



DIAMOND BUSH
DiCIANNI
& KRAFTHEFER

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

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

October 23, 2015

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

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

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

Dear Mr. VanKerkhoff:

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

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

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

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

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

25-5-15: INTERPRETATION OF USE LISTS:

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

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

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

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

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

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

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

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

Sincerely,



Julie A. Tappendorf

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

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

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