

ZONING BOARD OF APPEALS

KANE COUNTY, ILLINOIS

IN RE MAXXAM PARTNERS, LLC)
APPLICATION FOR SPECIAL USE)
)
) Petition No. 4364
)
)

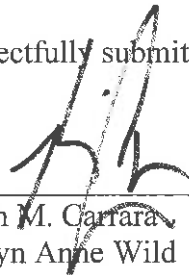
NOTICE OF MOTION

To: SEE ATTACHED SERVICE LIST

Please take notice that on the 28th day of January, 2016 at 7:00 p.m., counsel for Fox River and Countryside Fire Protection District, the Village of Campton Hills, Campton Township and Joline T. Andrzejewski, as Trustee of the Joline T. Andrzejewski Trust #2004, and Abram Andrzejewski, shall appear before the Kane County Zoning Board of Appeals and present the attached Motion To Strike The Murer Consultants, Inc. Expert Report And The Poletti And Associates, Inc. Expert Report From Administrative Record And Application, a copy of which is attached hereto and served upon you.

Dated: January 28, 2016

Respectfully submitted,



Kevin M. Carrara
Kaitlyn Anne Wild
Jordan R. Franklin
RATHJE & WOODWARD, LLC
300 E. Roosevelt Rd., Suite 300
Wheaton, IL 60189
630-668-8500


Attorneys for the Andrzejewskis

A20

CERTIFICATE OF SERVICE

On January 28, 2016, I, Kevin M. Carrara, an attorney, certify that I served a copy of the forgoing Notice of Motion and all other documents referenced therein on the following parties via electronic mail:

SEE ATTACHED SERVICE LIST



Kevin M. Carrara

SERVICE LIST

MAXXAM PARTNERS, LLC

c/o Andrew E. Kolb, Esq. & F. Keith Brown, Esq.
Meyers & Flowers, LLC,
3 Second Street, Suite 300,
St. Charles, Illinois 60174
akolb@vklawfirm.com

ZONING BOARD OF APPEALS, COUNTY OF KANE, ILLINOIS, *et. al.*

c/o Erin M. Gaeke
Assistant State's Attorney
Kane County State's Attorney's Office
100 S. Third Street, Fourth Floor
Geneva, Illinois 60134
GaekeErin@co.kane.il.us

Patrick M. Kinnally
2114 Deerpath Road, Unit 2
Aurora, Illinois 60506
pkinnally@kfkllaw.com

ZONING BOARD OF APPEALS

KANE COUNTY, ILLINOIS

IN RE MAXXAM PARTNERS, LLC)
APPLICATION FOR SPECIAL USE)
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**MOTION TO STRIKE THE MURER CONSULTANTS, INC. EXPERT REPORT AND
THE POLETTI AND ASSOCIATES, INC. EXPERT REPORT FROM
ADMINISTRATIVE RECORD AND APPLICATION**

NOW COME the Fox River and Countryside Fire Protection District, the Village of Campton Hills, Campton Township, and Joline T. Andrzejewski, as Trustee of the Joline T. Andrzejewski Trust #2004 and Abram Andrzejewski (collectively, the “Andrzejewskis”), (collectively, the “Objectors”), and hereby move the Zoning Board of Appeals (“ZBA”) to strike the expert opinions of Murer Consultants, Inc. and Poletti and Associates, Inc. from the administrative record and application for Petition No. 4364. In support of their motion, the Objectors state the following:

INTRODUCTION AND BACKGROUND

1. On December 15, 2015, and then continued on January 19, 21, and 26, 2016, the ZBA held a public hearing on Petition No. 4364, which is Application for Special Use (the “Application”) and supporting materials submitted by Maxxam Partners, LLC (the “Applicant”) for the property commonly known as the 41 W 400 Silver Glen Road, St. Charles, IL 60175 (the “Property”).

2. According to the Application, the Applicant is seeking a special use permit so that it may develop the Property into a “private-pay alcoholism and substance abuse treatment” facility (the “Use”). Currently, the Property is zoned F District-Farming under the Kane County Zoning

Ordinance (the “Ordinance”). The Ordinance allows certain specifically listed special uses for properties with the F District-Farming zoning classification; it also allows all specifically listed special uses under the R1 District zoning classification for properties with the F District-Farming zoning classification. *See* Ordinance § 8.1-2. The Use is not specifically listed under either the F District-Farming classification or the R1 District classification. *See* Ordinance §§ 8.1-2, 9.5-2.

3. The Application points to Section 8.1-2(DD), which allows for “[o]ther uses similar to those permitted herein as special uses” for the F District-Farming classification. Ordinance § 8.1-2(DD). The Application also points to Section 5.15 of the Ordinance, which states,

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

Ordinance § 5.15. According to the Application, the Use is similar to hospitals and nursing and convalescent homes. (*See* Ex. B attached hereto (excerpt from “Rider to Application for Special Use”).) Both of those uses are specifically listed special uses allowed for F District-Farming properties. *See* Ordinance §§ 8.1-2(Q), 9.5-2(C).

4. During the course of the public hearing, the Applicant presented evidentiary materials and live witness testimony to the ZBA. Among the documents submitted by the Applicant was an expert opinion by Murer Consultants, Inc. (the “Murer Opinion”) and the expert opinion by Poletti and Associates, Inc. (the “Poletti Opinion”). (*See* Ex. A attached hereto under “4364 Petition Submittals”). The Applicant also submitted its “witness list” in anticipation of the public hearing. (*See* Ex. C attached hereto; *see also* Ex. A under “4364 Petition Submittals 12 14 2015”). On its witness list, the Applicant provided notice that it would call two individuals

representing Murer Consultants, Inc. (“Murer Consultants”) – Ms. Monica Hon and Mr. Ryan Bailey and one individual representing Poletti and Associates, Inc.—Mr. Peter Poletti (“Poletti Consultant”). (Ex. C) These witnesses were compelled to appear by the ZBA.

5. Multiple members of the public and other stakeholders potentially affected by the Application, including the Objectors, raised questions and concerns regarding the Applicant’s evidence and cross-examined the Applicant’s witnesses throughout the multiple days of the public hearing.

6. The Andrzejewskis live immediately adjacent to the Property and thus have a protectable property interest at stake in the Application process.

7. On January 26, 2016, the Applicant rested its case before the ZBA. However, it rested without either: (a) calling Ms. Hon, Mr. Bailey or Mr. Poletti as witnesses to testify despite being compelled to do so, or (b) withdrawing the Murer Opinion or the Poletti Opinion from the administrative record before the ZBA. Because allowing the Murer Opinion and the Poletti Opinion to remain part of the administrative record when no one from Murer Consultants or Poletti and Associates has been subject to cross-examination would be a violation of the Objectors’ due process rights, the ZBA should strike the Murer Opinion and Poletti Opinion from the record.

8. Counsel for the Andrzejewskis raised this issue orally during the proceedings on January 26, 2016, others in the audience wished to ask question of these listed witnesses but the ZBA did not compel them to testify or provide a decision as to whether it would strike the Murer Opinion or Poletti Opinion. Accordingly, the Objectors submit this written motion.

ARGUMENT

9. By statute and case law, “[t]he principles of substantive and procedural due process apply at all stages of the decision-making and review of all zoning decisions.” 55 ILCS 5/5-12012.1(b); *E & E Hauling, Inc. v. Pollution Control Bd.*, 116 Ill. App. 3d 586, 596 (2d Dist. 1983). The Objectors have protectable interests that require procedural due process safeguards throughout the ZBA’s consideration of the Application because the Objectors are interested parties in a process by which Kane County will ultimately determine the relevant property rights of all interested parties. *See People ex rel. Klaeren v. Vill. of Lisle*, 202 Ill. 2d 164, 183 (2002).¹

10. “At the core of [procedural] due process is notice and a meaningful opportunity to be heard.” *Chamberlain v. Civil Serv. Comm’n of Vill. of Gurnee*, 2014 IL App (2d) 121251, ¶ 46. In the context of quasi-judicial administrative proceedings (such as this special use zoning hearing), procedural due process requires, among other things, ***a party’s opportunity to cross-examine witnesses***. *See Klaeren*, 202 Ill. 2d at 186-87; *see also Bartlow v. Shannon*, 399 Ill. App. 3d 560, 570 (5th Dist. 2010) (“Due process of law is served where there is a right to present evidence and argument in one’s own behalf, ***a right to cross-examine adverse witnesses***, and impartiality in rulings upon the evidence which is offered.” (quotation omitted; emphasis added)).² The decision by the Illinois Supreme Court in *Klaeren* is very clear, witnesses must be subject to reasonable cross examination.

11. It goes without saying that should the ZBA keep the Murer Opinion and Poletti Opinion as part of the administrative record, the ZBA is effectively denying the Objectors their

¹ *Superseded by statute on other grounds, see Condo. Ass’n of Commw. Plaza v. City of Chicago*, 399 Ill. App. 3d 32, 48 (1st Dist. 2010).

² *Bartlow* addressed an administrative proceeding by Illinois Department of Labor under Illinois’ Employee Classification Act.

right to cross-examine an expert witness as mandated by the Illinois Supreme Court. In essence, acceptance of the Murer Opinion and Poletti Opinion is acceptance of the expert testimony therein. It would be no different if the two experts appeared and testified at the public hearing but then the ZBA prevented the Objectors from cross examining the two witnesses. Either is a violation of *Klaeren*. The Murer Opinion and Poletti Opinion are defacto expert testimony which must be stricken.

12. Further, it is clear from the posture of the proceedings on the Application that the Murer Opinion arguments (regarding the similarity of the Applicant's proposed Use to a hospital) are central to the decision the ZBA must make on the Application. Thus, a failure to strike the Murer Opinion would not be a harmless error by the ZBA. ***The Application may be granted if, and only if, the Applicant can establish that the Use is "similar" to a hospital or nursing and convalescent home*** as required under the applicable provisions of the Ordinance. *See Shipp v. County of Kankakee*, 345 Ill. App. 3d 250, 253 (3d Dist. 2003) ("Since a special use permit allows property owners or developers to use their land in an express exception to the zoning code, ***the application must prove that the property falls squarely within that exception.***" (emphasis added)); *see also* Ordinance §§ 5.15, 8.1-2(DD).

13. It is thus the job of the ZBA to determine whether the Applicant has proven the similarity between the Use and a hospital or nursing and convalescent home. That decision has not yet been made -- in fact, despite the language of Ordinance § 5.15, the Enforcing Officer refused to solicit a "favorable report" on the matter from the County Development Department staff and informed the ZBA that "[it] may determine its own recommendation in regard to it the proposed

use is similar to other uses after hearing the evidence.”³ (See Ex. D hereto (“ZBA Memo regarding Appeal related to Maxxam Petition”) at page 5; *see also* Ex. A under “4364 Appeal in relation to Petition 4364 Oct. 30 2015”.) The ZBA has not received any sworn testimony to satisfy this requirement as Maxxam rested before presenting its promised “hospital” expert or allowing the Objectors to cross examine the expert to test similarity.

14. The holding of Illinois Supreme Court in *Klaeren* demands that the ZBA strike both the Murer Opinion and the Poletti Opinion and further prevents the ZBA from giving either opinion any consideration or weight when making its findings of fact.

³ The Andrzejewskis have filed an administrative review action challenging the ZBA’s denial of their appeal. That action remains pending. The Andrzejewskis do not waive their objections to the Enforcing Officer’s failure to comply with Ordinance § 5.15 or any other arguments raised in the review action by participating in the public hearing on Petition No. 4364.

CONCLUSION

WHEREFORE, for the reasons stated herein and during the public hearing on January 26, 2016, the Objectors pray the Zoning Board of Appeals strikes the Murer Opinion and the Poletti Opinion from the administrative record for Petition No. 4364.

Dated: January 28, 2016

Respectfully submitted,

**Joline T. Andrzejewski, as Trustee of the
Joline T. Andrzejewski Trust #2004 and
Abram Andrzejewski**

**The Fox River and Countryside Fire
Protection District**


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The Village of Campton Hills

Campton Township

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Fax: (312) 782-0943
jtappendorf@ancelglink.com

By:  _____
Richard Johansen
Town Clerk
4N498 Town Hall Road
St. Charles, IL 60175

CONCLUSION

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Dated: January 28, 2016

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Campton Township

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CONCLUSION

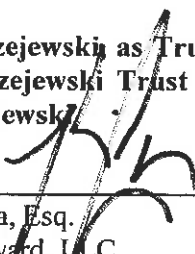
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Respectfully submitted,

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Joline T. Andrzejewski Trust #2004 and
Abram Andrzejewski**

**The Fox River and Countryside Fire
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EXHIBIT A



Kane County, Illinois

719 Belevia Avenue, Geneva, Illinois 60134 / Phone: 630-232-3400
www.countyofkane.org

Select Language: ▼

Font Size: A A A

Pending Zoning Petitions

This page contains a listing of the pending zoning petitions with associated documents. Please open each file to see all of the current documents associated with that petition. Also noted below is a listing of upcoming meetings with regard to any of the pending petitions. If you have any questions about any of the petitions noted on this page, please contact:

Keith Berkhout
 Kane County Zoning Planner
BerkhoutKeith@co.kane.il.us
 630-232-3495

Petition Documents

Petition Number	Meeting Date	Status	Board District
4372			Barbara Weinicki
4371			Michael Kenyon
4370			Monica Silva
4369			Barbara Weinicki
4368			Barbara Weinicki
4367			Drew Frasz
4366			Drew Frasz
4365			John J. Moschatt
4364 Zoning Request Report			Barbara Weinicki
Document			
Zoning Request Report 12-13-2015.pdf	12/14/2015 7:00 PM	Pending	
4364 Petition Submittals 12 14 2015			Barbara Weinicki
Document			
4364 Petition Submittals 12 14 2015 (1 of 2).pdf	12/14/2015 12:00 AM	Pending	
4364 Petition Submittals 12 14 2015 (2 of 2).pdf	12/14/2015 12:00 AM	Pending	
Petitioner's presentation.pdf		Pending	
Presentation overview.pdf		Pending	
Witness list.pdf		Pending	
4364 Petition Submittals			Barbara Weinicki
Document			
01 A Fully executed Kane County Application.pdf	12/14/2015 7:00 PM	Pending	
Aerial Photo - Sidwell.pdf		Pending	
C. Murer CV.pdf		Pending	
Certification of Notification of Prop Owners.pdf		Pending	
Chris Lannert Resume.pdf		Pending	
Consultation Termination Report.pdf		Pending	
Final Executive Summary Report.pdf		Pending	
Glenwood Substance Abuse and Eating Disorder Facility (Material for PPT).docx		Pending	
Holland and Knight Legal Opinion.pdf		Pending	
John H. Curtiss - The Retreat Letter Expert Opinion June 30.pdf		Pending	
Kane and Dunane - Land Use Opinion.pdf		Pending	
KLOA - Summary Traffic Evaluation.pdf		Pending	
Lannert Exhibit - Final.pdf		Pending	
ltr re land use opinion.pdf		Pending	
MAROUS Impact Study.pdf		Pending	
MEMO - Murer Consultants - Similarity to Hospital.pdf		Pending	
Meyers and Flowers Opinion.pdf		Pending	
Photographs of Property and Improvements.pdf		Pending	
Petelli Impact Study.pdf		Pending	
R12ER.pdf		Pending	
Sheaffer and Roland Inc. Water and Wastewater System Evaluation June 2015.pdf		Pending	
Signed Endorsed ALTA Survey.pdf		Pending	
Site Plan.pdf		Pending	
Soil and Water - Land Use Opinion (E-mails).pdf		Pending	
Petition 4364 Maxxam Partners LLC.pdf		Pending	
4364 Petition Amendments Nov. 5 2015			Barbara Weinicki
Document			
Ltr to County 11-4-15.pdf		Pending	
Maxxam - Delaware Formation Documents.pdf		Pending	
Maxxam - Rider 11.5.2015.pdf		Pending	
Maxxam - Rider Pages 1A-70 11.5.2015.pdf		Pending	
4364 Exhibits Submitted at Public Hearings			Barbara Weinicki
Document			
Exhibit A 9 Part1.pdf		Pending	
Exhibit A 9 Part2.pdf		Pending	
Exhibita 1.pdf		Pending	
Exhibita 2.pdf		Pending	
Exhibit15.pdf		Pending	
Exhibit16.pdf		Pending	
Exhibit 118.pdf		Pending	
4364 Correspondence Received			Barbara Weinicki
Document			

County analysis 10.2.15.pdf	Pending	
Letter to Kane County Maxxam process.pdf	Pending	
Village of Campion Hills R-15-18.pdf	Pending	
Campion Township letter and resolution.pdf	Pending	
Objector's request to continue December Zoning Board meeting.pdf	Pending	
Plate Township Resolution.pdf	Pending	
Campion Hills Mission Statement.pdf	Pending	
Fully executed copy Kane Co IL 11242015 1008551.pdf	Pending	
Memo to Board re PHA (Maxxam).pdf	Pending	
R-16-02 Campion Hills Maxxam resolution (standards).pdf	Pending	
Letter to Kane County (Resolution 16-02).pdf	Pending	
CampionHillsMissionStatement.pdf	Pending	
4364 Appeal in relation to Petition 4364 Oct. 30 2015		Barbara Wojnicki
Document	Meeting Date	Status
Notice of Appeal for decision in relation to Petition 4364.pdf		Denied
ZBA Memo regarding Appeal related to Maxxam Petition.pdf		Pending
Memorandum Response 11.23.15.pdf		Pending
ZBA Memo regarding other Special Use petitions requested under dd other uses similar.pdf		Pending
Holand Knight submittal 11.17.2015.pdf		Pending
Meyers Flowers submittal 11.17.2015.pdf		Pending
Carrara ZBA Appeal Hearing Exhibits.pdf		Pending
ZBA Decision Regarding the Appeal 11.23.2015.pdf		Denied
4363		Thomas (T.R.) Smith
4362		Drew Frasz
4361		Bill Lenert
4360		Bill Lenert
4359		Drew Frasz
4358		Bill Lenert
4357		Bill Lenert
4356		Thomas (T.R.) Smith
4355		Barbara Wojnicki
4354		Barbara Wojnicki
4353		Drew Frasz
4352		Barbara Wojnicki
4351		Barbara Wojnicki
4350		Susan Starrett
4349		Barbara Wojnicki
4348		John J. Hoescheit
4347		John Martin
4346 Addendum 1		John J. Hoescheit
4346		John J. Hoescheit
4345		John J. Hoescheit
4344		Thomas (T.R.) Smith
4343		Michael Kenyon
4342		Thomas (T.R.) Smith
4341		Drew Frasz
4340		Bill Lenert
4339		Drew Frasz
4338		Drew Frasz
4337		Bill Lenert
4336		Douglas Scheflow
4335		Drew Frasz
4334		Thomas (T.R.) Smith
4333		Barbara Wojnicki
4332		Mark Davoust
4331		Drew Frasz
4330		Drew Frasz
4329		Barbara Wojnicki
4328		Thomas (T.R.) Smith
4327		Kurt Koizarek
4326		Thomas (T.R.) Smith
4325		John J. Hoescheit
4324		Magalie Auwer
4323		Drew Frasz
4322		Marie Vazquez
4321		Thomas (T.R.) Smith
4320		Drew Frasz
4319		Bill Lenert
4318		Bill Lenert
4317		John Martin
4316		Drew Frasz
4315		Barbara Wojnicki
4314		Thomas (T.R.) Smith
4313		Susan Starrett
4312		Thomas (T.R.) Smith
4311		Thomas (T.R.) Smith
4310		Bill Lenert
4309 Post_ZBA Documents		Thomas (T.R.) Smith
4309 Jan Dev Comm Docs		Thomas (T.R.) Smith
4309		Thomas (T.R.) Smith
4308		Bill Lenert
4307		Bill Lenert
4305		Kurt Koizarek
4304		Barbara Wojnicki
4303		Drew Frasz
4302		Drew Frasz

4301
4300
4299
4298 (2013-0003)
4296
4294
4292
2014-0006

[John J. Moschelt](#)
[Bill Lerner](#)
[John J. Moschelt](#)
[John J. Moschelt](#)
[Rebecca Giliam](#)
[Barbara Wojnicki](#)
[Thomas \(T.R.\) Smith](#)

Links

[Upcoming Zoning Board of Appeals Meetings](#)
[Upcoming County Development Meetings](#)
[Upcoming County Board Meetings](#)
[Zoning Administration](#)
[Facilities, Development, and Environmental Resources](#)

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EXHIBIT B

RIDER TO APPLICATION FOR SPECIAL USE

Applicant, Maxxam Partners, LLC, a Delaware limited liability company ("Applicant"), for its Application for a Special Use, states as follows:

Property Information:

Parcel Number(s): 08-03-100-009; 05-34-300-032; 05-34-400-025
Street Address: 41W400 Silver Glen Road, St. Charles, Illinois 60175

Applicant / Contract Purchaser Information:

Name: Maxxam Partners, LLC
Address: c/o Andrew E. Kolb, Esq. & F. Keith Brown, Esq., Meyers & Flowers, LLC, 3 Second Street, Suite 300, St. Charles, Illinois 60174
Phone: Andrew E. Kolb: 630-513-9800
Fax: Andrew E. Kolb: 630-513-9802
Email: Andrew E. Kolb: akolb@vklawfirm.com

Applicant's Team: Copies of the biographies and/or curriculum vitae of Applicant's team members are incorporated herein as Exhibit A.

Name: Glenwood Academy, an Illinois not-for-profit corporation.
Address: c/o Mary Hollie, President, Glenwood Academy, 500 West 187th Street, Glenwood Illinois, 60425.
Phone: c/o Mary Hollie, President, Glenwood Academy; (708) 576-5054
Fax: c/o Mary Hollie, President, Glenwood Academy; (708) 756-5676
Email: c/o Mary Hollie, President, Glenwood Academy; mhollie@glenwoodschoo.org

I. General Background

- 1.1 The Property – The Subject Property is comprised of approximately 120.0574 acres and is located at 41W400 Silver Glen Road, St. Charles, in unincorporated Kane County, Illinois. The Subject Property is located south of McDonald Road, west of Corron Road and north of Silver Glen Road, in unincorporated Kane County. The ("Subject Property") is legally described in **Exhibit B** attached hereto.
- 1.2 Previous Use – Kane County approved the existing special use for the Subject Property on May 9, 1989. The approval granted the Glenwood School for Boys (subsequently renamed, Glenwood Academy) permission to operate a private boarding school for at-risk children on the Subject Property. The special use has existed since 1989 without incident or revocation. The special use remains in effect, however the Glenwood Academy permanently closed the school in June 2012 and the Subject Property is currently unoccupied.
- 1.3 Applicable Code Provisions - The Subject Property is located in the "F" Farming Zoning District of the Kane County Zoning Ordinance.

Pursuant to Section 25-8-1-2(dd) of the Kane County Zoning Ordinance, Special Uses within the "F" district also include:

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

In accordance with Section 25-8-1-2(a) of the Kane County Zoning Ordinance, the enumerated "special uses" in the "F" Farming Zoning Classification include by cross-reference, all "special uses allowed in the R1 District." Thus, all special uses permitted in the "F" district include all special uses permitted in the R1 District by reference.

Pursuant to Section 25-9-5-2(c), the following special use is expressly permitted within the R1 District (and by reference thereby within the "F" Farming District where the Subject Property is Located):

"Hospitals, general, for human beings. This may include power plants, residence for nurses and similar facilities."

Pursuant to Section 25-8-1-2(q), Special Uses within the "F" district also include:

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

Furthermore, Section 5.3(b) of the Kane County Zoning Ordinance states that "no section, clause or provision of this Ordinance is intended nor shall be construed as contrary to the Federal Fair Housing Act," and it implicitly acknowledges the County's mandate to provide such accommodations to persons with disabilities.

Additionally, pursuant to Section 5.15 of the County Ordinance, "the Enforcing Officer may allow land-uses which, though not contained by name in a zoning district list of permitted or special uses, are deemed to be similar in nature and clearly compatible with the listed uses."

Applicant submits the legal opinions of Holland & Knight, LLP and Meyers & Flowers, LLC attached herein as Tab #12 and Tab #13, respectively, in support of the zoning analysis outlined above.

- 1.4 Applicant's Proposed Use - Applicant proposes to use the existing buildings and infrastructure on the Subject Property for a 120-bed exclusively private-pay alcoholism and substance abuse treatment facility. The facility will offer patients a full continuum of care while they reside at Applicant's facility. The average duration of a patient's stay will be between 30 – 90 days. The duration of a patient's stay is determined by the patient's addiction and treatment plan. Applicant will treat all addictions with the exceptions of methamphetamine and sexual addictions. Applicant will also treat patients with eating disorders. Applicant will not accept Medicare or Medicaid. "Private-pay" patients will be pre-screened to ensure that they meet Applicant's patient standards, medically and financially.

Applicant's treatment programs are personalized using what evidence tells the staff will work for each particular patient. Applicant's professional staff assesses and diagnoses patients, collaborates with the patient and devises a treatment plan that will meet their individual needs. Among the resources Applicant's staff will use in alcoholism and substance abuse treatment are dialectical behavioral therapy, cognitive behavioral therapy, medication-assisted treatment, psychotherapy, art therapy, and a sobriety curriculum.

The Subject Property is ideally suited for the proposed use as an alcoholism and substance abuse treatment facility. The existing facility (with minor interior cosmetic updates and renovations) provides a private residential setting for patients. Applicant proposes to maintain the original footprint of the former Glenwood Academy and will limit renovation activities solely to the existing structures. No new buildings or structures will be constructed.

Per the submitted aerial overlay (Tab #7); there are eight existing residential dormitories that will be used as patient lodges. The eight patient lodges will house patients with separate buildings for men and women. Patient Lodge #1 will be used for "medically managed detoxification." Patient Lodges #2 - #8, will house patients according to their needs and the type of treatment they will be receiving.

The "Dining/Multi-Purpose Building" will be used as a central dining room and a multi-purpose room for movies, motivational speakers, and other group therapy activities. The "Therapy and Activity Building" contains twelve rooms that will be utilized for individual and group therapy sessions, art therapy, music therapy, yoga and meditation. The Applicant considers exercise to be an important component of treatment. As such, the existing Gymnasium will become a 25,000 square foot recreation center for exercise, yoga, basketball, volleyball, and other physical activities. Applicant plans to convert certain interior spaces within the recreation center into modern weight training and cardiovascular fitness rooms.

The facility will be licensed by the Division of Alcoholism and Substance Abuse of the Illinois Department of Human Services and will be accredited by the Joint Commission on Accreditation of Health Care Organizations (JCAHO). The level of care provided will be in accordance with that specified in the American Society of Addiction Medicine's (ASAM) Patient Placement Criteria and with the related administrative code.

II. Development Requests – Application for a Special Use "similar" to a Hospital and a Nursing and Convalescent Home.

2.0 Development Requests – Applicant requests the following development approvals:

- (a) 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, this Rider, and the materials incorporated in Section III hereof; and

(b) Applicant requests "reasonable accommodation" with respect to Applicant's proposed facility. Applicant's proposed alcoholism and substance abuse treatment facility will provide in-patient residential treatment to persons with disabilities who are protected under the terms of the Federal Fair Housing Act.

2.1 Applicable Ordinances – As referenced in Section 1.3 above, the Subject Property is located in the "F" **Farming Zoning District** of the Kane County Zoning Ordinance.

Pursuant to Section 25-8-1-2(dd) of the Kane County Zoning Ordinance, Special Uses within the "F" district also include:

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

In accordance with Section 25-8-1-2(a) of the Kane County Zoning Ordinance, the enumerated "special uses" with the "F" Farming Zoning Classification include by cross-reference, all "special uses allowed in the R1 District." Thus, all special uses permitted in the "F" district include all special uses permitted in the R1 District by reference.

Pursuant to Section 25-9-5-2(c), the following special use is expressly permitted within the R1 District (and by reference thereby within the "F" Farming District where the Subject Property is Located):

"Hospitals, general, for human beings. This may include power plants, residence for nurses and similar facilities."

Pursuant to Section 25-8-1-2(q), Special Uses within the "F" district also include:

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

Furthermore, Section 5.3(b) of the Kane County Zoning Ordinance states that "no section, clause or provision of this Ordinance is intended nor shall be construed as contrary to the Federal Fair Housing Act," and it implicitly acknowledges the County's mandate to provide such accommodations to persons with disabilities.

In further support of Applicant's development petition, Applicant requests that the Commission and Board note Section 5.15 of the Kane County Zoning Ordinance. Section 5.15 is evidence that the overall spirit and intent of the Kane County Zoning Ordinance is to permit existing land uses consistent and similar to existing permitted and special uses. More specifically, Section 5.15 vests the Zoning Enforcement Office of Kane County with the authority to examine existing uses in the County that are not enumerated as either permitted or special uses under the Code, and thereafter, to make a determination that the use being examined is allowed based solely upon the fact that it is "similar" to an existing use enumerated under the Zoning Ordinance. This section is consistent with Applicant's development petition.

Applicant submits the legal opinions of Holland & Knight, LLP and Meyers & Flowers, LLC attached herein as **Tab #12** and **Tab #13**, respectively, in support of its zoning analysis outlined above.

Analysis of similarity pursuant to Section 25-8-1-2(a) – Applicant’s proposed use for the Subject Property as an alcoholism and substance abuse treatment facility is substantially similar to that of a hospital, in terms of both facility operations and Illinois licensure law. These similarities include:

- (a) Compliance with National Fire Protection Association’s Life Safety Code,
- (b) Compliance with emergency care regulations,
- (c) Compliance with patient room and bath facility regulations,
- (d) Compliance with food preparation, nutrition, and dining facility regulations,
- (e) Compliance with housekeeping and laundry service regulations,
- (f) Compliance with patient rights standards,
- (g) Compliance with standards for maintenance of patient records,
- (h) Compliance with quality improvement and utilization review regulations,
- (i) Compliance with facility staffing and staff qualification standards,
- (j) Diagnostic services,
- (k) 24-hour observation, monitoring and treatment,
- (l) The administration of medicine,
- (m) Investigation of complaints in patient care,
- (n) Inspections before license renewals; and
- (o) Right to deny a license or impose a moratorium.

Murer Consultants, Inc. – Expert Opinion

Applicant hereby submits the expert opinion of Murer Consultants, inc. (“Murer Consultants”), in support of Applicant’s position that the proposed use as an alcoholism and substance abuse treatment facility is “similar” to a hospital under the Kane County Zoning Ordinance.

Murer Consultants concluded that the proposed facility is similar to a hospital as the term is defined under the Kane County Zoning Ordinance. Murer Consultants based this finding on the fact that the proposed facility substantially meets the definition of a hospital as defined under the Kane County Zoning Ordinance. Murer Consultants concluded that under Illinois licensure law, the facility staffing and service requirements applicable to the proposed facility share similar characteristics as those applicable to hospitals and the services provided by the proposed facility are regularly and customarily provided by hospitals in Illinois. Applicant submits the expert opinion of Murer Consultants attached herein as **Tab #11**.

Illinois Legislation

The Illinois statutes governing the licensure requirements of a hospital directly support the Applicant’s position that the Applicant’s proposed use as an alcoholism and substance abuse treatment facility is “similar” to a “Hospital” but exempts alcoholism and substance abuse

treatment facilities from being licensed as a hospital. It is clear that the legislature made the distinction to avoid unfairly burdening alcoholism and substance abuse treatment facilities with any unintended hardship. Furthermore, Illinois law requires facilities providing these services to be licensed *either* as a hospital or as an alcoholism and substance abuse treatment facility.

Illinois Hospital Licensing Act

Section 3(a) of the Hospital Licensing Act provides the legal definition of a "Hospital" in the State of Illinois:

"Hospital means any institution, place, building, buildings on a campus, or agency, public or private, whether organized for profit or not, devoted primarily to the maintenance and operation of facilities for the diagnosis and treatment or care of 2 or more unrelated persons admitted for overnight stay or longer in order to obtain medical, including obstetric, psychiatric and nursing, care of illness, disease, injury, infirmity, or deformity."

Section 3(a)(5) also states that:

"The term "Hospital" does not include:

(5) any person or facility required to be licensed pursuant to the Alcoholism and Other Drug Abuse and Dependency Act."

Applicant's proposed use requires licensure under the Alcoholism and Other Drug Abuse and Dependency Act. Devoid of the exemption provided under Section 3(a)(5) as mentioned above, the Applicant would have to be licensed as a "Hospital." Thus, the definitions are so similar that the distinction was made in Section 3(a)(5) of the Illinois Hospital Licensing Act, so that alcoholism and substance abuse treatment facilities would not be burdened with any unintended hardship.

Existing Hospital Facilities

Another factor demonstrating the similarity between a "Hospital" and an "alcoholism and substance abuse treatment facility," is that many existing alcoholism and substance abuse treatment facilities in the State of Illinois are physically located in a hospital or on a campus *and are licensed as hospitals*. In addition to medically managed detoxification, many licensed hospital facilities also provide inpatient residential alcoholism and substance abuse treatment.

Examples of hospitals that provide in-patient residential alcoholism and substance abuse treatment include:

- (a) Captain James A Lovell Federal Health Care Center, 3001 Green Bay Road, Building 11, North Chicago, 60064;
- (b) Loretto Hospital Addiction Center, 645 South Central Avenue, Chicago, Illinois 60644;
- (c) Edward J. Hines Veterans Administration Hospital, Substance Abuse Section, 100 5th Avenue, Hines, Illinois;

- (d) Behavioral Health Services of Central DuPage Hospital, 27 West 350 High Lake Road, Winfield, Illinois 60190;
- (e) Saint Bernard Hospital, 326 West 64th Street, Chicago, Illinois 60621;
- (f) Holy Family Medical Center, "Keys to Recovery Program," 100 North River Road, Des Plaines, Illinois, 60016,

Analysis of similarity pursuant to Section 25-8-1-2(q) – Applicant's proposed use for the Subject Property as an alcoholism and substance abuse treatment facility is substantially similar to that of a "Nursing and Convalescent Home." In support of the Applicant's proposed use to that of a "Nursing and Convalescent Home," Applicant hereby submits and incorporates herein the legal opinions of Holland & Knight, LLP and Meyers & Flowers, LLC attached herein as **Tab #12** and **Tab #13**, respectively. The Kane County Zoning Ordinance defines "Nursing and Convalescent Home" as "a building and premises for the care of sick, infirm, aged, or injured persons to be housed; or a place of rest for those who are bedfast or need considerable nursing care, but not including hospitals, assisted living facilities or group homes." The law firm, Holland & Knight, states in their legal opinion that "the defined 'Nursing and Convalescent Home' use best describes the residential dwelling arrangements for the residents of the facility." Furthermore, "the patients of the proposed residential alcoholism and substance abuse treatment facility are disabled and sick, and will be housed in seven separate resident lodges. Each lodge is a home or dwelling unit as it contains bedrooms with private bathrooms, a kitchen, and a dining/living room area." Also "the patients' medications will be administered to them in the lodges by the facility's professional staff, the same as in a Nursing Home."

Legal Opinions – In support of Applicant's entitlement to this Special Use and Applicant's request for "reasonable accommodation" under the Federal Fair Housing Act as set forth herein, Applicant hereby submits and incorporates herein the legal opinions of Holland & Knight, LLP and Meyers & Flowers, LLC attached herein as **Tab #12** and **Tab #13**, respectively.

EXHIBIT C

Maxxam Partners, LLC

Witness List

- F. Keith Brown, Esq. – Meyers & Flowers, LLC
- Andrew E. Kolb, Esq. – Meyers & Flowers, LLC
- Christopher Lannert – Lannert Group
- Monica Hon – Murer Consultants, Inc.
- Ryan Bailey – Murer Consultants, Inc.
- Michael S. MaRous – MaRous & Company (Market Impact Study)
- Hart M. Passman – Holland & Knight, LLP
- Peter Poletti – Poletti & Associates
- John Sheaffer, Jr. - Sheaffer & Roland, Inc.
- William Woodward – KLOA – Kenig, Lindgren, O'Hare, Aboona, Inc.
- Trina Diedrich – Illinois Department of Human Services' Division of Alcoholism and Substance Abuse
- James Marcus – Independent validation of findings within Retreat Letter

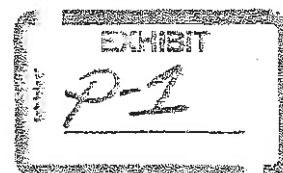
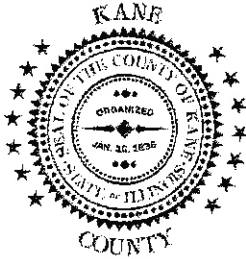


EXHIBIT D



Kane County Development
& Community Services Department
719 Batavia Avenue
Geneva, IL 60134
Tel: (630) 232-3480
Fax: (630) 232-3411

MEMO

Date: November 12, 2015
To: Kane County Zoning Board of Appeals
From: Mark VanKerkhoff, AIA, Director, Zoning Enforcing Officer
Re: Appeal dated October 30, 2015, in relation to Maxxam Partners, LLC –
Special Use Petition 4364

Background

The Kane County Zoning Ordinance, *Section 4.5. Appeals*, states that any person aggrieved may appeal to the ZBA to review any order, requirement, decision or determination made by the Zoning Enforcing Officer. Such an appeal was received dated October 30, 2015, in relation to Petition 4364. Per Section 4.5-2, the appeal stays all proceedings in furtherance of the action appeal from, in this case, Petition 4364. In light of this, the public hearing scheduled for Petition 4364 was cancelled and will be rescheduled and re-noticed for a later date to be determined following the resolution of the appeal.

Summary of the Appeal

The alleged aggrieved parties argue that:

1. My decision not to follow Section 5.15 of the Kane County Zoning Ordinance was not appropriate and must be reversed
2. The special use proposed in Petition 4364 is not sufficiently similar to any use defined in the Kane County Zoning Ordinance and should not be considered by the Zoning Board of Appeals

Summary of Zoning Enforcing Officer's Positions

The basis for my decision making in processing Petition 4364 is as follows:

1. Section 5.15 applies to application for permits under my duties as Zoning Enforcing Officer, not for petitions for special uses which must be processed per Section 4.8. This process falls under the duties of the Zoning Board of Appeals and the authority of the County Board per Section 4.8.
2. The Petitioner has petitioned the County Board for a special use under the Special Uses permitted in the F District – Farming, specifically Section 8.1-2 Special Uses. "*dd. Other uses similar to those permitted herein as special uses*". I determined that the petition was complete and reasonable and scheduled it for for a public hearing per Section 4.8. The ZBA may determine its own recommendation in regard to if the proposed use is similar to other uses after hearing the evidence.

Note: In 2012 and 2013, the Village of Campton Hills processed and considered a similar proposal for this property as a special use in the F District – Farming.

Zoning Enforcing Officer's comments regarding Appeal Item 1:

I did not follow Section 5.15 in respect to Petition 4364 because:

1. This section applies to applications for permits, not for petitions for special uses
2. It is permissive (MAY) rather than mandatory (SHALL)

25-5-15: INTERPRETATION OF USE LISTS:

*The enforcing officer **may** allow land uses which, though not contained by name in a zoning district list of permitted or special uses, are deemed to be similar in nature and clearly compatible with the listed uses. However, such nonlisted uses shall not be approved until the **application** for such use has been reviewed by the county development department staff and a favorable report has been received by the enforcing officer. The nonlisted uses which are approved shall be added to the appropriate use list at the time of periodic updating and revision. (Ord. 79-229, § 3, 12-11-1979)*

The above reflects the permit application and review process for buildings and for establishment of uses (such a new business in an existing building) per Section 4.3 Permits. Such new, nonlisted uses are later considered for text amendments through the ZBA and County Board processes per Section 4.7 Amendments.

Related Sections:

25-4-1: ZONING ENFORCING OFFICER:

*There is hereby created the position of zoning enforcing officer, whose office shall be located in the county government center, and said person to be selected by the county board shall be designated as the zoning enforcing officer. It shall be his duty to administer and enforce the provisions of this ordinance, and to that end **he shall have the power to make such orders, requirements, decisions, and determinations as are necessary with respect to applications for permits** and the enforcement of this ordinance.*

25-4-3: PERMITS:

25-4-3-1: PERMIT TO BE OBTAINED: A **written permit** shall be obtained from the building enforcing officer, located in the county government center, Geneva, Illinois, before starting:

- A. To establish any new use of property;
- B. To excavate for or build any foundation;
- C. To erect, construct, reconstruct, enlarge, alter or move any building or structure;
- D. To **change the use of any building, structure, or land from one classification to another;** or
- E. In the case of nonconforming uses, to change from one use to another;

25-4-3-3: APPLICATION FOR PERMIT:

Applications for the permits shall be filed in written form with the enforcing officer, shall state the legal description of the property as of public record and the name of owner and applicant and **shall describe the uses to be established** or extended, and shall give the estimated cost and such other information as may be required for the enforcement of this ordinance. Each copy of the application shall be accompanied by a dimensioned drawing of the building plot showing the location of buildings and structures, lot areas to be used, auto parking areas, and other pertinent information. All applications for permits and copies of permits issued shall be systematically kept for ready public reference by the enforcing officer.

Maxxam Partners LLC has petitioned the County Board for a special use. They have not made an application for a permit. Petition 4364 was properly processed according to Section 4.8 Special Uses.

25-4-8: SPECIAL USES:

25-4-8-1: PURPOSE:

The development and execution of this ordinance is based upon the division of the county into districts within which districts the use of land and buildings, and the bulk and location of buildings and structures in relation to the land are substantially uniform. It is recognized, however, that there are certain uses which, because of their unique characteristics, cannot be properly classified in any particular district or districts, without consideration, in each case, of the impact of those uses upon neighboring land and of the public need for the particular use in the particular location. To provide for the location of special classes of uses which are deemed desirable for the public welfare within a given district or districts, but which are potentially incompatible with typical uses herein permitted within them, a classification of "special uses" is hereby established.

25-4-8-2: PUBLIC HEARING:

Uses as hereinafter enumerated, which may be proposed for classification as "special uses", shall be considered at a public hearing before the zoning board, and its report of findings of fact and recommendations shall be made to the county board following the public hearing;

Appeal Item 1 Conclusions:

1. Maxxam Partners LLC did not make an application for a permit.
2. They submitted a petition for a special use.
3. Section 5.15 applies to application for permits under my duties as Zoning Enforcing Officer, not for petitions for special uses which must be processed per Section 4.8 Special Uses
4. Petitions for special uses fall under the duties of the Zoning Board of Appeals and the authority of the County Board per Section 4.8 Special Uses
5. Petition 4364 was properly processed according to Section 4.8 Special Uses.

Zoning Enforcing Officer's comments regarding Appeal Item 2:

The Petitioner has petitioned the County Board for a special use under the Special Uses permitted in the F District – Farming, specifically "dd. Other uses similar to those permitted herein as special uses". I determined that the petition was complete and reasonable and scheduled it for a public hearing per Section 4.8 Special Uses. The ZBA may determine its own recommendation in regard to if the proposed use is similar to other uses after hearing the evidence.

The petition and supporting opinions advocate that the proposed special use for a private-pay alcoholism and substance abuse treatment facility is similar to the following special uses listed for the F District and the R1 District:

- Monasteries, nunneries, religious retreats, nursing and convalescent homes, assisted living facilities, boarding schools and orphanages.
- Hospitals, general, for human beings. This may include power plants, residence for nurses and similar facilities.

The Kane County Zoning Ordinance, Article III. Rules and Definitions includes:

CONVALESCENT OR NURSING HOME: A private home for the care of the aged or infirm, or a place of rest for those suffering bodily disorders.

The petitioner also requests "reasonable accommodation" in that the proposed alcoholism and substance abuse treatment facility will provide in-patient residential treatment to persons with disabilities who are protected under the terms of the Federal Fair Housing Act.

I have reviewed the petition and supporting opinions as well as several opposing opinions submitted by an adjacent property owner and the Village of Campton Hills with assistance from the Civil Division of the Kane County State's Attorney Office. I am of the opinion that the proposed use of a private-pay alcoholism and substance abuse treatment facility is similar enough to the other uses listed above to be considered by the Zoning Board of Appeals and the Kane County Board, subject to testimony and evidence which may be forthcoming through the public hearing and public meeting process defined in the Kane County Zoning Ordinance and by the procedures of the Kane County Board.

In addition to the opinions included in the petition, please note that the proposed special use of private-pay alcoholism and substance abuse treatment facility may additionally be considered similar to "Monasteries, nunneries, religious retreats, nursing and convalescent homes, assisted living facilities, boarding schools and orphanages". It may be considered similar in that one of the common aspects of these institutional uses is that they all include residential facilities of various types to provide housing for staff, patients, students and/or others in the care of and/or under the umbrella of the institution. The inclusion of these various type of institutional uses on the same list suggests that it is the potential greater density of such institutional uses along with residential living units proposed to be located in the F District, along with supporting infrastructure, which requires the special use approval from the Kane County Board before such facilities may be approved as a land use and subsequently constructed. Such infrastructure includes water supply, wastewater disposal, parking and storm water management facilities.

The case for the appeal states that the Village of Campton Hills supports their opinions and their appeal. The appeal included the letter to me from the Village's attorney dated October 23, 2015. Additionally, the Village has passed *Resolution 15-18 - A Resolution Opposing Maxxam Partners, LLC Petition to the Kane County for a Special Use*.

In 2012 and 2013, the Village of Campton Hills processed and considered a similar special use for this property as a special use in the F District – Farming. While the proposed annexation and special use was defeated by one vote at the final Village Board meeting, the proposed special use was processed and was the subject of multiple public hearings and the final vote as a special use.

The above is relevant to this appeal because the Village of Campton Hills adopted the Kane County Zoning Ordinance after the Village incorporated, and a letter to me from the Village attorney dated October 23, 2015, was included in the documents submitted for this appeal.

1/11/13
VILLAGE OF CAMPTON HILLS

SPECIAL USE ORDINANCE
TO ALLOW FOR A HOSPITAL RELATED FACILITY
(ALCOHOL AND SUBSTANCE ABUSE TREATMENT FACILITY)

WHEREAS, The Glenwood School, an Illinois not-for-profit corporation ("Owner"); KIVA Recovery, LLC, an Illinois limited liability company ("Operator"); and KIVA Real Estate Investments, LLC, an Illinois limited liability company, ("Purchaser") (collectively, Owner, Operator and Purchaser shall be referred to as "Petitioners" and Operator and Purchaser shall be referred to as "KIVA") have applied for a special use permit to allow for the operation of an alcohol and substance abuse treatment facility at the property legally described in Exhibit "A" attached hereto and a part hereof and commonly known as the Glenwood School for Boys, with the street address of 41W400 Silver Glen Road, St. Charles, Illinois (the "Subject Property"); and

WHEREAS, the Subject Property is located within the "F" Farming District of the Village;
and

WHEREAS, pursuant to the Zoning Ordinance, property within the "F" Farming District may be used for a "nursing and convalescent home," "assisted living facility," and "group home" upon issuance of special use permits therefor; and

WHEREAS, pursuant to Section 8.1-2(dd) of the Zoning Ordinance, "other uses similar to those permitted [by the Zoning Ordinance] as special uses" are allowed in the "F" Farming District upon issuance of a special use therefor; and

WHEREAS, the Village Zoning Officer has determined that the proposed use of the Subject Property for the operation of an alcohol and substance abuse treatment facility is similar to the uses of nursing and convalescent home," "assisted living facility," and "group home"; and

WHEREAS, the Plan Commission, pursuant to notice published and given in accordance with the law, held public hearings on said request and at said public hearings heard the testimony of the Petitioners, experts employed by Petitioner, neighboring owners and residents and testimony of numerous other persons; and

WHEREAS, the Plan Commission has made findings and unanimously has recommended the approval of a special use, to allow for a hospital related facility which is an alcohol and substance abuse treatment facility including housing for patients and staff on the premises subject to restrictions and conditions.

The above ordinance represents the culmination of a more than 6 month process and many public hearings and meetings. The Village is questioning the County staff's processing a petition for a similar use under the same ordinance language.

Appeal Item 2 Conclusions:

1. The Petitioner has petitioned the County Board for a special use under the Special Uses permitted in the F District – Farming, specifically "*dd. Other uses similar to those permitted herein as special uses*".
2. I determined that the petition was complete and reasonable and scheduled it for a public hearing per Section 4.8 Special Uses.
3. The ZBA may determine its own recommendation in regard to if the proposed use is similar to other uses after hearing the evidence.
4. In 2012 and 2013, the Village of Campton Hills processed and considered a similar proposal for this property as a special use in the F District – Farming.