

VILLAGE OF CAMPTON HILLS

**A RESOLUTION OPPOSING MAXXAM PARTNERS, LLC
PETITION TO KANE COUNTY FOR A SPECIAL USE PERMIT**

WHEREAS, in August of 2015, Maxxam Partners, LLC (“*Maxxam*”) filed Petition No. 4364 (“*Maxxam Petition*”) requesting that the County approve a special use permit to allow it to use and operate a private-pay alcoholism and substance abuse treatment facility (“*Facility*”) on property located at 41W400 Silver Glen Road in unincorporated Kane County and zoned in the F Farming District (“*Property*”); and

WHEREAS, the County has scheduled Maxxam’s petition for a zoning board of appeals (“*ZBA*”) hearing on November 17, 2015, at 7:00 p.m.; and

WHEREAS, the County sent a notice to the Village of Campton Hills regarding the proposed hearing on Maxxam’s petition, which notice was dated October 15, 2015; and

WHEREAS, in its notice, the County provided the Village with 30 days to provide comments to the County on the Maxxam Petition; and

WHEREAS, however, the Village did not receive the County’s notice until October 26, 2015, providing little time to the Village Board to carefully review Maxxam’s request for relief and provide comments on the Maxxam Petition, there being only one Village Board meeting before the ZBA hearing; and

WHEREAS, notwithstanding the late notice, the Village Board desires to adopt and present to the County a formal resolution of the Village Board to oppose the Maxxam Petition based upon (i) the County’s failure to follow its own Zoning Ordinance procedures for approving a “similar” use, (ii) Maxxam filing an application for the wrong form of zoning relief, and (iii) Maxxam’s proposed Facility not complying with the standards set forth in the County Zoning Ordinance for granting a special use permit, as discussed more fully in this Resolution; and

WHEREAS, because the Facility is not listed as a permitted or special use in the F District, Maxxam applied for a special use permit for the Facility under section 25-8-1-2(DD) which states as follows:

DD. Other uses similar to those permitted herein as special uses.

WHEREAS, Section 25-8-1-2(DD) does not identify who is responsible for determining what uses are “similar” to the listed special uses or how “similar” uses are to be determined; and

WHEREAS, however, section 25-5-15 of the Zoning Ordinance does identify the person responsible for making such determination:

25-5-15: INTERPRETATION OF USE LISTS:

The enforcing officer may allow land uses which, though not contained by name in a zoning district list of permitted or special uses, are deemed to be similar in nature and clearly compatible with the listed uses. However, such nonlisted uses shall not be approved until the application for such use has been reviewed by the county development department staff and a favorable report has been received by the enforcing officer. The nonlisted uses which are approved shall be added to the appropriate use list at the time of periodic updating and revision.

WHEREAS, according to section 25-5-15, before a use can be deemed “similar” to the listed special uses in the F District, the following three things must happen:

1. County development department staff must review the application for the proposed use.
2. County staff must transmit a favorable report to the enforcing officer.
3. After receipt of the favorable report from staff, the enforcing officer must approve adding the nonlisted “similar” use to the special use list in the respective zoning district (in this case, the F-District); and

WHEREAS, thus, until the enforcing officer has approved the Facility as a nonlisted “similar” use, Maxxam’s petition for approval of a special use for the Facility cannot and should not be scheduled for hearing because the Facility is simply not an authorized special use in the F-District until the enforcing officer has approved it as a similar use; and

WHEREAS, it is the Village’s understanding through conversations with the Director of the Kane County Development and Community Services Department (who also serves as the County’s enforcing officer), that no such determination has been made and the ZBA would be responsible for determining whether the Facility was a “similar” use to listed special uses in the F District; and

WHEREAS, however, according to the County’s own Zoning Ordinance, the responsibility for approving a “similar” use is the enforcing officer’s not the ZBA; and

WHEREAS, it is the Village’s position that the County violated its own Zoning Ordinance in scheduling Maxxam’s special use petition for a public hearing without first going through the proper procedure for approving the addition of a nonlisted “similar” special use to the F District regulations; and

WHEREAS, as a result, the ZBA has no authority to hear Maxxam’s petition for a special use that (i) is not listed in the Zoning Ordinance as a special use or (ii) has not yet been approved as a “similar” nonlisted use pursuant to section 25-5-15; and

WHEREAS, by skipping a necessary step in the process, the County calls into question all future proceedings on Maxxam’s petition and exposes the County to the risk of a procedural challenge to any future decision on that petition; and

WHEREAS, even if the County had followed its Zoning Ordinance and the enforcing officer had made the determination that the Facility was a “similar” use to one of the listed special use permits authorized in the F District prior to scheduling this for a ZBA hearing, it is the Village’s position that this determination (had it happened) would not be consistent with Illinois zoning law because the proposed Facility is not a “similar” use to any of the listed special uses in the F District (including a hospital); and

WHEREAS, as an initial matter, it is not clear *what* listed special use the Facility would be deemed similar to since County staff has not made the required determination; and

WHEREAS, the Maxxam Petition suggests that the proposed Facility is similar to a hospital or a nursing and convalescent home; however, as discussed above, it is County staff that must make the determination as to whether the Facility is “similar” to a listed special use in the F District, not Maxxam; and

WHEREAS, in any event, an alcoholism and substance abuse treatment facility is not similar to a hospital or a nursing and convalescent home for a number of reasons, including the following:

1. The definition of a “hospital” under the County’s Zoning Ordinance does not contemplate the type of residency proposed by the Maxxam Facility.
2. Alcoholism and substance abuse treatment facilities, hospitals, and nursing homes are all regulated under completely different statutes under Illinois law.
3. Illinois courts have acknowledged that nursing homes are distinct from substance abuse facilities. *See Patella v. Leyden Family Service & Mental Health Center*, 79 Ill.2d 493 (1980).
4. Nursing homes are subject to different reporting and compliance requirements under Illinois law, including special testing and licensure requirements.

WHEREAS, because the Facility is not a “similar” use to any of the listed special uses in the F District (including hospitals or nursing and convalescent homes), Maxxam should have applied for a text amendment to add an alcoholism and substance abuse treatment facility as an authorized special use permit in the F District; and

WHEREAS, even if Maxxam had applied for a text amendment to add an alcoholism and substance abuse treatment facility as an authorized special use permit in the F District, it is the Village’s position that this proposed use is not consistent with the underlying purpose and intent of an agricultural zoning district such as the F District nor is the use consistent with Kane County’s 2040 Plan, which would be more appropriately addressed through a rezoning of the Property to a more appropriate zoning district; and

WHEREAS, if Maxxam had applied for the appropriate form of relief, the Village and other taxing bodies and neighboring property owners would have had additional legal rights to object to the zoning amendment (including the right to protest a zoning amendment under section 25-4-7-3 of the Zoning Ordinance and triggering a super majority vote of the County Board to

approve the requested relief) that are not available because Maxxam did not file for the appropriate zoning relief for its proposed Facility; and

WHEREAS, even if the County had followed its own ordinances and Maxxam had applied for the appropriate zoning relief, it is the Village's position that the proposed Facility simply does not meet the standards for granting a special use permit as set forth in Section 25-4-8-2 of the County's Zoning Ordinance; and

WHEREAS, specifically the proposed Facility does not meet the standard that provides that the establishment, maintenance or operation of the special use will not be unreasonably detrimental to or endanger the public health, safety, morals, comfort or general welfare; and

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

WHEREAS, in addition, the proposed Facility does not meet the standard that it will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.

THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF CAMPTON HILLS, KANE COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1. The recitals listed above are incorporated into this Resolution as if fully set forth in this Section 1.

SECTION 2. The Village Board opposes the Maxxam Petition because the County did not follow its own Zoning Ordinance in processing the application and scheduling it for a public hearing. Specifically, the Zoning Enforcing Officer did not approve adding an alcoholism and substance abuse treatment facility as a special use in the F District, a prerequisite to scheduling and holding a public hearing on a "similar" use application. Because the procedure involved in processing the Maxxam Petition is flawed, the ZBA has no authority to hear or make a recommendation on Maxxam's request for a special use permit for its proposed Facility.

SECTION 3. The Village Board also opposes the Maxxam Petition because Maxxam failed to apply for the appropriate relief in the form of a text amendment to add the Facility as an authorized special use in the F-Farming District. Because a private pay-alcoholism and substance treatment facility is not a "similar" use to any listed special use in the F District, is not consistent with the underlying purpose and intent of an agricultural zoning district such as the F District, and is inconsistent with Kane County's 2040 Plan, Maxxam's request for approval of the Facility would be more properly addressed through a rezoning of the Property to a more appropriate zoning district. As a result, the Maxxam Petition should not move forward to the ZBA for hearing or recommendation, as the requested relief is not appropriate to authorize the proposed Facility.

SECTION 4. Even if the County had followed its Zoning Ordinance in processing the Maxxam Petition and Maxxam had applied for the appropriate zoning relief, the Village Board opposes the Maxxam Petition because the Petition for the proposed Facility does not meet the special use permit standards set forth in Section 25-4-8-2 of the County Zoning Ordinance. The ZBA should find that the proposed Facility does not meet all of the required standards and recommend that the County Board deny the requested special use, and the County Board should accept the ZBA's recommendation and deny Maxxam's application for a special use permit for the Facility.

SECTION 5. All ordinances, resolutions, and other documents in conflict herewith are hereby repealed to the extent of the conflict.

SECTION 6. This Resolution shall be in full force and effect from after its passage and approval in the manner provided by law.

Passed this 3rd day of November, 2015 by roll call vote:

	AYES	NAYES	ABSENT	ABSTAIN
Trustee Laura Andersen	X	_____	_____	_____
Trustee Susan George	X	_____	_____	_____
Trustee James McKelvie	X	_____	_____	_____
Trustee Mike Millette	X	_____	_____	_____
Trustee Michael O'Dwyer	X	_____	_____	_____
Trustee Michael Tyrrell	X	_____	_____	_____
President Harry Blecker	_____	_____	_____	_____

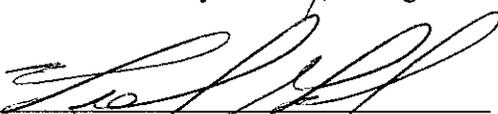
APPROVED THIS 3RD DAY OF NOVEMBER, 2015



 Harry Blecker, Village President

(SEAL)

ATTEST:



 Nicholas Girka, Village Clerk