

Petition #4462

Exhibit 1

Proposed Consent Decree (Subject to the Court's Approval)

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withdrew their claim for damages under Count V. On June 19, 2018, the Court denied Defendants' motion to dismiss without prejudice and with leave to refile should the parties not reach a settlement.

The Plaintiffs and Kane County resolved all matters related to this action by entering into a "Settlement Agreement" on _____, subject to the entry of this Decree. The Settlement Agreement requires that the Plaintiffs and Defendants jointly submit a request that the Court enter this Decree, and thereby enforce approval of Maxxam's application for the special use, subject to the terms and conditions set forth in Section III, below.

To avoid the uncertainty, delay and expense of complicated litigation, the parties agree that this dispute between them should be resolved upon the terms and conditions set forth in the Settlement Agreement and this Decree. The parties recognize and acknowledge that Defendants do not admit liability in this matter and dispute that they are liable to Plaintiffs for any of the claims and allegations in the Lawsuit. The parties further recognize and acknowledge that this Decree has been negotiated at arms' length and in good faith, that all required notices and procedural and substantive procedures have been provided and followed, and that this Decree is fair, reasonable, in the public interest, and lawful.

The parties agree that, with the entry of this Decree, this case has been settled and all issues and controversies have been resolved to their mutual satisfaction. The parties have consented to the jurisdiction of a magistrate judge pursuant to 28 U.S.C. § 636(c) and request this Court to retain jurisdiction to enforce the terms of their Settlement Agreement and this Decree under the authority of *Kokkonen v. Guardian Life Insurance Company of America*, 511 U.S. 375, 381-82 (1994).

NOW THEREFORE, pursuant to the authority granted to this Court and to the Defendants by the Illinois Counties Code and Kane County Ordinance §§ 4.8-2, et seq., and upon agreement and consent of the parties, it is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

II. PARTIES

This Decree applies to and is binding upon Maxxam, Glenwood Academy, County of Kane, Kane County Zoning Board of Appeals, Kane County Board, and the members, officials, employees, and agents of those so bound, and as provided in section IV below.

III. SPECIAL USE APPROVAL

A. The Subject Property (the "Property")

The subject property has a street address of 41 W 400 Silver Glen Road, St. Charles, Illinois 60175 and is identified under parcel numbers 08-03-100-109; 05-34-300-032; 05-34-400-025. The legal description of the property is attached hereto as Exhibit 1, and is expressly incorporated herein.

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B. Special Use Approval

On August 28, 2015, Maxxam applied for a special use permit to operate an alcoholism and substance abuse treatment facility (“the Facility”) (the “Application”). The Application, which includes a Rider and tabbed exhibits, is attached hereto as Exhibit 2 and incorporated herein by this reference. Pursuant to the Parties’ agreement, Maxxam has re-filed, and Kane County has again considered Maxxam’s Application for a special use permit to operate the Facility as described in Maxxam’s Application on the Property and incorporated therein the Application and all supporting materials previously filed as Petition 4364.

The County Zoning Officer designated the re-filed application submitted by Maxxam as Petition ___ and properly scheduled a public hearing before the Kane County Zoning Board of Appeals (“ZBA”). The ZBA has properly conducted a public hearing pursuant to the Kane County Zoning Ordinance and Illinois law during which it incorporated the complete public record from Petition 4364 and heard additional testimony and comments; a record of which public hearing can be found on the County website or otherwise made available for public inspection. The County Board represents that it has considered the public record and the findings and recommendations of the Kane County ZBA concerning Petition ___ and it has determined that Petition___ as modified by the terms and conditions set forth in Section III.C below: (i) satisfies all of the standards set forth in Sections 4.8-2(a) through 4.8-2(f) of the Kane County Zoning Ordinance for the approval of a special use permit to operate the Facility on the Property; and (ii) complies with all applicable provisions of the Zoning Ordinance. Accordingly, the County Board approved the terms of this Decree and Petition ___ as described herein and subject to the conditions described herein pursuant to the Ordinance, attached as Exhibit 3. These approvals give Maxxam the right to operate an alcoholism and substance abuse treatment facility on the Property as described in the Application (Exhibit 2), subject to those conditions set forth in section III.C., below. Maxxam’s Application for special use approval pursuant to the Kane County Zoning Ordinance is thereby deemed granted on such terms and conditions.

Based on the parties’ representations, the Court finds that Defendants, in approving this Decree, the Settlement Agreement, and Petition ___, have complied with Illinois law and the Kane County Zoning Ordinance.

In granting its approval for the special use in accordance with this Decree, Defendants do not admit that their previous actions were wrongful or that they discriminated against Plaintiffs’ proposed patients on the basis of disability in violation of the FHA, ADA, Rehabilitation Act, the Fifth and Fourteenth Amendments to the United States Constitution, and state zoning law. Further, by adopting Exhibit 3, the Special Use Permit Ordinance, Defendants seek to help aid the public by helping individuals and families who are impacted by addiction. Defendants reserve the right to ensure that the Property is in compliance with all applicable codes and ordinances; provided, however, that the Defendants shall not enforce any restriction that discriminates against Plaintiffs, any resident of the alcoholism and substance abuse treatment facility on the Property, or any person associated with any resident of the alcoholism and substance abuse treatment facility on the Property on the basis of disability or any protected class. This Decree does not waive or vary the application of any other section of Kane County’s ordinances, State of Illinois law, or federal law.

C. Conditions of Approval

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. 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 ("DHS"), found at 77 Illinois Administrative Code, Subchapter d, Part 2060 ("Code"), or federal law, the condition is invalid and shall not be enforced.

The parties agree that all conditions contained in this Decree are fair and reasonable, will not cause undue hardship on a party, and are not discriminatory or contrary to law. The parties further agree that prior to the start of operation and thereafter on the annual anniversary date of the start of operation, Maxxam shall provide the Kane County Zoning Officer a non-confidential statement substantially in the form of Exhibit 4 confirming compliance with the conditions listed below. The parties acknowledge and agree that this statement is subject to public disclosure.

Subject to the above, the special use approval is subject to the following conditions:

1. Maxxam and the Facility shall obtain all necessary licenses from the State of Illinois prior to start of operation, and shall maintain such licenses in good standing during any period of operation. In connection therewith, Maxxam shall comply with the legal and administrative requirements of the Code to the satisfaction of DHS. These requirements shall include, but are not limited to, all restrictions, obligations, undertakings, and requirements of Part 2060 (77 Ill. Admin. Code 2060) that govern any of the following:
 - a. Organization representative and ownership disclosure (*see* Section 2060.207, 209);
 - b. License application, period of licensure, renewal, change of ownership/management, and dissolution (*see* Sections 2060.211, 213, 215, 217, 219, 221, 223, 225, 227);
 - c. Facility requirements (*see* Section 2060.305), including those requiring proof of compliance with all local and State health, safety, sanitation, building and zoning codes (*see* Section 2060.305(a)(1)) and life safety codes (*see* Section 2060.305(a)(2)), and those pertaining to emergency and disaster planning and preparedness (*see* Section 2060.305(c));
 - d. Records retention (*see* Section 2060.307);
 - e. Staff qualifications, training, and personnel requirements and procedures (*see* Section 2060.309, 311, 313);

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- f. Quality improvement (*see* Section 2060.315);
 - g. Emergency patient care (*see* Section 2060.327);
 - h. Incident reporting (*see* Section 2060.331);
 - i. Inspections (*see* Section 2060.335);
 - j. Medical services (*see* Section 2060.413);
 - k. Infectious disease control (*see* Section 2060.415);
 - l. Patient assessment, screening and treatment planning (*see* Section 2060.417, 419, 421, 423); and
 - m. Continuing recovery planning and discharge (*see* Section 2060.427).
2. To the extent permitted by law, Maxxam shall provide Kane County or its designee with 150 doses of NARCAN (Naloxone) or similar mutually agreeable medication per year for a total of 1,500 doses for a 10-year period, starting on the date one month after the start of operation and thereafter on the annual anniversary of such date.
 3. The Special Use Permit approved by the Ordinance specifically and solely applies to the use and operation of all existing buildings on the subject Property as depicted on the site plan labeled “Maxxam Partners, LLC – Site Plan” and as described in the Application and Rider (Exhibit 2). A copy of the “Maxxam Partners, LLC – Site Plan” is separately attached and incorporated hereto as Exhibit 5.
 4. Should Maxxam or its successor or assigns desire to add new buildings 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, Illinois law, and federal and state anti-discrimination laws.
 5. The Facility shall not provide outpatient treatment of methadone patients or any other outpatient program or service unless it is related to a patient’s inpatient continuum of care.
 6. Maxxam agrees to provide a level of security that, in the opinion of Maxxam’s retained security vendor, is sufficient to protect the facility’s residents and the surrounding community.
 7. Maxxam shall comply with Change of Ownership/Management requirements in Section 2060.221 of the Code. Section 2060.221 provides, among other things, that each license issued by the Department of Human Services is not transferable and becomes null and void when there is a change of ownership involving more than 25% of the aggregate ownership interest within a one-

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year period or a significant change in management. Maxxam agrees to contemporaneously provide the County Zoning Officer with a copy of any notifications sent to the Department of Human Services under Section 2060.221(b). Maxxam agrees to provide to any successor owner(s) a copy of this Decree.

8. Maxxam shall use reasonable efforts to pursue accreditation for the Facility by the Joint Commission on Accreditation of Health Care Organizations (“JCAHO”) and the Commission on Accreditation of Rehabilitation Facilities (“CARF”).
9. Maxxam and the Facility shall comply, as applicable, with all requirements of the Illinois Controlled Substances Act, 720 ILCS 520, and any other applicable federal, state or local law, regulation or code pertaining to the storage, distribution, disposal, and dispensation of any controlled substance.
10. Maxxam shall comply with the Professional Staff Qualifications requirement provided in Section 2060.309 of the Code. Such compliance includes, in any medically managed or monitored detoxification service that at least one staff member, 24 hours a day, shall be a registered nurse, or a licensed practical nurse or certified emergency medical technician who has completed at least 40 hours of formal training in the field of alcoholism or other substance abuse. Notwithstanding Section 2060.309’s staffing requirements, Maxxam agrees to provide a Medical Director as referenced in Section 2060.413(a)(1) on premises at least 30 hours per week.
11. Within one year of the start of operation, Maxxam shall establish a foundation through the Community Foundation for the Fox River Valley for outreach to the Kane County community in connection with issues pertaining to substance abuse and addiction. Maxxam will fund the foundation at a minimum level of \$15,000 per year for a minimum of 10 years.
12. Maxxam shall comply with all applicable federal, state and local laws, regulations and codes pertaining to wastewater at its facility, including but not limited to the Wastewater Land Treatment Site Regulation Act, 415 ILCS 50/1, all related legal requirements of Kane County, and all related requirements of the Illinois and federal Environmental Protection Agency. Maxxam shall provide to the County any well monitoring/testing reports it receives from the Illinois or federal Environmental Protection Agency and/or any reports it receives from third-party vendors within 30 days of receipt.
13. Maxxam shall comply with Section 2060.305 (g) (1)-(24) of the Code’s spacing requirements including that (a) a minimum of 80 square feet is provided in a single bedroom; (b) 60 square feet is provided per bed in a multi-bedroom with no more than four beds per room; and (c) no bunk beds will be used for any detoxification patient.

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14. Maxxam shall install a fence substantially in compliance with Exhibit 6. The fence shall be located and installed around the Property 5-yards inside the survey line except for designated floodplain areas, as indicated in Exhibit 6, and across the private road/access drive. The fence shall be a minimum of 4 feet in height and shall be similar to the fence depicted in the photograph in Exhibit 7.
15. Exterior lighting fixtures upon replacement of existing fixtures or upon installation of new fixtures shall be full cut-off and have a color temperature of less than 3,000 Kelvin, provided that such fixtures do not compromise security as determined by the security system provider.
16. All signage related to the Facility shall be restricted to the Property. Further, such signage or advertising shall not be placed on the water tower located on the Property.
17. Maxxam shall pay the Fox River & Countryside Fire/Rescue District or any entity providing emergency medical services (EMS) to the Subject Property, including through any mutual aid agreements (hereinafter collectively the "EMS Entity"), directly for all emergency transport fees for transports to or from the Property, according to the EMS Entity's regular cost recovery and fee schedule in effect at the time of the transport. Maxxam agrees that the EMS Entity can bill Maxxam directly for all such transport fees and that Maxxam shall pay such fees on behalf of its patients and residents directly to the EMS Entity.

IV. SUCCESSOR OWNERS AND RECORDATION

Plaintiffs and Defendants agree that this Decree, the Settlement Agreement and the Special Use granted herein each shall run with the land and inure to the benefit of and shall be binding upon Maxxam Partners, LLC together with any assigns and/or successors (including any assignee of Maxxam's rights to purchase the Property, under its purchase and sale agreement, or otherwise), and any other tenant or occupant of the Property and any successor owners of Maxxam Partners, LLC or managers of the business. This Decree and the Settlement Agreement shall be recorded with the Kane County Recorder's Office by Maxxam at Maxxam's sole cost and expense within thirty days of entry of this Decree.

V. PROCEDURES AND MISCELLANEOUS.

A. Retention of Jurisdiction.

1. By consent of the parties, the Court shall retain jurisdiction for the purpose of enforcing the terms of this Decree and of the Settlement Agreement.
2. The parties shall comply with all terms of this Decree and the signed Settlement Agreement. The parties agree and acknowledge that this Decree, including its reference to the signed Settlement Agreement and/or any other

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document, meets all requirements of Federal Rule of Civil Procedure 65(d) to state its terms specifically and to describe in reasonable detail the acts restrained or required, and the parties further agree and acknowledge that they waive any and all challenges to this Decree under Rule 65(d) before this Court and/or on appeal.

3. The parties shall attempt to resolve informally any disputes that may occur under the Decree and/or the Settlement Agreement. If the parties are unable to reach agreement, the issue may be submitted by either party to the Court for resolution.

B. Integration; Representations and Warranties.

The Settlement Agreement and Decree (together the "Consent Documents") constitute the final, complete and exclusive agreement and understanding between the Plaintiffs and the Defendants with respect to the settlement of this action. The Plaintiffs and the Defendants acknowledge that there are not, and that they are not relying upon, any representations, agreements or understandings relating to the settlement of the matters embodied in the Decree, other than those expressly contained therein. The Plaintiffs and the Defendants acknowledge and represent that they have carefully reviewed the Settlement Agreement and this Decree and the terms thereof, they understand their contents and that they have executed them as their own free and voluntary act after consultation with legal counsel, which have had an opportunity to review the Settlement Agreement and Decree and their terms.

C. Disputed Liability.

It is understood and agreed that Kane County's consent to this Decree is made in the compromise of a doubtful and disputed claim and that this Decree is not to be construed as an admission of any liability of Kane County, such liability having been expressly denied.

D. Effect on Parties and Property.

This Decree enforces the granting of a special use for the Property and approval of a special use on the foregoing terms and conditions pursuant to Kane County's approval of the application on such terms and conditions, and with the same force and effect as any other special use approved by Kane County in the ordinary course. Except as set forth herein, this Decree is not intended to constitute a waiver by any party of any rights or remedies at law or in equity. As such, the obligations and rights under this Decree run with the Property and belong to both Plaintiffs and any future owners or developers of the Property.

This Decree shall supersede any prior Kane County Board votes or resolutions as they relate to the parties, the Property, the special use application, and the development of an alcoholism and substance abuse treatment facility on the Property.

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E. Dismissal.

Except as necessary to enforce the terms of the Settlement Agreement and Decree, this case is hereby dismissed with prejudice. Each party shall bear its own attorney's fees and costs. The Parties are barred from relitigating any claims raised in this matter or any claims released by the mutual general releases they executed concurrently herewith and/or set out in the Settlement Agreement.

F. Final Order.

Upon approval and entry of this Decree by the Court, this Decree shall constitute a final judgment of the Court. The Court finds that there is no just reason for delay and, therefore, enters this judgment as a final judgment.

ENTER:

Hon. Sheila Finnegan

Dated: _____

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ACKNOWLEDGED AND AGREED:

The undersigned, being duly authorized to sign on behalf of their designated parties, acknowledge the reasonableness of the above and the foregoing terms and conditions, and hereby accept the same.

MAXXAM PARTNERS, LLC

By: _____

Its: _____

Date: _____

COUNTY OF KANE

By: _____

Its: _____

Date: _____

KANE COUNTY BOARD

By: _____

Its: _____

Date: _____

GLENWOOD ACADEMY

By: _____

Its: _____

Date: _____

KANE COUNTY ZONING BOARD OF APPEALS

By: _____

Its: _____

Date: _____

LEGAL TITLE HOLDER (IF OTHER THAN GLENWOOD)

By: _____

Its: _____

Date: _____