

Transcript of **Public Hearing Petition 4364 - Volume 8**

Date: February 2, 2016

Case: Kane County Zoning Board of Appeals

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1132 1 BEFORE THE KANE COUNTY ZONING BOARD OF APPEALS 2 3 -----X 4 In Re: : MAXXAM PARTNERS, LLC 5 : 6 Special Use request in the : 7 F Farming District for a : 8 private-pay alcoholism and : 9 substance abuse treatment : Petition No. 4364 10 facility 41W400 Silver Glen : Road, Section 19, Campton : 11 12 Township (08-19-400-004) and : 13 Section 34, Plato Township : (05-34-300-032 & 05-34-400-025) : 14 15 -----X 16 PUBLIC HEARING - VOLUME 8 17 St. Charles, Illinois 18 19 Tuesday, February 2, 2016 20 7:02 p.m. 21 22 Job No.: 102998 Pages: 1132 - 1245 23 Reported by: Paula M. Quetsch, CSR 24

| | 1133 | |
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| 1 | Report of proceedings held at the location of: | |
| 2 | | |
| 3 | KANE COUNTY CIRCUIT COURT CLERK - | |
| 4 | BRANCH COURT | |
| 5 | 530 South Randall Road | |
| 6 | St. Charles, Illinois 60174 | |
| 7 | (630) 232-3495 | |
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| 10 | | |
| 11 | Before Paula M. Quetsch, a Certified Shorthand | |
| 12 | Reporter and a Notary Public in and for the State of | |
| 13 | Illinois. | |
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| | | 1134 |
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| 1 | PRESENT: | |
| 2 | JOSEPH WHITE, Chairman | |
| 3 | HAROLD BOWEN, Member | |
| 4 | PENNY CAMERON, Member | |
| 5 | DANIEL HEINRICH, Member | |
| 6 | ROBERT MOGA, Member | |
| 7 | GERALD REGAN, Member | |
| 8 | ROXANNE STOVER, Member | |
| 9 | | |
| 10 | ON BEHALF OF THE APPLICANT MAXXAM PARTNERS, LLC: | |
| 11 | HONORABLE F. KEITH BROWN, ESQUIRE | |
| 12 | ANDREW KOLB, ESQUIRE | |
| 13 | MEYERS & FLOWERS | |
| 14 | 3 North Second Street | |
| 15 | St. Charles, Illinois 60174 | |
| 16 | (630) 232-6333 | |
| 17 | | |
| 18 | ON BEHALF OF KANE COUNTY: | |
| 19 | ERIN GAEKE, ESQUIRE | |
| 20 | KATHLEEN WATSON, ESQUIRE | |
| 21 | KANE COUNTY STATE'S ATTORNEY JOSEPH MC MAHON | |
| 22 | 37W777 Route 38 | |
| 23 | St. Charles, Illinois 60175 | |
| 24 | (630) 232-3500 | |

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| | | 1135 |
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| 1 | ON BEHALF OF THE KANE COUNTY BOARD: | |
| 2 | PATRICK KINNALLY, ESQUIRE | |
| 3 | KINNALLY FLAHERTY KRENTZ LORAN | |
| 4 | HODGE & MASUR, PC | |
| 5 | 2114 Deerpath Road | |
| 6 | Aurora, Illinois 60506 | |
| 7 | (630) 907-0909 | |
| 8 | | |
| 9 | ON BEHALF OF THE OBJECTOR: | |
| 10 | KEVIN M. CARRARA, ESQUIRE | |
| 11 | RATHJE WOODWARD, LLC | |
| 12 | 300 East Roosevelt Road | |
| 13 | Suite 300 | |
| 14 | Wheaton, Illinois 60187 | |
| 15 | (630) 668-8500 | |
| 16 | | |
| 17 | ALSO PRESENT: | |
| 18 | MARK VAN KERKHOFF, Zoning Enforcing Officer | |
| 19 | KEITH BERKHOUT, Secretary | |
| 20 | | |
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| | | 1137 |
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| 1 | PROCEEDINGS | 1157 |
| 2 | CHAIRMAN WHITE: If everybody can take their | |
| 3 | seat, I'll reconvene the meeting. | |
| 4 | I'm going to go ahead and call the meeting | |
| 5 | to order. | |
| 6 | Everybody please rise for the pledge. | |
| 7 | (The Pledge of Allegiance was recited.) | |
| 8 | CHAIRMAN WHITE: Secretary, please call | |
| 9 | the roll. | |
| 10 | MR. BERKHOUT: Bowen. | |
| | | |
| 11 | MEMBER BOWEN: Here. | |
| 12 | MR. BERKHOUT: Cameron. | |
| 13 | MEMBER CAMERON: Here. | |
| 14 | MR. BERKHOUT: Heinrich. | |
| 15 | MEMBER HEINRICH: Here. | |
| 16 | MR. BERKHOUT: Moga. | |
| 17 | MEMBER MOGA: Here. | |
| 18 | MR. BERKHOUT: Regan. | |
| 19 | MEMBER REGAN: Here. | |
| 20 | MR. BERKHOUT: Stover. | |
| 21 | MEMBER STOVER: Here. | |
| 22 | MR. BERKHOUT: White. | |
| 23 | CHAIRMAN WHITE: Here. We have a quorum. | |
| 24 | This is a continuation of the public hearing | |

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| | 1138 |
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| 1 | for Petition No. 4364. It's a special-use request |
| 2 | in the F Farming District for a private pay alcoholism |
| 3 | and substance abuse treatment facility. It's located |
| 4 | at 41W400 Silver Glen Road in Section 19 of Campton |
| 5 | Township and Section 34 of Plato Township. The |
| 6 | applicant is Glenwood Academy and Maxxam Partners, LLC. |
| 7 | I would ask that everybody silence your cell |
| 8 | phones at this time, and please follow the rules |
| 9 | posted for the courtroom as we go on here this |
| 10 | evening. |
| 11 | We have some housekeeping before I begin any |
| 12 | other testimony. Last night we were given a |
| 13 | document from Deirdre Dowling. It was marked PU9. |
| 14 | It was never entered into the record. Is there a |
| 15 | motion to do that? |
| 16 | MEMBER BOWEN: So moved Mr. Chairman. |
| 17 | CHAIRMAN WHITE: Moved by Mr. Bowen, |
| 18 | seconded by Mr. Heinrich. All in favor say aye. |
| 19 | (Ayes heard.) |
| 20 | CHAIRMAN WHITE: Opposed, same sign. |
| 21 | (No response.) |
| 22 | CHAIRMAN WHITE: Motion carries. |
| 23 | In addition to that, Mr. Carrara submitted a |
| 24 | motion to the Board to strike the report of Murer |

| | 1139 |
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| 1 | Consultants and Poletti & Associates out of the |
| 2 | administrative record for the Application No. 4364. |
| 3 | I would ask for a motion to deny that request at |
| 4 | this time. |
| 5 | MEMBER STOVER: So moved. |
| 6 | CHAIRMAN WHITE: Moved by Ms. Stover, |
| 7 | seconded by Mr. Regan. |
| 8 | And I'll ask for legal counsel to step |
| 9 | forward and make some comments, please. |
| 10 | MR. KINNALLY: Does he want to go first? |
| 11 | CHAIRMAN WHITE: You can. |
| 12 | MR. KINNALLY: Thank you. Mr. Chairman. |
| 13 | The motion that was filed was explained by |
| 14 | the objector's attorney before I read, and I think |
| 15 | the issue here is twofold. |
| 16 | One, it's my understanding that the Board |
| 17 | under Section 4.2-2 issued an order to compel |
| 18 | witnesses to come to the hearing, and that was |
| 19 | Poletti, as well as Murer Consultants. They didn't |
| 20 | appear. Apparently, they were here. They were not |
| 21 | called by the petitioner. |
| 22 | Having said that, the reports are already in |
| 23 | evidence, and based on I think a prior ruling of the |
| 24 | Chair of the Board, you can give those reports |

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| 1 | whatever weight you want, if any. | |
| 2 | It's my position or the County's position, | |
| 3 | though, that because they're already in evidence | |
| 4 | that the motion is not appropriate. | |
| 5 | I understand Mr. Carrara's concern. I don't | |
| 6 | think the Klaeren case goes as far as he says it | |
| 7 | does, but in this particular instance you can give | |
| 8 | it whatever weight, if any, you want with respect to | |
| 9 | those reports. But they're already in evidence. | |
| 10 | That's my position. | |
| 11 | Thank you. | |
| 12 | CHAIRMAN WHITE: Thank you. | |
| 13 | Board members, any discussion? | |
| 14 | (No response.) | |
| 15 | CHAIRMAN WHITE: Everyone understand the | |
| 16 | motion? We are going to take a roll call. | |
| 17 | Secretary, please call the roll. | |
| 18 | MR. BERKHOUT: Stover. | |
| 19 | MEMBER STOVER: Yes. | |
| 20 | MR. BERKHOUT: Regan. | |
| 21 | MEMBER REGAN: Yes. | |
| 22 | MR. BERKHOUT: Bowen. | |
| 23 | MEMBER BOWEN: Yes. | |
| 24 | MR. BERKHOUT: Cameron. | |

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| 1 | MEMBER CAMERON: Yes. |
| 2 | MR. BERKHOUT: Heinrich. |
| 3 | MEMBER HEINRICH: Yes. |
| 4 | MR. BERKHOUT: Moga. |
| 5 | MEMBER MOGA: Yes. |
| 6 | MR. BERKHOUT: White. |
| 7 | CHAIRMAN WHITE: Yes. Motion carries. |
| 8 | With that, also, last night we did move a |
| 9 | motion to close the public comment period for this |
| 10 | public hearing, but I was informed that there were a |
| 11 | number of people who exited the meeting long before |
| 12 | it ended. So I'd like a show of hands this evening |
| 13 | of anyone who didn't stick around last night and |
| 14 | would have liked to have addressed the Board, and |
| 15 | then I will suggest a recommendation to the Board |
| 16 | depending on the response and show of hands. |
| 17 | If you spoke last night, I would recommend |
| 18 | that you not reply, but anybody who did not speak |
| 19 | and who was not here at the end of the meeting and |
| 20 | wishes to come forward, I would like to know that at |
| 21 | this time so I can schedule a time here tonight. |
| 22 | Anyone requesting? I see one hand two, |
| 23 | three okay. Then I would ask the Board at this |
| 24 | time to approve a motion to reconvene the public |

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| | | 1142 |
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| 1 | comment portion of the public hearing for this | |
| 2 | evening's meeting. | |
| 3 | MEMBER BOWEN: So moved, Mr. Chairman. | |
| 4 | CHAIRMAN WHITE: Moved by Mr. Bowen. | |
| 5 | MEMBER CAMERON: Second. | |
| 6 | CHAIRMAN WHITE: Seconded by Ms. Cameron. | |
| 7 | All those in favor say aye. | |
| 8 | (Ayes heard.) | |
| 9 | CHAIRMAN WHITE: Opposed, same sign. | |
| 10 | (No response.) | |
| 11 | CHAIRMAN WHITE: Motion carries. | |
| 12 | Then with that then we are back to the | |
| 13 | public comment portion of the meeting. So any one | |
| 14 | of you who raised your hand, you are welcome to come | |
| 15 | forward and present your testimony. | |
| 16 | Please raise your right hand. | |
| 17 | (Witness sworn.) | |
| 18 | CHAIRMAN WHITE: And please state your name | |
| 19 | and address for the record. | |
| 20 | MR. STRAUSS: Okay. My name is John Strauss. | |
| 21 | I live at 39W680 Deer Haven Trail in Campton Hills, | |
| 22 | Illinois 60175. | |
| 23 | CHAIRMAN WHITE: Approximately how close to | |
| 24 | the facility are you located? | |

| | 11. |
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| 1 | MR. STRAUSS: 5 miles, something like that. |
| 2 | CHAIRMAN WHITE: Thank you. And are you in |
| 3 | favor of or opposed to this petition? |
| 4 | MR. STRAUSS: Oh, I'm very much in favor of it. |
| 5 | MR. KINNALLY: Okay. Thank you. |
| 6 | MR. CARRARA: Mr. Chairman, just one |
| 7 | question. |
| 8 | Are you limiting this to people who were |
| 9 | present yesterday and didn't have the opportunity to |
| 10 | speak? Because, again, you closed public comment to |
| 11 | people as you can tell, the crowd has |
| 12 | substantially decreased. |
| 13 | CHAIRMAN WHITE: I understand. |
| 14 | MR. CARRARA: So are we limiting it to |
| 15 | people who were present and didn't have the |
| 16 | opportunity to speak, or are we opening up the floor |
| 17 | to anybody and all comers now? |
| 18 | CHAIRMAN WHITE: I thought I made it clear |
| 19 | that if they were present last night all the way to |
| 20 | the end, they had their opportunity to speak. If |
| 21 | they left before we concluded last night's meeting, |
| 22 | then they will have the opportunity to speak this |
| 23 | evening. |
| 24 | MR. CARRARA: Can we confirm that this |

1 gentleman was in attendance at yesterday evening's 2 meeting? CHAIRMAN WHITE: I cannot confirm that. 3 4 It's not -- I'm offering -- the Board made the 5 decision to close the public comment. We can 6 reconvene the public comment portion of it, and 7 that's what we've done at this point. MR. STRAUSS: Just to be clear and honest, I 8 9 was not here last night. I was unable to attend, 10 but I would hope and ask for your consideration to allow me at least to speak. I won't be here long. 11 12 CHAIRMAN WHITE: We've already made that decision. Go ahead. 13 MR. STRAUSS: Okay. Just so you know, I 14 15 used to be on the Village board of the Village of Campton Hills, and as you know, a number of years 16 17 ago this -- a similar situation was presented to the 18 Village, and I would have to say that I was very 19 disappointed that the Village turned down the 20 application which at that time was called Kiva. 21 I would like to talk a little bit about the 22 financial implications of what's been going on here. 23 The Village -- when the Village turned down the Kiva 24 application, it turned down roughly \$7.7 million

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| 1 | over 20 years, and right now I'm hearing the Village |
| 2 | talk about the fact that they don't have any money |
| 3 | to support the area, and similarly, I understand |
| 4 | that the fire department may have some similar issues. |
| 5 | At the same time that this happened the |
| 6 | Kane County, which is now expecting to receive about |
| 7 | \$350,000 in taxes, has not received that money, |
| 8 | which today if it had been passed a couple years ago |
| 9 | may have already totaled \$700,000 or more, and the |
| 10 | same to the Village. |
| 11 | And, also, at the same time, this organization |
| 12 | is going to hire possibly 40 to 60 people I |
| 13 | understand. At \$50,000 a year, 50 people, that's |
| 14 | another \$2.5 million that we can get pumped into the |
| 15 | local area, and I think that this all of this |
| 16 | stuff deserves some consideration. |
| 17 | The facility already exists. It isn't like |
| 18 | this is a brand-new facility. This facility is |
| 19 | existing and it's a shame that facilities are unused |
| 20 | and remain empty. |
| 21 | The area that we live in needs to support |
| 22 | business. This is a private enterprise and, |
| 23 | actually, from my perspective serves does no harm |
| 24 | to the Village or the County or anything whatsoever. |

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| 1 | These people have had the unfortunate | |
| 2 | experience, the customers that are going to be there | |
| 3 | have had the unfortunate experience of becoming | |
| 4 | addicted and need help. These people look like you | |
| 5 | and I. It's not like they've been you know, | |
| 6 | they're some drug addicts, some crazy drug addicts | |
| 7 | that some judge has sent there. | |
| 8 | So I very much encourage you to approve the | |
| 9 | zoning change, and hopefully the Kane County Board | |
| 10 | will see the wisdom to do likewise. | |
| 11 | Thank you very much. | |
| 12 | CHAIRMAN WHITE: Thank you. | |
| 13 | There were other people that raised their | |
| 14 | hands. Please come forward and please raise your | |
| 15 | right hand to be sworn in. | |
| 16 | (Witness sworn.) | |
| 17 | CHAIRMAN WHITE: Thank you. And please | |
| 18 | state your name and address for the record. | |
| 19 | MS. SCHMIDT: Stephanie Schmidt, | |
| 20 | 9N952 Tributary Lane, Elgin, or Plato Center 60124. | |
| 21 | CHAIRMAN WHITE: Approximately how far from | |
| 22 | this facility are you. | |
| 23 | MS. SCHMIDT: Probably 7 miles. | |
| 24 | CHAIRMAN WHITE: And are you in favor of or | |

1 opposed to this? 2 MS. SCHMIDT: I'm in favor of it. 3 CHAIRMAN WHITE: Thank you. Go ahead with 4 your comments. 5 MS. SCHMIDT: All right. This is my 6 opinion, and, of course, can be changed, but after I 7 get through, I may make some people angry at me. 8 First of all, I think it's very important 9 that the adults have a chance to heal themselves. Again, like the gentleman before me said, they are 10 11 not court ordered to be here. They are volunteers 12 who are seeking help who have a disease, and if this 13 facility can help them, that's wonderful. From 14 experience, had my grandson had the opportunity to 15 get into a facility like this, I would not have found him dead in my basement two years ago, 16 17 three years ago. These people absolutely need the help. 18 19 Again, like the gentleman before me said, they're 20 people like you and I. They're grandchildren. I'm 21 old enough to have adult grandchildren. 22 I'm a little bit nervous, so you'll have to 23 excuse me. 24 I don't know if any of you have seen

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| 1 | Dr. Phil now, I know this is kind of a cliché. |
| 2 | However, there are places he sends his adult people |
| 3 | to that are high-class. The people that can afford |
| 4 | this facility have to have top-notch insurance. So |
| 5 | you know that the caliber of people coming in are |
| 6 | not some spongy kid hanging out and vandalizing |
| 7 | things. |
| 8 | Another thing I want to mention, the |
| 9 | St. Charles School for Reform of Boys has been there |
| 10 | since when? 1930? How many breakouts have there |
| 11 | been since that school has been in action? How many |
| 12 | homes in the area have been vandalized by any of |
| 13 | those kids that have gone to that reform school? I |
| 14 | personally don't know of any. I could be wrong. |
| 15 | Again, this is an opinion. Opinions can be changed; |
| 16 | they're not set in stone. |
| 17 | Another thing, as a senior citizen, I |
| 18 | appreciate anything that can generate any money |
| 19 | toward school taxes. Like you said, there are so |
| 20 | many businesses and buildings and homes just being |
| 21 | left alone, which leaves the burden to all of us. |
| 22 | I've paid my dues; I've put four kids through school; |
| 23 | I've helped out 11 grandchildren, and I think we all |
| 24 | need a break from that as senior citizens. |

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| 1 | I can't think of what else I was going to |
| 2 | say, but this is from the heart. These people need |
| 3 | help. They need a clean, good facility. If they |
| 4 | want to leave, as I understand, there's a protocol |
| 5 | put in place where they have to let their |
| 6 | coordinators know they want to leave; they have to |
| 7 | make a phone call to home or to one of their peers. |
| 8 | The peer has to be approved to get into the school. |
| 9 | There are no gas stations, no restaurants, |
| 10 | no stores to hang around. And these people don't |
| 11 | want to hang out. These people have money; they're |
| 12 | not going to vandalize your homes; they're not going |
| 13 | to rob you. They don't need the money; they need |
| 14 | help, and God willing, we can get this facility. |
| 15 | I thank you. |
| 16 | CHAIRMAN WHITE: Thank you. |
| 17 | There were some other people that raised |
| 18 | your hands. |
| 19 | Ma'am, please come forward. |
| 20 | MS. WAGNER: I don't know if I'm allowed to |
| 21 | speak tonight or not because I was here yesterday, |
| 22 | and I was here to the end. So do you want to hear |
| 23 | from me or not? |
| 24 | CHAIRMAN WHITE: The public comment period |

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| 1 | is open, so you're more than welcome to speak. Did | |
| 2 | you speak last night? | |
| 3 | MS. WAGNER: No. | |
| 4 | CHAIRMAN WHITE: Raise your right hand. | |
| 5 | (Witness sworn.) | |
| 6 | CHAIRMAN WHITE: Please state your name. | |
| 7 | MS. WAGNER: My name is Donna Wagner. I | |
| 8 | live at 39W570 Kevin Court. I believe I'm well | |
| 9 | within the 2 miles. I might be right on the border, | |
| 10 | but I believe I am within the 2-mile circumference. | |
| 11 | CHAIRMAN WHITE: Are you in favor of or | |
| 12 | opposed to this? | |
| 13 | MS. WAGNER: I'm opposed. | |
| 14 | CHAIRMAN WHITE: Thank you. | |
| 15 | MS. WAGNER: I'm sorry I didn't take exact | |
| 16 | notes last night, but I do believe the gentleman | |
| 17 | here spoke yesterday and asked one of the other | |
| 18 | gentlemen that were speaking if we would feel more | |
| 19 | comfortable knowing that there was going to be a | |
| 20 | nurse on duty 24 hours a day and one physician that | |
| 21 | would be available for 40 hours a week. Is that not | |
| 22 | right? Did I hear that right? Thank you. | |
| 23 | Okay. I've spent my life as a dental | |
| 24 | hygienist. I'm not a nurse. I do realize that I | |

| 1 | have had emergency medical training as well as they |
|----|--|
| 2 | do because I am responsible for patients that are in |
| 3 | my chair. |
| 4 | I have enough knowledge to understand that |
| 5 | the nurses have to have a practice act, so I did a |
| 6 | little scrounging because it bothered me. I'm not |
| 7 | comfortable with a doctor that is only there for |
| 8 | 40 hours a week. Nurses work in collaboration with |
| 9 | a doctor. That means that they have to take orders |
| 10 | from a doctor. If a doctor is not present, a |
| 11 | telephone call is not always acceptable. They must |
| 12 | be able to see their patient. |
| 13 | So I went to the Illinois State Department |
| 14 | of Financial Professional Regulations. The division |
| 15 | of professional regulation this is available on |
| 16 | the Internet for the registered professional |
| 17 | nursing practice there's a nursing act. According |
| 18 | to Section 50-10, No. 7 let me paraphrase it |
| 19 | without because it's quite long. But it comes |
| 20 | down to this: That any nurse shall their duties |
| 21 | "shall not be deemed to include those acts of |
| 22 | medical diagnosis, prescription of therapeutic or |
| 23 | corrective measures." |
| 24 | Now, these people that are coming here, they |

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| 1 | are ill; they are sick. Some of them can be very |
| 2 | violent. We cannot rely upon a heat sensitive |
| 3 | barrier to keep these people where they're supposed |
| 4 | to be. This is a place where they can walk on, walk |
| 5 | out at will. There's one nurse there, according to |
| 6 | this gentleman, who is unsupervised. |
| 7 | So, let's see. The way I do my math, |
| 8 | 24 times 7 is 168 hours in a week. 40 of those |
| 9 | would be medically supervised by a doctor. That |
| 10 | leaves 128 hours where a nurse is working there |
| 11 | with no collaboration with the doctor as written by |
| 12 | State law. |
| 13 | So where does this come to? This brings me |
| 14 | to two things. |
| 15 | First of all, if she has to call a doctor to |
| 16 | get permission to push any medication into this |
| 17 | patient, the patient treatment is delayed by the |
| 18 | length of time she has to put in a phone call. |
| 19 | The other thing that happens here is if she |
| 20 | has to call for medical attention through the |
| 21 | county, through the fire department, whoever is |
| 22 | there, this is delayed. This is poor patient |
| 23 | management, poor treatment. These people are paying |
| 24 | big bucks for quality care. This is not quality |

1 care in my opinion. 2 The other point I would like to make is that 3 the County, I expect you to have high standards, and 4 if you are not maintaining high standards, then 5 you're not asking full support of medical personnel 6 that's going to be working there. They're allowing 7 shoddy, in my opinion, health services. And we are expecting -- as this lady behind 8 9 us that said, she wants some good quality care. These people are paying big bucks. They're not 10 going to get quality care. These people are coming 11 12 in, and they have no prior experience with drug treatment. This is their first operation. 13 They 14 can't point and say, "We have three other clinics 15 available." Therefore, I'm opposed to this. I don't 16 17 feel that they are being the quality institution that we expect in our county, and I don't want them 18 19 representing me in my county, and I don't want them 20 in my neighborhood, either. 21 Thank you very much. 22 CHAIRMAN WHITE: Thank you. 23 Next person. Is there anyone else 24 requesting -- ma'am, please come up.

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1154 1 (Witness sworn.) 2 CHAIRMAN WHITE: Thank you. Please state 3 your name and address for the record. 4 MS. JOHNSON: My name is Catherine Johnson, 5 43W123 Ickenham Lane, Campton Hills. I'm 6 approximately 2 miles from the facility off of 7 McDonald. CHAIRMAN WHITE: Are you in favor of or 8 9 opposed to this? 10 MS. JOHNSON: I'm opposed to this. 11 CHAIRMAN WHITE: Okay. 12 MS. JOHNSON: Again, I just want to make a reminder here that you know, as well as the audience 13 tonight, this is not a zoning request. This is a 14 15 request for a special permit as the special permit is written. The special-use permits are very clear 16 17 in what is allowed, such as a monastery school, a 18 nursing home, a convalescent center, and the other 19 uses identified here. 20 It was stated last night. Again, this is 21 not similar to any of those special-use permit items 22 there. This facility is also not affiliated with 23 any hospital. 24 There have been two attempts, this one and

| 1 | the previous attempt to put a rehab center at this |
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| 2 | facility. Just because there has been two attempts |
| 3 | to place such a facility at this grounds does not |
| 4 | mean that that is necessarily the right thing to do. |
| 5 | In the future is to change the special use permits. |
| 6 | Those things that are identified as suitable for |
| 7 | special use are aligned with what the community |
| 8 | would find, and I'll say quote, "acceptable." Some |
| 9 | of those are the nursing center, the private school |
| 10 | that was previously there, and the nunnery and the |
| 11 | monastery, also. |
| 12 | I do not see how we can state that the |
| 13 | nearby homes will not be adversely affected by a |
| 14 | drug rehabilitation center being put, quote, "in |
| 15 | their back yard." If we had two identical homes, |
| 16 | one within 10 miles of the facility and one next to |
| 17 | the facility, we will lose value with the one next |
| 18 | to the facility. |
| 19 | My last comment I wanted to state tonight is |
| 20 | we had a lot of the citizens of Campton Hills and |
| 21 | the neighboring areas throughout all of these |
| 22 | sessions showing their support for the community and |
| 23 | coming to the Board saying, "We respect you; we |
| 24 | respect the 2040 plan; we respect the special-use |

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1 permit." 2 Tonight the audience is a little bit smaller 3 than we had seen and it was my understanding -- I 4 was here until last night -- that the public comments were closed. I think if this was known 5 6 that they could potentially open, we would see that 7 same crowd here again showing their support. So, again, I just wanted to let that be 8 9 known that I think we are missing some of the people that would want to show their support against the 10 11 proposed special-use permit. 12 CHAIRMAN WHITE: Thank you. Anyone else? 13 Ma'am, please come forward and please raise 14 15 your right hand to be sworn. 16 (Witness sworn.) 17 CHAIRMAN WHITE: Thank you. 18 MS. BOUREL-CARTEE: My name is 19 Cathy Bourel-Cartee. My address is 41W815 McDonald 20 Road in Elgin. 21 CHAIRMAN WHITE: Approximately how close to 22 the facility are you? 23 MS. BOUREL-CARTEE: This facility touches my 24 property.

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| 1 | CHAIRMAN WHITE: Okay. Thank you. And are |
| 2 | you in favor or opposed to it? |
| 3 | MS. BOUREL-CARTEE: Opposed. |
| 4 | What has disturbed me the most about Maxxam |
| 5 | Partners is how out of touch they are with our |
| 6 | community. Never once did a representative from |
| 7 | Maxxam contact me, a neighbor, an adjoining |
| 8 | neighbor. Okay? |
| 9 | Mr. Brown indicated in past testimony that |
| 10 | he did reach out to the neighbors whose property |
| 11 | touches the school. I was really surprised. I sat |
| 12 | in the audience and listened to that and afterward |
| 13 | went up and asked him I said, "I'm one of those |
| 14 | neighbors." Okay? And I was never approached. |
| 15 | He somewhat acknowledged that he recognized |
| 16 | my name and said that had he would probably get in |
| 17 | touch with me. We talked a little bit about what I |
| 18 | really felt was needed, a fence. |
| 19 | Yes, there's a creek. Yes, there are |
| 20 | briars. But I am directly behind this facility. |
| 21 | Okay? People can walk there are deer trails. |
| 22 | They can get through. That's no problem if they |
| 23 | really want to. The forest preserve is also there, |
| 24 | which I'm very concerned about. The forest preserve |

| 1 | is a boundary on my left and on my south. |
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| 2 | I don't know how people in the community are |
| 3 | going to feel comfortable with taking their |
| 4 | grandchildren and their children to the forest |
| 5 | preserve to walk, see some of the species of the |
| 6 | flowers that are endangered there and everything |
| 7 | else when they can possibly have their kids or |
| 8 | grandkids run through the thermal imaging and go |
| 9 | into this property. You know, kids are kids; they |
| 10 | like to run. Then, what is there to prevent, again, |
| 11 | the patient coming out and interacting with these |
| 12 | kids? I don't think it's a good mix. Okay? |
| 13 | Also, I think they're asking and setting a |
| 14 | precedence for the forest preserve to be a buffer, |
| 15 | to be a buffer for a private company who wants to |
| 16 | come in and do their business, and it's surrounded |
| 17 | by 620 acres of forest preserve. Are we setting a |
| 18 | precedent that this is going to be allowed? |
| 19 | No signs have ever been talked about posting |
| 20 | anything in regards to no trespassing or, you know, |
| 21 | unlawful entrance will be prosecuted. We haven't |
| 22 | talked about any of that. And I know maybe this |
| 23 | isn't the time to talk about this, but I wanted to |
| 24 | get it into the evidence. |

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| 1 | I'm very concerned. I have a barn; I have |
| 2 | horses; I have almost 9 acres, and we, my husband |
| 3 | and I have spent the last 15 years there and |
| 4 | thoroughly enjoyed it. It's quiet and it's peaceful. |
| 5 | Thank you for listening. I hope you make |
| 6 | the right decision. |
| 7 | CHAIRMAN WHITE: Thank you. Anyone else |
| 8 | seeking the microphone at this time? |
| 9 | (No response.) |
| 10 | CHAIRMAN WHITE: I'm not seeing anybody. |
| 11 | Is there a motion to close the public |
| 12 | comment portion of the meeting? |
| 13 | MEMBER STOVER: So moved. |
| 14 | MEMBER BOWEN: So moved Mr. Chairman. |
| 15 | CHAIRMAN WHITE: Moved by Ms. Stover, |
| 16 | seconded by Mr. Bowen. All in favor say aye. |
| 17 | (Ayes heard.) |
| 18 | CHAIRMAN WHITE: Opposed, same sign. |
| 19 | (No response.) |
| 20 | CHAIRMAN WHITE: Motion carries. |
| 21 | At this point I'll open it up to the |
| 22 | petitioner. |
| 23 | Just to explain the process, I'll start with |
| 24 | the petitioner; I'll allow time for the objectors to |

1 make closing comments. 2 I guess the first question I would ask is, 3 how much time are you going to require in your 4 closing comments? 5 MR. BROWN: Well, it's my understanding that 6 the Board had requested a witness to be here 7 tonight. 8 MR. KOLB: Mr. Ryan Bailey is here from 9 Murer Consultants if the Board would like to ask questions. He was here earlier in the proceedings 10 11 and he is here again. CHAIRMAN WHITE: Do the Board members wish 12 to bring him forward? 13 14 I have a request, so Mr. Bailey, you're more 15 than welcome to come up and testify. MR. CARRARA: Mr. Chairman, if I may, I'm 16 17 not prepared to examine Mr. Bailey this evening as this is news to I think me and a number of people 18 19 here in the crowd that we were going to be bringing 20 experts back up for cross-examination. 21 We were prepared this evening to do closing 22 arguments as directed yesterday by the Chair. So 23 I'd be requesting additional time to cross-examine 24 Mr. Bailey.

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| 1 | CHAIRMAN WHITE: Yes. Yes, you will be |
| 2 | allowed to cross-examine. |
| 3 | MR. CARRARA: I won't be prepared this |
| 4 | evening because I didn't bring any of my materials |
| 5 | because I wasn't anticipating this happening this |
| 6 | evening. And I suspect others in the audience from |
| 7 | the villages and Campton Township are probably also |
| 8 | not here. I don't see Mr. Miller here who has been |
| 9 | an active participant in examination of experts. |
| 10 | MR. BROWN: If I can respond. We've been |
| 11 | listening to this for at least eight days of an |
| 12 | evening. I'm sure Mr. Carrara, knowing his background |
| 13 | and ability, will be able to cross-examine him, and |
| 14 | I believe there's a report that's in the file. |
| 15 | MR. KOLB: Correct. There's an expert |
| 16 | report. We've also discussed the possibility both |
| 17 | with Mr. Carrara and with the County about calling |
| 18 | rebuttal witnesses, and I think there was plenty of |
| 19 | public comment on the issue of similarity that |
| 20 | deserves a rebuttal witness, and that possibility |
| 21 | has always been there. |
| 22 | So regardless of Mr. Carrara's level of |
| 23 | preparation, I think it's appropriate to call |
| 24 | Mr. Bailey either at the request of the County, |

which there was a formal request, or alternatively 1 2 as a rebuttal to challenge some of the public 3 comment. MR. BROWN: And, also, there's no surprise 4 that he was on our list. He's been here to at least 5 6 three of these proceedings from what I recall, and 7 he could have been called at any time, and I'm assuming that Mr. Carrara was prepared on those 8 9 other dates. We did this based on an e-mail that was sent 10 to us today. We did not initiate this, and we're 11 12 just responding to your request. MR. CARRARA: Again, the e-mail was not sent 13 to me. I have exhibits that were prepared previously 14 15 for this witness when I was prepared for him during the public comments when the witnesses were to be 16 17 present. 18 The hearing was closed for testimony. You 19 told us last night we were only going to be dealing 20 with closing arguments. I did not bring my exhibits; 21 I did not bring my outline to prepare for this. All 22 I'm asking is -- I'll let him testify. I just ask 23 that I be given additional time to prepare and bring 24 my exhibits back. Again, that's all I'm asking.

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| 1 | You've already ruled against my motion |
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| 2 | because he wasn't here. Now, surprisingly, he's |
| 3 | here and I was not advised of whatever e-mail was |
| 4 | sent this morning. I would have brought my exhibits |
| 5 | and been prepared. |
| 6 | CHAIRMAN WHITE: And I didn't know he |
| 7 | was here. |
| 8 | MR. CARRARA: Well, somebody from I don't |
| 9 | know. Was it the County that requested it? |
| 10 | CHAIRMAN WHITE: Request doesn't mean the |
| 11 | person is going to attend, two different topics. I |
| 12 | was not made aware that he was here. |
| 13 | MR. CARRARA: In the interest of not |
| 14 | calling this trial by surprise, but I would have had |
| 15 | exhibits for the witness if I would have known he |
| 16 | would have been here. I guess I would ask staff or |
| 17 | somebody at least to advise us that he would have |
| 18 | been present. |
| 19 | MR. BROWN: Actually, I think we're also |
| 20 | entitled to bring rebuttal testimony as to the |
| 21 | public hearing, so we can properly bring that person |
| 22 | here. He's always been on our witness list, and we |
| 23 | would like to get this proceeding which has been |
| 24 | going on for a long time and just to finish it |

1164 1 tonight. I don't think we -- all right. That's fine. 2 CHAIRMAN WHITE: I'm going to allow for the 3 rebuttal witness to proceed. 4 MR. KOLB: Does the County have specific 5 questions for the witness? 6 CHAIRMAN WHITE: Any questions from Board 7 members? 8 MEMBER STOVER: Mr. Bailey, what's your 9 background? 10 THE WITNESS: I am a lawyer. 11 CHAIRMAN WHITE: I need to swear you in. I'm sorry. 12 THE WITNESS: Absolutely. 13 CHAIRMAN WHITE: Please raise your right 14 15 hand and stand, please. (Witness sworn.) 16 17 CHAIRMAN WHITE: And please state your name 18 and your affiliation with this petition for the 19 record, please. 20 THE WITNESS: My name is Ryan Bailey. I am 21 here as an authorized representative of Murer 22 Consultants to speak on behalf of the expert opinion. 23 RYAN BAILEY, 2.4 having been duly sworn, testified as follows:

1 EXAMINATION BY BOARD MEMBER 2 BY MEMBER STOVER: 3 Q So my question again is, what is your 4 background, Mr. Bailey. 5 I graduated from the University of Illinois А 6 in Urbana-Champaign in 2008. I then went to law 7 school at the DePaul University of Law in Chicago. I graduated in 2012. I held a position with a small 8 9 firm in Wheaton, and then I got a job with Murer Consultants, and I've been working with Murer for 10 approximately two years. And we specialize in 11 12 health care regulatory compliance. So it would be development and management. 13 And can you tell me as a rebuttal witness, 14 0 15 are you here to help us out with the similarity issue? 16 17 А Yes. 18 And can you tell me what facilities you have 0 19 worked on or what you -- in your past what's been 20 your experience in the state of Illinois or 21 surrounding states with that similar issue? 22 A On a daily basis I represent hospitals, 23 physician groups, and various health care providers 24 of multiple types. I'm intimately familiar with

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| 1 | licensing laws and standards of care. |
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| 2 | As a firm, we represent a laundry list of |
| 3 | different types of health care providers, including |
| 4 | short-term acute care hospitals, long-term acute |
| 5 | care hospitals, skilled nursing facilities. The |
| 6 | laundry list continues. |
| 7 | Q So noting that most recently in the State of |
| 8 | Illinois they carved out a different licensure law |
| 9 | for this type of facility, is it fair to say that |
| 10 | that's because there are similarities between the |
| 11 | two but there are definitely differences? |
| 12 | A I think that it's fair to say there are |
| 13 | similarities. There are definitely differences, as |
| 14 | well. However, the decision to carve out the |
| 15 | substance abuse facilities, it is my understanding |
| 16 | that it was done to allow to license these |
| 17 | facilities without having to achieve the same |
| 18 | hospital standards, rigorous standards for acute |
| 19 | care settings. |
| 20 | It's essentially like allowing this hospital |
| 21 | service line to be licensed under a different |
| 22 | category to allow a less stringent process of |
| 23 | licensure for the facility. |
| 24 | Q So you used the word "acute." Is it fair to |

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| 1 | assume, then, that the reason this was carved out |
| 2 | into a different licensing is because they do not |
| 3 | deal on a day-to-day basis with as many physical |
| 4 | things, such as, you know, surgeries, broken bones, |
| 5 | the types of equipment that would have to be in a |
| 6 | hospital? Is it that is that why they |
| 7 | distinguished between the two let me rephrase that. |
| 8 | A Sure. |
| 9 | Q Were there enough cumbersome things within |
| 10 | the hospital regimen that it would not apply or it |
| 11 | does not fully apply to a treatment center? |
| 12 | A So the way I understand the question, you're |
| 13 | asking whether or not the hospital has different |
| 14 | services other than solely alcoholism and substance |
| 15 | abuse. |
| 16 | Q What I'm saying is and I probably don't |
| 17 | phrase it well the amount of equipment, and the |
| 18 | licensure, and the rooms, and the doctors, and the |
| 19 | procedures, and the machinery, and some of the |
| 20 | things that would be in licensure for a hospital, do |
| 21 | you feel that that was why this law was carved out |
| 22 | of the hospital setting, because it was too cumbersome |
| 23 | to have them be the same? |
| 24 | A I feel like that would be part of the |

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| 1 | reasoning for carving this out. I also think that |
| 2 | these types of services customarily are provided in |
| 3 | hospital settings, so there are similarities in the |
| 4 | licensure acts applicable to the alcoholism and |
| 5 | substance abuse facility that share similarities |
| 6 | with the Illinois acute care hospital setting. |
| 7 | And I also feel that there's not just one |
| 8 | type of hospital that gets licensed. So where the |
| 9 | traditional mentality of a hospital is that, you |
| 10 | know, broken bones, surgery, et cetera, et cetera |
| 11 | there's hospitals that don't provide surgery; |
| 12 | there's hospitals that don't provide obstetrics. |
| 13 | There's all sorts of different health care |
| 14 | facilities and different licensure requirements. So |
| 15 | it's not uncommon to have different sorts of |
| 16 | licensure standards for different facilities. |
| 17 | Q Could you speak to the issue of the |
| 18 | similarity? How do you find this facility similar |
| 19 | to a hospital? |
| 20 | A Sure. And I think our expert report that |
| 21 | was issued by Murer Consultants speaks to that topic. |
| 22 | A little background. Murer Consultants is a |
| 23 | family-owned firm out of Mokena, Illinois. Cherilyn |
| 24 | and Mike Murer are two of the named partners. It's |

| 1 | been in existence since 1985 and, as I stated |
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| 2 | earlier, represents a laundry list of different |
| 3 | health care providers and facilities across the |
| 4 | country. |
| 5 | So as the similarity between the hospital |
| 6 | and the proposed alcoholism and substance abuse |
| 7 | facility, it's our understanding under the |
| 8 | Kane County ordinance that the facility needs to be |
| 9 | similar and not exactly like a hospital. And |
| 10 | there's three basic tenets to our argument that it |
| 11 | is similar. |
| 12 | The definition of a hospital in the |
| 13 | Kane County ordinance is an institution open to the |
| 14 | public in which patients or injured persons are |
| 15 | given medical or surgical care or for the care of |
| 16 | contagious diseases. |
| 17 | Q Where are you reading that from? |
| 18 | A I'm reading that directly from the first |
| 19 | paragraph of Section 1 of our expert opinion. |
| 20 | Q I meant where are you reading that from |
| 21 | Kane County. |
| 22 | MR. KINNALLY: It's page 9 of the zoning |
| 23 | ordinance, Ms. Stover. |
| 24 | THE WITNESS: I apologize. |

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| 1 | A (Continuing.) So under that definition, |
| 2 | when you turn then to the licensure for the facility |
| 3 | of the alcoholism and substance abuse, there's |
| 4 | two types of licenses the Department will issue, |
| 5 | either a treatment license or an intervention |
| 6 | license. |
| 7 | The treatment license specifically talks |
| 8 | about providing a continuum of care, having I |
| 9 | have the exact words "a continuum of care provided |
| 10 | to persons addicted to or abusing alcohol or other |
| 11 | drugs that is designed to identify and change patterns |
| 12 | of behavior that are maladaptive, destructive and/or |
| 13 | injurious to health; or to restore appropriate |
| 14 | levels of physical, psychological, and/or social |
| 15 | functioning." There's an element of continuum of |
| 16 | care that needs to be provided, that is treatment to |
| 17 | these patients, and it is different from the |
| 18 | intervention license, which is, you know, designed |
| 19 | to provide activities or services to assist in |
| 20 | coping and more of a social setting-type as opposed |
| 21 | to a continuum care-type license. |
| 22 | It is also Murer's understanding that Maxxam |
| 23 | Partners is seeking the highest level treatment |
| 24 | license, the Level 4 detoxification, and the acuity |

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| 1 | of care involved in this would regularly and |
| 2 | customarily be reserved in a hospital setting. So |
| 3 | the similarity between continuum of care that's |
| 4 | going to be provided in this facility is also |
| 5 | provided in hospital settings. |
| 6 | So that's the first basic argument. The |
| 7 | second position is that, as I stated before, the |
| 8 | actual regulations themselves share similar |
| 9 | characteristics between the Illinois Hospital |
| 10 | Licensing Act and the Alcoholism and Substance Abuse |
| 11 | Licensing Act. They're not exact; they just have |
| 12 | similar characteristics. |
| 13 | There's a requirement that a physician see |
| 14 | the patient daily, and the facility has to have a |
| 15 | medical director. They have to have nurses, and the |
| 16 | nurses have to provide care to the patients, $24/7$ |
| 17 | monitory. These are all things you find in a |
| 18 | hospital setting. |
| 19 | They also have a set of regulations that are |
| 20 | not exact to a hospital care but are similar in |
| 21 | regard to facility standards, infectious disease |
| 22 | control, patient room and bath. There's elements of |
| 23 | oversight that you would see the State providing in |
| 24 | hospitals that they're providing in this facility. |

1172 1 So there's a similar oversight. 2 And the third position and what I've alluded 3 to throughout is that this service line itself, the 4 alcoholism and substance abuse service line is 5 customarily provided in hospitals and is frequently 6 provided in hospitals. So it's a hospital-level 7 service provided in a facility that has similar 8 oversight by a State via the licensure act. 9 So it would be the opinion of Murer Consultants based on 30 years' experience as a firm 10 we feel it's similar to a hospital. 11 12 MEMBER STOVER: All right. No more. CHAIRMAN WHITE: Any Board members have any 13 questions? 14 15 (No response.) CHAIRMAN WHITE: County have any questions? 16 17 MR. KINNALLY: I've got some questions. 18 Thank you, Mr. Chairman. 19 CROSS-EXAMINATION BY COUNSEL FOR THE COUNTY 20 BY MR. KINNALLY: 21 You are a lawyer? You've been a lawyer for 0 22 three years? 23 А I'm in my fourth year. 24 And you didn't write this report, did you? Ο

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| 1 | A I assisted in the writing of this report. |
| 2 | Everything that comes through the Murer Consultants' |
| 3 | office is a collaborative team effort. Cherilyn |
| 4 | Murer, the president, was the lead on this report, |
| 5 | and I participated in the research and the writing |
| 6 | of this project. She has ultimate authority. |
| 7 | Q Well, who authored it? Did you author it? |
| 8 | A I wrote I wrote the majority of it, if |
| 9 | that's what you're questioning, but then she reviews |
| 10 | and approves. |
| 11 | Q I see. And when were you contacted by the |
| 12 | applicant? |
| 13 | A I was brought to a meeting I was told by |
| 14 | Cherilyn Murer that we were contacted by Maxxam |
| 15 | Partners. So I don't know the date when the initial |
| 16 | contact with them was, but in the summer of last |
| 17 | year we were talking with Steve Marco and Maxxam |
| 18 | Partners. |
| 19 | Q When were you contacted to testify? |
| 20 | MR. BROWN: Just a point of reference. You |
| 21 | mean for today? |
| 22 | MR. KINNALLY: Whenever. It's an open |
| 23 | question. I'm sure he knows the answer. |
| 24 | A Well, there's various stages. At the |

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| 1 | initial meetings, in understanding of our role in | |
| 2 | this project the possibility of testimony arose. | |
| 3 | But it wasn't verified until the hearing was put on | |
| 4 | the schedule and we were contacted and asked to | |
| 5 | participate. And after that we had two | |
| 6 | representatives on hand to make sure that Murer | |
| 7 | could be here whenever the County needed us, and | |
| 8 | then today I was asked to come. | |
| 9 | Q So you wrote the report, you were contacted | |
| 10 | to testify, and you're here to tell us about which | |
| 11 | criteria of the zoning ordinance? | |
| 12 | A That's a question? | |
| 13 | Q That is a question. | |
| 14 | A The similarity, whether or not this facility | |
| 15 | is similar to a hospital or also a nursing home. | |
| 16 | But mostly our report focuses on hospital standards. | |
| 17 | Q I didn't see anything in your report about | |
| 18 | nursing homes | |
| 19 | A That's true. | |
| 20 | Q can you tell me where that is? | |
| 21 | A This report specifically addresses hospitals. | |
| 22 | Q I see. So it's my understanding that you | |
| 23 | think this facility is like a hospital for the | |
| 24 | three reasons you stated. | |

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Yes. 1 А 2 0 And the first one was that it's open to the 3 public; right? 4 That's an element of the definition. A No. 5 There's multiple elements within that definition. 6 Q Well, I understand that. I appreciate that 7 information but doesn't the definition of hospital in the zoning ordinance say that the institution 8 will be open to the public? 9 Those words are included in there, but it 10 А doesn't further define "open to the public," whether 11 12 or not it means select members of the public or general public. From our reading of this, open to 13 the public could mean that it's open to members of 14 15 the public with a certain level of insurance that 16 would be acceptable to the facility. 17 0 It doesn't say anything about insurance in 18 there, does it? 19 But it doesn't say anything -- it А No. 20 doesn't further define the "phrase open to the public." 21 22 This particular facility is not open to the 0 23 public; correct? It's only open to the people that 24 can pay to get into it; right?

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1176 1 It depends on, again, how you define "open А 2 to the public." 3 Q I'm asking you, sir. You're the expert. 4 I'm just the lawyer. 5 I'm here -- respectfully, sir, I'm here on А behalf Murer Consultants, so I'm authorized to speak 6 7 on behalf of --That's what we're trying to find out. 8 Q 9 You agree with me that this is a private-pay substance abuse center; true? 10 I do. 11 А 12 And that means it's not open to the public; Q true? 13 14 А Again, it depends how we're defining "open 15 to the public" but we're --Okay. Well, kids from St. Charles or 16 Q 17 21-year-olds from St. Charles who don't have the 18 ability to go to this place, don't have the money to 19 go to this place, they're not going to get in, 20 are they? 21 That depends on the admissions criteria set А 22 by the facility, and based on my understanding, 23 there are preauthorization checks for insurance, and 24 if they don't meet those checks, then they would not

1177 1 be invited to the facility. 2 Okay. All right. Now, you indicated that Q 3 the second part of your opinion that you shared with 4 the Board was that there were elements of oversight 5 with respect to this facility that were similar to a 6 hospital. Is that right? 7 А Yes. Q Did I say that correctly? 8 9 There's an Illinois licensing act that will А 10 apply to this facility. And how many nurses will be staffed here? 11 0 12 Do you know? The organization and operation of the 13 А facility is outside the scope of our responsibility 14 15 for this. We're looking to the similarity of the type of care that will be provided in the facility. 16 17 The regulations require that a nurse be on staff 18 24/7 and that they oversee patients. 19 So we're clear, as you just stated, the Q 20 organization and operation of the facility is 21 outside the opinion that you're telling the Board 22 about tonight; true? Is that what you just said? 23 Am I correct in that? 24 Those were -- to clarify, what I mean by А

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| 1 | "organization and operation" is how any |
| 2 | additional levels beyond the licensure requirements |
| 3 | that will be put on the facility. And in the |
| 4 | licensure requirements there are staffing |
| 5 | requirements, and in those staffing requirements, |
| 6 | the facility must provide 24-hour observation, |
| 7 | monitoring, and treatment, and it must be by a |
| 8 | registered nurse, a licensed practical nurse, or a |
| 9 | certified emergency medical technician with 40 hours |
| 10 | of training in the field of alcoholism. |
| 11 | Q I appreciate you reading from the report and |
| 12 | we've read the report. My question is, did you not |
| 13 | just say that your opinion, Murer Consultants' |
| 14 | opinion with respect to the organization and |
| 15 | operation of the facility is not something that's in |
| 16 | your report? |
| 17 | A I feel like I |
| 18 | Q Yes or no, sir. |
| 19 | A I feel like I clarified my statement and |
| 20 | Q All right. That's fine. |
| 21 | A that's any element of organization and |
| 22 | operation above the basic licensure standards that |
| 23 | are set forth and that we've identified in our |
| 24 | memorandum. |

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1179 1 In your memorandum? Q 2 In our expert opinion, however you'd like to А 3 categorize it. 4 That's what you called it. You can call it 0 5 whatever you want. 6 A One more time, I'm here as an authorized 7 representative of the firm --I appreciate that. 8 Q 9 А -- and I just --10 Q Can I just ask a question? Please let me just ask the question so the reporter can take it 11 We can't talk over each other. 12 down. I apologize. 13 А Now, you said the elements of oversight are 14 Ο 15 the licensing act; is that right? Yes. 16 А 17 0 Would you agree with me that the elements of oversight for a public hospital are greater than the 18 19 licensing act in the state of Illinois? You're an 20 expert at this; right? 21 А Yes. The firm is an expert in this. 22 And so are you, right? Q 23 А I am a member. 24 But you're an expert. Q

| 1 | A I base in my legal training and my |
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| 2 | experience in the field, I think that I could |
| 3 | qualify as an expert on a number of elements. |
| 4 | Q Okay. Thank you. I'm sure that's true. |
| 5 | Now, the last thing you wanted to talk about |
| 6 | is you said that the service line with respect to |
| 7 | this facility will be akin to those that are |
| 8 | provided in hospitals. Did I get that right? |
| 9 | A If the service line were provided in the |
| 10 | hospital, it can be akin to that, yes. |
| 11 | The point of that statement, if I may |
| 12 | clarify, is that this type of service is provided in |
| 13 | hospitals. And to in furtherance of that point, |
| 14 | a hospital wouldn't need an additional license to |
| 15 | provide this service; it would apply underneath the |
| 16 | hospital license. |
| 17 | Q And has it been your experience that most of |
| 18 | the substance abuse centers in the state of Illinois |
| 19 | are attached to hospitals? |
| 20 | A No. I think that there are a number of |
| 21 | substance abuse facilities that are licensed |
| 22 | underneath hospitals or collocated with hospitals |
| 23 | Q Right across the street? |
| 24 | A and there |

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| 1 | Q Right across the street? | |
| 2 | MR. BROWN: We would just request that he | |
| 3 | finish his answer, please. | |
| 4 | MR. KINNALLY: Sure. | |
| 5 | MR. BROWN: Thank you. | |
| 6 | A (Continuing.) And there are a number of | |
| 7 | facilities that are collocated or licensed as far as | |
| 8 | with a hospital, but there are other facilities that | |
| 9 | are not. | |
| 10 | Q Where is the nearest hospital to this | |
| 11 | facility? Can you tell the Board? | |
| 12 | A I don't know that. | |
| 13 | Q Now, we heard from an adviser for Maxxam, a | |
| 14 | doctor that came to this hearing who is on the | |
| 15 | advisory board, and he's an emergency room doctor at | |
| 16 | Delnor Hospital. Are you familiar with that man? | |
| 17 | A No. I was not here on the day that he gave | |
| 18 | testimony. | |
| 19 | MR. KINNALLY: Thank you, Mr. Chairman. | |
| 20 | Thank you, sir. | |
| 21 | CHAIRMAN WHITE: Mr. Carrara. | |
| 22 | MR. CARRARA: Again, Mr. Chairman, I request | |
| 23 | that I'm unprepared this evening with my | |
| 24 | exhibits, and I request additional time. And if you | |

1 choose not to allow that, we'll stand on the record 2 as being presented. 3 CHAIRMAN WHITE: Then that's all I'm going 4 to do. You're more than welcome to ask some 5 questions. 6 MR. CARRARA: Thank you. We'll stand on the 7 objection. 8 CHAIRMAN WHITE: Thank you. Any units of 9 government wanting to address this witness? 10 Mr. Shepro. MR. SHEPRO: Mr. Chairman, I most 11 12 respectfully would join in the objection made by 13 Mr. Carrara. Last night this Board made and passed 14 a motion to close the public hearing and to close 15 testimony. And while I believe that rebuttal witnesses can be allowed, they're not allowed after 16 17 the hearing has been closed. I do believe, also, that this Board in its 18 19 discretion could decide to call this individual as 20 their own witness, but I think under those 21 circumstances I believe it is only fair when the 22 parties were not made aware that the witness would be 23 called. And it seems to me in this instance a very 24 simple copy of an e-mail or a telephone call would

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1 have alerted us to the fact that this individual was 2 going to testify. 3 So I really do believe that it is unfair to 4 expect us to be able to cross-examine a witness when moments before he testified the Board for a second 5 6 time closed the second hearing to any further 7 testimony. So I, too, would stand on the objection that 8 9 I'm not prepared to proceed with this witness this 10 evening. CHAIRMAN WHITE: And just to clarify, I 11 12 closed the public comment section of the hearing. Ι did not close the public hearing, and that was 13 14 purposely stated that way. 15 MR. SHEPRO: You are correct, Mr. Chairman. But, again, counsel for the applicant did not say we 16 17 are going to have rebuttal witnesses. He could have 18 said that. Instead we all discussed last night that 19 we would go directly to closing arguments. 20 MR. KOLB: Objection. The Klaeren case 21 states that rebuttal witnesses are appropriate. Ιt 22 doesn't need to be by agreement of counsel. Nor was 23 there ever a written agreement. 24 I'm not suggesting it required MR. SHEPRO:

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| 1 | agreement. I'm suggesting it required disclosure. | |
| 2 | CHAIRMAN WHITE: I recognize your objection. | |
| 3 | MR. SHEPRO: I thank you for that. | |
| 4 | Therefore, we will also stand on our objection. | |
| 5 | CHAIRMAN WHITE: Thank you. | |
| 6 | MR. KINNALLY: Mr. Chairman, just so the | |
| 7 | record is clear, I didn't know this guy was going to | |
| 8 | testify, either. So my cross-examination was based | |
| 9 | on just what I did tonight. So I just want to make | |
| 10 | the record clear on that, as well. Thank you. | |
| 11 | CHAIRMAN WHITE: And I'll also say that the | |
| 12 | Board did not know this person was going to be here. | |
| 13 | There was a request made. I did not get an answer | |
| 14 | to that question. | |
| 15 | MR. SHEPRO: Just for purposes of the record, | |
| 16 | Mr. Chairman, I would ask if there was a request in | |
| 17 | writing or by e-mail, I would ask that that be made | |
| 18 | part of the record of this case. I haven't seen it | |
| 19 | and I don't think Mr. Carrara has seen it, and it | |
| 20 | sounds like Mr. Kinnally didn't see it, either. | |
| 21 | MR. KOLB: I have a copy of it for the | |
| 22 | record. It was an e-mail sent by Mr. VanKerkhoff to | |
| 23 | me at 1:01 p.m. today. The e-mail says, "Andrew, | |
| 24 | Chairman White asked me to inquire if Ryan Bailey is | |

1 available to attend this evening if needed. 2 Thank you." 3 And my response, which was sent at 3:22 4 p.m., and there were a number of people copied on 5 that response, indicates, "He will be present, along 6 with Keith, me, and Steven Marco." 7 And, obviously, we scrambled to MR. BROWN: get that done tonight. We did not make this request. 8 9 MR. SHEPRO: And just if I understand what 10 counsel is saying is that the counsel for objectors 11 were not copied on that e-mail response. CHAIRMAN WHITE: Mr. VanKerkhoff would like 12 13 to speak. MR. VAN KERKHOFF: Thank you, Mr. Chairman. 14 15 I just wanted to confirm for the record, 16 that's an e-mail I sent to the petitioner at your 17 request. I did receive, I can see, an e-mail at 18 3:22 p.m. from Mr. Kolb. I had already left the 19 office for the afternoon to prepare for this evening's 20 meeting. So I was not aware of their response nor 21 did the petitioner respond to anyone else. 22 Again, it was a request just to see if he 23 was available. It was not a request that he be here 24 to testify or that he would be testifying. If I had

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| 1 | received the e-mail at 3:22, I certainly would have |
| 2 | shared that with the petitioner and other parties. |
| 3 | CHAIRMAN WHITE: Anyone else wishing to |
| 4 | cross-examine the witness? |
| 5 | Mr. VanKerkhoff. |
| 6 | MR. VAN KERKHOFF: If I could just make one |
| 7 | other comment for the record. |
| 8 | Through the course of all these hearings our |
| 9 | staff at the County has been slow to get requests or |
| 10 | shared information from all parties involved, both |
| 11 | the petitioner, Mr. Carrara, and other units of |
| 12 | government in terms of desires to call witnesses or |
| 13 | produce witnesses. |
| 14 | So just for the record, there's been, in my |
| 15 | opinion as zoning officer, not great communication |
| 16 | by any of the parties. |
| 17 | Thank you. |
| 18 | CHAIRMAN WHITE: Any Board members seeking |
| 19 | the floor at this time? |
| 20 | (No response.) |
| 21 | CHAIRMAN WHITE: The witness is excused. |
| 22 | Thank you. |
| 23 | (Witness excused.) |
| 24 | CHAIRMAN WHITE: Now we'll move on to closing |

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1 arguments -- closing comments I would rather say. 2 Is the petitioner ready -- and I guess I 3 started to explain, we're going to allow the 4 petitioner the opportunity for closing comments. 5 Then I'll open it up to the objectors. 6 MR. BROWN: We actually have one other 7 document that we would like to produce in rebuttal 8 which is based on some of the comments that were 9 made during the public forum yesterday. This is a -- and I will hand out a copy of the documents. 10 CHAIRMAN WHITE: That would be fine. 11 MR. KOLB: I think we're on 26. Is that 12 correct, Mr. Kinnally? 13 MR. KINNALLY: I have to check my notes. 14 15 Last one I have, Mr. Chairman, is J24, which would have been the ordinance. 16 17 CHAIRMAN WHITE: I think he's right, J25. 18 MR. KINNALLY: That's what I have, 19 Mr. Chairman. 20 CHAIRMAN WHITE: Thank you. 21 MR. BROWN: In accordance with past 22 practices that were used during the public hearing, we do have a letter from Trina Diedrich which 23 24 basically -- if you want me to read the entire

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1188 1 letter into the record or --2 MR. SHEPRO: Andrew, do you have another 3 copy of that exhibit? 4 CHAIRMAN WHITE: Are you just going to read 5 in the cover letter? Is that what you're --MR. BROWN: I can do that or I can summarize 6 7 it. It's not that long but this way --CHAIRMAN WHITE: Just summarize it. We have 8 9 it in writing, so we'll move on it to admit the 10 testimony. Is there a motion? 11 12 MR. BROWN: I'm sorry. Did you want me to read it? 13 14 CHAIRMAN WHITE: Let me move it first. Ιs 15 there a motion -- go ahead and read it. Go ahead. MR. BROWN: "Staff working within a 16 17 substance abuse treatment center where residential 18 detoxification services are being provided are 19 highly qualified and specialize in providing 20 exceptionally skilled medical supervision to 21 patients during the withdrawal phase of their 22 treatment. The medical staff is on the unit 24 23 hours a day, 7 days a week. This level of expertise 24 is not negotiable and is a condition of licensure

1 for every residential treatment center in Illinois. 2 "In the state of Illinois, there are 3 24 licensed detoxification units providing services 4 and 20 freestanding treatment centers. Several 5 organizations have multiple licenses for services 6 which are required by the State of Illinois. Each 7 organization must have a separate license for each 8 detoxification unit. 9 "In contrast, there are considerably less detoxification treatments available within a hospital 10 11 setting. While inpatient beds are available, most 12 of the hospital services are provided in an outpatient setting, and the number of residential 13 beds varies widely, including detoxification beds. 14 15 The type of beds available is at the discretion of the hospital, and highly specialized detoxification 16 17 beds are not widely available." 18 That is basically the sum and substance of 19 the letter. 20 CHAIRMAN WHITE: Okay. Is there a motion 21 from the Board is accept Document J25 into the 22 record? 23 MR. SHEPRO: Mr. Chairman, if I might. 24 Before you consider that, I would like to make an

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| 1 | objection to the receipt of this exhibit. | |
| 2 | While even if a rebuttal at this point is | |
| 3 | appropriate, this document is the rankest form of | |
| 4 | hearsay. This is simply an addendum to expert | |
| 5 | testimony. I assume that Ms. Diedrich is not here | |
| 6 | to be cross-examined on this supplemental letter, | |
| 7 | and I have to object to it being offered or received | |
| 8 | at this time. | |
| 9 | Thank you. | |
| 10 | CHAIRMAN WHITE: So noted. As we have with | |
| 11 | many of these documents, the Board is directed to | |
| 12 | take them for the weight that they contribute to the | |
| 13 | application. | |
| 14 | Is there a motion to | |
| 15 | MEMBER STOVER: Mr. Chairman, I'd like to | |
| 16 | move that we enter J26 into the record. | |
| 17 | CHAIRMAN WHITE: I've got J25. | |
| 18 | MEMBER STOVER: 25 into the record. | |
| 19 | MEMBER CAMERON: I'll second it. | |
| 20 | CHAIRMAN WHITE: Moved by Ms. Stover, | |
| 21 | seconded by Ms. Cameron. All in favor say aye. | |
| 22 | (Ayes heard.) | |
| 23 | CHAIRMAN WHITE: Opposed, same sign. | |
| 24 | (No response.) | |

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| 1 | CHAIRMAN WHITE: Motion carries. |
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| 2 | (Exhibit J25 admitted into evidence and |
| 3 | retained by the Board.) |
| 4 | MR. BROWN: We're going to share in closing. |
| 5 | I'm going to allow my cocounsel Mr. Kolb to start, |
| 6 | but I would like to say this in the beginning |
| 7 | actually, I'd like to address the audience in this |
| 8 | fashion. |
| 9 | I've had my back to you the entire time, and |
| 10 | that is the way we happened to configure it. But |
| 11 | I'd like to say this is that, if I have offended |
| 12 | anyone, I apologize for that. I'm a lawyer; I'm |
| 13 | here to defend my client; I take a position, and I |
| 14 | know sometimes this has been very overheated over |
| 15 | this period of time, but I would hope that neither |
| 16 | you take it personal nor do I take it personally. |
| 17 | The other thing I would say under oath for |
| 18 | yourselves, I did call you on the 19th. I was on |
| 19 | the premises and left a message, but my fault, I |
| 20 | only made one phone call. |
| 21 | AUDIENCE MEMBER: I was in Chicago. |
| 22 | MR. BROWN: Did you get my message on the |
| 23 | answering machine? Okay. That should have been on |
| 24 | me, and I apologize, and I recognize you disagree. |

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1 But I went out there, and I didn't get an answer, 2 and that just happened to be the day I was there. 3 But I'll turn this over to him. Thank you. MR. KOLB: I'd like to start out by thanking 4 5 everyone for their time and attention given to this 6 application. This Zoning Board of Appeals and the 7 members of the public but especially the Zoning Board of Appeals have gone above and beyond the 8 9 expectations of the zoning boards that I in 17 years 10 of doing this have seen. 11 This was a whopper of a zoning application, 12 and you really put the effort in. Regardless of how you decide this, I just wanted to thank you for the 13 14 time you're willing to give back to your community. 15 You're all volunteers and I think everyone needs to know that no matter how you vote, whether you're for 16 17 or against the facility, we thank you for your efforts and time and coming and giving your nights 18 19 without pay. 20 So thank you on behalf of the Maxxam team. 21 You have a very difficult job tonight; we understand 22 that. But I just want to start -- all of us should 23 thank you guys for taking your time for doing this. 24 A closing argument is an opportunity for any

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| 1 | zoning applicant to remind the Zoning Board of |
| 2 | Appeals of the evidence they have heard from all the |
| 3 | parties involved in the instant application and to |
| 4 | recap how the applicant has presented sufficient |
| 5 | evidence to satisfy each of the applicable standards. |
| 6 | From my 17 years of practicing zoning and |
| 7 | development work in Chicagoland, our written |
| 8 | application on this project is by far the most |
| 9 | comprehensive written application that I've ever put |
| 10 | together and submitted for approval. |
| 11 | The evidence gathered by credible experts on |
| 12 | each of the relevant issues here is quite staggering. |
| 13 | The applicant has an expert report which has been |
| 14 | open to challenge, obviously, but we have an expert |
| 15 | report, and in many cases two or three expert |
| 16 | reports to address virtually every issue we could |
| 17 | conceive of prior to the submission of this |
| 18 | application, which is not always the case when you |
| 19 | see a variance or a special use come before the |
| 20 | Zoning Board that we would get to this level of |
| 21 | abstract and bring in this many professionals to |
| 22 | talk to you all. |
| 23 | Our application was met with an early appeal |
| 24 | right off the bat which was denied, and it was |

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| 1 | followed by a court case in the Circuit Court of |
| 2 | Kane which was dismissed in its entirety by |
| 3 | Judge Villa. The dismissal of that case is evidence |
| 4 | of the proper way that the Zoning Board has handled |
| 5 | these proceedings so far, and I just want to commend |
| 6 | you all for the way you're handling yourselves to |
| 7 | date. Mr. Chairman is doing a nice job. |
| 8 | A couple of preliminary comments before we |
| 9 | overview the evidence. |
| 10 | First two preliminary comments. First, |
| 11 | there are a lot of comments about the applicant's |
| 12 | prior experience level running a facility like the |
| 13 | one that they're proposing. We have to remind |
| 14 | everyone here that Steven Marco is an expert at |
| 15 | gathering the best and brightest around him. You |
| 16 | have seen the experts he's gathered for this |
| 17 | hearing, looked at their résumés, and I'm sure his |
| 18 | choice for medical director, and I'm sure his choice |
| 19 | for medical staff will be equally as exemplary. |
| 20 | Simply put, issues with respect to licensure |
| 21 | and operation are left to the State of Illinois to |
| 22 | ascertain. The applicant presented as evidence the |
| 23 | entire Section 2060 of the Illinois Administrative |
| 24 | Code, as well as two witnesses, one from the |

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| 1 | Illinois Department of Human Services to demonstrate |
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| 2 | the exhaustive nature of legislation regarding |
| 3 | licensure and operational guidelines. Operational |
| 4 | guidelines are the purview of the State's police and |
| 5 | license to believe some elements of operations are |
| 6 | outside the scope of a special-use petition. |
| 7 | It is also completely premature for the |
| 8 | applicant to have been expected to hire all of its |
| 9 | medical staff, its medical director, its clinical |
| 10 | staff, its nursing staff, nursing assistant staff, |
| 11 | and all of its professionals prior to obtaining a |
| 12 | special use to bring these individuals into the |
| 13 | public eye. They have current jobs that they're |
| 14 | currently working; the applicant has not acquired |
| 15 | the real estate; it has not even applied for a State |
| 16 | license. But we can assure you as we sit here today |
| 17 | that Mr. Marco takes the responsibility of |
| 18 | stewardship in bringing the appropriate people here |
| 19 | and the appropriate professionals very seriously as |
| 20 | does our state. |
| 21 | Secondly and perhaps more importantly is our |
| 22 | second preliminary comment. Obviously, there are |
| 23 | members of the community who have spoken out both in |
| 24 | favor of and against the application, predominantly |

| 1 | against from the general public, and I feel it's |
|----|--|
| 2 | necessary to remind everyone that the Fair Housing |
| 3 | Act was designed to present excuse me to |
| 4 | prevent this "Not In My Back Yard" mentality. |
| 5 | If you read the Fair Housing Act and |
| 6 | understand the background of when it was passed and |
| 7 | the context of when it was passed in 1968 and the |
| 8 | facts that were going on back then, that mentality |
| 9 | is virtually written into the legislation. |
| 10 | The Federal law mandates that disabled |
| 11 | people not be treated with fear. The Federal law |
| 12 | mandates that people not be treated with anger or |
| 13 | disrespect and with a view that the disabled are |
| 14 | somehow disrupting our peaceful farming community or |
| 15 | that the disabled people are ruining our way of life |
| 16 | or causing a burden. |
| 17 | The disabled in our community have the right |
| 18 | under the FHA to live in rural areas as well as |
| 19 | urban areas. The disabled in our community have a |
| 20 | legal right to enjoy open space. The disabled in |
| 21 | our community should not be relegated to urban areas |
| 22 | only because of a baseless accusation that these |
| 23 | disabled people will cause crime while they are |
| 24 | seeking to recuperate their lives. |

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| 1 | Reasonable accommodation was requested |
| 2 | because those of us in society suffering with |
| 3 | alcoholism and substance abuse are disabled under |
| 4 | Federal law. Reasonable accommodation is requested |
| 5 | because these disabled people are entitled to seek |
| 6 | and pay for residential treatment in our community |
| 7 | without the type of discrimination voiced during |
| 8 | these hearings. |
| 9 | Our patients are not felons, as they were |
| 10 | termed; they are not criminals, as they were |
| 11 | characterized. Alcohol is quite legal last I |
| 12 | checked. |
| 13 | We've heard that the patients just don't |
| 14 | constitute a good mix for society here in Kane County. |
| 15 | The correct legal term for our patients are not |
| 16 | felons, or criminals, or undesirables. The correct |
| 17 | legal term for the patients of this facility are |
| 18 | disabled, and that term comes from the United States |
| 19 | legislature. I'd like to remind everyone as they |
| 20 | rule on this to keep that in the backdrop of their |
| 21 | thinking. |
| 22 | So what has the evidence in this case told |
| 23 | you? What evidence have you received, and what |
| 24 | evidence has been submitted as you consider this |

1 special-use application?

| 2 | You received the application itself, and we |
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| 3 | took the time to address in writing each of the |
| 4 | six standards applicable to a special use in detail. |
| 5 | You received a Kane-DuPage Soil and Water |
| 6 | Conservation District land use opinion, as well as |
| 7 | the waiver. You received the endangered species |
| 8 | report. You received a certification to adjoining |
| 9 | property owners and Sidwell photos of the property, |
| 10 | a site plan with building identifiers, and concept |
| 11 | plan complete with a PowerPoint presentation. |
| 12 | You received several legal opinions regarding |
| 13 | Fair Housing Act applicability from two zoning and |
| 14 | development law firms, including the Chicago-based |
| 15 | firm of Holland & Knight. You received an expert |
| 16 | opinion regarding similarity from Murer Consultants. |
| 17 | You received a market impact study from MaRous and |
| 18 | Company showing the highest and best use for the site |
| 19 | and utilizing matched-pair analysis. |
| 20 | You received fiscal impact studies from |
| 21 | Poletti & Associates utilizing a regression |
| 22 | analysis, and you read how the report showed a |
| 23 | qualitative analysis consisting of two parts, the |
| 24 | study of the sale of property surrounding the |

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| 1 | currently operating Timberline Knolls facility in |
| 2 | Lemont, Illinois, and the study of the currently |
| 3 | operating Rosecrance Center in Rockford. After |
| 4 | studying these facilities, the conclusion was that |
| 5 | the facility was located so as not to diminish |
| 6 | property values; Mr. MaRous' report concurred. |
| 7 | You received a Sheaffer & Roland wastewater |
| 8 | study and accompanying supplemental report which |
| 9 | were exhaustive. You received a KLOA study regarding |
| 10 | traffic patterns. You received property photos and |
| 11 | an opinion of John Curtiss of The Retreat indicating |
| 12 | AWOL discharges at facilities like these are quite |
| 13 | rare; people rarely walk off. |
| 14 | That was the written record. You also heard |
| 15 | testimony from additional witnesses that we brought |
| 16 | forward. You heard from Derrick Waldren regarding |
| 17 | security, how we're going to have a digital fence. |
| 18 | We showed you a virtual electronic slideshow |
| 19 | demonstrating the effectiveness of the system and |
| 20 | the mechanics of how law enforcement would be |
| 21 | contacted in the unlikely event a voluntary patient |
| 22 | seeks to walk out of the facility rather than |
| 23 | utilize the facility's complimentary driver. |
| 24 | Mr. Waldren focused, as did the applicant, |

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| 1 | on the theme throughout this process that this is a |
| 2 | voluntary facility. It's not a court-ordered |
| 3 | facility where people are detained; it's a facility |
| 4 | for people who are voluntarily there to seek |
| 5 | treatment and better their lives. |
| 6 | Security is a system designed to alert. |
| 7 | That's its primary focus. We believe with this |
| 8 | digital technology the idea is to provide the |
| 9 | quickest manner to alert those on staff as possible. |
| 10 | The computer system can identify instantly what's |
| 11 | been seen. |
| 12 | You heard from Trina Diedrich who works for |
| 13 | the Illinois Department of Human Resources who |
| 14 | provided evidence that the State of Illinois |
| 15 | indicates in writing that our facility is a |
| 16 | nonopiate-only, nonmethadone facility. This is a |
| 17 | critical point to understand. |
| 18 | There is a theme with the objector's |
| 19 | evidence through all these proceeding to include |
| 20 | and I see it again, and again, and again methadone |
| 21 | clinic data in all of its studies. It happens |
| 22 | repeatedly. Even as late as last night Campton |
| 23 | Township submitted additional data regarding EMS' |
| 24 | police from outpatient facilities, again, outpatient |

1 methadone facilities.

| 2 | What the applicant is proposing is quite |
|----|--|
| 3 | different. It is an inpatient, nonopiate-only, |
| 4 | nonmethadone facility providing a continuum of care. |
| 5 | A continuum of care is not the type of facility |
| 6 | that's outpatient where a medication is distributed |
| 7 | and the patient is sent along their way to cope with |
| 8 | their own means and to deal with whatever effects |
| 9 | they're feeling while the medication prevents some |
| 10 | effects from taking place. |
| 11 | Our facility is completely different. It |
| 12 | does not treat the same opiate-only methadone-type |
| 13 | addiction. Our facility is inpatient and provides a |
| 14 | 24-hour continuum of care with professionals that |
| 15 | are mandated by the State of Illinois under the |
| 16 | watchful eye of a medical director. |
| 17 | Why is this important? You heard from |
| 18 | Dr. Hendrickson that the data for inpatient |
| 19 | facilities, inpatient facilities had no correlation |
| 20 | to crime whatsoever. That's why we brought |
| 21 | Dr. Hendrickson here for you, so that you could see |
| 22 | that with respect to inpatient data there's no |

23 correlation with respect to crime.

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Dr. Hendrickson prepared this report in

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| | 1 |
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| 1 | 2012, years before Maxxam had ever conceived of this |
| 2 | treatment facility, and we brought Dr. Hendrickson |
| 3 | here to supplement our application and to update his |
| 4 | report with the most current information and to |
| 5 | outline all of his findings in a met data format. |
| 6 | Simply put, inpatient facilities do not |
| 7 | generate crime. |
| 8 | You also saw the staggering misinterpretation |
| 9 | in the Waller report provided by Mr. Carrara's |
| 10 | witness Mr. Waller. Aside from the fact that the |
| 11 | report devotes a substantial portion to FHA |
| 12 | application which I found interesting that the |
| 13 | objector's own report indicates FHA application |
| 14 | the report studied 36 facilities, half of which were |
| 15 | outpatient opiate-only facilities and methadone |
| 16 | facilities. |
| 17 | These opiate-only and methadone facilities |
| 18 | pull values down approximately 17 percent, and with |
| 19 | an overall 8 percent devaluation for all of the |
| 20 | facilities combined, we are left with some easy |
| 21 | second-grade math to demonstrate how the remaining |
| 22 | half must be around a positive impact of 1 percent. |
| 23 | You end up at 8, and the opiate-only and methadone |
| 24 | are at a negative 17, it means the other half of the |

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| 1 | sandwich is about 1 in order to end up at 8. It's |
| 2 | pretty simple. On cross from the ZBA itself, Waller |
| 3 | could not deny this credible result. |
| 4 | His report only studies also densely |
| 5 | populated areas whereby 60 homes were located within |
| 6 | an eighth of a mile, and he studied smaller home |
| 7 | sites as opposed to the larger estate rural acreage |
| 8 | like what's in our community. |
| 9 | I personally believe that Waller lacked the |
| 10 | credibility of Mr. MaRous. Mr. MaRous appraised |
| 11 | properties in Illinois totaling 15 billion with |
| 12 | respect to projects along 355, O'Hare International |
| 13 | Airport, McCormick Place expansion. MaRous was a |
| 14 | graduate of the University of Illinois, and he |
| 15 | served as a mayor, alderman, and committee chairman |
| 16 | of a local suburb. He's received awards from the |
| 17 | Chicago chapter of The Appraisal Institute, the |
| 18 | George M. Schultz Memorial award from The Appraisal |
| 19 | Institute, and Herman L. Walter award from the |
| 20 | Chicago chapter of The Appraisal Institute. He was |
| 21 | embarrassed to tell you that he had 40 years of |
| 22 | experience in appraising real estate in our state |
| 23 | and in our county in our community. |
| 24 | Conversely, Mr. Waller had never once |

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| 1 | appraised a piece of property for a fee. He had |
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| 2 | never once appraised a piece of property in |
| 3 | Kane County, and he had never once appraised a piece |
| 4 | of property in Illinois. He had never even visited |
| 5 | the site that's at issue in this case. |
| 6 | In my opinion, Waller's opinions are without |
| 7 | merit, his report is polluted with data involving |
| 8 | meth clinics, and his experience lacking, and I |
| 9 | think the Zoning Board should look at these facts |
| 10 | when they try to determine whose expert has the |
| 11 | better opinion regarding valuations. Is it |
| 12 | Mr. Waller, or is it Mr. MaRous and Mr. Poletti? |
| 13 | With respect to Mr. Abel, the other expert |
| 14 | that the objectors brought forward, I am still |
| 15 | trying determine what the subject matter of his |
| 16 | testimony really was. |
| 17 | He gave a valuation opinion, although he |
| 18 | himself is not an appraiser, either; he's a zoning |
| 19 | expert. And he gave a number of incorrect zoning |
| 20 | opinions in this case as early as really early when |
| 21 | he testified that this hearing shouldn't even be |
| 22 | taking place and that Section 5.15 should have |
| 23 | forced the matter through some different channel. |
| 24 | He then hedged that opinion by saying perhaps a text |

| 1 | amendment would have been more appropriate, but it |
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| 2 | was unclear as to whether the text amendment should |
| 3 | have come from the applicant or should have come |
| 4 | from the County itself. Then after suggesting the |
| 5 | County initiate the text amendment, he became upset |
| 6 | with one of the Zoning Board members for that zoning |
| 7 | board member's suggestion that the County perhaps |
| 8 | should initiate a text amendment to clarify his |
| 9 | opinions. |
| 10 | I still don't understand the basis of any of |
| 11 | his zoning opinions. In my opinion, what I could |
| 12 | interpret is that he's upset that the comprehensive |
| 13 | plan in the County didn't jive with what the zoning |
| 14 | ordinance provided as a permitted use or special use |
| 15 | in this zoning classification, just didn't feel like |
| 16 | the property worked for something like an alcoholism |
| 17 | and substance abuse treatment facility. |
| 18 | Yet the property is already zoned for a |
| 19 | hospital or a nursing home or a convalescent center. |
| 20 | He was upset with things like traffic for laundry |
| 21 | and food delivery when, in essence, those same |
| 22 | phenomenon would occur with any of the enumerated |
| 23 | permitted uses, as well. |
| 24 | So I still am confused as to what Mr. Abel |

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| 1 | added to the situation other than early confusion |
| 2 | and a lawsuit which was dismissed. |
| 3 | You heard from Trina Diedrich, and she |
| 4 | testified regarding staffing requirements. There |
| 5 | was a lot of concern about what our staff would look |
| 6 | like notwithstanding State requirements. She |
| 7 | testified that the applicant, notwithstanding the |
| 8 | fact that the applicant has not hired its medical |
| 9 | staff or its chief medical officer and chief medical |
| 10 | director, nonetheless put together a comprehensive |
| 11 | staff report, and she testified that that staff |
| 12 | report is consistent with the requirements of |
| 13 | Illinois law. We lay out all of the staff we intend |
| 14 | to hire, gave them titles they need to have under |
| 15 | the code, and we provided it to you. |
| 16 | You heard from Laura Garcia. She provided |
| 17 | an exhaustive licensure and operational requirements |
| 18 | overview of the State of Illinois and how |
| 19 | stringently and closely the State polices all of the |
| 20 | operational aspects of facilities like ours. |
| 21 | The purpose of these two witnesses was to |
| 22 | demonstrate to you and give you a sense of confidence |
| 23 | that the State does regulate this quite heavily, and |
| 24 | State does police the operation of these facilities |

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1 quite stringently. 2 Diedrich and Garcia also testified that they 3 themselves work in these types of facilities, and 4 they also provided testimony that, simply put, AWOL-5 type discharges or walk-outs in a voluntary 6 inpatient continuum of care treatment facility are 7 rare and so is crime. I think it was important that Ms. Diedrich's 8 9 own life story and the fact that she herself was a recovering substance abuse addict is a tribute to 10 11 recovery and accomplishment postrecovery. 12 Ms. Diedrich represents the type of credible, honorable, and loving person who would typify the 13 14 disabled people who will be at the applicant's 15 facility. You heard a lot of testimony that the 16 17 applicant's facility will fall into the business model accepting Medicare and Medicaid-type patients 18 19 on the public dole. We all know what the State of 20 Illinois reimbursements are like for State agencies 21 like this. I just read an article the State's not 22 paying its Lotto winners. I don't believe there's 23 any way that this facility in its current condition, 24 its current levels of amenity can survive a day on a

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| 1 | Medicaid model. It is strictly a private pay |
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| 2 | insurance model. There's no way that it could |
| 3 | support its infrastructure, and there's a demand |
| 4 | that's overwhelming for private pay in our area. |
| 5 | The facility is overamenitized. |
| 6 | The applicant submitted a detailed written |
| 7 | application addressing each of the six standards |
| 8 | applicable to a special use. We all know what those |
| 9 | standards are. We provided a written summary and a |
| 10 | written essay addressing each of those standards, |
| 11 | and I think we've heard I believe this is the |
| 12 | sixth public hearing I've lost count. So rather |
| 13 | than go into each of the standards in summary, I'll |
| 14 | just submit again our written application on these |
| 15 | points, and I touched on some of the points earlier. |
| 16 | So I think with that I'll turn it over to |
| 17 | Mr. Brown for further comment. |
| 18 | MR. BROWN: Do you mind if I take the |
| 19 | podium? |
| 20 | CHAIRMAN WHITE: That'd be fine. And I've |
| 21 | got 18 minutes, so if you can make it as brief as |
| 22 | possible, I would appreciate it. |
| 23 | MR. BROWN: Will we be given an opportunity |
| 24 | for rebuttal? |

| | | 12 |
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| 1 | CHAIRMAN WHITE: Yes, you will. | |
| 2 | MR. BROWN: Then I will keep it brief. | |
| 3 | Once again, I'd like to say thank you for | |
| 4 | this opportunity. I've never actually participated | |
| 5 | in this fashion in this hearing, and I want to say | |
| 6 | thank you once again for your time and consideration. | |
| 7 | And, also, thank you to the public for | |
| 8 | coming. Even though I may disagree, a public that | |
| 9 | is involved is something that as American citizens | |
| 10 | we'll always treasure. And even though we may be on | |
| 11 | different sides, I do stand on your right to say | |
| 12 | your freedom of speech and your freedom of trying to | |
| 13 | make your point across to the Board. | |
| 14 | But there's other things that are involved | |
| 15 | here other than just the freedom of speech. There's | |
| 16 | something called the law and the law that you are | |
| 17 | required to follow. And the law that you are | |
| 18 | required to follow cannot be based upon fear. It | |
| 19 | cannot be based upon what I heard very much, which | |
| 20 | would make a record for potentially a violation of | |
| 21 | the Fair Housing Act that "Not In My Back Yard." | |
| 22 | I have a personal reason why I was involved | |
| 23 | in this case, and that personal reason was what | |
| 24 | happened to Kiva. I saw the flyers that were sent ou | t, |

| 1 | including a flyer which showed an African-American |
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| 2 | being pulling someone and showing what could happen |
| 3 | in your neighborhood. I have a personal reason in |
| 4 | that my father back in 1963 and I was a young kid |
| 5 | was involved in the Housing Act. And in 1967 when |
| 6 | he tried to buy a home, people would tell him, "What |
| 7 | would I say to my neighbors" and not to have a black |
| 8 | person "in my back yard." |
| 9 | Now, in 1968 the day after Martin Luther |
| 10 | King died the Fair Housing Act was signed to stop |
| 11 | the discrimination against people of color. Now we |
| 12 | go into our time period now, and those same fears |
| 13 | that were being used which was the basis for the |
| 14 | Fair Housing Act is now being heard in this |
| 15 | testimony as to what we are afraid of. |
| 16 | What the fear is I agree their fear is |
| 17 | real, but what they're afraid of has not been proven |
| 18 | and is an illusion. It's a fear that's been based |
| 19 | upon the flyers have been sent into this community, |
| 20 | the flyers that are the most destructive value to |
| 21 | the homes is the people's perception of what's going |
| 22 | on which has been generated by the objectors. |
| 23 | It is the objectors themselves which are |
| 24 | lowering the property value, and there's one thing |

| 1 | that I can definitely agree with their expert is |
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| 2 | that the way they perceive it will affect property |
| 3 | values, and you see this being generated by putting |
| 4 | flyers in people's homes to scare them to bring the |
| 5 | fear for purposes that are objectives which are |
| 6 | based not on evidence. |
| 7 | The evidence has been clear, and my counsel, |
| 8 | cocounsel here has been talking about Waller |
| 9 | actually, you remember when I said presumptions will |
| 10 | lead to conclusions? And I also agree with the |
| 11 | gentleman who said that his math was correct, it was |
| 12 | just his presumption was to prove something other |
| 13 | than what we were, and we included in that package |
| 14 | of detox, and if you looked at ours, there's no |
| 15 | affect on the value of property. |
| 16 | Look at and I am a defender, and when |
| 17 | people came up and just gave you piles of |
| 18 | information and they did not talk to you about how |
| 19 | to decipher that information, I made objections. |
| 20 | Some of them actually, I do note that after a |
| 21 | while the people came up with the information, |
| 22 | brought them in a format to which I stopped making |
| 23 | objections. |
| 24 | Even though you receive information into |

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| 1 | evidence, look at that information when it comes |
| 2 | into what type of calls are being made. Use your |
| 3 | common sense to where even the cross-examination |
| 4 | today which had to do with, well, is this property |
| 5 | open to the public like a hospital? All right. |
| 6 | I'll help you with that. Are psychiatric hospitals |
| 7 | I'll make it even easier are children's hospitals |
| 8 | open to the public if they only allow children? And |
| 9 | I would say to you yes, they are. This hospital |
| 10 | hospitals have criteria that are open to the public. |
| 11 | It may be a private pay, but it's open to the public. |
| 12 | Also, I have a lot of respect for Sheriff |
| 13 | Kramer, and when we talked about the calls and what |
| 14 | was going to happen to Campton Hills, he said that |
| 15 | he could handle it with his staff. Now, he also |
| 16 | made some opinions which I don't agree with as to |
| 17 | how many calls he would have. But then he wasn't |
| 18 | subject to cross-examination, and it's interesting |
| 19 | as to what and, also, to defer to this, you have |
| 20 | no idea what data that he referred to. |
| 21 | Now, the data that I think is very interesting |
| 22 | is from the chief of police of Campton Hills who had |
| 23 | data that was when they were for the project when |
| 24 | their zoning board using the same criteria that |

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| 1 | you're being asked to do for this voted yes when he |
| 2 | had that criteria. When they were going to get |
| 3 | \$7 million and they were also going to get this |
| 4 | other money, it was 5 to 10 if I recall the |
| 5 | testimony correctly. And then when there was no |
| 6 | money, it changed. |
| 7 | You heard the testimony of our own witnesses |
| 8 | who are in the field working with these organizations, |
| 9 | working with licensure. What was their opinion who |
| 10 | do this on a daily basis? |
| 11 | And then also use your common sense, your |
| 12 | common sense as to what type of facility this is, |
| 13 | which has a licensed doctor. And we heard testimony |
| 14 | today, well, don't have a doctor on-site 24 hours a |
| 15 | day, 7 days a week; it's not safe. I will defer to |
| 16 | this. I'm a person that does medical malpractice, |
| 17 | and if you've ever been in a hospital for any time, |
| 18 | your doctor that's treating you is not there 24/7, |
| 19 | and he gives instructions to nurses, and the nurses |
| 20 | carry those out. And by the licensure we have to |
| 21 | have an RN, or an EMS, and I believe there's one |
| 22 | other that's going to escape me. They're 24/7. |
| 23 | Which brings me to the other point. You are |
| 24 | not a licensing board. You are not here to say |

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| 1 | whether we comply with the licensure. That's |
| 2 | another step down the line. You are here to say we |
| 3 | meet the criteria of a special use. And that |
| 4 | special use which I believe that my counsel has |
| 5 | hit every of those positions, but here's the other |
| 6 | part that's so important, and it goes back to the |
| 7 | Fair Housing Act. |
| 8 | The Fair Housing Act prohibits discrimination |
| 9 | in housing, including discrimination against persons |
| 10 | with disabilities. This prohibition encompasses of |
| 11 | enforcement of zoning or other local ordinances in a |
| 12 | manner that treats disabled persons less favorably |
| 13 | than nondisabled persons. Under the FHA a |
| 14 | disability generally means a physical or mental |
| 15 | impairment which substantially limits one or more |
| 16 | such person's major life activities. Individuals |
| 17 | recovering from alcoholism and substance abuse such |
| 18 | as those that would be residing at the proposed |
| 19 | facility are considered to be persons with |
| 20 | disabilities within the coverage of the Federal |
| 21 | Housing Act. |
| 22 | Accordingly, the County will be required to |
| 23 | make a reasonable accommodation with respect to the |
| 24 | facility because the facility will provide residential |

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| 1 | services to persons with disabilities who are |
| 2 | protected under the Act. Notably, Section 5.3(b) of |
| 3 | the County zoning ordinance expressly recognizes |
| 4 | that the FHA is applicable in Kane County and |
| 5 | implicitly acknowledges the County's mandate to |
| 6 | provide such accommodations to persons with |
| 7 | disabilities, particularly when, as here, the |
| 8 | proposed facility satisfies all the zoning criteria |
| 9 | for approval. |
| 10 | It would be difficult for the County to deny |
| 11 | the requested zoning relief without violating the FHA, |
| 12 | or let me help you with this, you will be violating |
| 13 | it if you use the criteria "Not In My Back Yard." |
| 14 | This is an emotional issue because what I'm |
| 15 | hearing is that people with disabilities do not have |
| 16 | the right to be in open spaces; people with |
| 17 | disabilities, even if they have money and insurance, |
| 18 | do not have the right to be in an area where there |
| 19 | may be forest preserves around; people with |
| 20 | disabilities are people who are tainted. We might |
| 21 | as well put a scarlet letter on them and say, "If |
| 22 | you're in my neighborhood, we don't want you." |
| 23 | But let me help you with something, and I |
| 24 | take this as a person who has been a member of this |

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| 1 | community but actually a person that's active in |
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| 2 | this community. There are people around you outside |
| 3 | of the Glenwood property who use drugs, have eating |
| 4 | disorders, are alcoholics and need help. And if |
| 5 | there's any one reason why this should be passed is |
| 6 | because this is something that could benefit our |
| 7 | community. I know that people are interested in |
| 8 | their lifestyles, but I'm interested in people who |
| 9 | save lives. And I think we can have a balanced |
| 10 | approach where they both can be present, and they |
| 11 | both can survive in the same environment. |
| 12 | The final thing I'd like to say and I will |
| 13 | stop is that the financial aspects of this and I |
| 14 | regret the fact that at one level Campton Hills has |
| 15 | some financial challenges. We've heard about the |
| 16 | financial challenges that are going on with the fire |
| 17 | district. And this property has stayed empty for a |
| 18 | long time, which creates a problem, but, also, we're |
| 19 | bringing tax dollars, and people with high education, |
| 20 | and money that's going to be for this for the |
| 21 | entire community. |
| 22 | We need this facility. We have made an |
| 23 | extensive application, and I would suggest that what |
| 24 | happened to Campton Hills, it was unfortunate. Their |

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| 1 | insurance company paid \$500,000 I believe because of |
| 2 | a violation a perceived potential violation of |
| 3 | the Fair Housing Act. |
| 4 | The Village of South Elgin had a consent |
| 5 | decree in a settlement for a violation of the Fair |
| 6 | Housing Act. That should not happen to Kane County |
| 7 | government to where that expense for a violation of |
| 8 | the Fair Housing Act will be an expense which will |
| 9 | be hit upon the County. |
| 10 | Now, obviously, the objectors have deep |
| 11 | pockets, and I will say this, we are here to take |
| 12 | this to the end. We have followed the law. We've |
| 13 | given the best application possible, and now I would |
| 14 | like you to do the right thing and follow the law |
| 15 | and approve what we're asking for in our petition. |
| 16 | Thank you. |
| 17 | CHAIRMAN WHITE: Thank you. I think at this |
| 18 | time if it doesn't disrupt the flow I'm going to |
| 19 | take a break. I know Mr. Moga is probably interested |
| 20 | in that. |
| 21 | So we'll take a 10-minute break. I've got |
| 22 | 8:40. So be back in about 10 minutes, please. |
| 23 | (Recess taken, 8:38 p.m. to 8:52 p.m.) |
| 24 | CHAIRMAN WHITE: If I could get the Board |

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1 members to get back to your seats. As soon as they 2 get seated we'll begin. 3 We need to come back to order, Mr. Brown. 4 Please, could you take your seat so we can get back 5 to the meeting? Okay. Keep your disagreements for 6 another time. 7 Mr. Carrara, the floor is open for your closing comments. 8 9 MR. CARRARA: Thank you, Mr. Chairman. Ι also thank you for everyone's time and patience here. 10 I do agree with Mr. Brown on at least one 11 12 point. I do agree we are here to focus solely on the law and not any of the other stuff out there in 13 terms of the discriminatory nature or any of those 14 15 comments. So we are in agreement on that. We 16 disagree on the application of the law, and I'll get 17 into that in a little bit. There has been talk, some of it again was 18 19 even by Mr. Brown and some others about the 20 potential tax gain from this property. In essence, 21 it's a rush to get a vacant property back on the tax 22 rolls and that Maxxam's application for a special 23 use is the only way to make that happen. 24 That's not true. Nowhere in the list of

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| 1 | standards for a special use is potential tax revenue |
| 2 | discussed. The ZBA doesn't have any discretion, |
| 3 | shouldn't even be considering tax rolls because it's |
| 4 | not one of the enumerated standards for a special use. |
| 5 | Now, additionally, the Kane County ordinance |
| 6 | and the comprehensive plan has great uses listed |
| 7 | that are available for this property which are |
| 8 | compatible with the farm estate districts. And they |
| 9 | will come; just give it time. |
| 10 | It was interesting this evening, I heard |
| 11 | Mr. Kolb say two things that were new this evening |
| 12 | that had never potentially been testified to before. |
| 13 | First, that they won't be treating opiate addictions |
| 14 | and that they won't be using methadone at the |
| 15 | clinic. I believe they always said they would be |
| 16 | using methadone and treating opiate at the clinic. |
| 17 | That is the highest Level 4 that they are seeking to |
| 18 | have at the State. |
| 19 | Now, he may try to clarify that during the |
| 20 | rebuttal portion and say they're not an outpatient |
| 21 | methadone clinic. That doesn't really matter either |
| 22 | way. They're going to be using methadone to treat |
| 23 | opiate addiction at this facility. |
| 24 | Additionally, Mr. Kolb mentioned that |

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| 1 | hospitals are a permitted use in this section. |
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| 2 | That's another incorrect statement and I ask you to |
| 3 | look at your zoning ordinance during your |
| 4 | deliberations, hospitals, nursery, nunneries, and |
| 5 | all the others are a special use that still have to |
| 6 | comply with the special use standards that are |
| 7 | before you. |

8 Now, if we jump ahead, you heard a number of 9 their experts testify that based on their opinion the proposed facility will be well run. One of the 10 11 key factors in the special use application is the 12 establishment, maintenance, or operation of the 13 special use facility will not unreasonably be 14 detrimental, endanger the public health, safety, 15 morals, comfort, or general welfare. So operational guidelines and operation of the facility is the 16 17 number -- first factor, Factor A of the special use. 18 So it is relevant and it is important for you to 19 consider. 20 Interestingly you heard their property value

expert Mr. MaRous even go so far under my questioning and say that he would agree that if the property was not well run, there would be a substantial impact on neighboring property values.

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| 1 | Maxxam again, and again, and again assured |
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| 2 | you on numerous times and you'll see that when |
| 3 | you read through the transcripts that Mr. Marco |
| 4 | would appear, and he would explain the day-to-day |
| 5 | operations of the facility and provide sworn |
| 6 | testimony for the ZBA to consider as part of its |
| 7 | deliberations on subparagraph A of the special use |
| 8 | on operations. But no sworn testimony was ever |
| 9 | given on day-to-day operations. |
| 10 | Operations of the facility, you heard even |
| 11 | yesterday through the fire the president of the |
| 12 | fire district, is still unknown. Nobody knows what |
| 13 | they're going to be doing there day to day. They've |
| 14 | given you some allegations that they'll be in |
| 15 | compliance with State licensing acts, and we've all |
| 16 | agreed that those are for the State licensing board |
| 17 | to consider, but day-to-day operations are within |
| 18 | your purview, and you should have heard them. |
| 19 | You didn't. |
| 20 | That alone is reason enough to deny the |
| 21 | special use but we'll continue on. |
| 22 | You also heard Maxxam claim that their |
| 23 | well-run operation of a facility will only generate |
| 24 | 5 to 10 police/fire calls a year. Now, that was not |

| 1 | through any witness; that was through their attorneys |
|----|---|
| 2 | arguing. No sworn witness that gave sworn testimony |
| 3 | before you of anybody testified that there would be |
| 4 | only 5 to 10 police or fire calls at this facility. |
| 5 | And I believe it's been shown through the |
| 6 | numerous FOIA documents and the like that the basis |
| 7 | of a claim of 5 to 10 calls is dramatically untrue. |
| 8 | Now, as we said, we can argue about whether a call |
| 9 | for an elopement at a facility an elopement in a |
| 10 | police case means somebody has left the facility |
| 11 | whether it's important or not. Whether the fire |
| 12 | department is called to assist because somebody was |
| 13 | having a medical issue, those are all important, |
| 14 | those are all before you, and you can look at those |
| 15 | numbers. |
| 16 | Interestingly, as the testimony went on, the |
| 17 | Kane County sheriff, who is apparently monitoring |
| 18 | the progress of the hearings, wanted to speak up and |
| 19 | actually revised his prior description to the Board, |
| 20 | and he estimated that he anticipates the call impact |
| 21 | to be up to 300 calls a year. Now, I would say that |
| 22 | is substantially and dramatically different than |
| 23 | their 5 to 10 calls. |
| 24 | You also heard the fire protection district |

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| 1 | estimate that the calls will be potentially 150 calls, |
| 2 | and you also heard them testify that that will have |
| 3 | a negative impact on their ability to service the |
| 4 | public and the safety of the citizens that are |
| 5 | within its district. |
| 6 | Again, that is a direct impact on the |
| 7 | factors of the special use that directly impacts the |
| 8 | general welfare of the citizens. |
| 9 | Now, you heard Mr. Brown allege that |
| 10 | excuse me you heard Mr. Brown state that at times |
| 11 | he was objecting to the numbers, and at times he |
| 12 | wasn't objecting to the numbers when they were |
| 13 | certified. But he also I agree that he disagrees |
| 14 | with them, and as he has said, like minds can |
| 15 | disagree on what those mean, but I'd like to point |
| 16 | you to two facilities that are mentioned within |
| 17 | Maxxam's application. |
| 18 | The first is Timberline Knolls. This is a |
| 19 | facility that has the Joint Commission gold seal of |
| 20 | approval. You may recall hearing that that's what |
| 21 | they're going to be aspiring to have. It's a high- |
| 22 | end, very expensive, private pay residential |
| 23 | facility. |
| 24 | Again, this was a facility that was used as |

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| 1 | a comparable by Maxxam. It only has 87 beds. So |
| 2 | it's approximately a third smaller than the proposed |
| 3 | facility. Yet the FOIA documents show that there |
| 4 | were 213 police calls and 167 fire calls. That's |
| 5 | from the facility that's a third smaller than their |
| 6 | proposed facility. If you were to extrapolate those |
| 7 | calls out to a facility the size of Kiva, it would |
| 8 | be approximately 54 calls a year. |
| 9 | Now, the next facility is a facility called |
| 10 | the Recovery Village. This is located in Florida. |
| 11 | You heard Mr. Kolb or Mr. Brown say that Mr. Marco |
| 12 | will bring the best and the brightest as part of its |
| 13 | advisory team. They did initially in their |
| 14 | application they listed this facility as being one |
| 15 | example that the ZBA could look at by one of their |
| 16 | advisers, Mr. Elliot Messing. |
| 17 | Now, interestingly, when we started to |
| 18 | inquire into Mr. Messing and his facilities, the |
| 19 | application by Maxxam was amended to drop Mr. Messing |
| 20 | and to drop reference to the Recovery Village. |
| 21 | Now, the Recovery Village identified in |
| 22 | Maxxam's original application is an 80-bed |
| 23 | alcoholism and substance abuse and detoxification |
| 24 | residential facility, 80 beds again are we okay? |

| | 1 |
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| again, 80 beds, roughly a third smaller than the | |
| proposed facility. That facility had 205 calls over | |
| the previous year. | |
| Now, these, again, directly impact on your | |
| ability to look at the general welfare of the | |
| surrounding area. Now, even if you go to the far | |
| side and accept every one of these calls as true and | |
| accurate, and you go to the far other side and | |
| accept that five calls from the petitioner, you see | |
| there are dramatic differences in the numbers. | |
| Interestingly, not one of the petitioner's | |
| experts was asked to look into that impact on the | |
| surrounding property and what affects it may have. | |
| That alone, again, is enough of a reason to deny the | |
| application. | |
| It's important to note that under | |
| cross-examination their traffic expert testified he | |
| was not requested to do a complete study, just an | |
| evaluation. He was not asked to do a complete | |
| traffic study, just an evaluation. He then went on | |
| to say if he had been requested to do a complete | |
| study, he would have considered the potential impact | |
| of those types of call volumes on the safety of the | |
| roadways; he would have also considered whether | |
| | proposed facility. That facility had 205 calls over the previous year. Now, these, again, directly impact on your ability to look at the general welfare of the surrounding area. Now, even if you go to the far side and accept every one of these calls as true and accurate, and you go to the far other side and accept that five calls from the petitioner, you see there are dramatic differences in the numbers. Interestingly, not one of the petitioner's experts was asked to look into that impact on the surrounding property and what affects it may have. That alone, again, is enough of a reason to deny the application. It's important to note that under cross-examination their traffic expert testified he was not requested to do a complete study, just an evaluation. He was not asked to do a complete traffic study, just an evaluation. He then went on to say if he had been requested to do a complete study, he would have considered the potential impact of those types of call volumes on the safety of the |

| there was any potential impact to school zones, |
|---|
| whether the two-lane rural roads would be able to |
| handle this additional call volume to this facility. |
| But he was not requested by the applicant to do that. |
| That alone, again, is question enough to |
| show they have not satisfied the standard that their |
| traffic expert satisfied the factors within the |
| special use request. |
| The next section is the substantial impact |
| on neighboring property values. We've heard a bunch |
| of witnesses that's two, by the way. That was |
| our expert and their expert. Their expert, |
| Mr. MaRous testified that his report is incomplete |
| if his assumption of 5 to 10 calls a year is |
| incorrect. And if it rises to the level of the |
| estimated calls that we are discussing, the |
| sheriff's 300, that could have an impact on the |
| property values in the surrounding neighborhood. |
| But, again, Mr. MaRous was not asked to |
| consider that or to change his assumption. That was |
| the baseline assumption of his report; it's going to |
| be well run and only 5 to 10 calls a year. Both those |
| have been in question, and his report, therefore, by |
| his own admission under cross-examination does not |
| |

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| 1 | give you the full picture on what impact that could |
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| 2 | have on surrounding property values. |
| 3 | That, again, is reason enough to deny this |
| 4 | application on a purely zoning factor as we are |
| 5 | talking about. |
| 6 | To the contrary you heard testimony about a |
| 7 | peer-reviewed statistical analysis of over 10 years |
| 8 | of data at almost 200,000 transactions by Mr. Waller |
| 9 | that his study, again, showed that there is a |
| 10 | substantial impact on property values based on that |
| 11 | 10 years of data and 200,000 transactions, not the |
| 12 | four transactions that Mr. MaRous decided to use as |
| 13 | his basis on a closed facility that's not even |
| 14 | similar to the Maxxam facility. |
| 15 | Now, you've heard some reference that the |
| 16 | petitioner disagrees with how Mr. Waller classified |
| 17 | or how they are classifying Mr. Waller's reference |
| 18 | to a methadone clinic within his report. Again, |
| 19 | methadone, if you read Mr. Waller's report is used |
| 20 | for the treatment of opiate addiction. It is one of |
| 21 | the medicines that are used. That is, again, a |
| 22 | medicine that will be used at the facility by the |
| 23 | petitioner. |
| 24 | Again, I would say that you heard testimony |
| | |

| 1 | from a third party, an independent member of the |
|----|--|
| 2 | public who is a retired statistical professor from |
| 3 | Northern Illinois University. He testified that |
| 4 | Maxxam's efforts to twist the math you again |
| 5 | heard it this evening by Mr. Kolb calling it second- |
| 6 | grade math had no basis in the statistical world, |
| 7 | and I think the phrase he used and I may be |
| 8 | butchering it was specious or of no weight or |
| 9 | bearing. |
| 10 | Now, again, he wasn't retained by us. He's |
| 11 | a member of the public. Unfortunately, the |
| 12 | petitioner ran into somebody who had statistical |
| 13 | knowledge and agreed to disagree with their |
| 14 | analysis. They have done nothing, have provided no |
| 15 | evidence to show that those two experts were wrong. |
| 16 | You heard the expert testimony of Mr. Waller |
| 17 | that it is anticipated that a facility such as |
| 18 | Maxxam will have a substantial impact on property |
| 19 | values of 8 to 17 percent. Now, if you were to take |
| 20 | that I think he referenced a \$300,000 house. At |
| 21 | 8 percent that's 24,000 up to the 17 percent, that's |
| 22 | over 50,000. That is substantial when you are |
| 23 | selling your house. |
| 24 | Additionally, it was interesting that |

| 1 | Mr. MaRous under my initial questioning never heard |
|----|---|
| 2 | of the report by Mr. Waller and stated on numerous |
| 3 | occasions when I questioned him he could never find |
| 4 | such a thing. Yet after that hearing apparently |
| 5 | somebody at the Kane County staff simply googled |
| 6 | impact of property impact of drug treatment |
| 7 | facilities on property values. That's the simple |
| 8 | search you have to put into Google, impact of drug |
| 9 | treatment facilities on property values. And guess |
| 10 | what pops up; the Waller report. |
| 11 | I'm not sure how extensive Mr. MaRous' |
| 12 | research was in finding it, but I suspect that it's |
| 13 | questionable at best. I don't think he wanted to |
| 14 | find the report because he knew he wouldn't be able |
| 15 | to counteract his evidence. |
| 16 | Again, that's my argument and that's the |
| 17 | purpose of why we are here. Even if he couldn't |
| 18 | find it, when it was presented to him, the best he |
| 19 | could do was say he disagreed with the math and how |
| 20 | they calculated it. But you also heard from |
| 21 | Mr. Waller that that's not true, and you also heard |
| 22 | by a member of the public how you can't twist the |
| 23 | math to try to get to the results that the |
| 24 | petitioner is seeking. |

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| 1 | Additionally, it is important to consider |
| 2 | that those large reductions, if you were to put them |
| 3 | on all of the properties in the area, there will be |
| 4 | a substantial price reduction in the neighborhood. |
| 5 | Now, again, I counseled you earlier that you |
| 6 | shouldn't consider tax revenue as part of your |
| 7 | application, and here's another reason why you |
| 8 | shouldn't consider the potential \$300,000 to the |
| 9 | petitioner Maxxam. Because when you base an |
| 10 | 8 to 17 percent reduction across all of the |
| 11 | properties in that surrounding area, that's going to |
| 12 | more than greatly outweigh any potential increase |
| 13 | from the Maxxam facility. There was no discussion |
| 14 | of that by the petitioner because, again, they don't |
| 15 | want to recognize that impact. |
| 16 | And, again, that shows another purely zoning |
| 17 | reason why you can deny their application because of |
| 18 | the substantial impact on surrounding property values. |
| 19 | Additionally, you heard Mr. Kolb attack |
| 20 | Mr. Abel in his opinion because he disagrees with the |
| 21 | references that he was making. Again, like minds |
| 22 | can disagree. However, you heard Mr. Abel read a |
| 23 | section of Kane County's ordinance. Kane County's |
| 24 | ordinance recently was changed to limit where |

| 1 | controlled substances can be dispensed. |
|----|--|
| 2 | They can only be dispensed under the |
| 3 | ordinance in the RB, B1, and B3 Districts, not in |
| 4 | the F District. Now, there was made reference that |
| 5 | this change in the ordinance was solely to address |
| 6 | medical marijuana dispensaries. |
| 7 | Unfortunately, that's not in your ordinance. |
| 8 | Your ordinance says controlled substances. Maxxam |
| 9 | has admitted that they will be dispensing controlled |
| 10 | substances. That can only happen in Kane County in |
| 11 | the RB, B1, and B3 Districts, not in the F District. |
| 12 | Again, another pure zoning reason why you can deny |
| 13 | the application. |
| 14 | Further, Kane County has spent hundreds of |
| 15 | thousands of dollars developing its ordinances and |
| 16 | its comprehensive land plan. I think you heard |
| 17 | Mr. Lannert, the petitioner's expert said that's |
| 18 | been going on for over 50 years, as long as he can |
| 19 | remember. For all the work he's done in Kane |
| 20 | County, the land plan was an important basis on how |
| 21 | the County proceeded with its development in open |
| 22 | areas. |
| 23 | Specifically the Glenwood property is called |
| 24 | out as an institutional open space. The definition |

| 1 | of an institutional open space specifically |
|----|--|
| 2 | says it's to offer important scientific, cultural, |
| 3 | and educational opportunities to the residents of |
| 4 | Kane County. Nowhere in that definition does it say |
| 5 | 120-patient drug and alcohol detox facility. |
| 6 | You heard the County I think mention at one |
| 7 | point and they asked if he ever heard of a |
| 8 | facility called Mooseheart. We have. Mooseheart is |
| 9 | a facility that's a residential facility that has |
| 10 | youths who aren't able to have a normal, stable |
| 11 | family life, and they're offered great opportunities |
| 12 | at the Mooseheart facility. |
| 13 | The Mooseheart facility is not a drug and |
| 14 | alcohol detoxification facility. So when it's called |
| 15 | out that Mooseheart can be in this institutional |
| 16 | open space, that's the same reason why it was called |
| 17 | out for Glenwood. These were, in essence, boarding |
| 18 | schools for youths, and that is much, much different |
| 19 | than a drug and alcohol detoxification center. |
| 20 | Again, those reasons are purely zoning reasons |
| 21 | where you can deny the special use. |
| 22 | Now, the big white elephant in the room and |
| 23 | you heard the very vocal response of Judge Brown |
| 24 | is the Fair Housing Act. I agree with Mr. Brown, |

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| 1 | the Fair Housing Act has good purpose and it does |
| 2 | certain things. Here's where I said I'd get back to |
| 3 | we disagree on the law. |
| 4 | In facilities such as this, their patients |
| 5 | do fall under the Fair Housing Act. However, do not |
| 6 | be bullied into thinking that the County gives up |
| 7 | every one of its zoning obligations in the face of |
| 8 | the Fair Housing Act. That is not correct. |
| 9 | You heard no law cited by Mr. Brown. You |
| 10 | heard a very passionate speech by Mr. Brown. I will |
| 11 | read you law on this subject. |
| 12 | "The FHA does not grant protected classes |
| 13 | carte blanche in determining where they can live in |
| 14 | total disregard of zoning codes." That is the |
| 15 | Advocacy and Resource Center vs. Town of Chazy, |
| 16 | 62 F. Supp. 2d 686 1999. |
| 17 | Again, they don't local zoning boards do |
| 18 | not give up all their rights to deny special use |
| 19 | applications for purely zoning matters. If you do |
| 20 | it for discriminatory matters as Mr. Brown suggested, |
| 21 | you are going to be libel, but you have plenty and |
| 22 | plenty of information here that is purely based on |
| 23 | the zoning, not on the fearmongering or bullying |
| 24 | that's out there. |

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| 1 | Additionally, the County may choose what |
| 2 | accommodation to make as long as some accommodation |
| 3 | is reasonable. That case is the Corp. of Episcopal |
| 4 | Church in Utah vs. West Valley City, |
| 5 | 119 F. Supp. 2d 215 (2000). |
| 6 | Again, the County doesn't give us its |
| 7 | determination as to what is reasonable and what is |
| 8 | not. Importantly, there is no requirement that when |
| 9 | the County must make a reasonable accommodation it |
| 10 | is limited to consideration of the accommodation |
| 11 | requested by the petitioner. Local zoning boards |
| 12 | still control their ordinance if they make their |
| 13 | decisions based on the zoning and the failure to |
| 14 | meet the standards of a special use. |
| 15 | By way of example, the ZBA has a number of |
| 16 | reasonable accommodations it can make. One of those |
| 17 | is the County could consider a reasonable |
| 18 | accommodation for a permit for a facility such as |
| 19 | this in the RB, B1, or B3 zoning districts. Now, |
| 20 | you remember where those districts were. Those were |
| 21 | the districts where the County has already said |
| 22 | controlled substances should be dispensed. |
| 23 | Alternatively the County would fulfill its |
| 24 | requirements of reasonable accommodation by |

1 considering a group home or homes in any zoning 2 district. That's a reasonable accommodation, also. 3 A third entirely appropriate and reasonable 4 accommodation by the County might be the consideration of a text amendment to its ordinance 5 6 to actually bring its ordinance in line with some of 7 the more modern definitions that are there. What I mean by that is we're all aware that 8 9 your ordinance doesn't have any definition or 10 reference to a facility such as this. That's why 11 Maxxam is trying to bootstrap this in under some 12 similarity to a hospital in a farming district with special use application. Again, that is very 13 tortured, doesn't seem really similar if you've got 14 15 to go through all those matriculations to get to the decision that something is so similar that it has to 16 17 go through three layers of the ordinance to get there. 18 And wrapping up, what I'll say is it's the 19 job of the ZBA to consider the sworn testimony that 20 it heard to support these special use application 21 It's not the ZBA's purview to be bullied standards. 22 into thinking that it has no choice but to think the 23 FHA is the only way that this application can move 24 forward. Again, the local zoning law boards do not

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1 give up all their rights.

| 2 | I think it's important to remember that it's |
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| 3 | Maxxam's burden to build a foundation to support its |
| 4 | special use factors. A foundation is a strong base |
| 5 | that's built upon, and in this case we've seen that |
| 6 | foundation is not strong. We've seen their experts |
| 7 | not take into consideration calls; we've seen no |
| 8 | testimony on their day-to-day operations and how |
| 9 | those issues could impact the general welfare of the |
| 10 | surrounding areas. |
| 11 | So there's more than enough purely zoning |
| 12 | reasons why you can deny this application. Simply |
| 13 | because the property is vacant doesn't mean this |
| 14 | application must move forward. It's okay to be |
| 15 | vacant because Maxxam failed to meet the zoning |
| 16 | standard for a special use. That's a purely |
| 17 | legitimate reason. |
| 18 | You have heard from not only my client; |
| 19 | you've heard from the Campton Township, the Village |
| 20 | of Campton Hills, Plato Township, and the Fox River |
| 21 | Countryside fire protection, as well as very well- |
| 22 | spoken members of the public that have given you |
| 23 | numerous reasons for a purely zoning analysis as to |
| 24 | why they have failed to prove the factors necessary |

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1 for special use through sworn testimony. And for 2 those reasons we'd ask that the ZBA deny this 3 application for a special use. 4 I thank you again. 5 CHAIRMAN WHITE: Thank you. 6 Mr. Shepro, if you would like, I'll give you 7 the podium but remind you that your closing comments 8 are just based on the testimony of your president of 9 the fire district and your relationship with that district. 10 MR. SHEPRO: So you would not permit me to 11 12 comment on any of the other evidence or testimony? CHAIRMAN WHITE: That was the purview of the 13 other objector in the room. You had objected as a 14 15 representative of the fire district. MR. SHEPRO: That is correct. I didn't know 16 17 that that meant that I couldn't rely on other 18 testimony or comment on other testimony. 19 I think under the circumstances if that is 20 to be the ruling, I really see no point. Mr. Carrara 21 has already eloquently stated many of the concerns 22 of the fire district. I did have some additional 23 thoughts, but I think under the circumstances I will 24 decline and object to the limitation on my ability

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| 1 | to comment. |
| 2 | Thank you, Mr. Chairman. |
| 3 | CHAIRMAN WHITE: You're welcome. |
| 4 | Mr. Kinnally. |
| 5 | MR. KINNALLY: I can be very brief. |
| 6 | First of all, the County doesn't have a |
| 7 | stake in this, but this is not a trial; this is a |
| 8 | public hearing. This is not a courtroom; this is a |
| 9 | place where people can come and put on evidence, not |
| 10 | anecdotes but evidence, testimony from the public, |
| 11 | from witnesses for the petitioner, for the objectors. |
| 12 | You're not making a decision here tonight you're |
| 13 | not making a decision on the law. You're making a |
| 14 | decision on the facts. And I'd like to read for you |
| 15 | what your job here is. |
| 16 | Section 4.82, Public Hearing: |
| 17 | "A public hearing before the Zoning Board in |
| 18 | its report and findings in fact or recommendation |
| 19 | shall be made to the County Board following the |
| 20 | public hearing provided the County Zoning Board in |
| 21 | its report of findings or facts and recommendations |
| 22 | to the County Board shall not recommend a special use |
| 23 | unless the Zoning Board shall find" the six factors |
| 24 | that my colleagues have outlined this evening. |

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| 1 | So this isn't a legal case. This is a factual |
| 2 | hearing where you get to make a recommendation based |
| 3 | on the facts and the evidence that came before you. |
| 4 | That's your job. It's a difficult job. I think |
| 5 | everyone has indicated that, and on behalf of the |
| 6 | County, I want to applaud you for sitting through |
| 7 | these hearings which are very important and |
| 8 | listening to all of the citizens, as well as the |
| 9 | lawyers, but mostly the citizens to come and tell |
| 10 | you what their views are. |
| 11 | It's an awesome responsibility, and I want |
| 12 | to on behalf of the County I want to thank you |
| 13 | for the job that you've done. |
| 14 | Thank you. |
| 15 | CHAIRMAN WHITE: Thank you. |
| 16 | At this point I'm going to open it up for |
| 17 | rebuttal from the petitioner. |
| 18 | MR. KOLB: Thank you. Just a point of |
| 19 | clarification with regard to Mr. Carrara's comments. |
| 20 | The applicant will use methadone to treat |
| 21 | opiate addiction not on an outpatient basis. So |
| 22 | when in these reports there's references to |
| 23 | methadone clinics, that is an outpatient clinic |
| 24 | where someone seeks specific receipt of these |

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| 1 | medicines and leaves. The distinction was between |
| 2 | an inpatient continuum of care versus outpatient. |
| 3 | The term I meant to use was opiate-only or |
| 4 | methadone, which was the term that was identified in |
| 5 | the letter from the Department of Human Services |
| 6 | from the State of Illinois. I think it was opiate- |
| 7 | only or methadone-only strictly methadone-only |
| 8 | clinic. So that's the clarification on that point. |
| 9 | With respect to the point about controlled |
| 10 | substances that's in Appendix B of your zoning |
| 11 | ordinance, Mr. Carrara made the point that |
| 12 | essentially this use term in here limits the |
| 13 | dispensary of controlled substances only within the |
| 14 | RB, B1, and B3 zoning classifications. |
| 15 | I think if you look at this and read it |
| 16 | verbatim, it says "an interim use that may be |
| 17 | granted on the zoning lots in the RB, B1, or B3 |
| 18 | specifically for dispensing controlled substances |
| 19 | licensed by the State of Illinois." That's how it's |
| 20 | defined. It's a "may be"; it's a discretionary |
| 21 | license, and if you look at the legislative history |
| 22 | behind this section, I believe it pertains to recent |
| 23 | rules and regulations promulgated by the State of |
| 24 | Illinois regarding medical marijuana dispensaries. |

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I don't believe this is applicable to the instant
application.

3 Thirdly, I've reviewed plenty of case law 4 that requires an applicant as a condition of making 5 an argument at a later date under the Fair Housing 6 Act that they actually would have had to request a 7 reasonable accommodation as part of their zoning entitlements. I agree with Mr. Kinnally that 8 9 normally it's not something that's requested in the 10 context of a special use. It's not in the list of standards that the Zoning Board is to request. 11 12 However, we're obligated I believe under some case law that I had reviewed to request that as part of 13 our zoning entitlements and so we did so. That's 14 15 why we're having the legal discussion about that 16 issue on the record here tonight.

17 I'd like to reference one case with respect 18 to some of the law that Mr. Carrara brought up. In 19 a well-known case that was recently resolved, which 20 incidentally is located in Kane County, monetary 21 damages and civil penalties were paid by the village 22 as part of a settlement for the denial of a special 23 zoning permit based upon, in part, improper comments 24 made by residents appearing before the public hearings

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in opposition of the proposed use. 1 2 The case was United States vs. Village of 3 South Elgin, No. 05 C5258, Northern District of 4 Illinois, December 13th, 2006. I think if you 5 examine that case, while I agree with the point that 6 the FHA doesn't divest the Zoning Board of Appeals 7 of its power to zone, it's clearly within your power to determine whether the applicant has satisfied the 8 9 standards. 10 We need to be cautious and what we're stating is that the law prohibits unreasonable restraints. 11 12 Courts have held that municipal zoning that limits the housing opportunities for those undergoing drug 13 and alcohol abuse treatment for recovering individuals 14 to live in residential communities violates the FHA. 15 So it's the unreasonable limitation or the tilting 16 17 of evidence a certain way so as to create a 18 discriminatory effect that the FHA precludes. So 19 there is a balance there, and we understand that but 20 this particular zoning case is particularly under a 21 microscope when it comes to the FHA. 22 Mr. Brown, do you have anything further? 23 MR. BROWN: Just thank you and good night. 24 Thank you on behalf of all MR. KOLB: Yes.

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1243 1 of us. 2 CHAIRMAN WHITE: Thank you. That will complete 3 the public hearing on this petition. 4 Is there a motion to close the public hearing? 5 MEMBER BOWEN: So moved, Mr. Chairman. 6 CHAIRMAN WHITE: Moved by Mr. Bowen, 7 seconded by --8 MEMBER STOVER: Second. 9 CHAIRMAN WHITE: -- Ms. Stover. All in 10 favor say aye. 11 (Ayes heard.) 12 CHAIRMAN WHITE: Opposed, same sign. 13 (No response.) CHAIRMAN WHITE: Motion carries. 14 15 Going forward, just to inform the public, we have another meeting scheduled for February 9th at 16 17 7:00 p.m. at this same location, and at that meeting the Board will offer motions on the floor to discuss 18 19 between the Board members, and then we'll render a 20 decision at that time. 21 So with that, is there a motion to adjourn? 22 MEMBER BOWEN: So moved, Mr. Chairman. CHAIRMAN WHITE: I'll take that back. 23 We 24 need a motion to continue to February 9th. Is that

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| 1 | a motion? | |
| 2 | MEMBER BOWEN: So moved. | |
| 3 | CHAIRMAN WHITE: Moved by Mr. Brown. | |
| 4 | MEMBER MOGA: Second. | |
| 5 | CHAIRMAN WHITE: Seconded by Mr. Moga. All | |
| 6 | in favor say aye. | |
| 7 | (Ayes heard.) | |
| 8 | CHAIRMAN WHITE: Thank you. | |
| 9 | (Off the record at 9:33 p.m.) | |
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| 1 | CERTIFICATE OF SHORTHAND REPORTER |
|----|--|
| 2 | |
| 3 | I, Paula M. Quetsch, Certified Shorthand |
| 4 | Reporter No. 084-003733, CSR, and a Notary Public in |
| 5 | and for the County of Kane, State of Illinois, the |
| 6 | officer before whom the foregoing proceedings were |
| 7 | taken, do certify that the foregoing transcript is a |
| 8 | true and correct record of the proceedings, that |
| 9 | said proceedings were taken by me stenographically |
| 10 | and thereafter reduced to typewriting under my |
| 11 | supervision, and that I am neither counsel for, |
| 12 | related to, nor employed by any of the parties to |
| 13 | this case and have no interest, financial or |
| 14 | otherwise, in its outcome. |
| 15 | |
| 16 | IN WITNESS WHEREOF, I have hereunto set my |
| 17 | hand and affixed my notarial seal this 4th day of |
| 18 | February, 2016. |
| 19 | |
| 20 | My commission expires: October 16, 2017. |
| 21 | |
| 22 | - fauly Juited |
| 23 | Notary Public in and for the |
| 24 | State of Illinois |

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