

RESOLUTION NO. 2015-003

A RESOLUTION DECLARING OPPOSITION TO THE PROPOSED GRANTING OF A SPECIAL USE PERMIT TO MAXXAM PARTNERS, LLC

Whereas, Maxxam Partners, LLC (“Maxxam” or “Petitioner”) in August 2015 filed Petition #4364 requesting that the County permit it to operate a private alcoholism and substance abuse treatment facility (“Proposed Use”) on property located at 41W400 Silver Glen Road in unincorporated Kane County (“Property”) and zoned in the F Farming District; and

Whereas, the property is partially located in Plato Township; and

Whereas, the nearest public roadways are in Plato Township; and

Whereas, the closest ingress and egress access point from the Property to public roads is to McDonald Road, in Plato Township, via an undeveloped easement across private property in Plato Township; and

Whereas, a memorandum report prepared by the former Fire Chief of the Fox River Fire/Rescue Protection District made projections of the potential number of incidents requiring emergency services of a similar proposed facility in 2012 and estimated that the facility would generate between 100-125 emergency personnel incidents per year; and

Whereas, those estimates were based on an incoming and outgoing residential patient population that was 25% smaller than the current Proposed Use; and

Whereas, the current Proposed Use will include on-site intensive medical detoxification treatment and the similar 2012 proposed facility did not; and

Whereas, a much larger residential patient population and the intense nature of medical detoxification on site will likely lead to a higher number of incident calls, time, and public fire, emergency, and safety resources being devoted to the Facility; and

Whereas, resources of the more encompassing Fox River Fire/Rescue Protection District that is adjacent to the fire protection district serving Plato Township will be significantly impacted by the Proposed Use and will therefore be more likely to generate calls for mutual aid; and

Whereas, the potential impact of the Proposed Use on neighboring property values, land use, and property development will be felt by residents of Plato Township; and

Whereas, the Petitioner in describing the Planned Use includes no plans or promises to fence the property; and

Whereas, Kane County Development Staff has not sufficiently weighed in with neutral findings related to impact on neighboring or encompassing public safety services or impact on property values; and

Whereas, the Kane County Zoning Ordinance does not list the Proposed Use as a permitted or special use in the F District; and

Whereas, the Petitioner is suggesting that the Proposed Use is similar in nature with listed uses such as a hospital or a nursing and convalescent home; and

Whereas, Kane County has scheduled Maxxam’s petition for a zoning board of appeals hearing on November 17, 2015, at 7:00 pm; and

Whereas, it is the Township's position that an alcoholism and substance abuse treatment facility is not similar to a hospital or to a nursing and convalescent home for a number of reasons, including the following:

1. The definition of a "hospital" under the County Zoning Ordinance does not contemplate the residential nature of the Proposed Use, described by the Petitioner as 30 to 90 day residencies.
2. Alcoholism and substance abuse treatment facilities, hospitals, and nursing homes are all regulated under completely different statutes under Illinois law.
3. Illinois courts have acknowledged that nursing homes are distinct from substance abuse facilities. See *Patella v. Leyden Family Service & Mental Health Center*, 79 Ill.2nd 493 (1980).
4. Nursing homes are subject to different reporting and compliance requirements under Illinois law, including special testing and licensure requirements; and

Whereas, under Illinois zoning law, "[s]ince a special use permit allows property owners or developers to use their land in an express exception to the zoning code, the application must prove that the property falls squarely within that exception." *Shipp v. County of Kankakee*, 345 Ill. App. 3d 250, 253 (3d Dist. 2003); and

Whereas, because the Proposed Use is not a 'similar' use to any of the listed special uses in the F District (including hospitals or nursing and convalescent homes) the Petitioner should have applied for a rezoning or for a text amendment to add alcoholism and substance abuse treatment facilities as authorized special use in the F District; and

Whereas, further the Proposed Use does not meet the standard that it will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood; and

Therefore, be it resolved by the Supervisor and Board of Trustees of Plato Township, Kane County, Illinois, as follows:

1. The Township opposes the Maxxam Petition #4364 for a Special Use Permit because the Proposed Use is not substantially similar to any special use in the F Zoning District.
2. In considering this type of new, unique, potentially disruptive, Proposed Use, the Township believes Maxxam should be required to apply for relief in the form of a text amendment to add the Proposed Use as an authorized and listed special use under the Kane County Zoning Ordinance, or for relief through a rezoning of the of the Property to a more appropriate zoning district.
3. In considering such an amendment to the Kane County Zoning Ordinance, the Township believes that the County should 1) define this type of use; 2) identify what zoning districts are best suited for the use; and, 3) identify what conditions are necessary to protect the public health, safety and welfare in considering the proposed Facility and other similar facilities that may be proposed in the future.

This resolution shall be in full force and effect from after its passage and approval in the manner provided by law.