anybody else?

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

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

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

MEMBER ARIS: It's the biggest unknown.

CHAIRWOMAN MELGIN: We know it isn't a prison. We don't think people should be walled
in, this is not what we're saying, but a level of
security I think for the people inside, too, would
be good to have a little bit more clarification.

Is that it for this factor?

(No response.)

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

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

CHAIRWOMAN MELGIN: Your mic, Molly.

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

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

MEMBER ARIS: I think it would also be
different if this was the first time we were
discussing a special use, but as the property has
had a special use, you know, that sort of changes
how you look at that. Because if it was pristine
farmland and we wanted to build a big facility on
it, that's a different question than the question
we're facing right now.

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

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

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

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

Okay. E is that "Adequate measures have
been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets and roads."

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

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

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

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

Any other comment?

(No response.)

CHAIRWOMAN MELGIN: That "The special use
shall in all other respects conform to the
applicable regulations of the district in which it
is located, except as such regulations may in each
instance be modified by the Kane County Board
pursuant to recommendations of the Kane County
Zoning Board of Appeals."

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

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

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

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

MEMBER MILLEN: Okay. No. E, I don't --
I'm sorry -- I don't remember. There was quite a
bit of discussion about ingress and egress. Did you end up with one or two?

    CHAIRWOMAN MELGIN: Just one.
    MR. LIGUORI: I believe it's one access point.
    MEMBER MILLEN: That's what I thought and that didn't change.
    Okay. Thank you.
    CHAIRWOMAN MELGIN: Any other questions from the Board?
    MEMBER ARIS: I heard you say but I guess I'd like you to reiterate it for me that should this special use be approved, and if for some reason either Maxxam or a successor company wants to change something in the facility or do anything different that is not discussed, that clearly the successor company or Maxxam would come back to the Zoning Board to discuss that change, that you're not going to go off to the Federal Court and say, "In the consent decree it allows us to put up another building up on the site, and we don't have to go back to the Zoning Board."
    Is that correct?
    MEMBER LAKE: Inclusive of the signs?
MEMBER ARIS: Yes.

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

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

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

MEMBER ARIS: Right.

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

MEMBER ARIS: Oh, no, no. I'm just --

what I'm trying to get is I'll call it an affirmation that if there is a change, you decide you want to put another road going north off the
property, or you want to start looking at doing outpatient and increasing your numbers that way versus doing the inpatient which is what is talked about in this existing special use request, if there are what I call changes in business operations as a broad term that you or the successor company will be coming back to the Zoning Board to say, "Yes, you've granted us this special use for this pristine beautiful piece of property" because you want to have your business in a rural setting, and if there is a change that impacts land use that you will come before this Board and file a request just like everybody else who has a special use in Kane County and come to us and say, "We're planning on doing something different, and we are asking for an update to our special use."

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

MR. LIGUORI: And I can add to that. I believe the zoning ordinance has a section on modifications.
MEMBER MILLEN: It does. And your site plan that submitted is what you're going to get, and if you want to make any changes, you're coming back.

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

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

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

Because the consent decree is not specific in certain areas what we're asking you is that once you make a decision and it looks like it's a change to all the things that we've talked about in two prior petitions, you know, if all of a sudden it's going to be 300 people, and 150 of them are going to be outpatient -- I'm just saying
businesses can change. All I'm saying is I would sure like you to come back to the Zoning Commission because that way not only do we hear it, our meetings are open to the public, and they're communicated, and if people want to weigh in on that, that's why we're here. So that transparency that some people have a concern with, there's an avenue for transparency.

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

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

So when would an inpatient need outpatient services?

MR. LIGUORI: So as I understand it, that's a State licensing issue. As part of your license you are required in certain instances to have a continuing recovery plan, and as part of the discharge criteria there are customary and clinical standards that you have to agree to continue to
provide. Just like if you're being discharged
from a hospital, you get to come back and make
sure that the surgery on your appendix is fine.
That's a State licensing requirement.

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

CHAIRWOMAN MELGIN: All right. Thank you.

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

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

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

MEMBER LAKE: That is my question.

Thank you.

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

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

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

MEMBER LAKE: Okay, thank you.

CHAIRWOMAN MELGIN: Any other comments?

(No response.)

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

I mean, the first factor in building --
assuring that the safety, the welfare, the morals
of the community, outreach to the community would
have been a really great idea.

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

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

MEMBER MILLEN: Can I comment on that, too?
I was thinking it was just a real shame that from
the very beginning all parties couldn't have sat
down and got together on this. There was too much
anger, animosity, snobbishness maybe, overconfidence.
Nobody got along and it's a shame because this facility needs to be in existence, and the community needs to be protected, and it's just sad that it came to what it did. It cost a lot of money and a lot of time, and they're never going to be happy neighbors probably, get along because of this bad start. And that's too bad.

So thank you.

CHAIRWOMAN MELGIN: Are we ready to take a vote?

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

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

MEMBER MILLEN: Someone made a motion.

MEMBER ARIS: I did and you seconded it.

MEMBER MILLEN: Oh, yeah.

MR. BERKHOUT: Aris.

MEMBER ARIS: Yes.

MR. BERKHOUT: Millen.

MEMBER MILLEN: Yes.

MR. BERKHOUT: Falk.

MEMBER FALK: No.
MR. BERKHOUT: Lake.

MEMBER LAKE: No.

MR. BERKHOUT: Melgin.

CHAIRWOMAN MELGIN: No.

(Applause.)

AUDIENCE MEMBER: You did the right thing.

AUDIENCE MEMBER: Thank you.

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

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

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

Thank you.
CHAIRWOMAN MELGIN: Do I have a motion to adjourn?

MEMBER ARIS: I move we adjourn.

MEMBER MILLEN: Second.

CHAIRWOMAN MELGIN: All in favor.

(Ayes heard.)

CHAIRWOMAN MELGIN: Meeting adjourned.

(Off the record at 10:35 p.m.)
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

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Notary Public in and for the State of Illinois
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