# Transcript of Public Hearing Petition 4364 - Volume 8 

Date: February 2, 2016
Case: Kane County Zoning Board of Appeals

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BEFORE THE KANE COUNTY ZONING BOARD OF APPEALS
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In Re: :
MAXXAM PARTNERS, LLC :
Special Use request in the :
F Farming District for a :
private-pay alcoholism and :
substance abuse treatment : Petition No. 4364
facility 41W400 Silver Glen :
Road, Section 19, Campton :
Township (08-19-400-004) and :

Section 34, Plato Township :
$(05-34-300-032 \& 05-34-400-025):$
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PUBLIC HEARING - VOLUME 8 St. Charles, Illinois

Tuesday, February 2, 2016
7:02 p.m.

Job No.: 102998
Pages: 1132 - 1245
Reported by:Paula M. Quetsch, CSR

Report of proceedings held at the location of: BRANCH COURT

530 South Randall Road
St. Charles, Illinois 60174
(630) 232-3495

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

PRESENT:

JOSEPH WHITE, Chairman
HAROLD BOWEN, Member
PENNY CAMERON, Member
DANIEL HEINRICH, Member
ROBERT MOGA, Member
GERALD REGAN, Member

ROXANNE STOVER, Member

ON BEHALF OF THE APPLICANT MAXXAM PARTNERS, LLC:
HONORABLE F. KEITH BROWN, ESQUIRE
ANDREW KOLB, ESQUIRE
MEYERS \& FLOWERS

3 North Second Street
St. Charles, Illinois 60174
(630) 232-6333

ON BEHALF OF KANE COUNTY:
ERIN GAEKE, ESQUIRE
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KANE COUNTY STATE'S ATTORNEY JOSEPH MC MAHON
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ON BEHALF OF THE KANE COUNTY BOARD:
        PATRICK KINNALLY, ESQUIRE
        KINNALLY FLAHERTY KRENTZ LORAN
        HODGE & MASUR, PC
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        Aurora, Illinois 60506
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    ON BEHALF OF THE OBJECTOR:
        KEVIN M. CARRARA, ESQUIRE
        RATHJE WOODWARD, LLC
        300 East Roosevelt Road
        Suite 300
        Wheaton, Illinois 60187
        (630) 668-8500
    ALSO PRESENT:
        MARK VAN KERKHOFF, Zoning Enforcing Officer
        KEITH BERKHOUT, Secretary
    
Closing Remarks By Mr. Kolb1209121812381239PAGE1191

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            PROC E E D I N G S
            CHAIRMAN WHITE: If everybody can take their
    seat, I'll reconvene the meeting.
    I'm going to go ahead and call the meeting
    to order.
    Everybody please rise for the pledge.
    (The Pledge of Allegiance was recited.)
    CHAIRMAN WHITE: Secretary, please call
    the roll.
    MR. BERKHOUT: Bowen.
    MEMBER BOWEN: Here.
    MR. BERKHOUT: Cameron.
    MEMBER CAMERON: Here.
    MR. BERKHOUT: Heinrich.
    MEMBER HEINRICH: Here.
    MR. BERKHOUT: Moga.
    MEMBER MOGA: Here.
    MR. BERKHOUT: Regan.
    MEMBER REGAN: Here.
    MR. BERKHOUT: Stover.
    MEMBER STOVER: Here.
    MR. BERKHOUT: White.
    CHAIRMAN WHITE: Here. We have a quorum.
    This is a continuation of the public hearing
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for Petition No. 4364. It's a special-use request in the F Farming District for a private pay alcoholism and substance abuse treatment facility. It's located at 41W400 Silver Glen Road in Section 19 of Campton Township and Section 34 of Plato Township. The applicant is Glenwood Academy and Maxxam Partners, LLC.

I would ask that everybody silence your cell phones at this time, and please follow the rules posted for the courtroom as we go on here this evening.

We have some housekeeping before I begin any
other testimony. Last night we were given a
document from Deirdre Dowling. It was marked PU9.
It was never entered into the record. Is there a motion to do that?

MEMBER BOWEN: So moved Mr. Chairman.
CHAIRMAN WHITE: Moved by Mr. Bowen, seconded by Mr. Heinrich. All in favor say aye. (Ayes heard.)

CHAIRMAN WHITE: Opposed, same sign. (No response.)

CHAIRMAN WHITE: Motion carries.
In addition to that, Mr. Carrara submitted a
motion to the Board to strike the report of Murer

Consultants and Poletti \& Associates out of the administrative record for the Application No. 4364.

I would ask for a motion to deny that request at this time.

MEMBER STOVER: So moved.
CHAIRMAN WHITE: Moved by Ms. Stover, seconded by Mr. Regan.

And I'll ask for legal counsel to step forward and make some comments, please.

MR. KINNALLY: Does he want to go first?
CHAIRMAN WHITE: You can.
MR. KINNALLY: Thank you. Mr. Chairman.
The motion that was filed was explained by the objector's attorney before I read, and I think the issue here is twofold.

One, it's my understanding that the Board under Section 4.2-2 issued an order to compel witnesses to come to the hearing, and that was Poletti, as well as Murer Consultants. They didn't appear. Apparently, they were here. They were not called by the petitioner.

Having said that, the reports are already in evidence, and based on $I$ think a prior ruling of the Chair of the Board, you can give those reports
whatever weight you want, if any.
It's my position or the county's position, though, that because they're already in evidence that the motion is not appropriate.

I understand Mr. Carrara's concern. I don't think the Klaeren case goes as far as he says it does, but in this particular instance you can give it whatever weight, if any, you want with respect to those reports. But they're already in evidence. That's my position.

Thank you.
CHAIRMAN WHITE: Thank you.

Board members, any discussion?
(No response.)
CHAIRMAN WHITE: Everyone understand the
motion? We are going to take a roll call.
Secretary, please call the roll.
MR. BERKHOUT: Stover.
MEMBER STOVER: Yes.
MR. BERKHOUT: Regan.
MEMBER REGAN: Yes.
MR. BERKHOUT: Bowen.

MEMBER BOWEN: Yes.
MR. BERKHOUT: Cameron.

MEMBER CAMERON: Yes.
MR. BERKHOUT: Heinrich.
MEMBER HEINRICH: Yes.
MR. BERKHOUT: Moga.
MEMBER MOGA: Yes.
MR. BERKHOUT: White.
CHAIRMAN WHITE: Yes. Motion carries.
With that, also, last night we did move a motion to close the public comment period for this public hearing, but $I$ was informed that there were a number of people who exited the meeting long before it ended. So I'd like a show of hands this evening of anyone who didn't stick around last night and would have liked to have addressed the Board, and then I will suggest a recommendation to the Board depending on the response and show of hands.

If you spoke last night, I would recommend that you not reply, but anybody who did not speak and who was not here at the end of the meeting and wishes to come forward, I would like to know that at this time so $I$ can schedule a time here tonight.

Anyone requesting? I see one hand -- two, three -- okay. Then I would ask the Board at this time to approve a motion to reconvene the public
comment portion of the public hearing for this evening's meeting.

MEMBER BOWEN: So moved, Mr. Chairman.
CHAIRMAN WHITE: Moved by Mr. Bowen.
MEMBER CAMERON: Second.
CHAIRMAN WHITE: Seconded by Ms. Cameron.
All those in favor say aye.
(Ayes heard.)
CHAIRMAN WHITE: Opposed, same sign.
(No response.)
CHAIRMAN WHITE: Motion carries.
Then with that then we are back to the public comment portion of the meeting. So any one of you who raised your hand, you are welcome to come forward and present your testimony.

Please raise your right hand.
(Witness sworn.)
CHAIRMAN WHITE: And please state your name and address for the record.

MR. STRAUSS: Okay. My name is John Strauss. I live at 39W680 Deer Haven Trail in Campton Hills, Illinois 60175.

CHAIRMAN WHITE: Approximately how close to the facility are you located?

MR. STRAUSS: 5 miles, something like that.
CHAIRMAN WHITE: Thank you. And are you in favor of or opposed to this petition?

MR. STRAUSS: Oh, I'm very much in favor of it.
MR. KINNALLY: Okay. Thank you.
MR. CARRARA: Mr. Chairman, just one question.

Are you limiting this to people who were present yesterday and didn't have the opportunity to speak? Because, again, you closed public comment to people -- as you can tell, the crowd has substantially decreased.

CHAIRMAN WHITE: I understand.
MR. CARRARA: So are we limiting it to people who were present and didn't have the opportunity to speak, or are we opening up the floor to anybody and all comers now?

CHAIRMAN WHITE: I thought I made it clear that if they were present last night all the way to the end, they had their opportunity to speak. If they left before we concluded last night's meeting, then they will have the opportunity to speak this evening.

MR. CARRARA: Can we confirm that this
gentleman was in attendance at yesterday evening's meeting?

CHAIRMAN WHITE: I cannot confirm that. It's not -- I'm offering -- the Board made the decision to close the public comment. We can reconvene the public comment portion of it, and that's what we've done at this point.

MR. STRAUSS: Just to be clear and honest, I was not here last night. I was unable to attend, but I would hope and ask for your consideration to allow me at least to speak. I won't be here long.

CHAIRMAN WHITE: We've already made that decision. Go ahead.

MR. STRAUSS: Okay. Just so you know, I used to be on the Village board of the Village of Campton Hills, and as you know, a number of years ago this -- a similar situation was presented to the Village, and I would have to say that I was very disappointed that the Village turned down the application which at that time was called Kiva.

I would like to talk a little bit about the financial implications of what's been going on here. The Village -- when the Village turned down the Kiva application, it turned down roughly $\$ 7.7$ million
over 20 years, and right now I'm hearing the Village talk about the fact that they don't have any money to support the area, and similarly, I understand that the fire department may have some similar issues.

At the same time that this happened the --
Kane County, which is now expecting to receive about \$350,000 in taxes, has not received that money, which today if it had been passed a couple years ago may have already totaled $\$ 700,000$ or more, and the same to the Village.

And, also, at the same time, this organization is going to hire possibly 40 to 60 people I
understand. At $\$ 50,000$ a year, 50 people, that's another $\$ 2.5$ million that we can get pumped into the local area, and I think that this -- all of this stuff deserves some consideration.

The facility already exists. It isn't like this is a brand-new facility. This facility is existing and it's a shame that facilities are unused and remain empty.

The area that we live in needs to support business. This is a private enterprise and, actually, from my perspective serves -- does no harm to the Village or the County or anything whatsoever.

These people have had the unfortunate experience, the customers that are going to be there have had the unfortunate experience of becoming addicted and need help. These people look like you and I. It's not like they've been -- you know, they're some drug addicts, some crazy drug addicts that some judge has sent there.

So I very much encourage you to approve the zoning change, and hopefully the Kane County Board will see the wisdom to do likewise.

Thank you very much.
CHAIRMAN WHITE: Thank you.
There were other people that raised their
hands. Please come forward and please raise your right hand to be sworn in.
(Witness sworn.)
CHAIRMAN WHITE: Thank you. And please
state your name and address for the record.
MS. SCHMIDT: Stephanie Schmidt,
9N952 Tributary Lane, Elgin, or Plato Center 60124.
CHAIRMAN WHITE: Approximately how far from this facility are you.

MS. SCHMIDT: Probably 7 miles.
CHAIRMAN WHITE: And are you in favor of or
opposed to this?
MS. SCHMIDT: I'm in favor of it.
CHAIRMAN WHITE: Thank you. Go ahead with your comments.

MS. SCHMIDT: All right. This is my opinion, and, of course, can be changed, but after I get through, I may make some people angry at me.

First of all, I think it's very important that the adults have a chance to heal themselves. Again, like the gentleman before me said, they are not court ordered to be here. They are volunteers who are seeking help who have a disease, and if this facility can help them, that's wonderful. From experience, had my grandson had the opportunity to get into a facility like this, $I$ would not have found him dead in my basement two years ago, three years ago.

These people absolutely need the help. Again, like the gentleman before me said, they're people like you and I. They're grandchildren. I'm old enough to have adult grandchildren.

I'm a little bit nervous, so you'll have to excuse me.

I don't know if any of you have seen

Dr. Phil -- now, I know this is kind of a cliché. However, there are places he sends his adult people to that are high-class. The people that can afford this facility have to have top-notch insurance. So you know that the caliber of people coming in are not some spongy kid hanging out and vandalizing things.

Another thing I want to mention, the St. Charles School for Reform of Boys has been there since when? 1930? How many breakouts have there been since that school has been in action? How many homes in the area have been vandalized by any of those kids that have gone to that reform school? I personally don't know of any. I could be wrong. Again, this is an opinion. Opinions can be changed; they're not set in stone.

Another thing, as a senior citizen, I appreciate anything that can generate any money toward school taxes. Like you said, there are so many businesses and buildings and homes just being left alone, which leaves the burden to all of us. I've paid my dues; I've put four kids through school; I've helped out 11 grandchildren, and I think we all need a break from that as senior citizens.

I can't think of what else $I$ was going to say, but this is from the heart. These people need help. They need a clean, good facility. If they want to leave, as I understand, there's a protocol put in place where they have to let their coordinators know they want to leave; they have to make a phone call to home or to one of their peers. The peer has to be approved to get into the school.

There are no gas stations, no restaurants, no stores to hang around. And these people don't want to hang out. These people have money; they're not going to vandalize your homes; they're not going to rob you. They don't need the money; they need help, and God willing, we can get this facility.

I thank you.
CHAIRMAN WHITE: Thank you.
There were some other people that raised your hands.

Ma'am, please come forward.
MS. WAGNER: I don't know if I'm allowed to speak tonight or not because I was here yesterday, and I was here to the end. So do you want to hear from me or not?

CHAIRMAN WHITE: The public comment period

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Conducted on February 2, 2016
is open, so you're more than welcome to speak. Did you speak last night?

MS. WAGNER: No.
CHAIRMAN WHITE: Raise your right hand.
(Witness sworn.)
CHAIRMAN WHITE: Please state your name.
MS. WAGNER: My name is Donna Wagner. I live at 39W570 Kevin Court. I believe I'm well within the 2 miles. I might be right on the border, but I believe I am within the 2-mile circumference.

CHAIRMAN WHITE: Are you in favor of or opposed to this?

MS. WAGNER: I'm opposed.
CHAIRMAN WHITE: Thank you.
MS. WAGNER: I'm sorry I didn't take exact notes last night, but $I$ do believe the gentleman here spoke yesterday and asked one of the other gentlemen that were speaking if we would feel more comfortable knowing that there was going to be a nurse on duty 24 hours a day and one physician that would be available for 40 hours a week. Is that not right? Did I hear that right? Thank you.

Okay. I've spent my life as a dental
hygienist. I'm not a nurse. I do realize that I
have had emergency medical training as well as they do because $I$ am responsible for patients that are in my chair.

I have enough knowledge to understand that the nurses have to have a practice act, so I did a little scrounging because it bothered me. I'm not comfortable with a doctor that is only there for 40 hours a week. Nurses work in collaboration with a doctor. That means that they have to take orders from a doctor. If a doctor is not present, a telephone call is not always acceptable. They must be able to see their patient.

So I went to the Illinois State Department of Financial Professional Regulations. The division of professional regulation -- this is available on the Internet -- for the registered professional nursing practice there's a nursing act. According to Section 50-10, No. 7 -- let me paraphrase it without -- because it's quite long. But it comes down to this: That any nurse shall -- their duties "shall not be deemed to include those acts of medical diagnosis, prescription of therapeutic or corrective measures."

Now, these people that are coming here, they
are ill; they are sick. Some of them can be very violent. We cannot rely upon a heat sensitive barrier to keep these people where they're supposed to be. This is a place where they can walk on, walk out at will. There's one nurse there, according to this gentleman, who is unsupervised.

So, let's see. The way I do my math,
24 times 7 is 168 hours in a week. 40 of those would be medically supervised by a doctor. That leaves 128 hours where a nurse is working there with no collaboration with the doctor as written by State law.

So where does this come to? This brings me to two things.

First of all, if she has to call a doctor to get permission to push any medication into this patient, the patient treatment is delayed by the length of time she has to put in a phone call.

The other thing that happens here is if she has to call for medical attention through the county, through the fire department, whoever is there, this is delayed. This is poor patient management, poor treatment. These people are paying big bucks for quality care. This is not quality
care in my opinion.
The other point $I$ would like to make is that the County, I expect you to have high standards, and if you are not maintaining high standards, then you're not asking full support of medical personnel that's going to be working there. They're allowing shoddy, in my opinion, health services.

And we are expecting -- as this lady behind us that said, she wants some good quality care. These people are paying big bucks. They're not going to get quality care. These people are coming in, and they have no prior experience with drug treatment. This is their first operation. They can't point and say, "We have three other clinics available."

Therefore, I'm opposed to this. I don't feel that they are being the quality institution that we expect in our county, and I don't want them representing me in my county, and I don't want them in my neighborhood, either.

Thank you very much.
CHAIRMAN WHITE: Thank you.
Next person. Is there anyone else requesting -- ma'am, please come up.
(Witness sworn.)
CHAIRMAN WHITE: Thank you. Please state your name and address for the record.

MS. JOHNSON: My name is Catherine Johnson, 43W123 Ickenham Lane, Campton Hills. I'm approximately 2 miles from the facility off of McDonald.

CHAIRMAN WHITE: Are you in favor of or opposed to this?

MS. JOHNSON: I'm opposed to this.
CHAIRMAN WHITE: Okay.

MS. JOHNSON: Again, I just want to make a reminder here that you know, as well as the audience tonight, this is not a zoning request. This is a request for a special permit as the special permit is written. The special-use permits are very clear in what is allowed, such as a monastery school, a nursing home, a convalescent center, and the other uses identified here.

It was stated last night. Again, this is not similar to any of those special-use permit items there. This facility is also not affiliated with any hospital.

There have been two attempts, this one and
the previous attempt to put a rehab center at this facility. Just because there has been two attempts to place such a facility at this grounds does not mean that that is necessarily the right thing to do. In the future is to change the special use permits. Those things that are identified as suitable for special use are aligned with what the community would find, and I'll say quote, "acceptable." Some of those are the nursing center, the private school that was previously there, and the nunnery and the monastery, also.

I do not see how we can state that the nearby homes will not be adversely affected by a drug rehabilitation center being put, quote, "in their back yard." If we had two identical homes, one within 10 miles of the facility and one next to the facility, we will lose value with the one next to the facility.

My last comment I wanted to state tonight is we had a lot of the citizens of Campton Hills and the neighboring areas throughout all of these sessions showing their support for the community and coming to the Board saying, "We respect you; we respect the 2040 plan; we respect the special-use

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permit."
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Tonight the audience is a little bit smaller than we had seen and it was my understanding -- I was here until last night -- that the public comments were closed. I think if this was known that they could potentially open, we would see that same crowd here again showing their support.

So, again, I just wanted to let that be known that $I$ think we are missing some of the people that would want to show their support against the proposed special-use permit.

CHAIRMAN WHITE: Thank you.
Anyone else?
Ma'am, please come forward and please raise your right hand to be sworn.
(Witness sworn.)
CHAIRMAN WHITE: Thank you.
MS. BOUREL-CARTEE: My name is
Cathy Bourel-Cartee. My address is 41W815 McDonald Road in Elgin.

CHAIRMAN WHITE: Approximately how close to the facility are you?

MS. BOUREL-CARTEE: This facility touches my property.

CHAIRMAN WHITE: Okay. Thank you. And are you in favor or opposed to it?

MS. BOUREL-CARTEE: Opposed.
What has disturbed me the most about Maxxam Partners is how out of touch they are with our community. Never once did a representative from Maxxam contact me, a neighbor, an adjoining neighbor. Okay?

Mr. Brown indicated in past testimony that he did reach out to the neighbors whose property touches the school. I was really surprised. I sat in the audience and listened to that and afterward went up and asked him -- I said, "I'm one of those neighbors." Okay? And I was never approached.

He somewhat acknowledged that he recognized my name and said that had he would probably get in touch with me. We talked a little bit about what I really felt was needed, a fence.

Yes, there's a creek. Yes, there are briars. But $I$ am directly behind this facility. Okay? People can walk -- there are deer trails. They can get through. That's no problem if they really want to. The forest preserve is also there, which I'm very concerned about. The forest preserve
is a boundary on my left and on my south.
I don't know how people in the community are going to feel comfortable with taking their grandchildren and their children to the forest preserve to walk, see some of the species of the flowers that are endangered there and everything else when they can possibly have their kids or grandkids run through the thermal imaging and go into this property. You know, kids are kids; they like to run. Then, what is there to prevent, again, the patient coming out and interacting with these kids? I don't think it's a good mix. Okay?

Also, I think they're asking and setting a precedence for the forest preserve to be a buffer, to be a buffer for a private company who wants to come in and do their business, and it's surrounded by 620 acres of forest preserve. Are we setting a precedent that this is going to be allowed?

No signs have ever been talked about posting anything in regards to no trespassing or, you know, unlawful entrance will be prosecuted. We haven't talked about any of that. And I know maybe this isn't the time to talk about this, but I wanted to get it into the evidence.

I'm very concerned. I have a barn; I have horses; I have almost 9 acres, and we, my husband and I have spent the last 15 years there and thoroughly enjoyed it. It's quiet and it's peaceful.

Thank you for listening. I hope you make the right decision.

CHAIRMAN WHITE: Thank you. Anyone else seeking the microphone at this time?
(No response.)
CHAIRMAN WHITE: I'm not seeing anybody.
Is there a motion to close the public
comment portion of the meeting?
MEMBER STOVER: So moved.
MEMBER BOWEN: So moved Mr. Chairman.
CHAIRMAN WHITE: Moved by Ms. Stover, seconded by Mr. Bowen. All in favor say aye.
(Ayes heard.)
CHAIRMAN WHITE: Opposed, same sign. (No response.)

CHAIRMAN WHITE: Motion carries.
At this point I'll open it up to the petitioner.

Just to explain the process, I'll start with the petitioner; I'll allow time for the objectors to
make closing comments.
I guess the first question $I$ would ask is, how much time are you going to require in your closing comments?

MR. BROWN: Well, it's my understanding that the Board had requested a witness to be here tonight.

MR. KOLB: Mr. Ryan Bailey is here from Murer Consultants if the Board would like to ask questions. He was here earlier in the proceedings and he is here again.

CHAIRMAN WHITE: Do the Board members wish to bring him forward?

I have a request, so Mr. Bailey, you're more than welcome to come up and testify.

MR. CARRARA: Mr. Chairman, if I may, I'm not prepared to examine Mr. Bailey this evening as this is news to I think me and a number of people here in the crowd that we were going to be bringing experts back up for cross-examination.

We were prepared this evening to do closing arguments as directed yesterday by the Chair. So I'd be requesting additional time to cross-examine Mr. Bailey.

CHAIRMAN WHITE: Yes. Yes, you will be allowed to cross-examine.

MR. CARRARA: I won't be prepared this evening because I didn't bring any of my materials because I wasn't anticipating this happening this evening. And I suspect others in the audience from the villages and Campton Township are probably also not here. I don't see Mr. Miller here who has been an active participant in examination of experts.

MR. BROWN: If I can respond. We've been listening to this for at least eight days of an evening. I'm sure Mr. Carrara, knowing his background and ability, will be able to cross-examine him, and I believe there's a report that's in the file. MR. KOLB: Correct. There's an expert report. We've also discussed the possibility both with Mr. Carrara and with the County about calling rebuttal witnesses, and I think there was plenty of public comment on the issue of similarity that deserves a rebuttal witness, and that possibility has always been there.

So regardless of Mr. Carrara's level of preparation, $I$ think it's appropriate to call Mr. Bailey either at the request of the County,
which there was a formal request, or alternatively as a rebuttal to challenge some of the public comment.

MR. BROWN: And, also, there's no surprise that he was on our list. He's been here to at least three of these proceedings from what I recall, and he could have been called at any time, and I'm assuming that Mr. Carrara was prepared on those other dates.

We did this based on an e-mail that was sent to us today. We did not initiate this, and we're just responding to your request.

MR. CARRARA: Again, the e-mail was not sent to me. I have exhibits that were prepared previously for this witness when $I$ was prepared for him during the public comments when the witnesses were to be present.

The hearing was closed for testimony. You told us last night we were only going to be dealing with closing arguments. I did not bring my exhibits; I did not bring my outline to prepare for this. All I'm asking is -- I'll let him testify. I just ask that $I$ be given additional time to prepare and bring my exhibits back. Again, that's all I'm asking.

You've already ruled against my motion because he wasn't here. Now, surprisingly, he's here and I was not advised of whatever e-mail was sent this morning. I would have brought my exhibits and been prepared.

CHAIRMAN WHITE: And I didn't know he was here.

MR. CARRARA: Well, somebody from -- I don't know. Was it the County that requested it?

CHAIRMAN WHITE: Request doesn't mean the person is going to attend, two different topics. I was not made aware that he was here.

MR. CARRARA: In the interest of -- not calling this trial by surprise, but I would have had exhibits for the witness if $I$ would have known he would have been here. I guess I would ask staff or somebody at least to advise us that he would have been present.

MR. BROWN: Actually, I think we're also entitled to bring rebuttal testimony as to the public hearing, so we can properly bring that person here. He's always been on our witness list, and we would like to get this proceeding which has been going on for a long time and just to finish it
tonight. I don't think we -- all right. That's fine.
CHAIRMAN WHITE: I'm going to allow for the rebuttal witness to proceed.

MR. KOLB: Does the County have specific questions for the witness?

CHAIRMAN WHITE: Any questions from Board members?

MEMBER STOVER: Mr. Bailey, what's your background?

THE WITNESS: I am a lawyer.
CHAIRMAN WHITE: I need to swear you in. I'm sorry.

THE WITNESS: Absolutely.
CHAIRMAN WHITE: Please raise your right hand and stand, please.
(Witness sworn.)
CHAIRMAN WHITE: And please state your name and your affiliation with this petition for the record, please.

THE WITNESS: My name is Ryan Bailey. I am here as an authorized representative of Murer Consultants to speak on behalf of the expert opinion. RYAN BAILEY,
having been duly sworn, testified as follows:

## EXAMINATION BY BOARD MEMBER

BY MEMBER STOVER:
Q So my question again is, what is your background, Mr. Bailey.

A I graduated from the University of Illinois in Urbana-Champaign in 2008. I then went to law school at the DePaul University of Law in Chicago. I graduated in 2012. I held a position with a small firm in Wheaton, and then I got a job with Murer Consultants, and I've been working with Murer for approximately two years. And we specialize in health care regulatory compliance. So it would be development and management.

Q And can you tell me as a rebuttal witness, are you here to help us out with the similarity issue?

A Yes.
Q And can you tell me what facilities you have worked on or what you -- in your past what's been your experience in the state of Illinois or surrounding states with that similar issue?

A On a daily basis I represent hospitals, physician groups, and various health care providers of multiple types. I'm intimately familiar with
licensing laws and standards of care.
As a firm, we represent a laundry list of different types of health care providers, including short-term acute care hospitals, long-term acute care hospitals, skilled nursing facilities. The laundry list continues.

Q So noting that most recently in the State of Illinois they carved out a different licensure law for this type of facility, is it fair to say that that's because there are similarities between the two but there are definitely differences?

A I think that it's fair to say there are similarities. There are definitely differences, as well. However, the decision to carve out the substance abuse facilities, it is my understanding that it was done to allow to license these facilities without having to achieve the same hospital standards, rigorous standards for acute care settings.

It's essentially like allowing this hospital service line to be licensed under a different category to allow a less stringent process of licensure for the facility.

Q So you used the word "acute." Is it fair to
assume, then, that the reason this was carved out into a different licensing is because they do not deal on a day-to-day basis with as many physical things, such as, you know, surgeries, broken bones, the types of equipment that would have to be in a hospital? Is it that -- is that why they distinguished between the two -- let me rephrase that.

A Sure.
Q Were there enough cumbersome things within the hospital regimen that it would not apply or it does not fully apply to a treatment center?

A So the way I understand the question, you're asking whether or not the hospital has different services other than solely alcoholism and substance abuse.

Q What I'm saying is -- and I probably don't phrase it well -- the amount of equipment, and the licensure, and the rooms, and the doctors, and the procedures, and the machinery, and some of the things that would be in licensure for a hospital, do you feel that that was why this law was carved out of the hospital setting, because it was too cumbersome to have them be the same?

A I feel like that would be part of the
reasoning for carving this out. I also think that these types of services customarily are provided in hospital settings, so there are similarities in the licensure acts applicable to the alcoholism and substance abuse facility that share similarities with the Illinois acute care hospital setting. And I also feel that there's not just one type of hospital that gets licensed. So where the traditional mentality of a hospital is that, you know, broken bones, surgery, et cetera, et cetera -there's hospitals that don't provide surgery; there's hospitals that don't provide obstetrics. There's all sorts of different health care facilities and different licensure requirements. So it's not uncommon to have different sorts of licensure standards for different facilities.

Q Could you speak to the issue of the similarity? How do you find this facility similar to a hospital?

A Sure. And I think our expert report that was issued by Murer Consultants speaks to that topic.

A little background. Murer Consultants is a family-owned firm out of Mokena, Illinois. Cherilyn and Mike Murer are two of the named partners. It's
been in existence since 1985 and, as I stated earlier, represents a laundry list of different health care providers and facilities across the country.

So as the similarity between the hospital and the proposed alcoholism and substance abuse facility, it's our understanding under the Kane County ordinance that the facility needs to be similar and not exactly like a hospital. And there's three basic tenets to our argument that it is similar.

The definition of a hospital in the Kane County ordinance is an institution open to the public in which patients or injured persons are given medical or surgical care or for the care of contagious diseases.

Q Where are you reading that from?
A I'm reading that directly from the first paragraph of Section 1 of our expert opinion.

Q I meant where are you reading that from Kane County.

MR. KINNALLY: It's page 9 of the zoning ordinance, Ms. Stover.

THE WITNESS: I apologize.

A (Continuing.) So under that definition, when you turn then to the licensure for the facility of the alcoholism and substance abuse, there's two types of licenses the Department will issue, either a treatment license or an intervention license.

The treatment license specifically talks about providing a continuum of care, having -- I have the exact words -- "a continuum of care provided to persons addicted to or abusing alcohol or other drugs that is designed to identify and change patterns of behavior that are maladaptive, destructive and/or injurious to health; or to restore appropriate levels of physical, psychological, and/or social functioning." There's an element of continuum of care that needs to be provided, that is treatment to these patients, and it is different from the intervention license, which is, you know, designed to provide activities or services to assist in coping and more of a social setting-type as opposed to a continuum care-type license.

It is also Murer's understanding that Maxxam Partners is seeking the highest level treatment license, the Level 4 detoxification, and the acuity
of care involved in this would regularly and customarily be reserved in a hospital setting. So the similarity between continuum of care that's going to be provided in this facility is also provided in hospital settings.

So that's the first basic argument. The second position is that, as I stated before, the actual regulations themselves share similar characteristics between the Illinois Hospital Licensing Act and the Alcoholism and Substance Abuse Licensing Act. They're not exact; they just have similar characteristics.

There's a requirement that a physician see the patient daily, and the facility has to have a medical director. They have to have nurses, and the nurses have to provide care to the patients, 24/7 monitory. These are all things you find in a hospital setting.

They also have a set of regulations that are not exact to a hospital care but are similar in regard to facility standards, infectious disease control, patient room and bath. There's elements of oversight that you would see the State providing in hospitals that they're providing in this facility.

So there's a similar oversight.
And the third position and what I've alluded to throughout is that this service line itself, the alcoholism and substance abuse service line is customarily provided in hospitals and is frequently provided in hospitals. So it's a hospital-level service provided in a facility that has similar oversight by a State via the licensure act.

So it would be the opinion of Murer
Consultants based on 30 years' experience as a firm we feel it's similar to a hospital.

MEMBER STOVER: All right. No more.
CHAIRMAN WHITE: Any Board members have any questions?
(No response.)
CHAIRMAN WHITE: County have any questions?
MR. KINNALLY: I've got some questions.
Thank you, Mr. Chairman.
CROSS-EXAMINATION BY COUNSEL FOR THE COUNTY BY MR. KINNALLY:

Q You are a lawyer? You've been a lawyer for three years?

A I'm in my fourth year.
Q And you didn't write this report, did you?

A I assisted in the writing of this report.

Everything that comes through the Murer Consultants' office is a collaborative team effort. Cherilyn Murer, the president, was the lead on this report, and I participated in the research and the writing of this project. She has ultimate authority.

Q Well, who authored it? Did you author it?
A I wrote -- $I$ wrote the majority of it, if that's what you're questioning, but then she reviews and approves.

Q I see. And when were you contacted by the applicant?

A I was brought to a meeting -- I was told by Cherilyn Murer that we were contacted by Maxxam Partners. So I don't know the date when the initial contact with them was, but in the summer of last year we were talking with Steve Marco and Maxxam Partners.

Q When were you contacted to testify?

MR. BROWN: Just a point of reference. You mean for today?

MR. KINNALLY: Whenever. It's an open
question. I'm sure he knows the answer.
A Well, there's various stages. At the

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initial meetings, in understanding of our role in this project the possibility of testimony arose. But it wasn't verified until the hearing was put on the schedule and we were contacted and asked to participate. And after that we had two representatives on hand to make sure that Murer could be here whenever the County needed us, and then today I was asked to come.

Q So you wrote the report, you were contacted to testify, and you're here to tell us about which criteria of the zoning ordinance?

A That's a question?
Q That is a question.
A The similarity, whether or not this facility is similar to a hospital or also a nursing home. But mostly our report focuses on hospital standards.

Q I didn't see anything in your report about nursing homes --

A That's true.
Q -- can you tell me where that is?
A This report specifically addresses hospitals.
Q I see. So it's my understanding that you think this facility is like a hospital for the three reasons you stated.

A Yes.
Q And the first one was that it's open to the public; right?

A No. That's an element of the definition. There's multiple elements within that definition.

Q Well, I understand that. I appreciate that information but doesn't the definition of hospital in the zoning ordinance say that the institution will be open to the public?

A Those words are included in there, but it doesn't further define "open to the public," whether or not it means select members of the public or general public. From our reading of this, open to the public could mean that it's open to members of the public with a certain level of insurance that would be acceptable to the facility.

Q It doesn't say anything about insurance in there, does it?

A No. But it doesn't say anything -- it doesn't further define the "phrase open to the public."

Q This particular facility is not open to the public; correct? It's only open to the people that can pay to get into it; right?

A It depends on, again, how you define "open to the public."

Q I'm asking you, sir. You're the expert. I'm just the lawyer.

A I'm here -- respectfully, sir, I'm here on behalf Murer Consultants, so I'm authorized to speak on behalf of --

Q That's what we're trying to find out.
You agree with me that this is a private-pay substance abuse center; true?

A I do.

Q And that means it's not open to the public; true?

A Again, it depends how we're defining "open to the public" but we're --

Q Okay. Well, kids from St. Charles or 21-year-olds from St. Charles who don't have the ability to go to this place, don't have the money to go to this place, they're not going to get in, are they?

A That depends on the admissions criteria set by the facility, and based on my understanding, there are preauthorization checks for insurance, and if they don't meet those checks, then they would not
be invited to the facility.
Q Okay. All right. Now, you indicated that the second part of your opinion that you shared with the Board was that there were elements of oversight with respect to this facility that were similar to a hospital. Is that right?

A Yes.
Q Did I say that correctly?
A There's an Illinois licensing act that will apply to this facility.

Q And how many nurses will be staffed here? Do you know?

A The organization and operation of the facility is outside the scope of our responsibility for this. We're looking to the similarity of the type of care that will be provided in the facility. The regulations require that a nurse be on staff 24/7 and that they oversee patients.

Q So we're clear, as you just stated, the organization and operation of the facility is outside the opinion that you're telling the Board about tonight; true? Is that what you just said? Am I correct in that?

A Those were -- to clarify, what I mean by
"organization and operation" is how -- any
additional levels beyond the licensure requirements
that will be put on the facility. And in the
licensure requirements there are staffing
requirements, and in those staffing requirements,
the facility must provide 24 -hour observation,
monitoring, and treatment, and it must be by a
registered nurse, a licensed practical nurse, or a
certified emergency medical technician with 40 hours
of training in the field of alcoholism.
Q I appreciate you reading from the report and
we've read the report. My question is, did you not
just say that your opinion, Murer Consultants'
opinion with respect to the organization and
operation of the facility is not something that's in
your report?
A I feel like I --
Q Yes or no, sir.
A I feel like I clarified my statement and --
Q All right. That's fine.
A -- that's any element of organization and
operation above the basic licensure standards that
are set forth and that we've identified in our
memorandum.

Q In your memorandum?
A In our expert opinion, however you'd like to categorize it.

Q That's what you called it. You can call it whatever you want.

A One more time, I'm here as an authorized representative of the firm --

Q I appreciate that.
A -- and I just --
Q Can I just ask a question? Please let me just ask the question so the reporter can take it down. We can't talk over each other.

A I apologize.
Q Now, you said the elements of oversight are the licensing act; is that right?

A Yes.
Q Would you agree with me that the elements of oversight for a public hospital are greater than the licensing act in the state of Illinois? You're an expert at this; right?

A Yes. The firm is an expert in this.
Q And so are you, right?
A I am a member.
Q But you're an expert.

A I base -- in my legal training and my experience in the field, I think that I could qualify as an expert on a number of elements.

Q Okay. Thank you. I'm sure that's true. Now, the last thing you wanted to talk about is you said that the service line with respect to this facility will be akin to those that are provided in hospitals. Did I get that right?

A If the service line were provided in the hospital, it can be akin to that, yes.

The point of that statement, if I may clarify, is that this type of service is provided in hospitals. And to -- in furtherance of that point, a hospital wouldn't need an additional license to provide this service; it would apply underneath the hospital license.

Q And has it been your experience that most of the substance abuse centers in the state of Illinois are attached to hospitals?

A No. I think that there are a number of substance abuse facilities that are licensed underneath hospitals or collocated with hospitals --

Q Right across the street?
A -- and there --

Q Right across the street?
MR. BROWN: We would just request that he finish his answer, please.

MR. KINNALLY: Sure.

MR. BROWN: Thank you.
A (Continuing.) And there are a number of facilities that are collocated or licensed as far as with a hospital, but there are other facilities that are not.

Q Where is the nearest hospital to this facility? Can you tell the Board?

A I don't know that.
Q Now, we heard from an adviser for Maxxam, a doctor that came to this hearing who is on the advisory board, and he's an emergency room doctor at Delnor Hospital. Are you familiar with that man?

A No. I was not here on the day that he gave testimony.

MR. KINNALLY: Thank you, Mr. Chairman.
Thank you, sir.

CHAIRMAN WHITE: Mr. Carrara.

MR. CARRARA: Again, Mr. Chairman, I request that -- I'm unprepared this evening with my exhibits, and I request additional time. And if you
choose not to allow that, we'll stand on the record as being presented.

CHAIRMAN WHITE: Then that's all I'm going to do. You're more than welcome to ask some questions.

MR. CARRARA: Thank you. We'll stand on the objection.

CHAIRMAN WHITE: Thank you. Any units of government wanting to address this witness?

Mr. Shepro.
MR. SHEPRO: Mr. Chairman, I most respectfully would join in the objection made by Mr. Carrara. Last night this Board made and passed a motion to close the public hearing and to close testimony. And while I believe that rebuttal witnesses can be allowed, they're not allowed after the hearing has been closed.

I do believe, also, that this Board in its discretion could decide to call this individual as their own witness, but I think under those circumstances $I$ believe it is only fair when the parties were not made aware that the witness would be called. And it seems to me in this instance a very simple copy of an e-mail or a telephone call would
have alerted us to the fact that this individual was going to testify.

So I really do believe that it is unfair to expect us to be able to cross-examine a witness when moments before he testified the Board for a second time closed the second hearing to any further testimony.

So I, too, would stand on the objection that I'm not prepared to proceed with this witness this evening.

CHAIRMAN WHITE: And just to clarify, I closed the public comment section of the hearing. I did not close the public hearing, and that was purposely stated that way.

MR. SHEPRO: You are correct, Mr. Chairman. But, again, counsel for the applicant did not say we are going to have rebuttal witnesses. He could have said that. Instead we all discussed last night that we would go directly to closing arguments.

MR. KOLB: Objection. The Klaeren case states that rebuttal witnesses are appropriate. It doesn't need to be by agreement of counsel. Nor was there ever a written agreement.

MR. SHEPRO: I'm not suggesting it required

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agreement. I'm suggesting it required disclosure.
CHAIRMAN WHITE: I recognize your objection.
MR. SHEPRO: I thank you for that.
Therefore, we will also stand on our objection.
CHAIRMAN WHITE: Thank you.
MR. KINNALLY: Mr. Chairman, just so the record is clear, I didn't know this guy was going to testify, either. So my cross-examination was based on just what I did tonight. So I just want to make the record clear on that, as well. Thank you.

CHAIRMAN WHITE: And I'll also say that the Board did not know this person was going to be here. There was a request made. I did not get an answer to that question.

MR. SHEPRO: Just for purposes of the record, Mr. Chairman, I would ask if there was a request in writing or by e-mail, $I$ would ask that that be made part of the record of this case. I haven't seen it and I don't think Mr. Carrara has seen it, and it sounds like Mr. Kinnally didn't see it, either.

MR. KOLB: I have a copy of it for the record. It was an e-mail sent by Mr. VanKerkhoff to me at 1:01 p.m. today. The e-mail says, "Andrew, Chairman White asked me to inquire if Ryan Bailey is
available to attend this evening if needed. Thank you."

And my response, which was sent at $3: 22$ p.m., and there were a number of people copied on that response, indicates, "He will be present, along with Keith, me, and Steven Marco."

MR. BROWN: And, obviously, we scrambled to get that done tonight. We did not make this request.

MR. SHEPRO: And just if I understand what counsel is saying is that the counsel for objectors were not copied on that e-mail response.

CHAIRMAN WHITE: Mr. VanKerkhoff would like to speak.

MR. VAN KERKHOFF: Thank you, Mr. Chairman.
I just wanted to confirm for the record, that's an e-mail $I$ sent to the petitioner at your request. I did receive, $I$ can see, an e-mail at 3:22 p.m. from Mr. Kolb. I had already left the office for the afternoon to prepare for this evening's meeting. So I was not aware of their response nor did the petitioner respond to anyone else.

Again, it was a request just to see if he was available. It was not a request that he be here to testify or that he would be testifying. If $I$ had
received the e-mail at $3: 22$, I certainly would have
shared that with the petitioner and other parties.
CHAIRMAN WHITE: Anyone else wishing to
cross-examine the witness?
Mr. VanKerkhoff.
MR. VAN KERKHOFF: If I could just make one
other comment for the record.
Through the course of all these hearings our
staff at the County has been slow to get requests or
shared information from all parties involved, both
the petitioner, Mr. Carrara, and other units of
government in terms of desires to call witnesses or
produce witnesses.
So just for the record, there's been, in my
opinion as zoning officer, not great communication
by any of the parties.
Thank you.
CHAIRMAN WHITE: Any Board members seeking
the floor at this time?
(No response.)
CHAIRMAN WHITE: The witness is excused.
Thank you.
(Witness excused.)
CHAIRMAN WHITE: Now we'll move on to closing
arguments -- closing comments $I$ would rather say.
Is the petitioner ready -- and I guess I
started to explain, we're going to allow the petitioner the opportunity for closing comments. Then I'll open it up to the objectors.

MR. BROWN: We actually have one other
document that we would like to produce in rebuttal which is based on some of the comments that were made during the public forum yesterday. This is a -- and I will hand out a copy of the documents. CHAIRMAN WHITE: That would be fine. MR. KOLB: I think we're on 26 . Is that correct, Mr. Kinnally? MR. KINNALLY: I have to check my notes. Last one I have, Mr. Chairman, is J24, which would have been the ordinance. CHAIRMAN WHITE: I think he's right, J25. MR. KINNALLY: That's what I have, Mr. Chairman.

CHAIRMAN WHITE: Thank you.
MR. BROWN: In accordance with past
practices that were used during the public hearing, we do have a letter from Trina Diedrich which basically -- if you want me to read the entire
letter into the record or --
MR. SHEPRO: Andrew, do you have another copy of that exhibit?

CHAIRMAN WHITE: Are you just going to read in the cover letter? Is that what you're --

MR. BROWN: I can do that or I can summarize it. It's not that long but this way --

CHAIRMAN WHITE: Just summarize it. We have it in writing, so we'll move on it to admit the testimony.

Is there a motion?
MR. BROWN: I'm sorry. Did you want me to read it?

CHAIRMAN WHITE: Let me move it first. Is there a motion -- go ahead and read it. Go ahead.

MR. BROWN: "Staff working within a substance abuse treatment center where residential detoxification services are being provided are highly qualified and specialize in providing exceptionally skilled medical supervision to patients during the withdrawal phase of their treatment. The medical staff is on the unit 24 hours a day, 7 days a week. This level of expertise is not negotiable and is a condition of licensure
for every residential treatment center in Illinois.
"In the state of Illinois, there are
24 licensed detoxification units providing services and 20 freestanding treatment centers. Several organizations have multiple licenses for services which are required by the State of Illinois. Each organization must have a separate license for each detoxification unit.
"In contrast, there are considerably less detoxification treatments available within a hospital setting. While inpatient beds are available, most of the hospital services are provided in an outpatient setting, and the number of residential beds varies widely, including detoxification beds. The type of beds available is at the discretion of the hospital, and highly specialized detoxification beds are not widely available."

That is basically the sum and substance of the letter.

CHAIRMAN WHITE: Okay. Is there a motion from the Board is accept Document J25 into the record?

MR. SHEPRO: Mr. Chairman, if I might.
Before you consider that, I would like to make an

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objection to the receipt of this exhibit.
While -- even if a rebuttal at this point is appropriate, this document is the rankest form of hearsay. This is simply an addendum to expert testimony. I assume that Ms. Diedrich is not here to be cross-examined on this supplemental letter, and $I$ have to object to it being offered or received at this time.

Thank you.
CHAIRMAN WHITE: So noted. As we have with
many of these documents, the Board is directed to take them for the weight that they contribute to the application.

Is there a motion to --
MEMBER STOVER: Mr. Chairman, I'd like to
move that we enter J26 into the record.
CHAIRMAN WHITE: I've got J25.
MEMBER STOVER: 25 into the record.
MEMBER CAMERON: I'll second it.

CHAIRMAN WHITE: Moved by Ms. Stover, seconded by Ms. Cameron. All in favor say aye. (Ayes heard.)

CHAIRMAN WHITE: Opposed, same sign. (No response.)

CHAIRMAN WHITE: Motion carries.
(Exhibit J25 admitted into evidence and retained by the Board.)

MR. BROWN: We're going to share in closing. I'm going to allow my cocounsel Mr. Kolb to start, but $I$ would like to say this in the beginning -actually, I'd like to address the audience in this fashion.

I've had my back to you the entire time, and that is the way we happened to configure it. But I'd like to say this is that, if $I$ have offended anyone, I apologize for that. I'm a lawyer; I'm here to defend my client; I take a position, and I know sometimes this has been very overheated over this period of time, but I would hope that neither you take it personal nor do $I$ take it personally.

The other thing $I$ would say under oath for yourselves, I did call you on the 19th. I was on the premises and left a message, but my fault, I only made one phone call.

AUDIENCE MEMBER: I was in Chicago.
MR. BROWN: Did you get my message on the answering machine? Okay. That should have been on me, and I apologize, and I recognize you disagree.

But I went out there, and I didn't get an answer, and that just happened to be the day I was there.

But I'll turn this over to him. Thank you.
MR. KOLB: I'd like to start out by thanking everyone for their time and attention given to this application. This Zoning Board of Appeals and the members of the public but especially the Zoning Board of Appeals have gone above and beyond the expectations of the zoning boards that I in 17 years of doing this have seen.

This was a whopper of a zoning application, and you really put the effort in. Regardless of how you decide this, I just wanted to thank you for the time you're willing to give back to your community. You're all volunteers and I think everyone needs to know that no matter how you vote, whether you're for or against the facility, we thank you for your efforts and time and coming and giving your nights without pay.

So thank you on behalf of the Maxxam team. You have a very difficult job tonight; we understand that. But I just want to start -- all of us should thank you guys for taking your time for doing this. A closing argument is an opportunity for any
zoning applicant to remind the Zoning Board of Appeals of the evidence they have heard from all the parties involved in the instant application and to recap how the applicant has presented sufficient evidence to satisfy each of the applicable standards.

From my 17 years of practicing zoning and development work in Chicagoland, our written application on this project is by far the most comprehensive written application that I've ever put together and submitted for approval.

The evidence gathered by credible experts on each of the relevant issues here is quite staggering. The applicant has an expert report -- which has been open to challenge, obviously, but we have an expert report, and in many cases two or three expert reports to address virtually every issue we could conceive of prior to the submission of this application, which is not always the case when you see a variance or a special use come before the Zoning Board that we would get to this level of abstract and bring in this many professionals to talk to you all.

Our application was met with an early appeal right off the bat which was denied, and it was
followed by a court case in the Circuit Court of Kane which was dismissed in its entirety by Judge Villa. The dismissal of that case is evidence of the proper way that the Zoning Board has handled these proceedings so far, and I just want to commend you all for the way you're handling yourselves to date. Mr. Chairman is doing a nice job.

A couple of preliminary comments before we overview the evidence.

First -- two preliminary comments. First, there are a lot of comments about the applicant's prior experience level running a facility like the one that they're proposing. We have to remind everyone here that Steven Marco is an expert at gathering the best and brightest around him. You have seen the experts he's gathered for this hearing, looked at their résumés, and I'm sure his choice for medical director, and I'm sure his choice for medical staff will be equally as exemplary.

Simply put, issues with respect to licensure and operation are left to the State of Illinois to ascertain. The applicant presented as evidence the entire Section 2060 of the Illinois Administrative Code, as well as two witnesses, one from the

Illinois Department of Human Services to demonstrate the exhaustive nature of legislation regarding licensure and operational guidelines. Operational guidelines are the purview of the State's police and license to believe some elements of operations are outside the scope of a special-use petition.

It is also completely premature for the applicant to have been expected to hire all of its medical staff, its medical director, its clinical staff, its nursing staff, nursing assistant staff, and all of its professionals prior to obtaining a special use to bring these individuals into the public eye. They have current jobs that they're currently working; the applicant has not acquired the real estate; it has not even applied for a State license. But we can assure you as we sit here today that Mr. Marco takes the responsibility of stewardship in bringing the appropriate people here and the appropriate professionals very seriously as does our state.

Secondly and perhaps more importantly is our second preliminary comment. Obviously, there are members of the community who have spoken out both in favor of and against the application, predominantly
against from the general public, and $I$ feel it's necessary to remind everyone that the Fair Housing Act was designed to present -- excuse me -- to prevent this "Not In My Back Yard" mentality.

If you read the Fair Housing Act and understand the background of when it was passed and the context of when it was passed in 1968 and the facts that were going on back then, that mentality is virtually written into the legislation.

The Federal law mandates that disabled people not be treated with fear. The Federal law mandates that people not be treated with anger or disrespect and with a view that the disabled are somehow disrupting our peaceful farming community or that the disabled people are ruining our way of life or causing a burden.

The disabled in our community have the right under the FHA to live in rural areas as well as urban areas. The disabled in our community have a legal right to enjoy open space. The disabled in our community should not be relegated to urban areas only because of a baseless accusation that these disabled people will cause crime while they are seeking to recuperate their lives.

Reasonable accommodation was requested because those of us in society suffering with alcoholism and substance abuse are disabled under Federal law. Reasonable accommodation is requested because these disabled people are entitled to seek and pay for residential treatment in our community without the type of discrimination voiced during these hearings.

Our patients are not felons, as they were termed; they are not criminals, as they were characterized. Alcohol is quite legal last I checked.

We've heard that the patients just don't constitute a good mix for society here in Kane county. The correct legal term for our patients are not felons, or criminals, or undesirables. The correct legal term for the patients of this facility are disabled, and that term comes from the United States legislature. I'd like to remind everyone as they rule on this to keep that in the backdrop of their thinking.

So what has the evidence in this case told you? What evidence have you received, and what evidence has been submitted as you consider this
special-use application?
You received the application itself, and we took the time to address in writing each of the six standards applicable to a special use in detail. You received a Kane-DuPage Soil and Water Conservation District land use opinion, as well as the waiver. You received the endangered species report. You received a certification to adjoining property owners and Sidwell photos of the property, a site plan with building identifiers, and concept plan complete with a PowerPoint presentation.

You received several legal opinions regarding Fair Housing Act applicability from two zoning and development law firms, including the Chicago-based firm of Holland \& Knight. You received an expert opinion regarding similarity from Murer Consultants. You received a market impact study from MaRous and Company showing the highest and best use for the site and utilizing matched-pair analysis.

You received fiscal impact studies from Poletti \& Associates utilizing a regression analysis, and you read how the report showed a qualitative analysis consisting of two parts, the study of the sale of property surrounding the
currently operating Timberline Knolls facility in Lemont, Illinois, and the study of the currently operating Rosecrance Center in Rockford. After studying these facilities, the conclusion was that the facility was located so as not to diminish property values; Mr. MaRous' report concurred.

You received a Sheaffer \& Roland wastewater study and accompanying supplemental report which were exhaustive. You received a KLOA study regarding traffic patterns. You received property photos and an opinion of John Curtiss of The Retreat indicating AWOL discharges at facilities like these are quite rare; people rarely walk off.

That was the written record. You also heard testimony from additional witnesses that we brought forward. You heard from Derrick Waldren regarding security, how we're going to have a digital fence. We showed you a virtual electronic slideshow demonstrating the effectiveness of the system and the mechanics of how law enforcement would be contacted in the unlikely event a voluntary patient seeks to walk out of the facility rather than utilize the facility's complimentary driver.

Mr. Waldren focused, as did the applicant,
on the theme throughout this process that this is a voluntary facility. It's not a court-ordered facility where people are detained; it's a facility for people who are voluntarily there to seek treatment and better their lives.

Security is a system designed to alert. That's its primary focus. We believe with this digital technology the idea is to provide the quickest manner to alert those on staff as possible. The computer system can identify instantly what's been seen.

You heard from Trina Diedrich who works for the Illinois Department of Human Resources who provided evidence that the State of Illinois indicates in writing that our facility is a nonopiate-only, nonmethadone facility. This is a critical point to understand.

There is a theme with the objector's evidence through all these proceeding to include -and I see it again, and again, and again -- methadone clinic data in all of its studies. It happens repeatedly. Even as late as last night Campton Township submitted additional data regarding EMS' police from outpatient facilities, again, outpatient
methadone facilities.
What the applicant is proposing is quite different. It is an inpatient, nonopiate-only, nonmethadone facility providing a continuum of care. A continuum of care is not the type of facility that's outpatient where a medication is distributed and the patient is sent along their way to cope with their own means and to deal with whatever effects they're feeling while the medication prevents some effects from taking place.

Our facility is completely different. It does not treat the same opiate-only methadone-type addiction. Our facility is inpatient and provides a 24-hour continuum of care with professionals that are mandated by the State of Illinois under the watchful eye of a medical director.

Why is this important? You heard from Dr. Hendrickson that the data for inpatient facilities, inpatient facilities had no correlation to crime whatsoever. That's why we brought Dr. Hendrickson here for you, so that you could see that with respect to inpatient data there's no correlation with respect to crime.

Dr. Hendrickson prepared this report in

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2012, years before Maxxam had ever conceived of this treatment facility, and we brought Dr. Hendrickson here to supplement our application and to update his report with the most current information and to outline all of his findings in a met data format. Simply put, inpatient facilities do not generate crime.

You also saw the staggering misinterpretation
in the Waller report provided by Mr. Carrara's witness Mr. Waller. Aside from the fact that the report devotes a substantial portion to FHA application -- which I found interesting that the objector's own report indicates FHA application -the report studied 36 facilities, half of which were outpatient opiate-only facilities and methadone facilities.

These opiate-only and methadone facilities pull values down approximately 17 percent, and with an overall 8 percent devaluation for all of the facilities combined, we are left with some easy second-grade math to demonstrate how the remaining half must be around a positive impact of 1 percent. You end up at 8, and the opiate-only and methadone are at a negative 17, it means the other half of the
sandwich is about 1 in order to end up at 8. It's pretty simple. On cross from the ZBA itself, Waller could not deny this credible result.

His report only studies also densely populated areas whereby 60 homes were located within an eighth of a mile, and he studied smaller home sites as opposed to the larger estate rural acreage like what's in our community.

I personally believe that Waller lacked the credibility of Mr. MaRous. Mr. MaRous appraised properties in Illinois totaling 15 billion with respect to projects along 355, O'Hare International Airport, McCormick Place expansion. MaRous was a graduate of the University of Illinois, and he served as a mayor, alderman, and committee chairman of a local suburb. He's received awards from the Chicago chapter of The Appraisal Institute, the George M. Schultz Memorial award from The Appraisal Institute, and Herman L. Walter award from the Chicago chapter of The Appraisal Institute. He was embarrassed to tell you that he had 40 years of experience in appraising real estate in our state and in our county in our community.

Conversely, Mr. Waller had never once
appraised a piece of property for a fee. He had never once appraised a piece of property in Kane County, and he had never once appraised a piece of property in Illinois. He had never even visited the site that's at issue in this case.

In my opinion, Waller's opinions are without merit, his report is polluted with data involving meth clinics, and his experience lacking, and I think the Zoning Board should look at these facts when they try to determine whose expert has the better opinion regarding valuations. Is it Mr. Waller, or is it Mr. MaRous and Mr. Poletti?

With respect to Mr. Abel, the other expert that the objectors brought forward, I am still trying determine what the subject matter of his testimony really was.

He gave a valuation opinion, although he himself is not an appraiser, either; he's a zoning expert. And he gave a number of incorrect zoning opinions in this case as early as really early when he testified that this hearing shouldn't even be taking place and that Section 5.15 should have forced the matter through some different channel. He then hedged that opinion by saying perhaps a text

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amendment would have been more appropriate, but it was unclear as to whether the text amendment should have come from the applicant or should have come from the County itself. Then after suggesting the County initiate the text amendment, he became upset with one of the Zoning Board members for that zoning board member's suggestion that the County perhaps should initiate a text amendment to clarify his opinions.

I still don't understand the basis of any of his zoning opinions. In my opinion, what I could interpret is that he's upset that the comprehensive plan in the County didn't jive with what the zoning ordinance provided as a permitted use or special use in this zoning classification, just didn't feel like the property worked for something like an alcoholism and substance abuse treatment facility.

Yet the property is already zoned for a hospital or a nursing home or a convalescent center. He was upset with things like traffic for laundry and food delivery when, in essence, those same phenomenon would occur with any of the enumerated permitted uses, as well.

So I still am confused as to what Mr. Abel
added to the situation other than early confusion and a lawsuit which was dismissed.

You heard from Trina Diedrich, and she testified regarding staffing requirements. There was a lot of concern about what our staff would look like notwithstanding State requirements. She testified that the applicant, notwithstanding the fact that the applicant has not hired its medical staff or its chief medical officer and chief medical director, nonetheless put together a comprehensive staff report, and she testified that that staff report is consistent with the requirements of Illinois law. We lay out all of the staff we intend to hire, gave them titles they need to have under the code, and we provided it to you.

You heard from Laura Garcia. She provided an exhaustive licensure and operational requirements overview of the State of Illinois and how stringently and closely the State polices all of the operational aspects of facilities like ours.

The purpose of these two witnesses was to demonstrate to you and give you a sense of confidence that the State does regulate this quite heavily, and State does police the operation of these facilities
quite stringently.
Diedrich and Garcia also testified that they themselves work in these types of facilities, and they also provided testimony that, simply put, AWOLtype discharges or walk-outs in a voluntary inpatient continuum of care treatment facility are rare and so is crime.

I think it was important that Ms. Diedrich's own life story and the fact that she herself was a recovering substance abuse addict is a tribute to recovery and accomplishment postrecovery.

Ms. Diedrich represents the type of credible, honorable, and loving person who would typify the disabled people who will be at the applicant's facility.

You heard a lot of testimony that the applicant's facility will fall into the business model accepting Medicare and Medicaid-type patients on the public dole. We all know what the State of Illinois reimbursements are like for State agencies like this. I just read an article the State's not paying its Lotto winners. I don't believe there's any way that this facility in its current condition, its current levels of amenity can survive a day on a

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Medicaid model. It is strictly a private pay insurance model. There's no way that it could support its infrastructure, and there's a demand that's overwhelming for private pay in our area. The facility is overamenitized.

The applicant sulomitted a detailed written application addressing each of the six standards applicable to a special use. We all know what those standards are. We provided a written summary and a written essay addressing each of those standards, and I think we've heard -- I believe this is the sixth public hearing -- I've lost count. So rather than go into each of the standards in summary, I'll just submit again our written application on these points, and I touched on some of the points earlier.

So I think with that I'll turn it over to Mr. Brown for further comment.

MR. BROWN: Do you mind if I take the podium?

CHAIRMAN WHITE: That'd be fine. And I've got 18 minutes, so if you can make it as brief as possible, I would appreciate it.

MR. BROWN: Will we be given an opportunity for rebuttal?

CHAIRMAN WHITE: Yes, you will.
MR. BROWN: Then I will keep it brief.

Once again, I'd like to say thank you for this opportunity. I've never actually participated in this fashion in this hearing, and I want to say thank you once again for your time and consideration.

And, also, thank you to the public for
coming. Even though $I$ may disagree, a public that is involved is something that as American citizens we'll always treasure. And even though we may be on different sides, $I$ do stand on your right to say -your freedom of speech and your freedom of trying to make your point across to the Board.

But there's other things that are involved here other than just the freedom of speech. There's something called the law and the law that you are required to follow. And the law that you are required to follow cannot be based upon fear. It cannot be based upon what I heard very much, which would make a record for potentially a violation of the Fair Housing Act that "Not In My Back Yard."

I have a personal reason why I was involved in this case, and that personal reason was what happened to Kiva. I saw the flyers that were sent out,
including a flyer which showed an African-American being -- pulling someone and showing what could happen in your neighborhood. I have a personal reason in that my father back in 1963 and I was a young kid was involved in the Housing Act. And in 1967 when he tried to buy a home, people would tell him, "What would I say to my neighbors" and not to have a black person "in my back yard."

Now, in 1968 the day after Martin Luther King died the Fair Housing Act was signed to stop the discrimination against people of color. Now we go into our time period now, and those same fears that were being used which was the basis for the Fair Housing Act is now being heard in this testimony as to what we are afraid of.

What the fear is -- I agree their fear is real, but what they're afraid of has not been proven and is an illusion. It's a fear that's been based upon the flyers have been sent into this community, the flyers that are -- the most destructive value to the homes is the people's perception of what's going on which has been generated by the objectors.

It is the objectors themselves which are lowering the property value, and there's one thing
that $I$ can definitely agree with their expert is that the way they perceive it will affect property values, and you see this being generated by putting flyers in people's homes to scare them to bring the fear for purposes that are objectives which are based not on evidence.

The evidence has been clear, and my counsel, cocounsel here has been talking about Waller -actually, you remember when $I$ said presumptions will lead to conclusions? And I also agree with the gentleman who said that his math was correct, it was just his presumption was to prove something other than what we were, and we included in that package of detox, and if you looked at ours, there's no affect on the value of property.

Look at -- and I am a defender, and when people came up and just gave you piles of information and they did not talk to you about how to decipher that information, I made objections. Some of them -- actually, $I$ do note that after a while the people came up with the information, brought them in a format to which I stopped making objections.

Even though you receive information into

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evidence, look at that information when it comes into what type of calls are being made. Use your common sense to where -- even the cross-examination today which had to do with, well, is this property open to the public like a hospital? All right. I'll help you with that. Are psychiatric hospitals -I'll make it even easier -- are children's hospitals open to the public if they only allow children? And I would say to you yes, they are. This hospital -hospitals have criteria that are open to the public. It may be a private pay, but it's open to the public.

Also, I have a lot of respect for Sheriff Kramer, and when we talked about the calls and what was going to happen to Campton Hills, he said that he could handle it with his staff. Now, he also made some opinions which I don't agree with as to how many calls he would have. But then he wasn't subject to cross-examination, and it's interesting as to what -- and, also, to defer to this, you have no idea what data that he referred to.

Now, the data that $I$ think is very interesting is from the chief of police of Campton Hills who had data that was when they were for the project when their zoning board using the same criteria that

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you're being asked to do for this voted yes when he had that criteria. When they were going to get \$7 million and they were also going to get this other money, it was 5 to 10 if I recall the testimony correctly. And then when there was no money, it changed.

You heard the testimony of our own witnesses who are in the field working with these organizations, working with licensure. What was their opinion who do this on a daily basis?

And then also use your common sense, your common sense as to what type of facility this is, which has a licensed doctor. And we heard testimony today, well, don't have a doctor on-site 24 hours a day, 7 days a week; it's not safe. I will defer to this. I'm a person that does medical malpractice, and if you've ever been in a hospital for any time, your doctor that's treating you is not there 24/7, and he gives instructions to nurses, and the nurses carry those out. And by the licensure we have to have an RN, or an EMS, and I believe there's one other that's going to escape me. They're 24/7.

Which brings me to the other point. You are not a licensing board. You are not here to say
whether we comply with the licensure. That's another step down the line. You are here to say we meet the criteria of a special use. And that special use -- which I believe that my counsel has hit every of those positions, but here's the other part that's so important, and it goes back to the Fair Housing Act.

The Fair Housing Act prohibits discrimination in housing, including discrimination against persons with disabilities. This prohibition encompasses of enforcement of zoning or other local ordinances in a manner that treats disabled persons less favorably than nondisabled persons. Under the FHA a disability generally means a physical or mental impairment which substantially limits one or more such person's major life activities. Individuals recovering from alcoholism and substance abuse such as those that would be residing at the proposed facility are considered to be persons with disabilities within the coverage of the Federal Housing Act.

Accordingly, the County will be required to make a reasonable accommodation with respect to the facility because the facility will provide residential
services to persons with disabilities who are protected under the Act. Notably, Section 5.3(b) of the County zoning ordinance expressly recognizes that the FHA is applicable in Kane County and implicitly acknowledges the County's mandate to provide such accommodations to persons with disabilities, particularly when, as here, the proposed facility satisfies all the zoning criteria for approval.

It would be difficult for the County to deny the requested zoning relief without violating the FHA, or let me help you with this, you will be violating it if you use the criteria "Not In My Back Yard."

This is an emotional issue because what I'm hearing is that people with disabilities do not have the right to be in open spaces; people with disabilities, even if they have money and insurance, do not have the right to be in an area where there may be forest preserves around; people with disabilities are people who are tainted. We might as well put a scarlet letter on them and say, "If you're in my neighborhood, we don't want you."

But let me help you with something, and I
take this as a person who has been a member of this
community but actually a person that's active in this community. There are people around you outside of the Glenwood property who use drugs, have eating disorders, are alcoholics and need help. And if there's any one reason why this should be passed is because this is something that could benefit our community. I know that people are interested in their lifestyles, but I'm interested in people who save lives. And I think we can have a balanced approach where they both can be present, and they both can survive in the same environment.

The final thing I'd like to say and I will stop is that the financial aspects of this -- and I regret the fact that at one level Campton Hills has some financial challenges. We've heard about the financial challenges that are going on with the fire district. And this property has stayed empty for a long time, which creates a problem, but, also, we're bringing tax dollars, and people with high education, and money that's going to be for this -- for the entire community.

We need this facility. We have made an extensive application, and I would suggest that what happened to Campton Hills, it was unfortunate. Their
insurance company paid $\$ 500,000$ I believe because of a violation -- a perceived potential violation of the Fair Housing Act.

The Village of South Elgin had a consent decree in a settlement for a violation of the Fair Housing Act. That should not happen to Kane County government to where that expense for a violation of the Fair Housing Act will be an expense which will be hit upon the County.

Now, obviously, the objectors have deep pockets, and I will say this, we are here to take this to the end. We have followed the law. We've given the best application possible, and now I would like you to do the right thing and follow the law and approve what we're asking for in our petition.

Thank you.
CHAIRMAN WHITE: Thank you. I think at this time if it doesn't disrupt the flow I'm going to take a break. I know Mr. Moga is probably interested in that.

So we'll take a 10-minute break. I've got
8:40. So be back in about 10 minutes, please.
(Recess taken, 8:38 p.m. to 8:52 p.m.)
CHAIRMAN WHITE: If $I$ could get the Board
members to get back to your seats. As soon as they get seated we'll begin.

We need to come back to order, Mr. Brown. Please, could you take your seat so we can get back to the meeting? Okay. Keep your disagreements for another time.

Mr. Carrara, the floor is open for your closing comments.

MR. CARRARA: Thank you, Mr. Chairman. I also thank you for everyone's time and patience here.

I do agree with Mr. Brown on at least one point. I do agree we are here to focus solely on the law and not any of the other stuff out there in terms of the discriminatory nature or any of those comments. So we are in agreement on that. We disagree on the application of the law, and I'll get into that in a little bit.

There has been talk, some of it again was even by Mr. Brown and some others about the potential tax gain from this property. In essence, it's a rush to get a vacant property back on the tax rolls and that Maxxam's application for a special use is the only way to make that happen.

That's not true. Nowhere in the list of

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standards for a special use is potential tax revenue discussed. The ZBA doesn't have any discretion, shouldn't even be considering tax rolls because it's not one of the enumerated standards for a special use.

Now, additionally, the Kane County ordinance and the comprehensive plan has great uses listed that are available for this property which are compatible with the farm estate districts. And they will come; just give it time.

It was interesting this evening, I heard Mr. Kolb say two things that were new this evening that had never potentially been testified to before. First, that they won't be treating opiate addictions and that they won't be using methadone at the clinic. I believe they always said they would be using methadone and treating opiate at the clinic. That is the highest Level 4 that they are seeking to have at the State.

Now, he may try to clarify that during the rebuttal portion and say they're not an outpatient methadone clinic. That doesn't really matter either way. They're going to be using methadone to treat opiate addiction at this facility.

Additionally, Mr. Kolb mentioned that
hospitals are a permitted use in this section.
That's another incorrect statement and I ask you to look at your zoning ordinance during your deliberations, hospitals, nursery, nunneries, and all the others are a special use that still have to comply with the special use standards that are before you.

Now, if we jump ahead, you heard a number of their experts testify that based on their opinion the proposed facility will be well run. One of the key factors in the special use application is the establishment, maintenance, or operation of the special use facility will not unreasonably be detrimental, endanger the public health, safety, morals, comfort, or general welfare. So operational guidelines and operation of the facility is the number -- first factor, Factor $A$ of the special use. So it is relevant and it is important for you to consider.

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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Maxxam again, and again, and again assured you on numerous times -- and you'll see that when you read through the transcripts -- that Mr. Marco would appear, and he would explain the day-to-day operations of the facility and provide sworn testimony for the $Z B A$ to consider as part of its deliberations on subparagraph $A$ of the special use on operations. But no sworn testimony was ever given on day-to-day operations.

Operations of the facility, you heard even yesterday through the fire -- the president of the fire district, is still unknown. Nobody knows what they're going to be doing there day to day. They've given you some allegations that they'll be in compliance with state licensing acts, and we've all agreed that those are for the State licensing board to consider, but day-to-day operations are within your purview, and you should have heard them. You didn't.

That alone is reason enough to deny the special use but we'll continue on.

You also heard Maxxam claim that their well-run operation of a facility will only generate 5 to 10 police/fire calls a year. Now, that was not
through any witness; that was through their attorneys arguing. No sworn witness that gave sworn testimony before you of anybody testified that there would be only 5 to 10 police or fire calls at this facility.

And I believe it's been shown through the numerous FOIA documents and the like that the basis of a claim of 5 to 10 calls is dramatically untrue. Now, as we said, we can argue about whether a call for an elopement at a facility -- an elopement in a police case means somebody has left the facility -whether it's important or not. Whether the fire department is called to assist because somebody was having a medical issue, those are all important, those are all before you, and you can look at those numbers.

Interestingly, as the testimony went on, the Kane County sheriff, who is apparently monitoring the progress of the hearings, wanted to speak up and actually revised his prior description to the Board, and he estimated that he anticipates the call impact to be up to 300 calls a year. Now, I would say that is substantially and dramatically different than their 5 to 10 calls.

You also heard the fire protection district
estimate that the calls will be potentially 150 calls, and you also heard them testify that that will have a negative impact on their ability to service the public and the safety of the citizens that are within its district.

Again, that is a direct impact on the factors of the special use that directly impacts the general welfare of the citizens.

Now, you heard Mr. Brown allege that -excuse me -- you heard Mr. Brown state that at times he was objecting to the numbers, and at times he wasn't objecting to the numbers when they were certified. But he also -- I agree that he disagrees with them, and as he has said, like minds can disagree on what those mean, but I'd like to point you to two facilities that are mentioned within Maxxam's application.

The first is Timberline Knolls. This is a facility that has the Joint Commission gold seal of approval. You may recall hearing that that's what they're going to be aspiring to have. It's a highend, very expensive, private pay residential facility.

Again, this was a facility that was used as

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a comparable by Maxxam. It only has 87 beds. So it's approximately a third smaller than the proposed facility. Yet the FOIA documents show that there were 213 police calls and 167 fire calls. That's from the facility that's a third smaller than their proposed facility. If you were to extrapolate those calls out to a facility the size of Kiva, it would be approximately 54 calls a year.

Now, the next facility is a facility called the Recovery Village. This is located in Florida. You heard Mr. Kolb or Mr. Brown say that Mr. Marco will bring the best and the brightest as part of its advisory team. They did -- initially in their application they listed this facility as being one example that the ZBA could look at by one of their advisers, Mr. Elliot Messing.

Now, interestingly, when we started to inquire into Mr. Messing and his facilities, the application by Maxxam was amended to drop Mr. Messing and to drop reference to the Recovery Village.

Now, the Recovery Village identified in
Maxxam's original application is an 80-bed
alcoholism and substance abuse and detoxification
residential facility, 80 beds again -- are we okay? --
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
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
give you the full picture on what impact that could have on surrounding property values.

That, again, is reason enough to deny this application on a purely zoning factor as we are talking about.

To the contrary you heard testimony about a peer-reviewed statistical analysis of over 10 years of data at almost 200,000 transactions by Mr. Waller that his study, again, showed that there is a substantial impact on property values based on that 10 years of data and 200,000 transactions, not the four transactions that Mr. MaRous decided to use as his basis on a closed facility that's not even similar to the Maxxam facility.

Now, you've heard some reference that the petitioner disagrees with how Mr. Waller classified or how they are classifying Mr. Waller's reference to a methadone clinic within his report. Again, methadone, if you read Mr. Waller's report is used for the treatment of opiate addiction. It is one of the medicines that are used. That is, again, a medicine that will be used at the facility by the petitioner.

Again, I would say that you heard testimony

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from a third party, an independent member of the public who is a retired statistical professor from Northern Illinois University. He testified that Maxxam's efforts to twist the math -- you again heard it this evening by Mr. Kolb calling it secondgrade math -- had no basis in the statistical world, and I think the phrase he used -- and I may be butchering it -- was specious or of no weight or bearing.

Now, again, he wasn't retained by us. He's a member of the public. Unfortunately, the petitioner ran into somebody who had statistical knowledge and agreed to disagree with their analysis. They have done nothing, have provided no evidence to show that those two experts were wrong. You heard the expert testimony of Mr. Waller that it is anticipated that a facility such as Maxxam will have a substantial impact on property values of 8 to 17 percent. Now, if you were to take that -- I think he referenced a $\$ 300,000$ house. At 8 percent that's 24,000 up to the 17 percent, that's over 50,000. That is substantial when you are selling your house.

Additionally, it was interesting that

Mr. MaRous under my initial questioning never heard of the report by Mr. Waller and stated on numerous occasions when I questioned him he could never find such a thing. Yet after that hearing apparently somebody at the Kane County staff simply googled impact of property -- impact of drug treatment facilities on property values. That's the simple search you have to put into Google, impact of drug treatment facilities on property values. And guess what pops up; the waller report.

I'm not sure how extensive Mr. MaRous' research was in finding it, but I suspect that it's questionable at best. I don't think he wanted to find the report because he knew he wouldn't be able to counteract his evidence.

Again, that's my argument and that's the purpose of why we are here. Even if he couldn't find it, when it was presented to him, the best he could do was say he disagreed with the math and how they calculated it. But you also heard from Mr. Waller that that's not true, and you also heard by a member of the public how you can't twist the math to try to get to the results that the petitioner is seeking.

Additionally, it is important to consider that those large reductions, if you were to put them on all of the properties in the area, there will be a substantial price reduction in the neighborhood.

Now, again, I counseled you earlier that you shouldn't consider tax revenue as part of your application, and here's another reason why you shouldn't consider the potential $\$ 300,000$ to the petitioner Maxxam. Because when you base an 8 to 17 percent reduction across all of the properties in that surrounding area, that's going to more than greatly outweigh any potential increase from the Maxxam facility. There was no discussion of that by the petitioner because, again, they don't want to recognize that impact.

And, again, that shows another purely zoning reason why you can deny their application because of the substantial impact on surrounding property values.

Additionally, you heard Mr. Kolb attack Mr. Abel in his opinion because he disagrees with the references that he was making. Again, like minds can disagree. However, you heard Mr. Abel read a section of Kane County's ordinance. Kane County's ordinance recently was changed to limit where
controlled substances can be dispensed.
They can only be dispensed under the ordinance in the RB, B1, and B3 Districts, not in the $F$ District. Now, there was made reference that this change in the ordinance was solely to address medical marijuana dispensaries.

Unfortunately, that's not in your ordinance. Your ordinance says controlled substances. Maxxam has admitted that they will be dispensing controlled substances. That can only happen in Kane County in the RB, B1, and B3 Districts, not in the $F$ District. Again, another pure zoning reason why you can deny the application.

Further, Kane County has spent hundreds of thousands of dollars developing its ordinances and its comprehensive land plan. I think you heard Mr. Lannert, the petitioner's expert said that's been going on for over 50 years, as long as he can remember. For all the work he's done in Kane County, the land plan was an important basis on how the County proceeded with its development in open areas.

Specifically the Glenwood property is called out as an institutional open space. The definition
of an institutional open space specifically says it's to offer important scientific, cultural, and educational opportunities to the residents of Kane County. Nowhere in that definition does it say 120-patient drug and alcohol detox facility.

You heard the County I think mention at one point -- and they asked if he ever heard of a facility called Mooseheart. We have. Mooseheart is a facility that's a residential facility that has youths who aren't able to have a normal, stable family life, and they're offered great opportunities at the Mooseheart facility.

The Mooseheart facility is not a drug and alcohol detoxification facility. So when it's called out that Mooseheart can be in this institutional open space, that's the same reason why it was called out for Glenwood. These were, in essence, boarding schools for youths, and that is much, much different than a drug and alcohol detoxification center.

Again, those reasons are purely zoning reasons where you can deny the special use.

Now, the big white elephant in the room -- and you heard the very vocal response of Judge Brown -is the Fair Housing Act. I agree with Mr. Brown,
the Fair Housing Act has good purpose and it does certain things. Here's where I said I'd get back to we disagree on the law.

In facilities such as this, their patients do fall under the Fair Housing Act. However, do not be bullied into thinking that the County gives up every one of its zoning obligations in the face of the Fair Housing Act. That is not correct.

You heard no law cited by Mr. Brown. You heard a very passionate speech by Mr. Brown. I will read you law on this subject.
"The FHA does not grant protected classes carte blanche in determining where they can live in total disregard of zoning codes." That is the Advocacy and Resource Center vs. Town of Chazy, 62 F. Supp. 2d 6861999.

Again, they don't -- local zoning boards do not give up all their rights to deny special use applications for purely zoning matters. If you do it for discriminatory matters as Mr. Brown suggested, you are going to be libel, but you have plenty and plenty of information here that is purely based on the zoning, not on the fearmongering or bullying that's out there.

Additionally, the County may choose what accommodation to make as long as some accommodation is reasonable. That case is the Corp. of Episcopal Church in Utah vs. West Valley City, 119 F. Supp. 2d 215 (2000).

Again, the County doesn't give us its determination as to what is reasonable and what is not. Importantly, there is no requirement that when the County must make a reasonable accommodation it is limited to consideration of the accommodation requested by the petitioner. Local zoning boards still control their ordinance if they make their decisions based on the zoning and the failure to meet the standards of a special use.

By way of example, the $Z B A$ has a number of reasonable accommodations it can make. One of those is the County could consider a reasonable accommodation for a permit for a facility such as this in the RB, B1, or B3 zoning districts. Now, you remember where those districts were. Those were the districts where the County has already said controlled substances should be dispensed.

Alternatively the County would fulfill its requirements of reasonable accommodation by
considering a group home or homes in any zoning district. That's a reasonable accommodation, also.

A third entirely appropriate and reasonable accommodation by the County might be the consideration of a text amendment to its ordinance to actually bring its ordinance in line with some of the more modern definitions that are there.

What I mean by that is we're all aware that your ordinance doesn't have any definition or reference to a facility such as this. That's why Maxxam is trying to bootstrap this in under some similarity to a hospital in a farming district with special use application. Again, that is very tortured, doesn't seem really similar if you've got to go through all those matriculations to get to the decision that something is so similar that it has to go through three layers of the ordinance to get there.

And wrapping up, what I'll say is it's the job of the ZBA to consider the sworn testimony that it heard to support these special use application standards. It's not the ZBA's purview to be bullied into thinking that it has no choice but to think the FHA is the only way that this application can move forward. Again, the local zoning law boards do not
give up all their rights.
I think it's important to remember that it's Maxxam's burden to build a foundation to support its special use factors. A foundation is a strong base that's built upon, and in this case we've seen that foundation is not strong. We've seen their experts not take into consideration calls; we've seen no testimony on their day-to-day operations and how those issues could impact the general welfare of the surrounding areas.

So there's more than enough purely zoning reasons why you can deny this application. Simply because the property is vacant doesn't mean this application must move forward. It's okay to be vacant because Maxxam failed to meet the zoning standard for a special use. That's a purely legitimate reason.

You have heard from not only my client; you've heard from the Campton Township, the Village of Campton Hills, Plato Township, and the Fox River Countryside fire protection, as well as very wellspoken members of the public that have given you numerous reasons for a purely zoning analysis as to why they have failed to prove the factors necessary
for special use through sworn testimony. And for those reasons we'd ask that the ZBA deny this application for a special use.

I thank you again.
CHAIRMAN WHITE: Thank you.
Mr. Shepro, if you would like, I'll give you the podium but remind you that your closing comments are just based on the testimony of your president of the fire district and your relationship with that district.

MR. SHEPRO: So you would not permit me to comment on any of the other evidence or testimony?

CHAIRMAN WHITE: That was the purview of the other objector in the room. You had objected as a representative of the fire district.

MR. SHEPRO: That is correct. I didn't know that that meant that $I$ couldn't rely on other testimony or comment on other testimony.

I think under the circumstances if that is to be the ruling, I really see no point. Mr. Carrara has already eloquently stated many of the concerns of the fire district. I did have some additional thoughts, but I think under the circumstances I will decline and object to the limitation on my ability
to comment.
Thank you, Mr. Chairman.
CHAIRMAN WHITE: You're welcome.
Mr. Kinnally.
MR. KINNALLY: I can be very brief.
First of all, the County doesn't have a
stake in this, but this is not a trial; this is a public hearing. This is not a courtroom; this is a place where people can come and put on evidence, not anecdotes but evidence, testimony from the public, from witnesses for the petitioner, for the objectors. You're not making a decision here tonight -- you're not making a decision on the law. You're making a decision on the facts. And I'd like to read for you what your job here is.

Section 4.82, Public Hearing:
"A public hearing before the Zoning Board in its report and findings in fact or recommendation shall be made to the County Board following the public hearing provided the County Zoning Board in its report of findings or facts and recommendations to the County Board shall not recommend a special use unless the Zoning Board shall find" the six factors that my colleagues have outlined this evening.

So this isn't a legal case. This is a factual hearing where you get to make a recommendation based on the facts and the evidence that came before you. That's your job. It's a difficult job. I think everyone has indicated that, and on behalf of the County, I want to applaud you for sitting through these hearings which are very important and listening to all of the citizens, as well as the lawyers, but mostly the citizens to come and tell you what their views are.

It's an awesome responsibility, and I want to -- on behalf of the County I want to thank you for the job that you've done.

Thank you.
CHAIRMAN WHITE: Thank you.
At this point I'm going to open it up for rebuttal from the petitioner.

MR. KOLB: Thank you. Just a point of clarification with regard to Mr. Carrara's comments.

The applicant will use methadone to treat opiate addiction not on an outpatient basis. So when in these reports there's references to methadone clinics, that is an outpatient clinic where someone seeks specific receipt of these
medicines and leaves. The distinction was between an inpatient continuum of care versus outpatient. The term I meant to use was opiate-only or methadone, which was the term that was identified in the letter from the Department of Human Services from the State of Illinois. I think it was opiateonly or methadone-only -- strictly methadone-only clinic. So that's the clarification on that point.

With respect to the point about controlled substances that's in Appendix B of your zoning ordinance, Mr. Carrara made the point that essentially this use term in here limits the dispensary of controlled substances only within the RB, B1, and B3 zoning classifications.

I think if you look at this and read it verbatim, it says "an interim use that may be granted on the zoning lots in the RB, B1, or B3 specifically for dispensing controlled substances licensed by the State of Illinois." That's how it's defined. It's a "may be"; it's a discretionary license, and if you look at the legislative history behind this section, I believe it pertains to recent rules and regulations promulgated by the State of Illinois regarding medical marijuana dispensaries.

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

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

I'd like to reference one case with respect to some of the law that Mr. Carrara brought up. In a well-known case that was recently resolved, which incidentally is located in Kane County, monetary damages and civil penalties were paid by the village as part of a settlement for the denial of a special zoning permit based upon, in part, improper comments made by residents appearing before the public hearings
in opposition of the proposed use.
The case was United States vs. Village of South Elgin, No. 05 C5258, Northern District of Illinois, December 13th, 2006. I think if you examine that case, while I agree with the point that the FHA doesn't divest the Zoning Board of Appeals of its power to zone, it's clearly within your power to determine whether the applicant has satisfied the standards.

We need to be cautious and what we're stating is that the law prohibits unreasonable restraints. Courts have held that municipal zoning that limits the housing opportunities for those undergoing drug and alcohol abuse treatment for recovering individuals to live in residential communities violates the FHA. So it's the unreasonable limitation or the tilting of evidence a certain way so as to create a discriminatory effect that the FHA precludes. So there is a balance there, and we understand that but this particular zoning case is particularly under a microscope when it comes to the FHA.

Mr. Brown, do you have anything further?
MR. BROWN: Just thank you and good night.
MR. KOLB: Yes. Thank you on behalf of all
of us.
CHAIRMAN WHITE: Thank you. That will complete the public hearing on this petition.

Is there a motion to close the public hearing?
MEMBER BOWEN: So moved, Mr. Chairman.
CHAIRMAN WHITE: Moved by Mr. Bowen,
seconded by --
MEMBER STOVER: Second.
CHAIRMAN WHITE: -- Ms. Stover. All in
favor say aye.
(Ayes heard.)
CHAIRMAN WHITE: Opposed, same sign.
(No response.)
CHAIRMAN WHITE: Motion carries.
Going forward, just to inform the public, we have another meeting scheduled for February 9th at 7:00 p.m. at this same location, and at that meeting the Board will offer motions on the floor to discuss between the Board members, and then we'll render a decision at that time.

So with that, is there a motion to adjourn?
MEMBER BOWEN: So moved, Mr. Chairman.
CHAIRMAN WHITE: I'll take that back. We need a motion to continue to February 9th. Is that
a motion?

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MEMBER BOWEN: So moved.
CHAIRMAN WHITE: Moved by Mr. Brown.
MEMBER MOGA: Second.
CHAIRMAN WHITE: Seconded by Mr. Moga. All
in favor say aye.
(Ayes heard.)
CHAIRMAN WHITE: Thank you.
(Off the record at 9:33 p.m.)
    MBMBR BONEN:
    CHAIRMAN WHITE: Moved by Mr. Brown.
    MEMBER MOGA: Second.
    CHAIRMAN WHITE: Seconded by Mr. Moga. All
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        (Off the record at 9:33 p.in)
    CERTIFICATE OF SHORTHAND REPORTER

I, Paula M. Quetsch, Certified Shorthand Reporter No. 084-003733, CSR, and a Notary Public in and for the County of Kane, State of Illinois, the officer before whom the foregoing proceedings were taken, do certify that the foregoing transcript is a true and correct record of the proceedings, that said proceedings were taken by me stenographically and thereafter reduced to typewriting under my supervision, and that $I$ am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 4th day of February, 2016.

My commission expires: October 16, 2017.


Notary Public in and for the
State of Illinois

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