

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 X

St. Charles, Illinois

Tuesday, January 10, 2017

7:08 p.m.

Job No.: 131275

Pages: 1320 - 1452

Reported by: Paula M. Quetsch, CSR, RPR

1 PUBLIC HEARING, held at the location of:

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KANE COUNTY CIRCUIT COURT CLERK -

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BRANCH COURT

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530 South Randall Road

6

St. Charles, Illinois 60174

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(630) 232-3495

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Before Paula M. Quetsch, a Certified Shorthand

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Reporter, Registered Professional Reporter, and a

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Notary Public in and for the State of Illinois.

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1 PRESENT:

2 HON. MANUEL BARBOSA, Chairman
3 ANN MICHALSEN, Vice Chairwoman
4 TRACY ARIS, Member
5 MARC FALK, Member
6 MARY LAKE, Member
7 WENDY MELGIN, Member
8 MARGUERITE MILLEN, Member

9

10 ON BEHALF OF THE APPLICANT MAXXAM PARTNERS, LLC:

11 ANDREW E. KOLB, ESQUIRE
12 VANEK, LARSON & KOLB, LLC
13 200 West Main Street
14 St. Charles, Illinois 60174
15 (630) 513-9800

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17 ON BEHALF OF THE KANE COUNTY BOARD:

18 PATRICK KINNALLY, ESQUIRE
19 KINNALLY FLAHERTY KRENTZ LORAN
20 HODGE & MASUR, PC
21 2114 Deerpath Road
22 Aurora, Illinois 60506
23 (630) 907-0909

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1 ON BEHALF OF OBJECTOR JOLINE ANDRZEJEWSKI:

2 KEVIN M. CARRARA, ESQUIRE

3 RATHJE WOODWARD, LLC

4 300 East Roosevelt Road

5 Suite 300

6 Wheaton, Illinois 60187

7 (630) 668-8500

8

9 ON BEHALF OF FOX RIVER AND COUNTRYSIDE

10 FIRE RESCUE DISTRICT:

11 KENNETH SHEPRO, ESQUIRE

12 KENNETH SHEPRO, COUNSELOR AT LAW

13 33W542 Army Trail Road

14 Wayne, Illinois 60184

15 (630) 377-7372

16

17

18 ALSO PRESENT:

19 MARK VANKERKHOFF, Zoning Enforcing Officer

20 KEITH BERKHOUT, Secretary

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1 C O N T E N T S

2 EXAMINATION OF ANDREW KOLB PAGE

3 By Mr. Shepro 1430

4

5 E X H I B I T S

6 (Retained by the Board.)

7

8 ID PAGE

9

10 Exhibit A List of Conditions 1362 1362

11 Exhibit B Waller Affidavit 1379 1383

12 Exhibit C Abel Affidavit 1379 1383

13 Exhibit D Website Printout 1411 1416

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P R O C E E D I N G S

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2 CHAIRMAN BARBOSA: Good evening, ladies and
3 gentlemen. We commenced a few minutes late to try
4 to accommodate people who I was informed were still
5 trying to come through the front door, but at this
6 time we will call the session of the Kane County
7 Zoning Board of Appeals to order. We will commence
8 with a roll call.

9 Tracy Aris.

10 MEMBER ARIS: Here.

11 CHAIRMAN BARBOSA: Mary -- Marc Falk.

12 MEMBER FALK: Present.

13 CHAIRMAN BARBOSA: Mary Lake.

14 MEMBER LAKE: Here.

15 CHAIRMAN BARBOSA: Wendy Melgin.

16 MEMBER MELGIN: Here.

17 CHAIRMAN BARBOSA: Ann Michalsen.

18 MEMBER MICHALSEN: Here.

19 CHAIRMAN BARBOSA: Marguerite Millen.

20 MEMBER MILLEN: Here.

21 CHAIRMAN BARBOSA: Very well. We have a
22 quorum of Board members. At this time we will
23 commence our session with the Pledge of Allegiance.

24 (The Pledge of Allegiance was recited.)

1 CHAIRMAN BARBOSA: At this time I would like to
2 put on the record that in the course of preparation
3 for this evening's proceedings, I determined that I
4 have a personal conflict in this matter which I feel
5 prohibits me from acting -- in order to preserve the
6 integrity of these proceedings I feel it's only
7 fitting and proper that I recuse myself, which means
8 that I will not partake in the taking of testimony,
9 evidence, deliberations, or have any further dealings
10 directly with this case or, for that matter,
11 indirectly, I should say.

12 I think it's appropriate, then, since I will
13 be abstaining completely from these proceedings that
14 at this time my colleagues make a motion for the
15 appointment of a vice chair who will act as chair
16 during the course of these proceedings.

17 MEMBER FALK: Chairman, I'll go ahead and
18 make the motion to nominate Ann Michalsen to take
19 over as acting chair for this session.

20 CHAIRMAN BARBOSA: Do we have a second?

21 MEMBER LAKE: Chairman, I'll second that.

22 CHAIRMAN BARBOSA: Motion has been made and
23 seconded. All in favor.

24 (Ayes heard.)

1 CHAIRMAN BARBOSA: Ms. Michalsen will then be
2 acting chair for the balance of these proceedings,
3 and upon my recusal I will absent myself from
4 participating in any portion of these proceedings.

5 VICE CHAIRWOMAN MICHALSEN: Good evening to
6 the petitioner, representatives of units of
7 government, adjacent property owners, and other
8 interested parties. The public hearing this evening
9 is for Maxxam Partners, LLC, Petition No. 4364 for a
10 special use in the F Farming District for a private-
11 pay alcoholism and substance abuse treatment facility.

12 On November 8th, 2016, the Kane County Board
13 rescinded their vote to deny Petition 4364 from
14 Glenwood Academy and Maxxam Partners, LLC, as
15 considered at the March 8th, 2016, County Board
16 meeting.

17 At that November 8th, 2016, meeting the
18 Kane County Board also remanded the petition back to
19 the Zoning Board of Appeals. In addition to the
20 original petition and submittals, the petitioner has
21 tendered to the Kane County Board a list of conditions
22 agreeable to the petitioner. You should have all
23 seen those conditions when you came in the door.

24 On December 13th, 2016, the Kane County

1 Board approved the appointment of the Zoning Board
2 of Appeals members conducting the public hearing
3 this evening. The new ZBA members have reviewed the
4 petition and exhibits previously used in prior
5 ZBA hearings, as well as the transcripts from those
6 hearings.

7 Tonight's public hearing, as well as any
8 subsequent public hearings, if needed, are to hear new
9 evidence pertaining to the petition, allow questions
10 of the petitioner regarding the new evidence, and to
11 receive public comment regarding the new evidence.
12 There is no need to repeat submittal of evidence,
13 testimony, or comments already presented in previous
14 hearings except to the extent it is directly relevant
15 to new evidence in these additional hearings.

16 The first order of business in regards to
17 the new evidence from the petitioner, that being the
18 letter dated December 5th, 2016, and the list of
19 conditions agreeable to the petitioner dated
20 November 9th, 2016. These new documents are posted
21 on the County website and included in the notices
22 for this public hearing.

23 The order for this evening's public hearing
24 will be as follows: Staff will present an overview

1 PowerPoint. Petitioner will make opening remarks and
2 present the new exhibit. The ZBA will ask questions of
3 the petitioner regarding the petitioner's conditions.
4 Staff and County attorney will ask questions of the
5 petitioner. Objectors may ask questions of the
6 petitioner. Units of government may ask questions
7 of the petitioner, and then it is opened up for
8 public comment.

9 As a reminder, questions and public comments
10 tonight must be limited to the topic of conditions.
11 They may include the petitioner's agreed conditions,
12 conditions previously stated by the petitioner during
13 previous hearings, and/or additional conditions that
14 the objector, units of government, and the public
15 feel are reasonable and appropriate for the ZBA and
16 the County Board to consider in conjunction with
17 this petition.

18 In the event a second meeting is needed to
19 complete testimony, a second meeting will be held on
20 January 12th, 2017, at the Kane County Branch Court,
21 530 South Randall Road, St. Charles, at 7:00 p.m.

22 At this time I'll turn it over to staff for
23 their PowerPoint presentation.

24 MR. VANKERKOFF: Good evening members of the

1 ZBA, members of the public. Staff is going to just
2 go through mostly a repeat of the previous PowerPoint
3 shown at the other hearings as a means to get
4 ourselves reacquainted with the petition and the site.

5 Larry, if you could pull up that PowerPoint
6 for me, that would be great. Thank you.

7 Again, this is the Glenwood Academy Maxxam
8 Partners, LLC, special use for a private-pay
9 alcoholism and substance abuse treatment facility.

10 This is the map that shows the location of
11 the subject property outlined in red on the 2040 plan
12 map. You can see this is designated institutional
13 open space in recognition of the use that already
14 exists there or is there at the Glenwood School
15 currently surrounded by Kane County Forest Preserve
16 holdings, the Village of Campton Hills, the City of
17 Elgin to the east, and some other residential uses
18 in the county countryside estates and some
19 agricultural uses on the 2040 land use map.

20 Here's the existing zoning map. Again, you
21 can see the areas with the red lines surrounding the
22 subject property, the forest preserve also mostly
23 surrounding the subject property, and then the
24 hatched area for the Village of Campton Hills and

1 City of Elgin to the east.

2 Here is an aerial identifying it in more of
3 a far out view.

4 Same view of the subject site closer in.
5 Again, this is the campus that was constructed by
6 Glenwood, the property owner, for use for a boys'
7 and girls' school.

8 This is a view with a 2-mile radius to give you
9 an idea of the surrounding land uses, agricultural,
10 estate residential, and then to the south and east
11 more concentrated residential uses.

12 Here's a close-up sort of a graphic with a
13 half mile radius.

14 Some photos of the site. This is the
15 entranceway off of Silver Glen Road. The entrance
16 drive is through an easement through the forest
17 preserve district, a rather long entrance road.

18 This is the existing gate as you get to the
19 campus proper, some views of the campus, south side
20 of the building proposed for the therapy and
21 activity uses, a bird's-eye view of the gymnasium
22 recreation center, inside view of that building,
23 interior of the multipurpose building, interior of
24 the gymnasium entrance, interior of the gymnasium.

1 This is a view from that cluster of buildings
2 that we were just looking at. Looking to the north
3 there's a pond and the existing residential use
4 structures that were constructed and used by the
5 school being proposed to be used for the patient
6 lodges.

7 Here's a bird's-eye view of the campus. We
8 just came up the drive this way, took a look at the
9 administration building campus and the pond and the
10 residential-use buildings.

11 And then this is the petitioner's site plan
12 indicating the uses of the buildings numbered and
13 corresponding with uses for patient lodges and the
14 other buildings as described.

15 A couple things just as a reminder for the
16 role of the Zoning Board for the purpose of everyone
17 present. The findings of fact by the Zoning Board
18 of Appeals Kane County zoning ordinance as to special
19 uses states that, "Uses as herein enumerated which
20 may be proposed for classification and special uses
21 shall be considered at a public hearing before the
22 Zoning Board, and its report of findings of fact and
23 recommendation shall be made to the Kane County Board
24 following the public hearing provided that the

1 Kane County Zoning Board of Appeals in its report of
2 findings of fact and recommendations to the Kane County
3 Board, shall not recommend a special use unless the
4 Kane County Zoning Board of Appeals shall find the
5 application has met each of the six requirements
6 specified in the ordinance."

7 For purpose of review, those criteria are:

8 A) That the establishment, maintenance, or
9 operations of the special use will not be unreasonably
10 detrimental to endanger the public health, safety,
11 morals, comfort, or general welfare;

12 B) That the special use will not be injurious
13 to the use and enjoyment of other property in the
14 immediate vicinity for the purposes already permitted,
15 not substantially diminish and impair property
16 values within the neighborhood;

17 C) That the establishment of special use
18 will not impede the normal and orderly development
19 and improvement of the surrounding property for uses
20 permitted in the district.

21 D) That adequate utility, access roads,
22 drainage, or other necessary facilities have been or
23 are being proposed;

24 E) That adequate measures have been or will

1 be taken to provide ingress and egress so designed
2 as to minimize traffic congestion in the public
3 streets and roads; and finally

4 F) That the special use in all other
5 respects conforms to the applicable regulations of
6 the district in which it is located except as such
7 regulations may in each instance be modified by the
8 Kane County Board pursuant to the recommendations of
9 the Kane County Zoning Board of Appeals.

10 On February 9th, 2016, the Zoning Board of
11 Appeals reviewed the petition, reports, testimony,
12 and public comments received over the course of
13 nine public hearings held in December of 2015 and
14 January and February of 2016. After discussion of
15 the six requirements, the motion to recommend the
16 special use failed on a 4-to-3 vote.

17 On February 16th, 2016, the Kane County
18 development committee heard additional comments from
19 the petitioner, supporters, and objectors in
20 addition to their review of the transcripts of the
21 public hearings and deliberations of the Zoning
22 Board of Appeals.

23 After that meeting the development committee
24 unanimously voted to recommend denial of the special

1 use. On March 8th, 2016, the Kane County Board
2 voted by a motion to deny the special use. This
3 vote passed 15 to 6.

4 On November 8th, as previously stated, 2016,
5 the Kane County Board voted in a motion 17 to 3 to
6 rescind the March 8th, 2016, decision and to send
7 the petition back to the Zoning Board of Appeals.

8 On December 5th, 2016, the petitioner submitted
9 to Kane County a list of conditions. These were at
10 the door. We were trying to hand those out. If
11 anyone didn't receive a copy, we have extra copies,
12 and staff is available to hand those out at this
13 time. I'm not going to go through the conditions at
14 this time. I'm going to leave that to the petitioner
15 to present.

16 These types of conditions fall under the
17 Zoning Ordinance Section 4.8.3 which is part of the
18 ordinance language for special uses, and this is
19 under "Conditions and Guarantees." It actually
20 immediately follows the section I just cited for the
21 Zoning Board and the public on the six factors.

22 "Prior to the granting of any special use
23 the Zoning Board may recommend and the County Board
24 shall stipulate such conditions and restrictions

1 upon the establishment, location, construction,
2 maintenance, and operation of the special use as being
3 necessary for the protection of the public health,
4 safety, and welfare. In all cases in which special
5 uses are granted the County Board shall require such
6 evidence and guarantees as it may deem necessary as
7 proof that the conditions stipulated in connection
8 therewith are being and will be complied with."

9 That ends the staff presentation. At this
10 time I'll turn it back over to the Zoning Board.

11 VICE CHAIRWOMAN MICHALSEN: Thank you very
12 much. At this time we would ask the petitioner to
13 submit his conditions for consideration.

14 MR. KOLB: We have prepared an opening
15 statement if that's amenable to the Board.

16 VICE CHAIRWOMAN MICHALSEN: Absolutely.

17 MR. KOLB: Good evening. Thank you all for
18 your time. My name is Andrew Kolb. I was here
19 during the many nights of public hearings
20 originally, and I still continue to be zoning and
21 development counsel for Maxxam Partners, LLC, a year
22 later.

23 So, Ms. Vice Chairman and Zoning Board of
24 Appeals, thank you for taking the time to again

1 review our application. On behalf my client and his
2 team, we anticipate that what you went through
3 looking through the arduous task of reviewing all
4 the pages of public transcript and hearings were
5 comprehensive.

6 As you know, the petition before you was the
7 subject of many months of public hearings and zoning
8 meetings before the prior Kane County Zoning Board
9 of Appeals and the County Board and its committees.
10 As you saw from your review of the extensive records,
11 the proceedings were extremely comprehensive and
12 lasted months and months. The application before
13 you, Specifically Petition 4364, is certainly the
14 most detailed zoning petition I've ever put together
15 in my 17 years of doing this as a zoning and health
16 care attorney.

17 The evidence gathered by credible experts on
18 each of the relevant issues was staggering, and the
19 resources dedicated by my client in terms of money
20 and time to bring the information before the prior
21 zoning board was magnanimous. In virtually every
22 case Maxxam Partners retained and presented to the
23 Zoning Board of Appeals the most credible experts
24 that we could find in the United States, flew them

1 in, brought them here before you for these hearings.
2 Simply put, the applicant retained at great cost in
3 many cases two or three expert reports to address
4 virtually every issue conceivable relevant to the
5 standards for the special use in this instance.

6 Our application was met with an early appeal
7 before the Zoning Board which was immediately and
8 summarily dismissed, and thereafter the opposition
9 to our application filed a court case in the Circuit
10 Court of Kane County which was dismissed in its
11 entirety before the Honorable Judge Villa.

12 We now find ourselves a year later before a
13 new Zoning Board of Appeals with new members once
14 again following the County Board's complete rescision
15 of its earlier denial and following the County Board's
16 request that the Zoning Board review again our record
17 in this case and consider its vote in light of
18 conditions agreed to by the applicant.

19 So we thank you for having taken the time to
20 review the transcripts, the testimony, the exhibits,
21 the reports, probably a couple bankers boxes of
22 information. So no matter what you decide, thank
23 you for taking the time to do that. That's got to
24 be a tremendous public service. So thank you.

1 The subject property, as Mark VanKerkhoff
2 had pointed out, is 128 acres approximately at
3 41W400 Silver Glen Road. It's surrounded by
4 McDonald Road, Corron Road, Silver Glen. It's in
5 unincorporated Kane County.

6 As a matter of background, Kane County approved
7 an existing special use for the subject property on
8 May 9th, 1989, for the operation of the Glenwood
9 School for boys and gave it permission to operate a
10 boarding school for at-risk children on the subject
11 property. The Glenwood School closed in 2012, and
12 the property has been vacant ever since that point
13 and has remained under contract with our client for
14 quite some time at great cost.

15 The subject property is located in the
16 F Farming zoning classification of the Kane County
17 zoning ordinance in accordance with 25812A of the
18 County ordinance the enumerated special uses within
19 the F1 Farming classification include all of the
20 special uses applicable to the R1 classification.
21 Thus, if you're an F, you get the R1 incorporated in.

22 Pursuant to 259C2 of the Kane County
23 ordinance, there are special uses expressly permitted
24 in R1, including hospitals for human beings, and

1 this may include power plants, residences for
2 nurses, and similar facilities. Section 25-8.1-2(dd)
3 allows special uses similar to those uses enumerated
4 in the statute, which is where we find our
5 application.

6 Our application for a special use requests
7 the following development approvals:

8 A) We request a special use to operate the
9 subject property as an alcoholism and substance
10 abuse treatment facility in accordance with the
11 ordinances and analysis outlined in our application
12 materials; and

13 B) We also request reasonable accommodation
14 with respect to our proposed facility.

15 Our proposed alcoholism and substance abuse
16 facility will provide inpatient residential treatment
17 to persons with disabilities who are protected under
18 the terms of the Federal Fair Housing Act as outlined
19 within legal opinions in our application.

20 Additionally, Section 5.3(b) of the Kane
21 County Zoning ordinance itself states that, quote,
22 no section, clause, or provision of this ordinance is
23 intended nor shall it be construed as contrary to
24 the Federal Fair Housing Act, and it implicitly

1 acknowledges the County's mandate to such
2 accommodations for persons with disabilities.

3 Applicants submitted legal opinions of
4 Holland & Knight, LLP, in Chicago, as well as
5 Meyers & Flowers, LLC, locally here in Kane County
6 in support of our zoning analysis above and the
7 applicant's development request for a special use
8 fitting the criteria of your code.

9 What is our proposed use? Maxxam Partners
10 intends to acquire the property by contract from the
11 Glenwood Academy and thereafter convert the subject
12 property into a 120-bed exclusively private pay
13 luxury alcoholism and substance abuse treatment
14 facility. The facility will offer patients a full
15 continuum of care while they reside at the facility.

16 The average duration of a patient's stay
17 will be between 30 and 90 days. The duration of a
18 patient's stay is determined by the patient's
19 addiction and treatment plan. Applicant will treat
20 alcoholism and substance abuse addictions with the
21 exceptions of methamphetamine and sexual addictions
22 which will not be treated. Applicant will also
23 treat patients with eating disorders.

24 Applicant will not accept Medicare or Medicaid.

1 Strictly private patients will be prescreened to ensure
2 that they meet the applicant's strict patient
3 standards both medically and financially. We invite
4 you to review the record and our application for
5 special use in more detail on this point.

6 Applicant's treatment programs are personalized
7 using what evidence tells the staff will work for each
8 particular person. The professional staff assesses
9 and diagnoses patients, collaborates with the patient,
10 and devises a treatment plan that will meet their
11 individual needs.

12 Among the resources that the applicant's
13 staff will use in alcoholism and substance abuse
14 dialectical behavioral therapy, cognitive behavioral
15 therapy, medication-assisted treatment, psychotherapy,
16 art therapy, exercise, group support, and sobriety
17 curriculum.

18 The subject property we believe is ideally
19 suited for the proposed use and substance abuse
20 treatment facility. The existing facility with
21 minor interior updates and renovation provides a
22 private residential setting for patients. Applicant
23 proposes to maintain the original footprint of the
24 former Glenwood Academy in its entirety.

1 A couple of preliminary comments. We must
2 remind everyone that Steven Marco, one of the
3 managing partners of Maxxam Partners is an expert at
4 gathering the best and brightest around him. You've
5 seen the experts he's gathered for the record in
6 this case, and his choice for medical director and
7 medical staff similarly will be exemplary.

8 But most importantly, we cannot forget as we
9 proceed through these proceedings that the oversight,
10 regulatory governance, and licensure of a facility
11 like ours will take place at the State level. We
12 spent significant time outlining Section 2060 of the
13 Illinois Administrative Code in this regard and how
14 the State is to administer the operation that's
15 before you, and we submitted the entire Section 2060
16 to demonstrate the exhaustive nature of Illinois
17 legislation regarding licensure and the operational
18 guidelines of a facility like this in our state.
19 The medical staff hired by Maxxam Partners to operate
20 the facility will be governed by State law, including
21 the administrative code and the body's policing
22 facility.

23 Second preliminary point, while there are
24 members of the community who spoke out both in favor

1 and against the application for many, many nights
2 and long into the hours of those nights, I'd like to
3 remind everyone here that the Federal Fair Housing
4 Act was designed to prevent the "Not in my back yard"
5 mentality when it comes to protecting the rights of
6 disabled persons in our community.

7 This Federal law mandates that the disabled
8 not be treated with fear, anger, disrespect, and
9 with a view that the disabled are somehow disrupting
10 our peaceful farming community, or ruining our way
11 of life, or causing a burden on us.

12 The disabled in our community have a legal
13 right under the FHA to live in rural areas as well
14 as urban areas. The disabled in our community have
15 a legal right to enjoy open space and should not be
16 relegated to urban areas only because of a baseless
17 accusation contrary to the evidence presented in
18 this case that these disabled people will cause crime
19 while they are seeking to recuperate their lives, get
20 themselves back on their feet.

21 Reasonable accommodation was requested because
22 those of us in society suffering from alcoholism and
23 substance abuse are disabled under Federal law.
24 Reasonable accommodation is requested because these

1 people are entitled to seek and pay for residential
2 treatment in our community without the type of
3 discrimination voiced during these hearings.

4 We submitted a number of materials to this
5 board for review. We gave you biographies of our
6 principals; a legal description of the property found
7 in Exhibits A and B; a survey was Tab 1; Tab 2 was a
8 Kane DuPage Soil and Water Conservation District land
9 use opinion; Tab 3 was a land use opinion waiver;
10 Tab 4 was an IDNR endangered species report; Tab 5 was
11 a certification of adjoining property owners; Tab 6
12 was an aerial photo from Sidwell; 7 was a site plan
13 with building identifiers; 8 was concept meeting
14 PowerPoint presentation slides; Tabs 9 and 10 were
15 legal opinions from Holland & Knight and Meyers &
16 Flowers regarding FHA applicability; Tab 11 was a
17 Murer expert opinion; Tab 12 is the market impact study
18 from MaRous; Tab 13 was a fiscal impact study from
19 Poletti & Associates; Tab 14 was a Sheaffer & Roland
20 wastewater system evaluation report; Tab 15 was a
21 KOA summary traffic evaluation; Tab 16 was drawings
22 and elevations of the facility; 17 was a digital
23 submission regarding security; 18 was an opinion of
24 John Curtis of The Retreat indicating that absent

1 without leave discharges are extremely rare for
2 residential inpatient facilities as opposed to
3 methadone facilities; Tab 19 was a land use opinion
4 from Christopher Lannert regarding the appropriateness
5 of the property for this proposed use; Tab 20 was
6 our fee to the County.

7 And we thank the County for the resources in
8 using this building and all of the time and
9 attention and effort it took to put these public
10 hearings on by all of the County staff after hours.
11 It doesn't go unnoticed and we appreciate that
12 effort.

13 So we generally incorporate all of the
14 materials found on the Kane County's website into
15 tonight's hearing as a matter of evidence. We offer
16 them into evidence, as well as our supplemental
17 submission documents, including our letter and our
18 conditions. We have submitted a condition list
19 which we shall move into evidence at the end of
20 these remarks.

21 What evidence have you heard so far on the
22 record? I'd like to highlight a few things.

23 Special Uses, Section 4.8 of the Kane County
24 Zoning Ordinance sets for the procedures and the

1 criteria for granting a special use, Section 4.8.1
2 sets forth the relevant standards that Mark
3 outlined.

4 The first standard, "That the established
5 maintenance and operation of the special use will
6 not be unreasonably detrimental to or endanger the
7 public health, safety, morals, comfort, or general
8 welfare."

9 As outlined in our development application
10 rider, the establishment of the special use sought
11 here is an upscale luxury alcoholism and substance
12 abuse treatment facility, will serve to improve the
13 public health, safety, morals, comfort, or general
14 welfare of the community by treating those among us
15 who are in need of that care.

16 In support of the position that the proposed
17 use will not be detrimental or endanger the public's
18 health, safety, welfare, and morals we submitted an
19 expert opinion letter from John Curtis, president of
20 The Retreat, a not-for-profit residential alcoholism
21 and substance abuse treatment located in Minnesota.
22 He had 35 years of operational experience, and his
23 letter addresses possible concerns that may arise.

24 He states that incomplete stays, voluntary

1 discharges, and walkouts are extremely rare in a
2 voluntary residential facility like this and that
3 high-end alcoholism and substance abuse treatment
4 facilities that are voluntary and take resources to
5 participate in involve people more committed.

6 Mr. Curtis states that in his experience those who
7 choose to invest in an expensive treatment program
8 are highly motivated to complete the program in its
9 entirety with success.

10 In the case of our facility, should a
11 patient choose to leave, there is no need to become
12 AWOL. They simply summon a car service and can be
13 removed to a place where they have predesignated
14 they'd like to go.

15 The applicant has also presented extensive
16 evidence in public hearing from security experts,
17 including Derrick Walgreen and has proposed a
18 condition relating to security which I'll outline
19 shortly.

20 The second standard is that the special use
21 will not be injurious to the use and enjoyment of
22 other property in the immediate vicinity for
23 purposes already permitted and substantially
24 diminish or impair properties values.

1 What did we have here in the record? The
2 proposed alcoholism and substance abuse facility
3 will not be injurious to the enjoyment of other
4 surrounding properties. We introduced studies
5 performed by MaRous & Company and Poletti & Associates
6 that are incorporated as Tabs 12 and 13 of your
7 binders respectively and are part of the record that
8 you received and reviewed.

9 These opinions clearly demonstrate that the
10 proposed use is the highest and best use for the
11 proposed property and will have no negative impact
12 upon surrounding property values. These reports are
13 detailed. We'll address the evidence of the
14 opposition regarding property values shortly. I'll
15 go through how the evidence contrary to those
16 reports can easily be impeached.

17 C, that the establishment of the special use
18 will not impede the normal and orderly development
19 and improvement of surrounding property for the uses
20 in the district. With respect to this standard, our
21 proposed facility will maintain a vast open space at
22 the subject property, will not impede the development
23 or improvement of the surrounding property. The use
24 is no more intense than what was there previously,

1 and the subject property is predominantly surrounded
2 by Kane County Forest Preserve property, and the
3 applicant's proposed use will not hinder in any
4 manner any permitted development in nearby areas.

5 As stated in standard B above, the market
6 impact analysis performed by MaRous and Poletti
7 indicate that the proposed treatment facility will
8 have no measurable impact on the values of homes in
9 the area. We ask you to review those reports again
10 to substantiate that statement.

11 D, the adequate utility, access roads,
12 drainage, or other necessary facilities have been or
13 are being provided. In this case adequate utilities,
14 access road, drainage, and other necessary facilities
15 already exist on the subject property. The existing
16 construction and improvements are sufficient and
17 perfect to serve the preexisting use, Glenwood
18 Academy, as well as our use. Please refer to a copy
19 of the report prepared by Sheaffer & Roland dated
20 May 9th, 2015, titled "Glenwood School for Boys and
21 Girls Water and Waste Water System Evaluation" which
22 is attached as Tab 14 to the application binder.

23 The applicant includes a copy of the summary
24 traffic evaluation prepared by KLOA, which concludes

1 that given the low volume of traffic near Silver Glen
2 Road, additional traffic generated from the applicant's
3 facility will not have a detrimental impact on
4 Silver Glen Road traffic. KLOA also concluded that
5 the access drive and westbound right-turn lane on
6 Silver Glen will adequately serve the traffic
7 generated from the applicant's proposed facility and
8 that the traffic signal is not warranted or necessary
9 at the intersection of Silver Glen Road and the
10 access drive.

11 Given that the applicant's facility will
12 generate less traffic than the Glenwood Academy, the
13 access road will meet the needs of the applicant. A
14 copy of the traffic evaluation prepared by KLOA
15 dated June 22nd, 2015, is attached as Tab 15 to our
16 application, and we ask that you consider it.

17 Last standard, the adequate measures have
18 been taken or will be taken to provide for ingress
19 or egress so designed to minimize traffic congestion
20 in the public streets. Our application incorporates
21 a copy of the summary traffic evaluation prepared by
22 KLOA again which concludes that the low volume of
23 traffic along Silver Glen Road, additional traffic
24 generated from the applicant's proposed facility

1 will not have a detrimental impact on the Silver
2 Glen project. KLOA also concluded that existing
3 access drive and westbound right-turn lane will, in
4 fact, adequately serve the traffic generated from
5 the proposed facility. No additional intersection
6 or roadway improvements will be necessary to
7 accommodate traffic. We again refer and incorporate
8 a copy of that June 22nd, 2015, report.

9 Lastly, that the special use will in all
10 other respects conform to the applicable regulations
11 of the district, and in this regard we ask you to
12 refer to our section of the binder regarding our
13 zoning analysis and the appropriateness of the
14 substantially similar use.

15 So what testimony did we bring before the
16 Zoning Board of Appeals over many nights of hearings?
17 From your review of the transcript you heard from
18 primarily in the beginning of our hearings experts
19 regarding security. Derrick Waldren testified
20 regarding security. He demonstrated a digital fence
21 system. You saw the electronic slides demonstrating
22 the effectiveness and the mechanics of law enforcement
23 being contacted in the unlikely event a patient
24 seeks to walk out of the facility rather than

1 utilize the facility's complimentary driver.

2 From review of the record, you heard from
3 Trina Deidrich, works directly with the Department
4 of Human Services who provided evidence from the
5 State of Illinois indicating that our proposed
6 facility is, in fact, not a methadone facility; it's
7 an inpatient residential continuum of care drug and
8 alcoholism treatment facility.

9 The point is critical to understand.
10 Importantly the record shows the opposition to our
11 project for many nights, including the Campton
12 Township and the Village of Campton Hills mistakenly
13 submitting EMS and police data from outpatient
14 facilities as opposed to residential inpatient
15 facilities treating patients voluntarily on a
16 continuum of care.

17 Our facility is not a methadone facility.
18 We do not administer medication and let the patient
19 leave. We do not hand medication out to patients
20 who do not reside and check into the facility and
21 are under our 24-hour continuum of care. Outpatient
22 facilities dispense medication and send the patient
23 on his or her way. Conversely, our facility is not
24 an outpatient facility. Our facility is inpatient.

1 It is not a methadone facility. We utilize a
2 continuum of care providing round-the-clock care for
3 patients who can leave voluntarily at any time with
4 our designated procedures.

5 I think it's important that a lot of the
6 data and information that was submitted to contradict
7 the expert reports that we had invested in and
8 brought before the Zoning Board contained data from
9 outpatient facilities and methadone facilities, and
10 when you exclude that data, many times those reports
11 actually support our positions in this case.

12 Regarding crime we brought before you
13 Dr. Hendrickson, the nation's most preeminent expert
14 on the issue of inpatient alcoholism and substance
15 abuse facilities, and he testified that these
16 facilities do not generate crime. His report is
17 part of the record that you reviewed in the case,
18 and Dr. Hendrickson opined that the data from
19 inpatient facilities has no correlation for crime
20 whatsoever after he surveyed all of the data in the
21 industry.

22 Hendrickson's original report, how we found
23 him, was dated 2012, and we went back and had him
24 update his report with the most recent findings at

1 great expense and bring before you with an updated
2 report. Dr. Hendrickson was here at great cost before
3 the Zoning Board with the most current information
4 on this point. We submit that his report and
5 Dr. Hendrickson himself is the most qualified expert
6 in the country regarding the correlation between
7 crime in inpatient facilities, more specifically the
8 lack of correlation. The baseless assumptions by
9 the Village of Campton Hills and other objectors
10 regarding the likelihood of crime based on improper
11 data was remarkable.

12 Property value diminution. From your review
13 of the records you saw lists of inpatient versus
14 outpatient data once again when it came to property
15 value diminution. You saw the misinterpretation in
16 the Waller report provided by Mr. Carrara's witness.
17 The report in that case studied 36 facilities half
18 of which were outpatient opiate-only or methadone
19 facilities. The opiate-only facilities pulled down
20 values over 17 percent in their surrounding community,
21 while the overall impact was only an 8 percent
22 reduction in value. If you pulled out the facilities
23 that were opiate-only outpatient facilities, you
24 were left with an actual 1 percent positive increase

1 on property values using the data that he presented.

2 It was an important distinction because we
3 believe Mr. Waller to be the opposition's key
4 witness regarding diminution of property value, one
5 of the elements to the special use. And when you
6 dissected his data and pulled out the outpatient
7 data and took those facilities out of the 36 studied
8 that were outpatient, leaving only facilities like
9 ours left, you were left with a 1 percent increase
10 in property values which the record demonstrated he
11 admitted under oath and upon cross-examination.

12 Simply put, when we backed out the outpatient
13 facilities from the 36 studied by Waller, property
14 values actually increased in the study that he
15 presented to the Zoning Board by the remaining
16 19 facilities studied. On cross-examination by the
17 ZBA itself, Waller could not deny this result of
18 his data.

19 His report also studied only densely
20 populated areas. Whereby, 60 homes were located by
21 my count within an 8th of a mile, and he studied
22 most smaller home sites. Conversely, our project is
23 located in a rural area. So for those reasons alone
24 the report should be discredited, not to mention the

1 fact that it actually supported our position that
2 there's no diminution of property values associated
3 with facilities like these.

4 Simply put, the opposition's own expert in
5 this case, as well as the applicant's experts both
6 supported the notion that property values are not
7 negatively impacted by 24-hour inpatient residential
8 treatment facilities that are voluntarily like the
9 applicant's proposed facility.

10 The opposition's key witness Mr. Waller also
11 lacked credibility. The record compares Waller to
12 Mr. MaRous. Mr. MaRous appraised properties in
13 Illinois totaling 15 billion in our state to
14 projects along 355, O'Hare International Airport,
15 McCormick Place expansion and others. We brought
16 Mr. MaRous in because he had all of this experience
17 in our state to talk about property values.

18 Mr. MaRous was a graduate of the U of I and
19 served as a mayor, I think it was Park Ridge. He
20 was also an alderman and committee member of a local
21 suburb. He received the Opelka award from the
22 Chicago Chapter of the Appraisal Institute and the
23 George L. Schmutz Memorial award from the Appraisal
24 Institute, and the Herman O. Walther award from the

1 Chicago Appraisal Institute.

2 Mr. MaRous had 40 years of experience when
3 we looked for the best experts to bring before the
4 Zoning Board in our state in our country and in our
5 community. Conversely, Mr. Waller, who was brought
6 forth --

7 MR. SHEPRO: Madam Chairman, excuse me. For
8 the record, my name is Kenneth Shepro. I'm
9 representing one of the units of government.

10 I understood the Chair to rule at the
11 beginning of this hearing that it was limited to
12 conditions, and what I seem to be hearing is a
13 summary and reargument of the testimony that was
14 previously presented by the petitioner, and I'm just
15 wondering if we could clarify what the real scope of
16 this hearing tonight is.

17 VICE CHAIRWOMAN MICHALSEN: Certainly. The
18 scope of the meeting tonight is to talk about the
19 conditions. I wasn't aware that your opening
20 remarks were going to be so broad. I can assure you
21 that all the ZBA members tonight have read through
22 the record. It's a very voluminous record we spent
23 a lot of time reading.

24 If you could -- we are running at a quarter

1 to 8:00, and we have a lot of people who are probably
2 going to want to speak tonight. If you could -- you
3 don't have to go over the résumés for us. We have
4 read those. It's all in the record. It's all -- we
5 have it.

6 If you want to get to -- finish up your
7 point and then get to the conditions that you have
8 in that letter, that is the discussion tonight. We
9 would appreciate that.

10 MR. KOLB: Not a problem. There likely will
11 be hundreds of people speaking ad nauseam against
12 the project, and so we were trying to take our
13 opportunity before it's gone. I'm probably the only
14 one in the room --

15 MR. KINNALLY: Point of order. Not ad nauseam.

16 MR. KOLB: All right. So we have submitted
17 a list of conditions to which the applicant will
18 agree. I can read those into the record. I'd like
19 to have them at least admitted into evidence.

20 MR. KINNALLY: Madam Chairman, I think if
21 he's going to do that, you need to swear him in.

22 VICE CHAIRWOMAN MICHALSEN: Certainly.

23 (Witness sworn.)

24 MR. KOLB: The first condition to which the

1 applicant will agree is that Maxxam Partners will
2 agree to provide Kane County with 1,000 doses of
3 Narcan/naloxone per year for a total of 10,000 doses
4 over a 10-year period.

5 No. 2, the site plan included in the petition
6 does not propose expansion or the construction of
7 additional buildings or infrastructure. Any future
8 proposed construction of additional buildings and/or
9 infrastructure, including additional access roads or
10 access locations would not be permitted unless the
11 special-use site plan is amended per Section 4.8,
12 special uses.

13 Condition No. 3, the petitioner has stated
14 that there will be no outpatient treatment of
15 methadone patients or other programs that solely
16 administer medications on an outpatient basis. The
17 addition of any such outpatient program will require
18 an amendment to the special use and will require a
19 public hearing before the full County Board.

20 No. 4, the petitioner has stated that
21 patients will be private pay only. Admission of
22 patients with public aid will require an amendment
23 to the special use and require a public hearing
24 before the full County Board.

1 No. 5, the petitioner must submit a security
2 plan, including a copy of post orders, procedures,
3 and proof of contracts prior to Kane County issuing
4 a certificate of occupancy.

5 No. 6, the special use is only for Maxxam
6 Partners, LLC, and is not transferrable to any other
7 entity.

8 No. 7, license approvals from the State of
9 Illinois are required prior Kane County issuing a
10 certificate of occupancy.

11 No. 8, Maxxam Partners will use reasonable
12 efforts to pursue accreditation for our facility by
13 the Joint Commission on Accreditation of Health Care
14 Organizations and CARF, the Commission on
15 Accreditation of Rehabilitation Facilities.

16 And 9, Maxxam Partners, LLC, or its successors
17 shall pay all costs and recovery fees for patients
18 and any persons on the premises for fire and EMS calls
19 and services to the responding fire district or
20 provider according to the adopted fee schedule as
21 determined by that provider. So, in essence, we're
22 guaranteeing the payment.

23 So those are the conditions to which the
24 applicant will agree, and we submit those into

1 evidence as the -- I guess we'll call it Exhibit A
2 for tonight's proceeding, I suppose.

3 (Exhibit A marked for identification.)

4 VICE CHAIRWOMAN MICHALSEN: Do I have a
5 motion from the Board?

6 MEMBER LAKE: Motion to submit.

7 MEMBER ARIS: Second.

8 VICE CHAIRWOMAN MICHALSEN: All in favor.

9 (Ayes heard.)

10 VICE CHAIRWOMAN MICHALSEN: All opposed?

11 (No response.)

12 VICE CHAIRWOMAN MICHALSEN: Motion is
13 granted. We do receive this into evidence.

14 (Exhibit A admitted into evidence and
15 retained by the Board.)

16 VICE CHAIRWOMAN MICHALSEN: At this time do
17 any of the Board members have any questions for the
18 petitioner about the conditions that he presented
19 this evening?

20 MEMBER LAKE: Madam Cochair, I do have a
21 question for Mr. Kolb and that is Condition 1.

22 I'm not exactly clear on the origin of the
23 offer for 1,000 doses of Narcan for your 10,000 doses
24 over a 10-year period. I'm curious as to what the

1 shelf life of this is, and what the value is, and
2 how the transfer of one person to another entity is
3 actually handled.

4 MR. KOLB: So the origin of this particular
5 condition arose I believe from reviewing a budgetary
6 line item in the County budget where there was perhaps
7 a shortage of Narcan. This is a gesture of good will.

8 Narcan is a drug administered to people
9 suffering from an opiate overdose, and it's credited
10 with saving lives. One dose usually saves one life.
11 It's critical. It's necessary for any community to
12 have a storage of it. Anyone that has a loved one
13 who has suffered from an opiate overdose that has
14 had their life saved by Narcan understands the
15 importance of this drug.

16 So this is something that the applicant has
17 offered. And it's not all at once; it will be over
18 time. It's a significant value.

19 MEMBER LAKE: So you can't actually answer
20 what the value of this offer is?

21 MR. KOLB: In terms of dollars?

22 MEMBER LAKE: Yes.

23 MR. KOLB: Not at this time, no. I could
24 approximate but I don't feel comfortable giving you

1 a dollar figure.

2 MEMBER LAKE: I'm just curious whether it
3 might be more appropriate to offer that in monetary
4 and let them administer the storage, if that were
5 the proper thing to do.

6 VICE CHAIRWOMAN MICHALSEN: Any other
7 questions?

8 MEMBER MELGIN: I do have a request. On
9 No. 8 when you talk about using reasonable efforts
10 to pursue accreditation. Reasonable efforts being
11 you applied for application, you actively go for
12 accreditation?

13 MR. KOLB: Uh-huh.

14 MEMBER MELGIN: How does that work?

15 MR. KOLB: Well, the condition was formulated
16 with those words because you have to have an
17 operating history to be accredited. So it's a
18 little bit of a chicken and the egg scenario. If
19 you make the opening of the facility based on
20 accreditation, you can't gate accredited without an
21 operating history.

22 It's a standard that they'll use efforts to
23 procure. It's a very high standard.

24 VICE CHAIRWOMAN MICHALSEN: Tagging onto

1 Member Melgin's question, with respect to this
2 condition and a few of the others, how do you foresee
3 enforcement?

4 So I understand this accreditation takes a
5 few years of operating in order to comply for it.
6 So say three years down the line Maxxam begins
7 applying for the process, and members of the public,
8 or members of the County Board, or somebody feels
9 you're not living up to your agreement to actively
10 pursue it. Who arbitrates that? How do you discuss
11 that? How do you envision that enforcement
12 happening down the line if people do not agree that
13 you are actively pursuing those accreditations?

14 MR. KOLB: There's a lot of disputes in
15 courts systems testimony over the word "reasonable."
16 It's kind of the default word that a lot of lawyers
17 will insert to sort of "insert smell test here."

18 So I think there will come a time in your
19 scenario, which we don't believe will ever occur --
20 but let's assume your hypothetical for a moment.
21 There could come a time when in the estimation of
22 your County enforcement officer or attorneys that
23 you believe efforts aren't being made. He certainly
24 would have the ability like any other zoning

1 enforcement officer to find the property not in
2 compliance with applicable ordinances, in which case
3 there would be the procedures in the County code for
4 zoning enforcement.

5 So I think it's written that way to give
6 some leeway to both parties I think to act reasonably
7 in that respect. We're not sure, for instance, what
8 the backlog might be at these accreditation
9 organizations the time of analysis or whether the
10 criteria is a shifting criteria.

11 The condition is there, so it's something
12 that we have to strive to obtain, and there would
13 come a point in any analysis where I think the scale
14 could tip either way. So I think you've got to look
15 at that on a case-by-case basis in the future.

16 VICE CHAIRWOMAN MICHALSEN: Thank you.

17 Any other questions?

18 MEMBER MILLEN: Just real quickly, does
19 Maxxam have any facilities or is this their only
20 facility of this type?

21 MR. KOLB: This particular LLC, Maxxam
22 Partners, LLC, this is the sole facility it will
23 operate. Usually, facilities are single-member
24 LLC-type entities.

1 MEMBER MILLEN: But they don't have facilities
2 across the country?

3 MR. KOLB: Maxxam Partners does not, no.

4 VICE CHAIRWOMAN MICHALSEN: Member Aris.

5 MEMBER ARIS: In your testimony you talked
6 about reasonable accommodation requests, and you
7 specifically mentioned that the disabled not be
8 discriminated against, and you also mentioned being
9 able to live in rural as well as urban areas. Do
10 you have any other specific accommodation requests
11 specifically either to ADA or the Federal Housing Act?

12 MR. KOLB: The accommodation we're requesting
13 has to do with housing. The FHA arose out of civil
14 rights legislation in the '60s and has been extended
15 very broadly by various Federal Courts through the
16 years, and it includes the ability to have residential
17 housing, and it includes stays between 30 and 90 or
18 60 days falling under that category, and it also
19 covers people with disabilities.

20 And, quite frankly, there are a number of --
21 you can look at the legal opinions that are in your
22 application binders for the extension of the FHA in
23 the instant context. We believe it to be quite clear.

24 MEMBER ARIS: Thank you.

1 VICE CHAIRWOMAN MICHALSEN: Any other
2 questions from the ZBA?

3 MEMBER LAKE: I actually have one that --
4 when it comes to FHA.

5 I read testimony from a person that I --
6 forgive me, I don't recall who exactly, but they
7 were quoting a capacity per unit. Does this
8 eight-facility, 120-bed fit an FHA capacity?

9 MR. KOLB: We believe that the FHA applies
10 to the facility with 120 beds, correct.

11 VICE CHAIRWOMAN MICHALSEN: Any other
12 questions from the members of the ZBA?

13 (No response.)

14 VICE CHAIRWOMAN MICHALSEN: At this time we'd
15 open it up to staff and our attorney to question the
16 petitioner.

17 MR. VANKERKOFF: Thank you. Staff does have
18 some questions for the petitioner.

19 If it pleases the ZBA, in the interest of time
20 so we can get to the these good folks who showed up
21 here, I'd like to read these into the record. I'd
22 be happy to share these with the petitioner and let
23 him either respond during rebuttal time after other
24 comments have been made relative to the conditions

1 or respond in writing, whichever petitioner concludes.

2 So I'll go through my list quickly here.

3 Most of them have to do with your earlier concern

4 about enforcement. From a staff level, as your

5 County zoning enforcement officer I would be charged

6 with doing that.

7 First of all, with the Condition No. 1 staff

8 would recommend getting input from the County Health

9 Department regarding this condition, including

10 delivery, storage, and expiration date, some of the

11 things already covered by the ZBA.

12 For Condition No. 2, staff requests getting

13 some additional feedback from the sheriff, village

14 police chief, and fire protection district regarding

15 the second access point, if that's desirable or not.

16 There's been some turnover in the fire district

17 since a year has gone by since the original topic

18 came up at the previous hearings.

19 Condition No. 3, staff believes that this

20 condition may be enforceable, but we would appreciate

21 a legal opinion or some specific data from the

22 petitioner or legal opinion from the State's Attorney's

23 office as to whether it's enforceable or not.

24 No. 4, staff has doubts that this condition

1 would be enforceable and similarly would like to
2 have a legal opinion from the State's Attorney's
3 office.

4 Condition No. 5, petitioner has already
5 agreed to provide a staffing plan as to the security
6 and operations before the County Board decided the
7 matter which they did not do. So staff's
8 recommendation would be to ask petitioner if they
9 will do this or add some other strength to this
10 stipulation.

11 As to Stipulation No. 6, staff also has
12 doubts that this condition would be enforceable and
13 would like a legal opinion from the State's Attorney.

14 No. 7, staff believes that this condition
15 would be enforceable.

16 No. 8, staff has doubts that this condition
17 would be enforceable and would also like a legal
18 opinion from the State's Attorney.

19 And, finally, No. 9, staff has doubts that
20 this condition would be enforceable by Kane County,
21 may be enforceable by the fire protection district.

22 Those are staff recommendations regarding
23 the conditions, and I'll turn it over to State's
24 Attorney Pat Kinnally for some additional comments.

1 VICE CHAIRWOMAN MICHALSEN: Thank you.

2 MR. KINNALLY: Thank you.

3 I went back and reviewed my notes and the
4 transcript of this -- the hearings that we were at.
5 I want to know whether Maxxam is going to agree to
6 the following stipulations that were agreed to either
7 by you or Attorney Brown.

8 First one is, you agreed to provide information
9 as to what drugs would be used at the facility,
10 where they would be stored, and how they would be
11 safeguarded, transcript pages 274 through 276. Do
12 you agree to that?

13 MR. KOLB: Section 2060 of the Illinois
14 administrative code --

15 MR. KINNALLY: No, no. I want to know whether
16 you agree to that because that's what you said at
17 the prior hearing, that's what your client said.
18 That's number one.

19 Number two, you agreed to provide a staffing
20 plan as to operations as well as security. That's
21 page 550 of the transcript. Do you agree to that
22 or not?

23 MR. KOLB: The conditions that we had agreed
24 to are laid out in the exhibit.

1 MR. KINNALLY: So I want to know whether you
2 are renegeing on the stipulations and conditions that
3 you told the Zoning Board of Appeals last January.
4 Yes or no?

5 MR. KOLB: I'll have get a response from the
6 client on that.

7 MR. KINNALLY: You agreed to have a medical
8 director on-site 40 hours per week, page 554 of the
9 transcript. Yes or no?

10 MR. KOLB: Again, I believe that's correct
11 but I will have to go back and check.

12 MR. KINNALLY: I'm not making these up.

13 D, you agreed to provide staffing plans for
14 the levels of additional certification that
15 Ms. Melgin just asked you about. That's page 632 of
16 the transcript. Do you agree to that or not?

17 MR. KOLB: Do you have these written down
18 for me?

19 MR. KINNALLY: I can give you a copy of them.

20 MR. KOLB: That would be nice. Thank you.

21 MR. KINNALLY: E, as to the fire protection
22 district, Mr. Shepro's client, has stipulated that
23 Maxxam would pay all of the expenses for ambulance
24 calls from the facility when they went unpaid,

1 page 1025 of the transcript, yes or no?

2 MR. KOLB: Yes.

3 MR. KINNALLY: Some other things that you --
4 that your client indicated, and I don't have the
5 page on this one, but I wrote it out for you.

6 MR. KOLB: That last condition is actually
7 in our list.

8 MR. KINNALLY: Okay. That's fine.

9 You agreed that you would set up a foundation
10 and fund it through the Fox Valley Foundation for
11 outreach for the Kane County community in connection
12 with drug use and addiction issues, and I believe
13 it's on page 262, but I could be wrong, and I believe
14 it was Mr. Brown that brought this up. Do you agree
15 to do that?

16 MR. KOLB: I'll confirm.

17 MR. KINNALLY: The second -- that my
18 colleague Mr. VanKerkhoff brought up, that is the
19 entranceway that -- the second entranceway at the
20 rear of the facility. And I believe that the fire
21 district -- which I can't speak for them -- wanted a
22 second way into the facility, and I believe that
23 Mr. Brown agreed that they would do that if the fire
24 district wanted it. Is that --

1 MR. KOLB: Yes.

2 MR. KINNALLY: And then -- I think that's
3 all of my notes, Madam Chair.

4 VICE CHAIRWOMAN MICHALSEN: Thank you.

5 MR. KINNALLY: I'll give you a copy of these
6 if you want them.

7 MR. SHEPRO: Pat, could we have a copy of
8 that, as well?

9 MR. KINNALLY: Sure.

10 MR. SHEPRO: Thanks.

11 VICE CHAIRWOMAN MICHALSEN: At this time
12 I'll allow the objector to ask questions of the
13 petitioner.

14 MR. CARRARA: Thank you, Madam Chairwoman.
15 My name is Kevin Carrara. I'm with the law firm of
16 Rathje and Woodward in Wheaton, Illinois; I represent
17 Joline Andrzejewski, a property owner that abuts
18 directly to the north of this facility.

19 I guess just by way of initial comments,
20 thank you all for your time and consideration
21 reviewing the transcripts. As you can see behind
22 me, I've got a stack of binders. That is the
23 transcript. The exhibits are an additional couple
24 500 more pages. So thank you for your efforts in

1 reviewing all those.

2 I would like to renew our previous objections
3 in the record as well as our motions to strike certain
4 experts who did not appear to be cross-examined, which
5 brings me to my next point. We find ourselves in the
6 same condition that we did at the prior proceedings
7 where nobody from the petitioner is here. We have
8 their attorney, who again is providing hearsay
9 testimony or he's now going to have to go back and
10 check with his client on a number of things because
11 he can't testify to the actual operations of this
12 facility and how these conditions, specifically, the
13 nine conditions in his new letter affect the special
14 use factors that you need to consider. So, again, I
15 have nobody to cross-examine. I'm not going to
16 cross-examine Mr. Kolb because he's not going to be
17 able to answer those questions in detail.

18 So, again, I would renew, by the way,
19 something I think the prior ZBA board had never had
20 to do in its entire history, issue motions to compel
21 the petitioner and its principal to come and give
22 testimony on all the unanswered questions that you
23 have, I have, the other objectors have, and I suspect
24 a number of citizens have.

1 We started this hearing basically with the
2 assumption that we were going to go hear nine new
3 pieces of evidence. There's only one new piece of
4 evidence. If you reviewed those transcripts,
5 2 through 8 were all previously stipulated to by
6 either Mr. Kolb or Mr. Brown, and thanks to
7 Mr. Kinnally I don't need to go through my
8 additional list of stipulations that were somehow
9 left off this list.

10 The only new condition is the doses of
11 medication. And with all due respect to Mr. Kolb
12 and his offer of his client's good will, I don't see
13 this as good will. I see this as pay to play
14 politics; we will give you medication if you give us
15 our --

16 (Applause.)

17 MR. KINNALLY: Point of order.

18 VICE CHAIRWOMAN MICHALSEN: Please, no
19 cheering, jeering, clapping, booing. If we can make
20 this a professional hearing. We are all here for
21 the purposes of hearing the information about this
22 petition and letting everyone get their say in. So
23 I'd ask that we remain civil to one another.

24 MR. CARRARA: Moving on with Condition No. 1,

1 Condition No. 1 has no impact on the six factors
2 that you're to review in a special use application.
3 Mr. VanKerkhoff went through those six things.
4 Nowhere in that list -- by the way, it's the
5 petitioner's burden to show he's met all those --
6 does Condition No. 1 have any impact on that.
7 Again, call it good will, call it what you like; it
8 has no bearing on the process.

9 The remaining eight conditions aren't new
10 evidence. So, again, you said you've reviewed all
11 those records; you probably read through those and
12 saw those, as well as the ones that Mr. Kinnally
13 brought to your attention this evening.

14 So I would I guess propose that there isn't
15 any new evidence here for the ZBA to consider its
16 prior denial. You obviously have the ability at
17 some point I suspect to make a motion to somehow
18 reconsider this application. I'll leave that to
19 your counsel as to how you're going to address that
20 process from Robert's Rules.

21 So, I guess, again, I would like to say from
22 this standpoint there's only one new condition; it's
23 the offer of medicine or at some point somebody
24 potentially send money in lieu of the medicine

1 invoked only way, by the way, if they get the vote.

2 So we then go on to a number of other
3 conditions, and I think at some point we now are
4 stuck again because we have Mr. Kinnally's conditions
5 that Mr. Kolb is going to check with his client, we
6 have Mr. VanKerkhoff who has asked for legal opinions,
7 which is the first time I think the staff has asked for
8 legal opinions on this matter petitioned throughout
9 the process to date. So, again, I respectfully request
10 that those questions be answered and then this
11 public hearing is brought back so we can ask the
12 proper questions when we have all this information
13 in front of us.

14 Again, the point of these hearings, as you
15 suggested, Madam Chair, is to get to the information.
16 That from an objector's standpoint is through
17 reasonable cross-examination of people who are
18 providing the testimony.

19 We have nobody here to provide testimony
20 again. We have a blanket list of things that we
21 have. So I would make that request of the Chair and
22 the ZBA that we would get all those answers that
23 staff and your legal counsel have asked for, and we
24 come back and we start this matter anew.

1 If you don't wish to do that, I understand.
2 What I would like to present to you, though, in the
3 interim is two affidavits from our experts,
4 Mr. Joe Abel and Dr. Bennie Waller who because of
5 short notice and their schedules are not able to be
6 here this evening to testify.

7 Basically -- I'll hand out the affidavits in
8 a second -- the gist of the affidavits are they
9 reviewed the proposed nine new conditions, and none
10 of those affect their prior testimony as to the
11 factors under special use standards.

12 So if I may, I'd like to tender that as
13 Exhibits B and C is I think where we might be, and
14 then the Chair can do with them what they'd like.

15 (Exhibits B and C marked for identification.)

16 MR. CARRARA: Also, in their affidavits, by
17 the way, they do offer that should the Chair and the
18 ZBA want them here to hear testimony, we will bring
19 them back subject to a reasonable accommodation just
20 so I can get travel schedules arranged and get them
21 back here. We won't prevent the ZBA from hearing
22 any testimony from them; we just need time to get
23 them back here so you could hear them.

24 MR. SHEPRO: Madam Chairman, I don't want to

1 be in a position of seeming to object to my fellow
2 objector, but I'm a little confused now as to what
3 we're actually doing. I understood that you were
4 offering Mr. Kolb to us for cross-examination and
5 not for presentation of any case that we had at this
6 point. Am I mistaken about that?

7 VICE CHAIRWOMAN MICHALSEN: That is correct
8 and I will allow Mr. VanKerkhoff.

9 MR. VANKERKOFF: Just in response to
10 Mr. Carrara's point and for the ZBA and the public
11 here tonight, in the consideration in the hearings
12 from the previous Zoning Board, that particular
13 Zoning Board never got to the work of discussing or
14 considering any conditions or restrictions for
15 recommendation onto the full County Board.

16 The petitioner, as evidenced by the discussion
17 so far, in the course of the lengthy testimony did
18 offer up some conditions and stipulations, but those
19 were never formalized by the County Board. Thus, I
20 think -- or by the Zoning Board. Thus, a little bit
21 of difference being denying -- most of which are
22 restipulated from their earlier testimony but
23 clarified into a list, as well as additional ones
24 that Mr. Kinnally reviewed in the record.

1 So this is in a sense new work by you, the
2 new Zoning Board, in terms of reviewing and getting
3 input on potential conditions that would potentially
4 be recommended onto the County Board as stipulations
5 and conditions per ordinance.

6 So with that, that's really -- from staff's
7 standpoint that's really the topic of the evening.
8 Thank you.

9 VICE CHAIRWOMAN MICHALSEN: Thank you,
10 Mr. VanKerkhoff.

11 I wanted to get back to Mr. Carrara with a
12 few housekeeping matters, make sure we handled
13 everything that he brought up. He did bring up a
14 few new issues.

15 As I have it from my notes, you brought up
16 three different motions or petitions. The most
17 recent one was a motion to enter two different
18 affidavits as Exhibits B and C into evidence for the
19 SBA to consider and give whatever weight they
20 consider appropriate.

21 You also made a motion to strike two different,
22 I believe, expert opinions that were previously
23 admitted into evidence that you had previously made
24 a motion to strike which had been denied by the

1 previous ZBA.

2 And third -- the first one you made was you I
3 believe made a motion to encourage the ZBA to renew
4 its petition to compel testimony from Mr. Marco, and
5 I'm not sure -- I think you mentioned somebody else.

6 MR. CARRARA: Merely a request, Madam Chair.
7 As you're aware, we have no ability to compel any
8 witness to appear here. I would ask that the ZBA
9 make that -- renew its motion to compel and bring --
10 Mr. Marco I believe is the principal of Maxxam
11 Partners, to give testimony on the operational
12 issues that were never addressed during the process
13 of the hearing, as well as other relevant factors
14 that are affected by the six standards that the
15 special use has to be determined by.

16 For housekeeping, if you'd like, I have the
17 affidavit of Dr. Bennie Waller I had marked as
18 Exhibit B, and then I have an affidavit of
19 Joseph H. Abel I've marked as Exhibit C. I'll hand
20 them to Mr. VanKerkhoff.

21 MR. KOLB: For the record, I object. Hearsay.

22 VICE CHAIRWOMAN MICHALSEN: Does anyone on
23 the ZBA want to make a motion to accept these into
24 evidence?

1 MEMBER ARIS: I'll move to accept.

2 VICE CHAIRWOMAN MICHALSEN: And do we have
3 any -- thank you. All those in favor say aye.

4 (Ayes heard.)

5 VICE CHAIRWOMAN MICHALSEN: All those
6 opposed, same sign.

7 (No response.)

8 (Exhibits B and C admitted into evidence
9 and retained by the Board.)

10 MR. KOLB: Can I get a ruling on the
11 objection, the hearsay objection?

12 VICE CHAIRWOMAN MICHALSEN: We do find that
13 it's not hearsay, as they are able to be brought
14 before us. If we have questions about the affidavit,
15 we will have an opportunity to cross-examine just as
16 we have heard testimony from you tonight about what
17 your client is willing to do, and we assume that you
18 would be willing to present your client at a later
19 date if we needed to solicit testimony from him on
20 what you offer tonight. So you're both doing the
21 same thing.

22 MR. KOLB: Hearsay is an out-of-court
23 declarant making a statement offered for its truth,
24 which is precisely what that document is intended to

1 do. Declarant is not here. I'm here. I've been
2 sworn in to provide testimony.

3 VICE CHAIRWOMAN MICHALSEN: Correct. But you
4 haven't been able to actually provide much testimony
5 because you cited numerous times that you needed to
6 talk to your client. So your client is not here to
7 provide the actual testimony that people are seeking.

8 MR. KOLB: These are new issues, so I do
9 need to collaborate and take additional time to
10 answer your questions.

11 MEMBER FALK: But they're on the record.

12 MR. KOLB: Pardon me.

13 MEMBER FALK: Weren't they taken in the last
14 Zoning Board?

15 MR. KOLB: Mr. Marco was available to
16 testify. Chairman White asked if anybody wished to
17 ask Mr. Marco questions, and there was no questions
18 asked of Mr. Marco.

19 VICE CHAIRWOMAN MICHALSEN: And I believe
20 you've made your record. I have overruled you. The
21 Board has voted to accept these into evidence.

22 MR. KOLB: Thank you.

23 VICE CHAIRWOMAN MICHALSEN: Thank you.

24 To Mr. Carrara's request that we consider --

1 reconsider petitioning -- compelling anyone here to
2 testify at a later date, the ZBA will take that
3 under advisement and confer and decide at a later
4 date or later tonight whether or not we believe it's
5 appropriate to call any additional witnesses.

6 As to your motion to strike the two expert
7 opinions, do I have a motion from -- I'm trying to
8 think -- I'm sorry -- procedurally do we just need
9 to take a vote on the motion?

10 MEMBER FALK: They're affidavits.

11 MR. KINNALLY: You're talking about prior --

12 VICE CHAIRWOMAN MICHALSEN: Objector previously
13 made a motion to strike two different expert
14 opinions. That was denied by the ZBA previously. I
15 believe he has renewed that motion to strike, and I
16 apologize, I'm not sure procedurally what we -- how
17 we handle that, whether it's by motion or just a vote.

18 MR. KINNALLY: I'd like to be heard on it if
19 I could.

20 VICE CHAIRWOMAN MICHALSEN: Certainly.

21 MR. KINNALLY: -- with your permission.

22 VICE CHAIRWOMAN MICHALSEN: We would appreciate
23 your insight.

24 MR. KINNALLY: Last time this came up it was

1 my advice that those documents were already in
2 evidence. So those reports as submitted by the
3 petitioner had been admitted into evidence, and I
4 advised the Board at that time to give them whatever
5 weight they thought they had, if any, since the
6 person that authored the document was not available
7 to vouch for the document or the report and was
8 unavailable for cross-examination.

9 Therefore, I felt those reports were
10 admissible, and I have not changed my opinion since
11 then. You give them whatever weight, if any, you
12 think they're worth when nobody shows up to talk
13 about them. That's my view.

14 VICE CHAIRWOMAN MICHALSEN: Thank you. As
15 to the motion to strike -- and could you please
16 remind me the names of the experts you wish to strike?

17 MR. CARRARA: Sure, if I may. It's -- just
18 for the record, it was entered as Exhibit A20 was
19 the motion to strike, and it's obviously included in
20 the list of exhibits on the website.

21 The two people we were seeking to strike
22 were the Murer Consultant expert report and the
23 Poletti & Associates expert report.

24 VICE CHAIRWOMAN MICHALSEN: Thank you.

1 Do we make a motion -- I apologize -- do we
2 need a motion from the Board or simply a ruling from
3 the Chair?

4 MR. KINNALLY: You can do it either way. I
5 think Mr. Miller referred to the entire board, but
6 it's your call, Madam Chair.

7 VICE CHAIRWOMAN MICHALSEN: Then I will ask
8 if any member of the ZBA has a motion regarding his
9 motion to strike the Murer opinion included in the
10 application and the Poletti.

11 MEMBER MELGIN: I motion that we retain them.

12 VICE CHAIRWOMAN MICHALSEN: Do we have a
13 second?

14 MEMBER ARIS: Second.

15 VICE CHAIRWOMAN MICHALSEN: Thank you. All
16 in favor say aye.

17 (Ayes heard.)

18 VICE CHAIRWOMAN MICHALSEN: All opposed,
19 same sign.

20 (No response.)

21 VICE CHAIRWOMAN MICHALSEN: Seeing no
22 disagreement, that motion is denied. Thank you.

23 Does that complete Mr. Carrara's presentation
24 at this time?

1 MR. CARRARA: It does. Again, the problem I
2 have here is I was prepared to cross-examine whatever
3 testimony was going to be given on these conditions,
4 but, unfortunately, Mr. Kolb isn't the person to do
5 that. That's why I renewed my motion to compel
6 Mr. Marco to appear this evening.

7 I'm not waiving my rights to ask questions;
8 it's just I have nobody here to ask questions of.
9 With all due respect to Mr. Kolb, we heard this
10 before. Mr. Marco was here to answer questions, but
11 he never took the stand.

12 So, again, I can't force him to take the
13 stand. So it's the chicken and the egg, I think, was
14 the analogy that was used before. Part of the case
15 law we cited in my motion to strike specifically goes
16 to you have to have meaningful cross-examination as
17 part of the public hearing process, and the attorneys
18 for the petitioner are advocates; they're not to
19 give testimony on those specific issues.

20 So we find ourselves in a difficult quandary
21 because I have questions on the new evidence that
22 we're supposed to be here for this evening, these
23 nine conditions and how they directly affect the
24 special use factors from Mr. Marco's perspective as

1 the principal of the petitioner, or if it's not
2 Mr. Marco, it has to be somebody that has to be able
3 to answer those, but, again, I don't know who that
4 is. Mr. Marco would seem the most reasonable person,
5 but I can't ask anybody anything this evening.

6 So I'd like to make a closing statement if
7 we get to that this evening. If not, I'll wait to
8 hear what the Chair has to say.

9 VICE CHAIRWOMAN MICHALSEN: You have made
10 your record. You've not waived any ability to
11 cross-examine any future witnesses.

12 I would like to just make it clear, Mr. Kolb,
13 if I could that you do not have your client present
14 here tonight. Is that correct?

15 MR. KOLB: I'm here on behalf of the applicant.
16 Mr. Kinnally swore me in. I'm here to answer
17 questions. It's not uncommon in a zoning hearing for
18 an attorney to present a zoning case before a zoning
19 board. I do it -- I did it last night in St. Charles.
20 It is very common for attorneys to present.

21 VICE CHAIRWOMAN MICHALSEN: Certainly, I
22 don't disagree with you, Mr. Kolb. I just want to
23 be clear for the record that your client is not
24 actually sitting out somewhere that would be

1 available to us --

2 MR. KOLB: Oh, correct.

3 VICE CHAIRWOMAN MICHALSEN: -- that he
4 actually is not here physically in the building to
5 answer questions tonight.

6 MR. KOLB: Tonight was directed to the
7 conditions that we agreed to ahead of time as part
8 of our special use. We had many nights of public
9 hearings in which even the witnesses that are
10 subject to Mr. Carrara's motions were actually
11 physically present in the building and could have
12 been called by the Zoning Board to provide testimony.

13 VICE CHAIRWOMAN MICHALSEN: I understand
14 that. But your client is not here tonight?

15 MR. KOLB: Oh, that's correct.

16 VICE CHAIRWOMAN MICHALSEN: Okay. Thank
17 you. That was all the answer I was asking for just
18 so we're clear on the record who is present and who
19 is not.

20 MR. KOLB: Thank you.

21 VICE CHAIRWOMAN MICHALSEN: Thank you.

22 Mr. Shepro, did you have any questions?

23 MR. SHEPRO: Yes, I do, and also a few
24 primary remarks or questions.

1 As the chair rightly noted, apparently the
2 subject of tonight's hearing was to be the conditions.
3 Although, I guess one of my concerns or questions is
4 that in examining the motion action of the County
5 Board, all I saw in that action was a general
6 rescinding of the previous denial, and part of the
7 motion was to remand it to the Zoning Board of Appeals.

8 I don't believe that there was anything in
9 that order of remand that in any way limited the
10 scope of what the remand was to be. And so I guess
11 one question I would ask of anybody who could answer
12 it is, on what basis was the limitation to conditions
13 for tonight's hearing -- where did that come from,
14 and by what decision or authority?

15 So I guess that's the first concern. The
16 second concern I think has been highlighted just by
17 the very thorough report from Mr. VanKerkhoff and
18 the questions that have been raised by staff and by
19 the members of the Board even thus far and only
20 exacerbated by Mr. Kolb's response to Mr. Kinnally's
21 questions.

22 I think really, with respect, this is all
23 premature because as many of us said during the
24 hearing, the previous hearings, much of what was

1 said and done was, "Don't worry; we'll do it later;
2 it will be fine; we can't tell you who these people
3 are; we don't have answers for your questions."

4 Almost every condition that was submitted
5 has generated I think serious questions that need
6 follow-up and some position before we can really go
7 any further.

8 If we get to my questions, you'll see we
9 also have serious doubts as to whether many of these
10 conditions are even enforceable as a matter of
11 zoning law, constitutional law, or anything else.
12 With respect to the six or seven conditions that
13 Mr. Kinnally raised from the record, I think the
14 answer to all but one of those was, "I don't know.
15 I have to check with my client."

16 How can we realistically and why do we
17 expect the members of the audience who are here to
18 be able to meaningfully ask questions about things
19 where we don't even know what the position of the
20 petitioner is at this point.

21 MR. KOLB: If I could clarify that because I
22 think that's misinterpreted.

23 We took the time to formulate a list of
24 conditions to which we will agree. We presented

1 that list in the form of an exhibit, and we're
2 asking this Board to vote on those conditions.

3 If there are additional conditions that you are
4 requesting, I'm not telling you I won't take those
5 back, but at this point in time to represent that I
6 don't know what conditions we'll agree to is
7 inaccurate. We will agree to the list of conditions
8 that we presented to you in accordance with the
9 questions you had previously asked me for
10 clarification.

11 So that's our position. If this Board wants
12 additional conditions, let me know.

13 VICE CHAIRWOMAN MICHALSEN: Thank you.

14 At this time I would refer it over to
15 State's Attorney Patrick Kinnally to discuss the
16 first question you had about the remand and the
17 scope of tonight's meeting.

18 MR. KINNALLY: The purpose of this hearing
19 is a remand from the County Board consistent with
20 our zoning ordinance which empowers the Zoning Board
21 of Appeals to make findings of fact with respect to
22 this special use petition. That could be conditions;
23 that could be new evidence, but it's not to rehash
24 what was done previously.

1 So that's the purpose, the focus of this
2 particular hearing. As Mr. VanKerkhoff indicated
3 previously, if objectors want to produce new
4 evidence, especially from the fire protection
5 district, or if Mr. Carrara wants to produce some
6 new evidence other than what has already been
7 produced, then I think the Zoning Board is empowered
8 to hear that.

9 If the Zoning Board wants to consider these
10 conditions, if it wants to compel witnesses to testify,
11 it can do that, as well. It's up to the Zoning
12 Board. If it wants to hear perhaps new evidence
13 from local government units, perhaps from citizens,
14 it's empowered to do that. This is a public
15 hearing.

16 So the focus is somewhat limited, but that
17 is the area that we are to consider as I understand
18 it from the County Board's decision. We're not to
19 consider what we already considered. What is new
20 and if the petitioner has some conditions, maybe the
21 staff is going to have some conditions. I don't
22 know. But that's the purpose of the hearing, ma'am.

23 VICE CHAIRWOMAN MICHALSEN: Thank you,
24 Mr. Kinnally.

1 Could you rephrase your second question for
2 me? I'm afraid it blended into the objection about
3 no one here to discuss the conditions. So I want to
4 make sure we have it right for the record.

5 MR. SHEPRO: Let me see if I remember. I
6 think my second question -- or maybe it was a
7 statement -- that in light of all of the uncertainty
8 that has so far surfaced with respect to the
9 conditions or stipulations raised by Mr. Kinnally,
10 the very, I think, key and serious questions raised
11 by staff as far as the need for legal opinions and
12 questions as to enforceability, it really seems to
13 me that this is premature for us to be spending all
14 this time questioning these things where we may
15 get -- and I believe you will get from the State's
16 Attorney an opinion that many of these conditions
17 cannot be enforced not only because they're not
18 practical but because they legally cannot be
19 enforced. And I just think that we deserve and you
20 deserve to have answers to those questions before we
21 all know what additional matters we are going to
22 present.

23 It just -- I'm going to try to do what
24 Mr. Carrara didn't do, but, frankly, Mr. Kolb is not

1 really the right witness to be here to answer these
2 questions. I certainly agree with his comment about
3 the way zoning hearings are conducted, but at the
4 end of the day they are still conducted despite a
5 lot of talking by the attorneys by witnesses who
6 have knowledge of the facts. And particularly, if
7 Mr. Kolb were in a position to say, "Yes, I talked
8 to my client, all these are fine," okay, I think he
9 has that authority. But he's saying candidly, "I
10 don't know; I have to get back to my client."

11 These are all important conditions, every
12 one of them. I assume that's why they proposed them
13 in the first place, and I just think that's the
14 orderly procedure here and not to have a lot of
15 people make comments or ask questions and then we
16 have to -- pretty clearly I assume if we're waiting
17 for answers from the State's Attorney, and while you
18 have not expressed your views as a board, I'm hoping
19 that you'll agree with staff that these questions
20 need to be answered. So then the question obviously
21 is when will they be answered, and how will that
22 impact the remainder of this hearing.

23 So I would respectfully ask that this
24 hearing stand adjourned until time as the questions

1 have been answered.

2 VICE CHAIRWOMAN MICHALSEN: Thank you,
3 Mr. Shepro. I think now may be a good time to take
4 a -- I'm sorry -- Mr. VanKerkhoff would like to
5 speak.

6 MR. VANKERKOFF: Take a break.

7 MR. KINNALLY: Take a break. Ms. Quetsch
8 has been typing away for an hour and a half.

9 VICE CHAIRWOMAN MICHALSEN: So we will take a
10 15-minute recess to reconclude at 8:45.

11 (Recess taken, 8:34 p.m. to 8:49 p.m.)

12 VICE CHAIRWOMAN MICHALSEN: If we could hold
13 all talking as we reconvene the meeting, that would
14 be great. That way you can hear what everyone has
15 to offer.

16 At this time I believe the Zoning Board may
17 have a motion to bring to the table. Does anyone
18 want to bring a motion?

19 MEMBER LAKE: Yes. Madam Chair, if I could
20 please make a motion to compel Mr. Marco to a
21 meeting because he seems to be the key component to
22 many questions that are going unanswered.

23 VICE CHAIRWOMAN MICHALSEN: Motion by
24 Member Lake to compel the testimony of Mr. Marco.

1 Do I have a second?

2 MEMBER FALK: I'll second.

3 VICE CHAIRWOMAN MICHALSEN: Seconded by
4 Member Falk. All those in favor say aye.

5 (Ayes heard.)

6 VICE CHAIRWOMAN MICHALSEN: All those
7 opposed, same sign.

8 MEMBER MILLEN: All right. The motion
9 passes 5 to 1. And we would ask for staff
10 assistance in issuing that order to compel and
11 finding a future date at which to compel that
12 appearance.

13 At this time -- I'm sorry -- Mr. VanKerkhoff.

14 MR. VANKERKOFF: In deference to that, since
15 we do have an additional date already scheduled for
16 Thursday night, it may not be possible, but I would
17 just ask petitioner's attorney if it's a possibility
18 that Mr. Marco would be able to comply with that for
19 Thursday evening.

20 MR. KOLB: At this point in time, we're going
21 to reiterate that the record we believe has been
22 completely and fully vetted in earlier proceedings
23 of a year ago given the expense and time we expended.
24 The applicant is not presenting additional evidence

1 with the exception of these conditions. The applicant
2 is not presenting new witnesses or testimony nor is
3 it going to pay its experts to come back. We're
4 resting on the record as it exists, and I'm advised
5 that no witnesses will be brought forward.

6 VICE CHAIRWOMAN MICHALSEN: Thank you for
7 that information, Mr. Kolb. I would ask our State's
8 Attorney Patrick Kinnally if he has any thoughts on
9 moving forward at this point.

10 MR. KINNALLY: I think your direction is
11 clear. The order should be issued. Staff will
12 prepare the order. If they don't want to comply --
13 we'll serve the order on Mr. Kolb as the agent for
14 Mr. Marco or Maxxam, and if they don't comply, they
15 don't comply. So we'll see how the process
16 plays out.

17 VICE CHAIRWOMAN MICHALSEN: Thank you.

18 At this time we would like to invite units --
19 representatives from units of local government to
20 come forward. The comments we're looking for this
21 evening are comments on the conditions listed by
22 Maxxam that are the topic of tonight's meeting and
23 any conditions or new evidence that you feel the
24 current Zoning Board needs to hear or any new

1 conditions you think we should consider as we
2 consider these conditions in this special use permit
3 application.

4 Do we have any representatives from units of
5 local government? We'll start there.

6 Yes. The gentleman in the front. I apologize
7 if I don't know your name yet. Although, I probably
8 read your name in the transcripts.

9 MR. BLECKER: My name is Harry Blecker,
10 B-l-e-c-k-e-r, president of Village of Campton Hills.
11 Madam Chairman and members of the Board, thank you
12 for the opportunity to speak tonight.

13 While I'm going to discuss these conditions
14 that we talked about, I want to review, as Mr. Kolb
15 and others did, briefly some of the things that
16 concern the Village of Campton Hills that have not
17 been mentioned and not addressed at all in any of
18 these conditions.

19 VICE CHAIRWOMAN MICHALSEN: I'm sorry. Are
20 these going to be new conditions that you propose?
21 We're not looking for additional testimony. We're
22 looking for additional conditions that we should
23 consider as we consider these conditions and also
24 the petition as a whole.

1 MR. BLECKER: Well, they're not specifically
2 conditions but items that should be addressed, and
3 conditions should be addressed to these items.

4 MEMBER FALK: So it's new information?

5 MR. BLECKER: It's information that has been
6 put out before but has not been addressed at all by
7 anybody here tonight, by Mr. Kolb, by Mr. Carrara,
8 by Mr. Shepro, or any of other attorneys.

9 These are important to the Village. The
10 biggest problem we have, the biggest condition we
11 have is the impact on our police department, and
12 nobody has addressed that.

13 VICE CHAIRWOMAN MICHALSEN: Mr. Blecker, if
14 we could just for a moment, I believe Mr. VanKerkhoff
15 wanted to respond.

16 MR. VANKERKOFF: I just wanted to reiterate
17 as your zoning officer and putting this proceeding
18 together tonight, this is exactly part of what I
19 envisioned that in response to responding to the
20 nine conditions put forth, and the only new evidence
21 we had as a staff to put out to the public for
22 tonight's hearing, that units of government and even
23 members of the community may have other conditions
24 that they think should be considered by the Zoning

1 Board in addition to making comments on the
2 nine proposed by the petitioner.

3 So I would recommend that you allow the
4 Village president to proceed with items that he
5 thinks should be formed into conditions and
6 considered by the County Board if they were to
7 approve the special use.

8 Thank you.

9 VICE CHAIRWOMAN MICHALSEN: Thank you.

10 Mr. Blecker, we would ask that you frame
11 your comments in the form of conditions that we
12 could consider as part of the special use in
13 considering the petition as a whole.

14 MR. BLECKER: Okay. I'll have to edit on
15 the fly here, but I'll try to do that.

16 None of the -- none of the eight conditions --

17 MEMBER FALK: Excuse me, Mr. Blecker. Can
18 you hold on a second.

19 VICE CHAIRWOMAN MICHALSEN: I apologize.

20 Mr. VanKerkhoff?

21 MR. VANKERKOFF: I was just going to add,
22 Mr. Blecker I think appears to have prepared
23 comments. I think if he were to prepare them and
24 the Village were to follow up with staff in terms of

1 forming those into conditions, that would be
2 acceptable, and staff could use that in -- with the
3 other public input tonight to form the draft
4 conditions that try to meet a variety of inputs.

5 VICE CHAIRWOMAN MICHALSEN: Okay. So my
6 understanding from staff is that we will encourage
7 you to read your prepared statement, and staff will
8 work with that information in formulating the
9 response.

10 MR. BLECKER: I promise I will be brief. I
11 will not be as long as Mr. Kolb.

12 VICE CHAIRWOMAN MICHALSEN: Thank you. And
13 I apologize for the multiple directions. We're still
14 getting a handle on jumping into this proceeding.

15 MR. BLECKER: That's okay.

16 None of the remaining eight conditions
17 address the concerns of the Village of Campton
18 Hills, Kane County Sheriff's department, Campton
19 Township, Plato Township, or Fox River and
20 Countryside Fire Protection District.

21 The Village Board opposed the Maxxam
22 petition due to the fact the petition for the
23 proposed facility does not meet the special use
24 standard set in Section 25-4-8-2 of the County

1 Zoning Ordinance. Pursuant to that section the ZBA
2 shall not recommend a special use unless it finds
3 the proposed special use meets all the enumerated
4 standards set forth in that section.

5 It is the Village Board's position that
6 Maxxam's proposed special use to operate the
7 facility on the property does not meet each and
8 every one of these standards and, therefore, must be
9 remanded -- must be recommended to denial by
10 the ZBA.

11 In particular, even the new conditions in
12 front of you do not meet the first standard that the
13 establishment, maintenance, or operation of the
14 special use will be unreasonably detrimental to or
15 endanger public health, safety, morals, comfort, or
16 general welfare.

17 The most significant concern to the Village
18 of Campton Hills is the detrimental impact the
19 facility and proposed use of the property will have
20 on the Village's police department. As testified in
21 the original hearings, this facility will negatively
22 affect the ability of Campton Hills Police Department
23 to serve the Village's residents and property owners.

24 The Village of Campton Hills is a nonhome

1 rule village with no property tax and will not in
2 any way benefit from the \$336,878 estimated tax
3 revenues that may result from the Maxxam facility.
4 Nevertheless, the Village as the closest responder
5 will likely be the most impacted by police calls
6 generated by this facility but without receiving any
7 tax or revenue to offset the additional call volume
8 that this facility is certain to result.

9 I'll quote from a letter to -- I'll quote
10 from a letter to Mark VanKerkhoff from Sheriff Kramer
11 dated January 27, 2016. Quote, "I believe the
12 facility will require between 100 and 300 combined
13 responses from police and EMS. The surrounding area
14 will see an increase in emergency responses that in
15 many cases will require lights and sirens. The
16 sheriff's office handles over 30,000 calls for
17 service each year, and a 300-call increase is about
18 1 percent.

19 "Once again, I believe the Sheriff's office
20 has adequate resources to address the increase in
21 call load, but the responding partners, Campton Hills
22 Police Department, Kane County Forest Preserve
23 police, Fox River and Countryside Fire and Rescue
24 also need to be considered in the piece of the

1 equation and the response to public safety."

2 While I cannot speak for the other
3 departments, I can tell you for a fact that neither
4 the County nor Maxxam has had any conversation to
5 address these concerns with the Village. This is
6 clearly evident by the lack of acknowledgement of
7 any of the concerns in the list of conditions by
8 Maxxam.

9 New Conditions 2, 3, and 4 are all well and
10 good. However, what guarantee does the public have
11 that as economic conditions change for better or
12 worse Maxxam Partners will not come to the zoning
13 board and a full County Board to amend its special
14 uses? If this Board recommends approval of these
15 new conditions and full County Board approves, a bad
16 precedent will be set. All Maxxam or any other
17 entity will do is threaten a \$68 million lawsuit to
18 get what they want. Nobody has said how Maxxam
19 arrived at the \$68 million figure. It appears to be
20 just enough over the County's liability limit to
21 cause the County Board members to take the
22 unprecedented move --

23 VICE CHAIRWOMAN MICHALSEN: Mr. Blecker, I
24 apologize for interrupting. The lawsuit that you're

1 discussing is not part of the hearing tonight; it is
2 not part of the record. We do have a full record
3 from the three months of hearings that all these
4 fine citizens attended dutifully as we hashed
5 through this material the first time. I would ask
6 that you keep your comments to the conditions.

7 You've made it clear that you would like a
8 condition somehow benefitting the Campton Hills
9 Police Department to cover perhaps their costs in
10 covering the calls, supporting the Kane County
11 Sheriff. Are there other conditions -- that is in
12 the record. I assure you, sir, those concerns are,
13 and I'd ask if you have additional concerns you let
14 us know so we can add those to the list.

15 MR. BLECKER: Condition 5 begs the question
16 who is going to write the post orders. Will it be
17 Maxxam? Will it be the County? Will it be the
18 sheriff? Will the Village of Campton Hills PD be
19 involved? Is the public going to be asked for their
20 input? Who is going to approve the orders? Who is
21 going to monitor these orders, and what are the
22 consequences if they are not followed?

23 Condition 6 is very interesting. It states,
24 "The special use is only for Maxxam Partners, LLC,

1 and is not transferrable to any other entity." If
2 you read further, Condition 9 states, "Maxxam Partners,
3 LLC, or its successors." Which is it? Is it a
4 special use for Maxxam only, or does the special use
5 run with the land for Maxxam's successors?

6 Item 7 is nothing special. I am sure the
7 State of Illinois would require the proper license
8 before Maxxam was allowed to open the largest
9 facility of this type in the state.

10 Item 8 leaves some questions. Who is to
11 determine what is reasonable effort to pursue the
12 accommodations? I think you've already asked that
13 question. Obviously, it would only be in the best
14 interest of Maxxam to attain these accreditations,
15 as it would only enhance their résumé and further
16 enhance their \$1,000-a-night charge. This does
17 nothing to address the first one of not being
18 detrimental and not endangering the public health,
19 safety, and morals.

20 In closing, let me remind you that the
21 previous Zoning Board and the Kane County Board had
22 found Maxxam did not meet the requirements to issue
23 the special use permit. These new conditions do not
24 change the facts that the Maxxam petition does not

1 meet each and every one of these conditions necessary
2 for the County to issue the permit.

3 Thank you for your time.

4 VICE CHAIRWOMAN MICHALSEN: Thank you for
5 your comments, Mr. Blecker.

6 Do we have anyone else representing units of
7 local government?

8 I see a hand. You, sir.

9 MR. KOLB: Did the record reflect that
10 Mr. Blecker was speaking on behalf of the Village?

11 VICE CHAIRWOMAN MICHALSEN: Yes. He opened
12 with that.

13 MR. JOHANSEN: Richard Johansen, Campton
14 Township clerk. My address is 3N522 Balkan Drive,
15 Campton Hills 60175.

16 MR. KOLB: Can we have the record reflect
17 that he is speaking on behalf of the township of --

18 MR. JOHANSEN: Of Campton Township, yes,
19 that is correct.

20 VICE CHAIRWOMAN MICHALSEN: Thank you.

21 MR. JOHANSEN: Good evening. I've looked at
22 the nine conditions the petitioner has brought
23 forth, and they are with one exception not new.

24 The Kane County Zoning Ordinance on when a

1 denial of a special use can be reheard is clear.
2 Section 4.8-4 reads, quote, "Effect of a Denial a
3 Special Use: No application for a special use which
4 has been denied wholly or in part by the County Board
5 shall be resubmitted for a period of one year from
6 the date of said order of denial except on the grounds
7 of new evidence or proof of change of conditions
8 found to be valid by the Zoning Board or the County
9 Board," closed quote.

10 The attorney for the petitioner was quoted
11 in last week's local newspaper saying he was going
12 to show up and rest his case. There is no new
13 evidence proposed in these nine new conditions,
14 and there has been no change of conditions. You
15 will be reviewing the previous record, and this
16 seems to me to fly squarely in the face of this
17 ordinance.

18 Now, of course, the County Board rescind
19 their vote from March as any legislative body can
20 do, but in order to permit the petitioner to
21 resubmit the same zoning case to you sooner than
22 12 months from March 8th, 2016, the County would
23 have to amend the language of the zoning ordinance,
24 and the County has not amended the text of the

1 zoning ordinance.

2 Ordinances passed by legislative bodies
3 apply to legislative bodies, and to be rehearing
4 this today is premature by three months unless you
5 think there is new evidence or change of conditions.
6 You won't find new evidence or proof of a change in
7 conditions in the conditional use permit conditions
8 list except for the first point, which is not
9 evidence and which is not a change of conditions.
10 This is old news.

11 But let's talk about that first point, the
12 intention of the petitioner to provide Kane County
13 with 1,000 doses of Narcan per year for 10 years.
14 There are two things you need to know.

15 First, I think it's important to frame up
16 the value of this offer for you. That question was
17 asked by one of your members. I went online on
18 Sunday to look up the retail price of Naloxone. You
19 can walk into any Rite Aid with a coupon and buy it
20 retail for \$22.32. I'm going to submit evidence of
21 that pricing into the public record when I finish
22 speaking. That's the retail price. I will submit
23 this document.

24 ///

1 (Exhibit D marked for identification.)

2 MR. JOHANSEN: The wholesale price is probably
3 about half of that, but Maxxam, their contribution
4 of 1,000 doses per year might come to 20- or \$22,000
5 in donated pharmaceuticals per year. That is a
6 pittance compared to the substantial detrimental
7 financial impacts this kind of facility will have on
8 nearby property values. It's a pittance compare to
9 the real financial strains and demands that a for-
10 profit facility of this huge size will have on the
11 encompassing fire protection district and on county
12 and nearby municipal police protective services.
13 The County can buy its own pharmaceuticals.

14 Second and far more important, promising to
15 donate Narcan to the County might be something, but
16 it certainly has nothing to do with the zoning
17 issues at stake here. There are only six factors to
18 consider here, and buying Narcan for the County
19 doesn't bear on any of these six zoning factors.
20 Buying Narcan for the County doesn't bear on whether
21 this 120-bed rehab center will diminish or impair
22 property values in the neighborhood. That's a
23 legitimate zoning issue. Buying Narcan for the
24 County is not germane to the question of whether

1 this huge new commercial enterprise generating, if
2 you believe the testimony of Kane County sheriff,
3 100 to 300 police and emergency calls per year will
4 negatively impact public health, safety, and comfort.
5 That's a legitimate zoning issue. Buying Narcan
6 doesn't address whether this proposal will impede
7 the normal and orderly development of surrounding
8 property. That's a legitimate zoning issue.

9 I will conclude there is no new evidence or
10 proof of change of conditions being presented at
11 this hearing tonight. The County Board has not
12 amended the text of their zoning ordinance to
13 properly rehear a special use application within
14 12 months of a denial. You really have no business
15 rehearing early, and I ask you to vote to deny it
16 once again.

17 Thank you.

18 (Applause.)

19 VICE CHAIRWOMAN MICHALSEN: If we could please
20 hold applause or any others crowd --

21 MR. JOHANSEN: And I have this exhibit. Who
22 do I give it to?

23 VICE CHAIRWOMAN MICHALSEN: You can give it
24 to Mr. VanKerkhoff, and if you could describe the

1 exhibit that you're handing over.

2 MR. JOHANSEN: Yes. The title at the top of
3 the page is Naloxone prices and Naloxone coupons,
4 Good RX" -- Good RX is the name at the top of the
5 page, and the drug is Naloxone, N-a-l-o-x-o-n-e. It
6 says, "Naloxone is a narcotic blocker. It is used
7 to treat narcotic drug overdose, compare opiate
8 antagonists," and it goes on, generic, syringe, and
9 so forth, and prices and coupons for two syringes of
10 1 milliliter of Naloxone .4 milligrams per milliliter.

11 Thank you.

12 VICE CHAIRWOMAN MICHALSEN: Thank you. Does
13 any board member have a motion as to whether to
14 accept this into evidence?

15 MEMBER LAKE: I do have a question whether
16 that's drawn off the Internet. I've read in previous
17 testimonies and hearings where random stuff off the
18 Internet may not be permissible.

19 MR. KINNALLY: Again, I think this goes to
20 the weight of the document. You can get a lot of
21 stuff on the Internet, and I think the gentleman has
22 brought this in good faith to the Board for
23 information. Whatever weight you want to give to
24 it, if any, you can do that. It clearly is hearsay

1 but I don't think -- just because it's hearsay it's
2 not necessarily something that you can't consider
3 here. Whatever weight you want to give it, that's
4 up to you.

5 VICE CHAIRWOMAN MICHALSEN: Thank you,
6 Mr. Kinnally.

7 Do we have any motion from any of the members
8 to move this into evidence?

9 MEMBER ARIS: I move that we place this into
10 evidence.

11 VICE CHAIRWOMAN MICHALSEN: Do I have a
12 second?

13 MEMBER LAKE: I'll second.

14 VICE CHAIRWOMAN MICHALSEN: Thank you. All
15 those in favor of moving the website printout from
16 www.goodrx.com/naloxone page 1 of 2 dated
17 January 10, 2017, into evidence as Exhibit D say aye.

18 (Ayes heard.)

19 VICE CHAIRWOMAN MICHALSEN: All those
20 opposed, same sign.

21 (No response.)

22 VICE CHAIRWOMAN MICHALSEN: Aye. 5 to 1 it
23 is admitted into evidence as Exhibit D.

24 ///

1 (Exhibit D admitted into evidence and
2 retained by the Board.)

3 VICE CHAIRWOMAN MICHALSEN: Do we have any
4 other representatives from local units of government?

5 Yes, sir.

6 MR. MILLER: Good evening. Joe Miller,
7 Campton Township trustee, 39W861 Barnside Court,
8 St. Charles or Campton Hills, whichever you prefer
9 60175. And to anticipate Mr. Kolb's question, yes,
10 I'm here speaking on behalf of Campton Township.

11 I do have a prepared statement. However, in
12 respect to the Board and what you're trying to
13 achieve, I'm going to probably less than artfully
14 edit on the fly. I'm just going to ask for,
15 although I'm operating on good faith, a little
16 leeway with that good faith as I try to strike out
17 things while I'm going along.

18 VICE CHAIRWOMAN MICHALSEN: Thank you.

19 MR. MILLER: I do feel a little compelled,
20 though, first, because it was read into the record
21 by Mr. Kolb, and he did do things such as typify the
22 people, the good people of Campton Township as a
23 bunch of NIMBYs. That is the farthest thing from
24 what we are. We are here objecting because we believe

1 fundamentally that their proposition, their business
2 proposition does not meet the proper zoning criteria.
3 It's that simple.

4 And as much as he would like us not to paint
5 his potential future patients in one light, we would
6 ask the same respect in return that he does not take
7 a broad brush and say that we are strictly against
8 this because we are somehow ignorant, have ill will,
9 or have some bias against the potential clients they
10 might serve. So I think that's mutual respect.

11 (Applause.)

12 VICE CHAIRWOMAN MICHALSEN: Thank you. If
13 we can please not cheer, and not jeer, and not hiss,
14 and not boo.

15 I appreciate that respectful statement, and
16 I ask that you continue.

17 MR. MILLER: Thank you.

18 Secondly, he did mention -- I really was not
19 hoping to go in this direction, but he did he mention
20 the data. He said, "Look, we've got all this data
21 that we have, and they presented lousy data."

22 I'm a scientist by background. I've been
23 trained as a scientist. So when it came time towards
24 looking and submitting certified data, I specifically

1 chose private pay remote locations, ones that do not
2 do methadone, ones that meet all the key criteria
3 that they claim that they will do. And on multiple
4 occasions after phone calls and certified data that
5 was submitted we can attest, and you can look in the
6 record and find that there will be high incidents of
7 phone calls, that there will be high incidents of
8 emergency response calls. That's just a fact.
9 That's not a disparagement of any of the patients
10 that might be there; it's a simple recognition
11 of the fact that this is a very intensive process
12 and that these people, while deserving compassion,
13 are also sometimes needing to be availed of response
14 services from emergency response centers. It's that
15 simple.

16 I treat this as a very logical kind of a
17 process. So to say that there will be no way that
18 they will have that number of calls just flies in
19 the face of everything that we have found. And I
20 look at that and I say, okay, at the same time they
21 want to compare themselves in the data that he
22 cited, and if you look in the record, they did not
23 share the same standard of data. That same standard
24 of data was not applied because in many cases the

1 data sources they chose -- for instance, the
2 Minnesota, here is a wonderful letter, but they
3 really don't do the same business model.

4 So I have objections to when that is brought
5 up today again to paint all the data as being bad
6 from our end but good from their end.

7 This kind of leads me to where I really do
8 want to go. I'm just disappointed at the cavalier
9 attitude at which the emergency response issue has
10 been treated because basically this would include
11 the future of potential safety of the patients they
12 claim they would like to serve.

13 Safety should be of the utmost concern to
14 everybody, and everybody should want to ensure they
15 thoroughly understand the issues, risks,
16 responsibilities, and industry best practices. So
17 when it comes down to it, despite several months of
18 their ability to actually present real data that
19 says they understand these concerns and here's how
20 they plan to mitigate at the time, instead they
21 present a list of these conditions of which are all
22 redundant to what came out during the original
23 testimony.

24 So I look at that and I say that just makes

1 no sense to me, and it kind of shows a lack of
2 planning on this issue. It really confuses me as to
3 why we're here and not concentrating on real issues
4 and concentrating on giveaways that occurred months
5 and months ago.

6 If I look at it, it really doesn't matter to
7 me as a citizen or any of the citizens that I
8 represent who will ultimately pay for a service.
9 What the citizens want to know is what happens when
10 they pick up the phone and the service doesn't show
11 up or has to come from another jurisdiction because
12 they're busy on yet another predictable call to the
13 Maxxam facility. That is what is paramount to the
14 citizens, not where the money is going to be
15 transferred from, whether from Bucket A to Bucket B
16 or to Bucket C. That really doesn't matter. So
17 that condition entirely misses the mark and the
18 points we've been trying to express for years now in
19 this process.

20 Mr. Kolb talked about the property values,
21 property values will come up over and over again.
22 His experts, our experts, as much as he would like
23 to denigrate the experts that we chose, and he had
24 to mention today so, unfortunately, I feel compelled

1 to also state I grew up right in the area where the
2 example came from where their expert presented. It's
3 nothing like this area. So if they want to turn
4 around and say whose doesn't stink, there's plenty
5 to go around on both ends, and I encourage you to
6 take a look at those studies in a little more
7 thorough detail.

8 Now to the heart of the matter. In regards to
9 their so-called Concession No. 6, as a professional
10 that has financed, owned, operated, and liquidated
11 businesses, any special use privilege afforded their
12 LLC can be bought, sold, become a subsidiary, or
13 experience a change in partnership or investors. As
14 a private shell, the County would never know who
15 was, is, or will be benefited by this business, and
16 you will never be able to prevent any of these
17 transactions or hold any individual accountable
18 because they will be shielded by a corporate veil.
19 This is yet another nonsolution offered by the
20 petitioner that does nothing to address the real
21 issues that will face this community. Worse that
22 meaning nothing, it pretends to provide assurances
23 that simply aren't there.

24 I guess there's probably just three more

1 comments before I leave. The first would be
2 something I've spoken with Mr. VanKerkhoff about.
3 If I read back into the record, one thing that they
4 did say they would promise to do and should still be
5 imposed upon them as a condition that it is very
6 typical of people undergoing treatment for these
7 types of addictions to be on continuing medications.

8 It was previously requested that in addition
9 to actually having the septic system certified
10 on-site at Glenwood that they have an EPA study
11 conducted on the impacts of any medications that
12 would be urinated out in the process that will be to
13 the surrounding area. That actually should be
14 studied and is a very critical component.

15 We have a lot of shallow aquifers around
16 this area. We've done credible studies that had
17 incredible data behind these aquifers, their
18 impacts, their flows, et cetera. We would even as a
19 township make those available to the County; we work
20 very well cooperatively with the County in this
21 respect. But I believe a study should be conducted
22 so we know the actual impact of these medications.
23 These medications have a half-life sometimes of
24 extended periods of years. That's why in some

1 municipalities they are finding that even the drinking
2 water -- people are picking up drugs in the drinking
3 water that they do not anticipate.

4 So other than that, in closing I basically
5 just want to let you know that as a township we look
6 at this, and we're saying if you reject this, it's
7 not rejecting a class of people. It's not a
8 disparagement to anybody. We treat people with
9 compassion in this area. All this is is simply a
10 clinical petition. Somebody is out here; they have
11 a business proposition; they want to make a bunch of
12 money. We are turning around and saying we think
13 all the disadvantages we think they'll bring to this
14 area, their lack of experience is going to be a
15 greater detriment than a benefit to the area.

16 All we're asking for is to say and look at
17 this data realistically, and I believe you'll come
18 to the exact same conclusion that we have that it
19 just does not meet any of the key criteria and that
20 you should reject it based on those clinical, just
21 purely logical reasons, not from any of these other
22 sideshow distractions.

23 Thank you very much for your time.

24 VICE CHAIRWOMAN MICHALSEN: Thank you.

1 Do we have any other representatives from
2 units of local government?

3 MR. O'DWYER: Michael O'Dwyer, trustee from
4 Campton Hills. Address is 40W085 Fox Mill Boulevard,
5 Campton Hills, Illinois.

6 I had prepared comments I was going to make,
7 but in light of trying to be brief like everyone else
8 has been asked to do I'm going to focus very quickly
9 on No. 6, the condition -- it's one of the shortest
10 conditions, but it could be one of the most important
11 conditions for the Board to consider. That's the
12 transferability of the ownership of Maxxam Partners.

13 Most of you either are familiar or may want
14 to become a little bit more familiar with the
15 structures of LLCs and the ability to transfer those
16 rather easily yet keep the initial entity in place.
17 That could easily be done here in this case. So
18 while this organization is coming before you making
19 all kinds of conditional promises, those promises
20 could be transferred to another organization that
21 this Board had no intentions of allowing to happen
22 and the promises potentially could not follow with
23 those. So please consider that very carefully as
24 you're considering the rest of the conditions that

1 are being put forth.

2 The other comment I'll make which sounds
3 very interesting, I find it fascinating that it's
4 not the Board putting the conditions on this
5 organization, it's them telling you what conditions
6 they're going to do. It seems backwards to me. It
7 seems to me you're the Board; you're the one that
8 should be telling them whether or not one, you're
9 going to consider it meets the conditions, and two,
10 if it does what conditions you're going to put on
11 them. It's like putting the cart before the horse.
12 It just doesn't seem appropriate for them to be
13 telling you, "Here's what we'll agree to." It seems
14 like it should work the other way around. I
15 strongly have you consider who is driving this
16 process to make sure it's something that you want as
17 a board.

18 Thank you.

19 VICE CHAIRWOMAN MICHALSEN: Thank you.

20 Anyone else from the audience that represents
21 a unit of local government?

22 MR. SHEPRO: Yes.

23 VICE CHAIRWOMAN MICHALSEN: I apologize,
24 Mr. Shepro. I thought you had concluded your

1 questioning before we took our break.

2 MR. SHEPRO: No, the last I heard was I said
3 I was going to ask Mr. Kolb some questions, and then
4 I had asked you to consider adjourning the hearing,
5 and that was the last I heard.

6 VICE CHAIRWOMAN MICHALSEN: I apologize.
7 We'll hear from --

8 MR. SHEPRO: But I'll defer to the others.

9 VICE CHAIRWOMAN MICHALSEN: -- this
10 gentleman, and then we'll let you take your turn.

11 MR. CARTEE: James Cartee. I live at
12 41W815 McDonald Road. I'm a trustee for Plato
13 Township, and I would like to address the Condition
14 No. 7 just briefly about the State licensing.

15 It's not the job of the State of Illinois to
16 evaluate whether or not special use permits should
17 be approved on ag zoned parcels for rehab and detox
18 facilities. What is before you is not whether such
19 a facility will meet the minimum requirements that
20 the State sets to operate such a business. Rather
21 what is before you is whether the operation of this
22 business which is a for-profit should be permitted
23 on this particular unincorporated farming zoned
24 parcel without even changing the zoning of the

1 parcel to a business use. The State leaves that to
2 the good judgment of you guys.

3 The State of Illinois is not going to
4 consider the impact at putting one of the largest
5 residential rehab facilities in the state on a
6 farm-zoned parcel in a semirural corner of the
7 county will have on adjacent property values.
8 That's already being addressed. The State will not
9 consider the impact of the facility and several
10 hundred emergency calls per year on our slow moving,
11 curving, rural roads that go up and down hills that
12 have long stretches of no-passing zones with low
13 shoulders. It's not the State's job to determine
14 whether there should be significant fencing
15 surrounding this facility or whether it raises
16 reasonable public safety, comfort, general welfare,
17 and enjoyment concerns. It is not the State's job
18 to discern whether the impacts of hundreds of police
19 and EMS calls are something that the financially
20 strapped Fox River and Countryside Fire Protection
21 District can handle without leaving local residents
22 affected by that large volume of aid to rely on
23 mutual aid from Elburn or Pingree Grove across its
24 38-square-mile geography.

1 These are fundamentally local decisions, and
2 they are your heavy responsibilities. The State
3 simply won't and can't replace you in your capacity
4 as a local citizen familiar with our local zoning
5 ordinance and blessed with good judgment in deciding
6 not to site this facility on this particular parcel.

7 Thank you very much for your time.

8 VICE CHAIRWOMAN MICHALSEN: Thank you.

9 Mr. Shepro.

10 MR. SHEPRO: Thank you. And, for the
11 record, again, I'm appearing on behalf of the Fox
12 River and Countryside Fire Rescue District, which is
13 the fire district that serves this property.

14 I have some questions for Mr. Kolb, and then
15 I also have two witnesses. I don't know if you want
16 to proceed with that tonight or what we want to do.
17 I'm prepared to go forward.

18 VICE CHAIRWOMAN MICHALSEN: Who are your
19 two witnesses?

20 MR. SHEPRO: I have the president of my fire
21 district who will be testifying to events that have
22 occurred since his previous testimony almost a year
23 ago with respect to the condition of the district
24 and also our Fire Chief John Nixon.

1 MR. KINNALLY: Madam Chair, I think as I
2 understand what you ordered before that Mr. Shepro
3 was going to cross-examine Mr. Kolb, and since it
4 looks like we're going to be coming back here later
5 this week, if Ken has his two witnesses available
6 for that evening, then I think that would probably
7 be the order that we would go. And maybe we can
8 leave a little early tonight or take some more
9 testimony from the public, whatever you want to do,
10 but it would seem to me that you've indicated to
11 staff that they're to prepare an order, and they'll
12 do that the next day or so, see what kind of
13 response we get. But it looks like we're coming
14 back once, if not another time, and we'll find out
15 what the petitioner's response is to the order
16 that's issued. If they persist with that, then we
17 can decide how we want to proceed at that time.

18 MR. SHEPRO: That would be acceptable to me.

19 MR. KINNALLY: Would that be acceptable?

20 MR. SHEPRO: Yes.

21 VICE CHAIRWOMAN MICHALSEN: I would just
22 like to take a quick poll of the Board members.
23 Does any Board member have any concern or questions
24 they want to ask about that way of proceeding?

1 (No response.)

2 VICE CHAIRWOMAN MICHALSEN: Is everyone okay
3 with reserving those witnesses?

4 MR. SHEPRO: Right. But then I will proceed
5 with Mr. Kolb now?

6 VICE CHAIRWOMAN MICHALSEN: Correct.

7 MR. SHEPRO: All right. Very good.

8 ANDREW KOLB,
9 having been duly sworn, testified as follows:

10 EXAMINATION BY COUNSEL FOR OBJECTOR FOX RIVER AND
11 COUNTRYSIDE FIRE PROTECTION DISTRICT

12 BY MR. SHEPRO:

13 Q Mr. Kolb, with respect to your proposed
14 Condition 1, how did Maxxam decide on that number
15 and that time frame?

16 A Going back in time, I remember discussions
17 relative to a newspaper article about Kane County's
18 need for this particular drug, and it was just
19 discussed that it would be a nice gesture to assist
20 with providing that.

21 Q So it was not geared to any particular need
22 analysis or cost analysis?

23 A Correct. Nor was it requested by Kane County
24 in any manner.

1 Q With respect to Condition No. 2, as someone
2 who has done much in the way of zoning, wouldn't you
3 agree that that is a -- whether or not that's stated
4 as a condition, that is a statement of the law with
5 respect to a special use?

6 A You're asking my legal opinion?

7 Q Yeah.

8 A It depends on how the special use ordinance
9 would be drafted on a case-by-case basis.

10 Q But, generally, a special use cannot be
11 expanded beyond the terms of the special use without
12 a new application and hearing?

13 A Depends on what municipality you're looking
14 at for a special use ordinance.

15 Q With respect to Condition No. 3, has the
16 applicant done any research in connection with that
17 condition to determine whether or not you believe
18 that it is actually an enforceable condition?

19 A Legally enforceable?

20 Q Yes.

21 A By whom?

22 Q By anybody.

23 A Have we researched the legal enforceability
24 of that question?

1 Q That's my question.

2 A I believe so, yes.

3 Q Would you share that research with
4 Mr. Kinnally and the other State's attorneys to
5 assist in their work?

6 A That would be work product. I'm not sure.

7 Q Well, then let me ask you this: Here today
8 as a sworn witness and on behalf of your client do
9 you believe that this condition is enforceable by
10 the County?

11 A I do.

12 Q All right. With respect to Condition No. 4
13 I'll ask you the same question. Have you researched
14 whether or not this condition is in your view
15 enforceable by the County or by anybody else?

16 A No.

17 Q And what is the basis for your proposing
18 that condition?

19 A The economic reality of this project is that
20 the site is amenitized to a degree where -- it could
21 not financially be supported by a State of Illinois
22 subsidy-type payments. Our state is in many respects
23 quite behind on many of its reimbursement rates for
24 many different public services, and to support a

1 facility and infrastructure like this on a public
2 basis would be economically impossible. So the --

3 Q So no matter how few the number of nonprivate
4 pay patients were?

5 A That's correct.

6 Q So you couldn't even take one State of
7 Illinois Medicaid patient without --

8 A It's not our business plan.

9 Q All right. But you would agree that a
10 business plan is different than an enforceable
11 condition in a zoning ordinance?

12 A We believe the condition to be enforceable.

13 Q You just said you didn't do any research
14 on it.

15 A We believe it to be enforceable. You asked
16 me if I researched it.

17 Q Did anybody on behalf of Maxxam research it?

18 A I do not know that answer.

19 Q All right. I would just request that if you
20 have anything that would be of assistance to the
21 Board or to the State's Attorneys that it would be
22 helpful to share that information with them.

23 With respect to -- well, we covered some of
24 these already.

1 All right. With respect to Condition No. 9,
2 how was that condition formulated?

3 A There were concerns -- we believe the
4 premise that this facility will generate police and
5 fire calls is inherently violative of FHA to begin
6 with, but putting that argument aside, there were
7 concerns during the proceedings there would be left
8 with certain budgetary deficits or an inability for
9 the fire protection district to be compensated. So
10 what the facility is saying is that if the patient
11 needs an ambulance, essentially that the facility
12 will guarantee that this bill gets paid so that
13 there's never a situation where the costs of EMS are
14 not covered. We shouldn't have that worry.

15 So we're essentially saying the facility
16 itself will step up, for instance, if a patient is
17 not. We don't anticipate that to be the case because
18 the residency agreements will contain certain
19 obligations, and the patients are vetted financially
20 as well as medically to make sure they're appropriate,
21 but the idea was that the facility itself will
22 guarantee that payment to make sure that EMS is
23 covered.

24 Q How do you envision that provision would be

1 administered by the County if it were ultimately
2 incorporated into the special use ordinance?

3 A We could work through that, but I would
4 imagine if there was an invoice that was outstanding
5 for a period of time -- or there could be direct
6 billing to the facility itself. We would have to
7 set up the protocol there.

8 Q Would you agree that this condition as is
9 presently stated does not adequately address how
10 that would be carried out or enforced?

11 A I do not.

12 Q Have you been made aware of any other
13 concerns expressed by the fire district as to the
14 impact of your client's proposal on its operations
15 and facilities?

16 A Ken, I was at eleven public hearings. Yes,
17 I listened to the public testimony.

18 Q Outside of what was presented at the public
19 hearing, could you perhaps help the Board with
20 explaining what interaction you've had with the fire
21 district in order to reach an accommodation that
22 would recognize the needs of the district?

23 A What is it that you're asking?

24 Q I guess I'm asking, which is what my

1 witnesses will testify to, is that there's been
2 virtually no contact with your client despite
3 repeated requests by the fire district to meet with
4 you, to meet with your client, to meet with us and
5 to discuss what and how the petitioner is prepared
6 to deal with our concerns. That's my question.

7 A The petitioner is prepared to pay your bills,
8 and I think that's the condition of the approval.
9 If there's a bill, we'll pay it.

10 Q But you're not prepared to do anything else
11 to ameliorate the impact on the fire district's
12 equipment, facilities, or operations; is that correct?

13 A Are you willing to state on the record what
14 it is that you're demanding?

15 MR. SHEPRO: I think we furnished that to you.
16 I'd be happy to do that. I don't have it in front
17 of me, but I'll certainly bring that back at the next
18 opportunity, and I think my witness will have
19 something to say on that subject. I'll furnish it
20 to you before the next hearing. I mean, we've
21 previously given you a written proposal or we gave
22 it to Judge Brown. I don't know what happened to it.

23 MEMBER FALK: Has that been brought forth
24 to us?

1 VICE CHAIRWOMAN MICHALSEN: Was that
2 previously made part of the --

3 MR. SHEPRO: It was not. It was not. We
4 furnished it to them and they didn't respond, but we
5 did not formally present it as suggested conditions
6 at that time.

7 MR. KOLB: We believe that Condition No. 9
8 will satisfy this element. If there is an expense
9 incurred, the expense is passed on, and the fee is
10 guaranteed by the facility.

11 MR. SHEPRO: Not to belabor it at this
12 point, but if you have read the record you know that
13 our testimony indicated that there were concerns
14 that the fire district had far beyond simply the
15 cost of providing ambulance service, and our
16 witnesses will get into that. But we are concerned
17 about the impact on equipment which is not covered
18 by ambulance fees and the impact on service to the
19 other residents of the community without some
20 additional accommodation by the petitioner.

21 And we've made clear to the petitioner that
22 whatever agreement, stipulation is placed as a
23 condition for us in the ordinance, if it turns out
24 that after any period of operations it appears that

1 our fears were not justified, then we would certainly
2 understand that whatever they've agreed to do then
3 would be reduced or eliminated, but right now we
4 have no evidence on which to base their contention
5 that there will be no impact.

6 But, again, I think we're getting ahead of
7 ourselves, and we will be presenting that through
8 Chief Nixon's testimony.

9 VICE CHAIRWOMAN MICHALSEN: Did you have any
10 additional questions?

11 MR. SHEPRO: This is all I have for Mr. Kolb.

12 MR. KINNALLY: I have one. I would ask that
13 Mr. Shepro bring that proposal. Because we don't
14 have that as part of the record, and I think that's
15 information that the Board would want to know.

16 And I would like to know whether or not,
17 given the breadth of Condition No. 9 the way I read
18 it, is Maxxam willing to post a bond to guarantee
19 payment with respect to that obligation based on the
20 proposal that Mr. Shepro would bring forward, which
21 would seem to me would allay some of the fire
22 district's fears with respect to payment?

23 I just throw that out at this time,
24 Madam Chair.

1 VICE CHAIRWOMAN MICHALSEN: Thank you. Do
2 you have a comment now about Mr. Kinnally's question
3 concerning a bond, or would you need to consult with
4 your client?

5 MR. KOLB: Is this Board asking for the
6 posting of a performance bond as part of this
7 condition?

8 MR. KINNALLY: I didn't say that. I said I
9 wanted to know whether or not once the proposal is
10 made by Mr. Shepro on behalf of his client with
11 respect to the amounts -- I'm not asking for a
12 performance bond. I'm asking for a bond due to the
13 fact in Condition No. 9 you indicate that at some
14 point Maxxam may have some successors.

15 So I think one of the concerns for the ZBA
16 would be the ongoing obligation in view of the fact
17 that limited liability company members can change
18 quite easily. That's my point. I just throw that
19 out. This is supposed to be a give-and-take
20 proposition as I understand it, as I understand the
21 Fair Housing Amendment Act and our ordinance, so I
22 throw that out for consideration by the Board and
23 the parties.

24 Thank you, ma'am.

1 VICE CHAIRWOMAN MICHALSEN: Thank you. If I
2 could make it clear, Mr. Kolb, you do not have to
3 give us an answer tonight on the bond. I want to be
4 clear that that's something you should take back to
5 your client as part of what you take back from our
6 discussion here tonight so that if you're trying --
7 if your client should choose to comply with the order
8 to compel that was issued earlier tonight that they
9 would be prepared to discuss that, and it wouldn't
10 be coming out of left field because you would have
11 apprised them that that was a concern brought out by
12 the State's Attorney.

13 Mr. VanKerkhoff.

14 MR. VANKERKOFF: If I as your zoning
15 enforcement officer could remind the Zoning Board,
16 as well as units of government and members of the
17 public that this provision up there in conditions
18 and guarantees as I understand it and as was brought
19 as a concern of one of the trustees of the village
20 is that these really are conditions and guarantees
21 that are usually initiated by the Zoning Board.

22 In this case it was not, as I stated before,
23 considered by the previous Zoning Board. It was
24 initiated by the petitioner, but these are the

1 Zoning Board's and ultimately the County Board's
2 conditions not necessarily needing to be agreed upon
3 by the petitioner, conditions that the Zoning Board
4 and subsequently the County Board deem to be in
5 compliance with the section of the zoning ordinance
6 as being necessary to prove that conditions
7 stipulated to are being able to be complied with.

8 VICE CHAIRWOMAN MICHALSEN: Thank you for
9 that reminder, Mr. VanKerkhoff.

10 Mr. Shepro, am I correct in understanding
11 your presentation is done at the time?

12 MR. SHEPRO: As we discussed, yes, my
13 presentation is done except for bringing my
14 witnesses back and submitting the documentation that
15 Mr. Kinnally has requested.

16 VICE CHAIRWOMAN MICHALSEN: Thank you.

17 MEMBER FALK: Mr. Shepro, one question I have
18 for you is, how many times did you reach out to --
19 was it once?

20 MR. SHEPRO: Oh, no, it was multiple times.
21 It started in December of 2015, and there were
22 telephone conversations, a few meetings in the back
23 here during recesses, e-mails. I think at one point
24 Judge Brown lost what I gave him, and we resent it

1 to him. I would say it's been at least seven or
2 eight occasions.

3 MEMBER FALK: And you'll give us a listing
4 of --

5 MR. SHEPRO: I'll be happy to provide that.

6 MEMBER FALK: They've never responded to any
7 of those?

8 MR. SHEPRO: Yes.

9 MEMBER FALK: Is that my understanding?

10 MR. SHEPRO: Yes.

11 MR. KOLB: I'd like the record to reflect
12 that the applicant was at various meetings with
13 respect to fire protection district, and I'd like
14 the record to reflect that conversations were had
15 between the lawyers present in this room where
16 written proposals were exchanged.

17 The idea of compensating the fire protection
18 district in a certain way is violative of the FHA.
19 We have to cover the cost of EMS services, but there
20 is a line there that's crossed I think when we step
21 into the realm of other things.

22 So I think there's been some misinterpretation
23 and certainly misrepresentation regarding our
24 willingness to work with the fire protection service.

1 We certainly stepped up to the plate and guaranteed
2 our fees and expenses. That's what we legally can do.

3 MR. SHEPRO: I don't want to belabor the
4 point, but this is the very first time that Mr. Kolb
5 has suggested the reason they couldn't talk about
6 those things with us is because they thought it
7 violated the FHA. Before that it was just we were
8 too greedy.

9 VICE CHAIRWOMAN MICHALSEN: Thank you.

10 Mr. VanKerkhoff.

11 MR. VANKERKOFF: I was just going to suggest
12 that if Mr. Shepro was done that we move on to
13 testimony from adjacent property owners and members
14 of the public, also suggest that you help keep the
15 focus on the topic of conditions, that if there's
16 any testimony out there that is not repetitive but
17 would be new information for the Board or conditions
18 that they should be considered.

19 Maybe you can get an indication of how many
20 folks out there would like to -- if you can address
21 that, you can maybe determine the scope of the evening
22 and what gets carried over to the next hearing.

23 Thank you.

24 VICE CHAIRWOMAN MICHALSEN: Thank you,

1 Mr. VanKerkhoff.

2 By a show of hands can I see which member of
3 the general public would like to make comments that
4 you don't feel have already been made by other
5 members of the public tonight?

6 All right. I'm seeing quite a few hands here.

7 AUDIENCE MEMBER: Plus a lot of people have
8 already left who wanted to talk.

9 VICE CHAIRWOMAN MICHALSEN: Certainly.
10 Please keep in mind we certainly appreciate everyone
11 being here this evening. That includes everyone,
12 all the participants in the actual petition and, of
13 course, the public that has come to let us know
14 their thoughts.

15 We want to be respectful of everyone's time,
16 and we are at quarter to 10:00. Do we have a
17 general feeling from the Board if we want to end
18 now, or at 10:00, or at some later time? If we
19 could have some discussion so I know where my Board
20 members --

21 MEMBER LAKE: My opinion is I'd like to give
22 some of the audience a chance to speak so that we
23 have a better understanding of future things we may
24 need to address on the 12th.

1 VICE CHAIRWOMAN MICHALSEN: Anybody else?
2 Do we want to limit it to a certain number or try to
3 accommodate everyone that is present tonight knowing
4 that we will have other hearings at which public
5 comment will be taken?

6 MEMBER MELGIN: I think you should limit it
7 to a time.

8 VICE CHAIRWOMAN MICHALSEN: Per speaker?

9 MEMBER MELGIN: No, a time.

10 MEMBER MILLEN: 5, 10 minutes.

11 VICE CHAIRWOMAN MICHALSEN: I'm sorry. I
12 didn't hear your comment.

13 MEMBER LAKE: I would rather suggest not,
14 but if you're going to limit it to five minutes.

15 MEMBER ARIS: I also suggest that we set a
16 time limit for this meeting to conclude knowing that
17 we hope people can come back on Thursday and join us
18 and provide more input on the new issues that have
19 come up so that people know, all right, we're going
20 until this time, and that we will be meeting on
21 Thursday, and people themselves can judge do they
22 want to hang out here until 10:00 or 10:30 or
23 whatever, or do they want to come back on Thursday,
24 recognizing that the public's time is valuable time

1 and that I don't want to put limits on that, as well.

2 VICE CHAIRWOMAN MICHALSEN: Certainly. I'd
3 ask if staff has any recommendations since this is
4 new for us on the best way to proceed with the
5 number of people that would still like to speak.

6 MR. KINNALLY: My recommendation is -- maybe
7 I'm just old but after about 9:45, having done this
8 and having gone to 10:30 before on different
9 occasions, I think a three-hour limit is pretty much
10 the limit when you start at 7:00.

11 MR. KOLB: Hear, hear.

12 MR. KINNALLY: And I think the Board wants to
13 hear from people. I know people have probably left.

14 So I would suggest that we call it a day
15 tonight -- we're close to 10:00 -- with all due
16 respect to all of your opinions we come back on
17 Thursday or whatever the next date is, Mr. Shepro
18 can put his witnesses on, we can hear from Mr. Kolb
19 as to his responses to the Board's inquiries, and
20 then we can start with the testimony or comments
21 from the people that are in the audience, and if we
22 have to go to another date to hear them, then we can
23 do that, as well.

24 That's kind of the way we did them in the

1 past. I think 10:00 is kind of the curtain call, so
2 to speak. So that's my recommendation.

3 VICE CHAIRWOMAN MICHALSEN: Thank you,
4 Mr. Kinnally.

5 How would the Board like to proceed? Should
6 we end it here and invite everyone back on the 12th,
7 or would you like to take some comments until
8 perhaps 10:00 p.m. and then adjourn?

9 MEMBER LAKE: Madam Chair, if we could just
10 give Mr. Kolb our comments regarding the conditions
11 that he presented tonight so he has an idea of how
12 we're thinking about this. I also wanted to ask
13 Mr. Kolb two questions, if I may.

14 VICE CHAIRWOMAN MICHALSEN: Okay.

15 MEMBER LAKE: Mr. Kolb, the first question
16 I'd like to ask of you is while Mr. Shepro was
17 questioning you, you referred to a business plan.
18 Is that business plan available? You said it is not
19 in your business plan.

20 MR. KOLB: Business model.

21 MEMBER LAKE: You said plan.

22 MR. KOLB: I meant model. I apologize.

23 MEMBER LAKE: What documents towards a
24 business model do you have?

1 MR. KOLB: We have created over the course
2 of many months a comprehensive record in the case
3 regarding zoning, and we believe it to be exhaustive
4 coverage of all of the elements of a special use,
5 all of the requirements, and we rest on the evidence
6 we've presented.

7 If you're asking us to submit a formal business
8 model complete with consolidated financial
9 statements and anticipated revenues for this Board
10 to consider, you can order that to be compelled,
11 but's not appropriate in a zoning case, and we rest
12 on the record we've created.

13 MEMBER LAKE: All right. The second
14 question -- I just got distracted, so I apologize
15 for that. Yeah. I've lost my second question. I
16 should have written it down.

17 Going into the conditions that you presented
18 before the Board for us to consider, it is my
19 opinion and it may be of others that No. 1 doesn't
20 belong there, you know, that it's just not practical
21 for this. I welcome other Board members' opinions
22 on that.

23 And I was thinking that it may appease more --
24 you know, answer my questions if you were to further

1 on these -- like on No. 2, "The site plan including
2 the petition does not propose expansion" -- that one
3 is pretty clear, but the ones where you speak to
4 certification and everything else, if you can just
5 complete the sentence as it will be modeled
6 according to what standard and monitored according
7 to what boards, so you give us measurables as to how
8 it will be, you know, put forward.

9 MR. KOLB: No. 8?

10 MEMBER LAKE: Most. In helping the State's
11 Attorney determine how these will be measured and
12 monitored.

13 And No. 9, I feel that if that is moving
14 toward any kind of acceptability that the district
15 should be able to bill Maxxam directly. Whether or
16 not you get compensation from your clients is up to
17 you, that they should not have to work through you
18 as a third party.

19 MR. KOLB: Thank you.

20 MEMBER LAKE: My comments.

21 VICE CHAIRWOMAN MICHALSEN: Do we have any
22 other comments or questions from the Board right now
23 for the petitioner that came up during the course of
24 this evening just from the ZBA members?

1 MEMBER MELGIN: I have one comment. I agree
2 with what you're saying. I think a lot of these
3 conditions just need more specifics. So if we're
4 trying to determine if they're enforceable, it's
5 you'll do something by when and if not then what.

6 So if there's, you know, a condition that
7 you're going to pay something, that it would pay
8 after a certain amount of time, and if that doesn't
9 happen, then what will occur that will show that you
10 will pay it, so some sort of corrective action.

11 On the first one I'm not sure. If you can
12 be more specific in how that does apply, and it
13 could be to the welfare part of what we're considering.

14 MR. KOLB: That's the idea. There's an
15 identified need in Kane County -- it was public --
16 that there are people suffering from these conditions
17 and that this particular drug was in high demand.
18 And while I disagree with the exhibit that was
19 promulgated, this was an attempt to make the drug
20 available to the County to assist with residents who
21 need it, nothing more.

22 MEMBER MELGIN: Thank you.

23 VICE CHAIRWOMAN MICHALSEN: Any other comments
24 from the Zoning Board?

1 (No response.)

2 VICE CHAIRWOMAN MICHALSEN: At this time I
3 would ask if anyone has a motion to adjourn -- no, I
4 apologize. I'm new at this.

5 MR. KINNALLY: Move to continue the hearing
6 to the next date and time to, I think it's Thursday.

7 VICE CHAIRWOMAN MICHALSEN: Do I have
8 someone to make a motion to adjourn tonight's
9 meeting and continue it to this coming Thursday,
10 January 12, at 7:00 p.m. at this same location?

11 MEMBER ARIS: I so move.

12 VICE CHAIRWOMAN MICHALSEN: Do I have a
13 second?

14 MEMBER MILLEN: I'll second.

15 VICE CHAIRWOMAN MICHALSEN: All those in
16 favor say aye.

17 (Ayes heard.)

18 VICE CHAIRWOMAN MICHALSEN: Opposed,
19 same sign.

20 (No response.)

21 VICE CHAIRWOMAN MICHALSEN: Motion passes.

22 (Off the record at 9:56 p.m.)

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CERTIFICATE OF SHORTHAND REPORTER

I, Paula M. Quetsch, Certified Shorthand Reporter No. 084-003733, CSR, RPR, 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 23rd day of January, 2017.

My commission expires: October 16, 2017

Notary Public in and for the State of Illinois