UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MAXXAM PARTNERS, LLC, a Delaware limited liability company, and GLENWOOD ACADEMY, an Illinois not-for-profit corporation,

Plaintiffs,

v.

COUNTY OF KANE, KANE COUNTY ZONING BOARD OF APPEALS, and KANE COUNTY BOARD,

Defendants.

Case No. 1:17-cv-05707

Hon. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs Maxxam Partners, LLC ("Maxxam") and Glenwood Academy (together "Plaintiffs"), by and through their undersigned counsel, file this complaint against the County of Kane ("Kane County"), the Kane County Zoning Board of Appeals (the "Zoning Board"), and the Kane County Board and, in support, allege as follows:

I. NATURE OF THIS ACTION

1. Plaintiffs bring this action under the Fair Housing Act, 42 U.S.C. § 3601, ("FHA"), the Americans with Disabilities Act, 42 U.S.C. § 12102, ("ADA"), the Rehabilitation Act, 29 U.S.C. § 791, the Fifth and Fourteenth Amendments to the United States Constitution, and state zoning law.

2. This action arises out of the unlawful acts of Defendants to deprive Plaintiffs of a special use permit to develop an alcohol and drug rehabilitation center ("rehabilitation center") on a 120-acre site located in Kane County, Illinois.

3. The property's existing zoning already permits facilities similar to Plaintiffs' rehabilitation center, including nursing and convalescent homes, assisted living facilities, and hospitals. Kane County Ordinance ("Ordinance"), §§ 8.1-2(a); 8.1-2(q); 8.1-2(dd); 9.5-2(c).

4. Based on those already permitted uses, Kane County granted a special use approval to Glenwood Academy in 1989 to operate a boarding school for at-risk youth. The school operated for 20 years without incident or revocation of Kane County's special use approval.

5. The former boarding school is surrounded by hundreds of acres of forest preserve and is ideally suited for Plaintiffs' proposed rehabilitation center.

6. Maxxam and Glenwood Academy fully demonstrated that the proposed rehabilitation center was similar to the special uses already authorized and permitted by Kane County. To the extent the Ordinance did not already permit Plaintiffs' proposed rehabilitation center, Plaintiffs satisfied all of the established criteria set forth in the applicable Ordinance for a special use, and Defendants failed to make any reasonable accommodation for the proposed facility.

7. Defendants' denial of Plaintiffs' application constitutes unlawful discrimination under the FHA, ADA and Rehabilitation Act, and violates Illinois zoning laws and the United States Constitution.

8. Defendants' illegal discrimination was blatant and clearly established in the public hearing transcripts. It was rooted in the all-too-common ignorance and prejudice of those who refuse to permit substance abuse treatment in their communities based upon illegal and discriminatory stereotypes about those seeking to recover from addiction.

9. This "not in my back yard" (or "NIMBY") mentality is not only illegal, but it perpetuates the growing public health problem posed by what has become a public epidemic of

drug and alcohol addiction in the United States. The NIMBY mentality also causes lasting harm by depriving addicts of viable rehabilitation treatment centers, increasing deaths and serious injuries, and unlawfully prohibiting willing caretakers from carrying out their plans to combat addiction.

10. In the course of denying Plaintiffs a special use permit on two separate occasions on the clearly discriminatory and unlawful basis that the facility would house recovering addicts, Defendants burdened Maxxam and Glenwood Academy with almost two years of sham proceedings before the Zoning Board of Appeals, County Development Committee and the County Board. Those proceedings included an unprecedented 20 public hearings and a host of fictional legal hurdles that were intended to dissuade Plaintiffs from proceeding with their plans for the rehabilitation center.

11. In the first round of hearings, the Zoning Board departed from its customary practices and held 10 hearings over two months before voting to deny the application for openly discriminatory reasons. The Board's and public's discriminatory motivations are made clear from the many objections voiced throughout the hearings, showing an irrational fear of disabled recovering drug addicts and alcoholics. Comments included such claims as that those suffering from addiction were criminals, that patients would "escape" the facility and commit crimes, and that they just plain did not want "these people" living in their community. To cite two additional examples:

a. Zoning Board member Robert Moga urged that to even consider allowing recovering addicts to live in the community was "**disgusting**."

b. A Kane County resident argued: "**There's a place for a facility like this . . . It's not my back yard**."

12. The County Board's initial decision denying Plaintiffs' application followed this discriminatory reasoning.

13. In the second round of hearings, after Defendants took the unprecedented steps of rescinding the earlier vote of the County Board, firing each of the members of the original Zoning Board, and remanding the matter to a newly constituted Zoning Board for further proceedings regarding what conditions might be placed on the facility, the County Board again voted to deny the application for discriminatory reasons. The County Board denied the application a second time even though Maxxam had by then agreed to a bevy of illegal and unnecessary conditions that the Board had insisted on as a precondition for a permit. Moreover, although Maxxam asked for reasonable accommodation to allow its disabled patients to reside on the property, the County Board refused to engage in a reasonable accommodation analysis or to grant any such accommodation.

14. The history and procedure behind Defendants' discriminatory decisional process demonstrates that there was no legitimate rationale for the denial of Plaintiffs' special use application.

15. Defendants' unprecedented campaign of discrimination and abuse of its own zoning laws has delayed life-saving treatment to Maxxam's patients. It has also cost both Maxxam and Glenwood Academy millions of dollars in delay and carrying costs for the property, as well as millions of dollars in added costs and lost profits.

16. To remedy these abuses and the continuing harm Plaintiffs and Maxxam's patients have and will continue to suffer, Plaintiffs seek declaratory, preliminary and permanent injunctive relief, compensatory damages, punitive damages, and attorneys' fees and costs.

II. THE PARTIES

17. Plaintiff Maxxam Partners, LLC is a Delaware limited liability company authorized to do business in Illinois. Maxxam acts through its members, Steven Marco and Adam Glassberg. Since November 2014, Maxxam has been under contract with Glenwood Academy to purchase the parcel of property located at 41W400 Silver Glen Road in unincorporated Kane County, Illinois (the "property"). Marco and Glassberg formed Maxxam to develop and operate this property as a residential treatment facility for those seeking to recover from drug and alcohol addiction. Once successful, they planned to develop and operate other similar properties throughout the Midwestern United States.

18. Plaintiff Glenwood Academy, formerly known as Glenwood School For Boys, is an Illinois not-for-profit corporation. Glenwood Academy is the current owner of the property, and is under contract to sell the property to Maxxam. For 130 years, Glenwood Academy has operated residential boarding schools at various locations in Illinois, with the goal of eradicating poverty, injustice, and inequality through the power of residential education.

19. Defendant Kane County is an Illinois municipal corporation and non-home-rule unit of local government under Illinois law. Kane County acts on zoning matters such as this one through its Zoning Enforcement Officer, Mark VanKerkhoff, the Kane County Zoning Board of Appeals, and the Kane County Board, including through that board's Development Committee.

20. Defendant Kane County Zoning Board of Appeals is an administrative body of Kane County and is vested with authority under the Kane County zoning ordinance to, among other things, hear applications for a special use within Kane County and make related recommendations to the County Board.

21. Defendant Kane County Board is a legislative body of Kane County and is vested with authority under the Kane County zoning ordinance to, among other things, approve or deny applications for a special use within Kane County.

III. JURISDICTION AND VENUE

22. This Court has jurisdiction over Plaintiffs' federal law claims under 28 U.S.C. §§ 1331 and 1343, and over Plaintiffs' state law claims under 28 U.S.C. § 1367.

23. Venue is proper here under 28 U.S.C. §§ 1391(b)(1) and 1391(b)(2) because Defendants are residents of this judicial district, the events or omissions giving rise to the claims set forth herein occurred in this judicial district, and the property that is the subject of this action is situated in this judicial district.

IV. FACTUAL BACKGROUND

Drug and Alcohol Abuse is a Public Health Epidemic.

24. Drug and alcohol abuse has become a nationwide public health epidemic. Drug overdose deaths now surpass deaths from gun homicides and traffic accidents combined. This public health epidemic has been widely acknowledged across the country, with hardly a day passing that does not see new reports of communities that have been devastated by the health consequences of drug and alcohol abuse.

25. The Comprehensive Addiction and Recovery Act of 2016 recognized the abuse of heroin and prescription opioid painkillers as having "a devastating effect on public health and safety in communities across the United States." Comprehensive Addiction and Recovery Act of 2016, S. 524, 114th Cong., § 2.

26. More recently, on July 31, 2017, the United States President's Commission on Combating Drug Addiction and the Opioid Crisis issued a report in which it warned:

> According to the Centers for Disease Control (CDC), the most recent data estimates that 142 Americans die every day from a drug overdose. Our citizens are dying. We must act boldly to stop it. The Opioid epidemic we are facing is unparalleled. The average American would likely be shocked to know that drug overdoses now kill more people than gun homicides and car crashes combined. In fact, between 1999 and 2015, more than 560,000 people in this country died due to drug overdoses – this is a death toll larger than the entire population of Atlanta.

(Available at: https://www.whitehouse.gov/ondcp/presidents-commission (last visited August 1, 2017)). The Commission urged the President to declare a national emergency.

27. In addition, the Commission found that one of the largest obstacles to stemming the epidemic was a lack of treatment facilities. As it now stands, the Commission noted, "only 10 percent of the nearly 21 million citizens with a substance abuse disorder (SUD) receive any type of specialty treatment according to the most recent National Survey on Drug Use and Health."

28. Illinois is one of the states hardest hit by this drug epidemic. Recognizing addiction's devastating effects, the Illinois General Assembly has declared:

> The abuse and misuse of alcohol and other drugs constitutes a serious public health problem the effects of which on public safety and the criminal justice system cause serious social and economic losses, as well as great human suffering. It is imperative that a comprehensive and coordinated strategy be developed under the leadership of a State agency and implemented through the facilities of federal and local government and community-based agencies (which may be public or private, volunteer or professional) to empower individuals and communities through local prevention efforts to provide intervention, treatment, rehabilitation and other services to those who misuse alcohol or other drugs (and, when appropriate, the families of those persons) to lead healthy and drug-free lives and become productive citizens in the community.

Alcoholism and Other Drug Abuse and Dependency Act, 20 ILCS 301/1-5.

29. Despite the fact that substance abuse and addiction are on the rise in Illinois, Illinois has seen a dramatic decline in the number of residential treatment beds available to would-be

patients. An August 2015 study from Roosevelt University found that from 2007 to 2012, Illinois saw a larger decline in available residential treatment options than any other state in the nation.

30. The need for residential alcohol and drug treatment is particularly acute in northern Illinois and Kane County. Northern Illinois is one of the most underserved markets for alcohol and substance abuse treatment in the United States. This area has a critical shortage of beds, particularly for state-licensed and medically managed detoxification.

31. Kane County currently has only one licensed residential addiction treatment facility. That single facility is unable to serve Kane County's approximately 535,000 residents, and it has a lengthy waiting list for those seeking treatment.

32. In part because of this shortage, in January 2017 the United States Congressman for the congressional district that includes Kane County, Representative Randy Hultgren, issued a report entitled "Persisting in the Fight: An Update to the Community Action Plan to Combat Heroin and Opioid Abuse." In the report, Congressman Hultgren identified the lack of beds at treatment facilities as one of the major obstacles to fighting the epidemic, and he implored state and local authorities and their communities to collaborate to create more treatment options.

33. Kane County has experienced the devastating effects of the county's lack of treatment options. In 2016 alone, the Kane County Coroner's Office found that 36 local deaths were the result of opioid overdoses, and the coroner has recently requested additional funding for drug-related autopsies. The Kane County Board also recently approved a request by the Kane County Health Department and local law enforcement to purchase 2,300 doses of Narcan, a life-saving drug that reverses the effects of opioid overdose.

34. Because of a shortage of beds in dedicated drug treatment facilities, many patients end up in hospital emergency rooms for detoxification. This in turn causes unnecessary expense

to the patient and to the community, an unnecessary strain on first responders, who are commonly required to transport patients 60-90 miles to find a bed at a facility capable of medically managed detoxification, and on hospitals, which must find space and medical staff to treat these patients.

35. Detoxification in a hospital setting is often less effective than care at many residential treatment facilities, which are, unlike hospitals, able to offer a continuum of care that extends well beyond a typical hospital stay.

36. A skyrocketing number of people suffering from addiction in Kane County and elsewhere need treatment and are unable to get it, particularly in a residential facility. Defendants' denial of Plaintiffs' application perpetuates this growing problem and irreparably harms those persons in desperate need of treatment.

The Glenwood Academy Property

37. Glenwood Academy previously operated a residential boarding school for at-risk youth on the site of the proposed facility. The school housed and taught youth who were from challenging family environmental situations, including households with limited resources, unsafe family environments, family desertion, drug addiction, and gang-plagued neighborhoods.

38. Glenwood Academy operated on the site of the facility for two decades. In 1989, Glenwood first applied to the Kane County Board for a special use to operate a boarding school on the property. The Kane County Board approved the special use, and Glenwood built and opened its campus shortly thereafter.

39. Glenwood Academy's campus consists of nine constructed residence halls. The Kane County Board approved the site for four additional residence halls, but the school opted not to build them. At full capacity, the approved campus could house over 190 students, house parents and their children.

40. Even though its residents came from challenging backgrounds, Glenwood Academy operated the school without any recurring or significant incidents. In over 20 years of operation, on information and belief, the Kane County Board never considered limiting, suspending or revoking the special use it had granted to Glenwood Academy in 1989.

41. In 2012, Glenwood Academy was forced for budgetary reasons to close the school, and the property has remained vacant since then. In its vacancy, the site has attracted vandalism and other crimes, and the vacancy has resulted in increased police calls to the property.

Maxxam Agrees to Purchase the Glenwood Academy Property and Seeks to Open a Residential Treatment Facility to Help Those with Addictions.

42. In response to the increasing need for safe, effective residential treatment facilities for those seeking to recover from drug and alcohol addiction, Maxxam planned to develop a residential alcohol and substance abuse treatment facility on the property. The facility would be called "Remedies Chicago" and would serve as a licensed residential rehabilitation center for those suffering from addiction.

43. In November 2014, Maxxam entered into a contract to purchase the property from its current owner, the Glenwood Academy, for the purpose of opening the rehabilitation center. Maxxam initially agreed to pay $9.5 million to purchase the property, with the closing contingent upon Maxxam receiving approval from Defendants to occupy and operate the rehabilitation center. Maxxam currently remains under contract with Glenwood Academy to purchase the property until June 2018 with no guarantee that Glenwood Academy will extend the purchase date further.

44. Maxxam has had to invest significant sums of money to extend its original purchase contract, and has been required to pay more for the property to, at least for the time being, secure its sale.

45. The existing school facilities and setting are ideally suited for use as a rehabilitation center.

46. The school's existing facilities include numerous classrooms and presentation halls, a dining hall, a commercial-grade kitchen, a full-court gymnasium, two baseball fields, an outdoor basketball court and nine freestanding residence halls. The facilities collectively occupy only a small portion of the 120-acre property, which otherwise consists of open fields, a pond, trails, and undeveloped open space.

47. The school is located deep in the center of the property and is very private. It is set back approximately one-half mile from Silver Glen Road. The property is surrounded by hundreds of acres of forest preserve on the West, South and East.

48. The only nearby private home (a large 39-acre estate to the North) sits over 700 feet (or over one eighth of a mile) away, and is separated from the property by acres of old and new growth forest and a private lake. The school's facilities are shielded from view by any of the adjoining roads.

49. Because of its isolated location, the design has and would minimize any impact the facility otherwise might have on the surrounding community.

The Kane County Zoning Ordinance and Application Procedures

50. The land on which the rehabilitation center would be located is zoned as F District – Farming. Ordinance, § 8.1. Kane County permits land in the F District to be used as of right for, among other things, certain uses approved by the County Board as "special uses." *Id.* at § 8.1-2.

51. The Ordinance enumerates certain uses which an applicant may propose to the County Board for classification as a "special use." Within the F District, these enumerated uses

include all uses permitted in the R-1 Residential District including, among other things, nursing and convalescent homes, assisted living facilities, hospitals and "[o]ther uses similar to those." Ordinance, §§ 8.1-2(a); 8.1-2(q); 8.1-2(dd); 9.5-2(c).

52. In addition, the Ordinance expressly acknowledges that the County is obligated to comply with the requirements of the FHA: "[n]o section, clause or provision of this Ordinance is intended, nor shall be construed, to be contrary to the Federal Fair Housing Act as amended (42 USC 3601 et seq.)." Ordinance, § 5.3(b).

53. In the ordinary course, an application for the classification of one of these enumerated uses as a "special use" is first considered by the County's Zoning Enforcement Officer. If the officer deems the application complete and reasonable, he or she sets it for a public hearing before the Zoning Board. Ordinance, § 4.8-2. Following the public hearing, the Zoning Board presents its findings and recommendations to the Kane County Board. *Id*.

54. To qualify for a special use, the Zoning Board and, later, the Kane County Board must consider the following six requirements:

a. 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;

b. That the special use 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;

c. That the establishment of the special use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district;

d. That adequate utility, access roads, drainage and/or other necessary facilities have been or are being provided;

e. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets and roads; and

f. That the special use shall in all other respects conform to the applicable regulations of the district in which it is located, except as such regulations may in each instance be modified by the County Board pursuant to the recommendations of the Zoning Board of Appeals.

Ordinance, § 4.8-2.

55. Following a Zoning Board vote, applications for a special use are sometimes referred to the Development Committee of the Kane County Board, which makes a recommendation to the full County Board. After its own hearing, the full County Board votes on whether to approve the application.

56. Ordinarily, this process requires between two and four public hearings and a similar number of private meetings with representatives of Defendants, and may last from a few weeks to a few months at the longest.

Plaintiffs' Request for a Special Use Met All Requirements of the Zoning Ordinance.

57. On August 28, 2015, Maxxam and Glenwood Academy filed their application for a special use with the Kane County Development Department, Zoning Division. (A true and correct copy of that application is attached as Exhibit A to this complaint.)

58. In the application, among other things, Maxxam explained the precise nature of Remedies Chicago. It committed to use the existing footprint of the Glenwood Academy campus as previously approved and set forth in the Glenwood Academy Master plan. Although not necessary to meet the requirements of the Zoning Ordinance, Maxxam further committed that it would not build any new and unapproved structures, and it would house fewer individuals than the Glenwood Academy housed. Maxxam's application also detailed the nature of the services it would offer and the facility's expected treatment methods and model, and explained how it

proposed to use each of the facility's existing buildings to achieve its treatment objectives. (Exhibit A, Rider at 2.)

59. Further, Maxxam provided in its application that Remedies Chicago would be licensed by the Division of Alcoholism and Substance Abuse of the Illinois Department of Human Services, that it would seek additional accreditation through the Joint Commission on Accreditation of Health Care Organizations, and that the level of care provided would be in accordance with that specified in the American Society of Addiction Medicine's Patient Placement Criteria and with the related administrative codes.

60. The requirements of these organizations are extremely exacting.

61. For example, in order to be licensed by the Department of Human Services under the Illinois Alcoholism and Other Drug Abuse and Dependency Act, 20 ILCS § 301, *et seq.*, and its implementing regulations to provide the type of treatment proposed by Maxxam, a facility must: (a) have a medical director licensed to practice medicine in Illinois, (b) commit to having at least two registered nurses or licensed emergency medical technicians on staff 24 hours per day, (c) have detoxification patients seen on site daily by a licensed physician, and (d) meet strict requirements concerning hiring, physical examinations of patients, the provision of emergency care, patient rights, incident reporting, outside inspections, staff qualifications, record keeping, record retention, physical facilities, and patient treatment, housing, education and release, among many other requirements. *See generally* Illinois Administrative Code, § 2060.101 *et seq.*

62. Upon information and belief, no facility that poses any risk to patients or the community can meet these requirements.

63. In sum, Maxxam's application exhaustively addressed and satisfied each of the Ordinance's requirements, including the six conditions listed in Section 4.8-2.

64. First, Maxxam's proposed use is unquestionably similar to "nursing and convalescent homes" and "hospitals," which are permitted special uses under the Ordinance. Indeed, Defendants repeatedly admitted throughout the zoning process that the proposed facility is similar to nursing homes, convalescent homes, assisted living facilities and hospitals, and is thus a permitted special use in the district.

65. Second, Maxxam's application met each of the six elements of Section 4.8-2 of the Ordinance pertaining to a special use.

66. Maxxam's application demonstrated that, far from causing any injury or harm to the neighboring community, Remedies Chicago would serve to improve the public health, safety, morals, comfort, and general welfare of the community. Ordinance § 4.8-2(a).

67. For example, Maxxam proposed to provide life-saving treatment for those suffering from addiction, committed in its application to participate in community outreach programs with local schools, religious groups and other agencies in an effort to improve substance abuse awareness within the community, and agreed to provide security for the then-vacant property, which had in its vacancy attracted incidents involving theft, trespass, loitering, yard waste dumping, and destruction of property.

68. In addition, Remedies Chicago was projected to generate over $300,000 in annual tax revenue, which would go primarily to the local school district, without adding any additional students.

69. Plaintiffs' application similarly addressed and met each of the five remaining elements of the Ordinance. Ordinance § 4.8-2 (b) – (e). Plaintiffs demonstrated that the rehabilitation center would 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; would not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district; had adequate utility, access roads, drainage and/or other necessary facilities; had adequate measures to provide ingress and egress so as to minimize traffic congestion; and conformed to the applicable regulations of the district in all other respects. (Exhibit A, attached hereto.)

70. Plaintiffs supported their application with substantial evidence, including reports and testimony from some of the nation's leading land use experts.

71. Plaintiffs' application also expressly sought reasonable accommodation with respect to the proposed facility on the grounds that it would provide in-patient residential treatment to persons with disabilities.

72. Plaintiffs' application was met by a burdensome campaign by Defendants to deny the application on discriminatory grounds having nothing to do with the Zoning Ordinance or the merits of the application. As part of this campaign, Defendants required Plaintiffs to participate in 20 public hearings over almost two years, as set forth more fully below.

Kane County's First Set of Hearings

73. In November 2015, Kane County's Zoning enforcement officer, Mark VanKerkhoff, determined that Plaintiffs' application was reasonable and complete, and he set the matter for hearing before the Zoning Board. Between December 14, 2015 and February 9, 2016, the Zoning Board held 10 hearings on the question of whether Plaintiffs' application for a special use satisfied the criteria set forth in Section 4.8-2.

74. Maxxam hired and presented at the hearings several expert witnesses who testified that the rehabilitation center would have little, if any, impact on the surrounding neighborhood,

which consists primarily of forest preserve. Plaintiffs' expert witnesses established that the application satisfied all of the Ordinance's requirements.

a. **James Marcus**, clinical director of Feinberg Consulting, a firm specializing in assessing individuals suffering from drug and alcohol addiction and placing them in proper treatment facilities, and an expert in the field, testified that in his experience and opinion, the stigma of addicts as being more likely to commit crimes is unfounded. He testified that while the treatment facility will not be a locked facility or prison, the notion that there would be patients "running off in communities and creating crimes and havoc and hurting people is just absolutely not my experience." (Hearing Transcript ("Tr.") at 62:12-14.)

b. **Trina Diedrich, Ph.D.**, who works for the State of Illinois Department of Human Services Division of Alcoholism and Substance Abuse and has over 20 years of experience working with individuals suffering from drug and alcohol addiction, provided expert testimony that (1) there is an extreme need for such a facility in this area, and (2) given the proposed treatment model, there is a high likelihood that patients admitted into a high-end facility such as the proposed facility will complete their course of treatment. She also testified that, in her over 20 years of experience, she could not think of an instance in which a patient left a facility on his or her own against medical advice with no plan to get home, only to wander on to neighboring private property or create a danger to the community. She also testified that the facility would be required to meet extensive Illinois licensure requirements and would be subject to regular inspections.

c. **Derrick Waldren**, a security consultant for Alarm Detection Systems, described the security system and technology (including thermal cameras) that Maxxam intends to install at the facility, and he testified that the systems are state-of-the-art and would provide a high degree of security for its residents and the surrounding community.

d. **William Woodward**, of KLOA, Inc., a traffic engineering and consulting firm, and an expert with 16 years' experience in the field of traffic management, testified that after substantial study, in his opinion, the treatment facility would have comparable or less traffic than the Glenwood Academy school had, and that it would not have a detrimental impact on public land or its surrounding network of roads.

e. **Christopher Lannert** of the Lannert Group, a Geneva-based land use planning and consulting firm, submitted an expert report in which he opined that the treatment facility would not impede the normal and orderly development of the property in the surrounding area. Mr. Lannert was made available to testify but was not called as a witness.

f. **Mark MaRous**, a licensed real estate appraiser with 40 years of experience in Illinois, performed and submitted an extensive market impact study and testified that the treatment facility would not have a negative impact on property values in the area.

g. **Stephen Holtsford, MD**, an emergency room doctor at Delnor Hospital (one of the hospitals closest to Maxxam's proposed facility) with sixteen years of experience, testified that a detoxification facility does not create any danger to the surrounding community. He testified that the proximity of Maxxam's facility to the nearest hospital would not create any danger to the recipients of treatment at the facility. And he testified that, as with a nursing home, there is no need for a facility like Maxxam's to have doctors on site 24 hours a day. Dr. Holtsford also testified that he encounters individuals in need of substance abuse treatment on a daily basis, that finding treatment for them is very difficult, and that Maxxam's facility is needed in the community.

h. **Leslie Hendrickson, Ph.D.**, a site location expert with 11 years of experience performing market site analyses of treatment centers, testified that there is no correlation between crime and the presence of a substance abuse treatment facility in an area.

i. **Laura Garcia**, director of clinical programs at Salvation Army Harbor Light Center in Chicago, a 200-bed residential alcohol and substance abuse treatment center, and a former substance abuse program monitor for the State of Illinois, testified concerning the extensive state-imposed guidelines and licensure requirements for residential rehabilitation facilities such as the proposed facility, including the medical personnel that are required to be on site. Ms. Garcia also testified that, given the presence of medical personnel on site at such facilities, outside emergency personnel are "very seldom" required to come to the facility. (Tr. at 450:3.)

j. **Bruce R. Gunderson**, of Per Mar Security, testified as to the security personnel that Plaintiff would have in place at the treatment facility, and opined that they would provide a high degree of security for the facility's residents and surrounding community.

k. **Ryan Bailey**, of Murer Consultants, a consulting firm specializing in healthcare regulatory compliance, testified that the proposed facility was substantially similar to a hospital as defined by the Ordinance.

l. **Sheaffer & Roland, Inc.**, a firm of consulting engineers and land surveyors, submitted an expert report opining that the wastewater/storm water system in place for the facility was adequate to meet its needs.

Individuals from Sheaffer & Roland, Inc. were made available to testify but were not called as witnesses.

75. In opposition, the Kane County Board and those objecting to Plaintiffs' application presented only three witnesses.

76. **Professor Bennie Waller** was called to testify that properties within an eighth of a mile of the treatment facility might see an 8% decrease in property value. Waller's opinions were not credible and he was not qualified to offer them. Among other deficiencies, Waller admitted:

a. He is not a licensed real estate appraiser in Illinois and had *never before* performed a real estate appraisal for a fee anywhere in the United States;

b. The majority of the rehabilitation facilities that he analyzed to come to his conclusion were outpatient methadone facilities, while the proposed facility will be an inpatient facility and will not simply distribute methadone to individuals and send them on their way. Maxxam later expressly agreed that the facility will not offer outpatient treatment to methadone patients or offer any other program that solely administers medication on an outpatient basis; and

c. He could not say that if he had used only comparable, in-patient facilities in his analysis, there would be any impact on property values. In fact, even using Waller's own numbers, Maxxam's expert calculated that property values would increase by 1%.

77. In addition, Waller admitted that any decrease in property value that he predicted would be attributable in significant part to "stigma" and "perceived risk," *i.e.* discrimination by the community, and testified that in his opinion whether the perception is actually true is "irrelevant." (Tr. at 836:11-837:13l; 861:19-21.)

78. **Joseph H. Abel** opined that the Zoning Board had followed an incorrect procedure in holding its hearings. Certain objectors to Plaintiffs' application filed a lawsuit on the basis of his opinion. That lawsuit, *Andrzejewski, et al. v. Zoning Board of Appeals of Kane County, Illinois, et al.*, No. 15-MR-001456, was dismissed by the Circuit Court of Kane County.

79. **Robert Handley**, the president of the Fox River Countryside Fire Rescue District, speculated that the fire district might receive between 120 and 150 additional calls per year due to the treatment facility. Handley, however, is not the Fire Chief, and he admitted that he did not read the entire report on which his opinion was purportedly based. Moreover, in forming this opinion, Handley did not take into account the security personnel and technology that would be in place at the facility, or the trained nurses, emergency medical technicians, doctors and other staff who would be on site at the facility.

80. In any event, Handley's opinion was largely moot because Maxxam later reached an agreement with the Fire Rescue District to pay unprecedented "impact" fees to the Fire Rescue District, to guarantee payment for any fire or EMS calls to the facility, to require all staff to undergo CPR training, and to form a joint emergency response plan, all "in order to [e]nsure that the District will continue to provide the highest quality of fire and rescue services within the District and to otherwise fulfill its statutory mission." That agreement was executed by Handley on behalf of the Fire Rescue District, and no witness testified that it would not satisfy any concerns regarding emergency calls to the facility.

81. Finally, the Zoning Board permitted a one-page email from Don Kramer, the Kane County Sheriff, to be read into the record. Sheriff Kramer's email stated that he "[did] not foresee a rise in crime or call load at the facility that the sheriff's office would not be able to handle." (Tr. at 885:2-5.) Sheriff Kramer's email also stated that he "believe[s] the facility will require between 100 and 300 combined responses from police and EMS [per year]." (Tr. at 885:13-15.) Neither Sheriff Kramer nor the objectors provided any basis (verifiable or otherwise) for this naked assertion. Sheriff Kramer did not appear as a witness to be cross-examined.

82. No other "evidence" was submitted in opposition to the application at any stage of the proceedings.

The Zoning Board's First Discriminatory Consideration of Plaintiffs' Application

83. The Zoning Board hearings were open to the public, and members of the public in attendance were permitted to make statements on the record and, in a break from protocol, were even allowed to cross-examine Plaintiffs' witnesses. Each of these hearings lasted for many hours, and the hearing rooms were often packed with residents who vocally opposed the application simply because the facility sought to treat individuals seeking to recover from drug and alcohol addiction. This public opposition, together with the Zoning Board's unusual decision to allow the public to examine witnesses, allowed a mob mentality to prevail during the course of the hearings.

84. Thus, although the manifest weight of the evidence overwhelmingly supported the approval of Plaintiffs' special use application, irrational fear and discrimination against disabled individuals seeking to recover from drug and alcohol addiction dominated the hearings and led to the application's denial.

85. For example, residents argued that disabled individuals seeking to recover from addiction who have checked into a high-end, voluntary treatment facility would inevitably seek to "escape" and would "wreak havoc" in the community. Indeed, members of the public speaking on the record against Plaintiffs' application made blatant discriminatory comments, such as:

a. "When an addict has just used their drug of choice, they're usually pretty happy. When you take that narcotic away and they need to figure out a way to get more is when they become the most dangerous. That's obviously one of the things that would be done at the facility to attempt to get these people detoxed. Being an open facility where you can come and go as you please…the first urgent call to any police agency would be possibly when somebody enters onto someone's private property or worse, was kicking in their back door." (Tr. at 305:19-306:8.)

b. "I think the big issue for me is that I got 120 people that have had severe alcohol and drug problems a half a mile from my house and my grandkids who could very easily, if they want to escape because the place has got no fence, walk out. And they're not going to go into the road; they're going to go into the farms which is what I've got – and maybe hide in the barn. That's the issue for me." (Tr. at 1062:18-1063:3.)

c. "We have hosted, my husband and I, our neighborhood bonfire and hay ride where we have 50, 60 people in our back yard, which you can see the entrance right through the ball fields to this facility. We're probably within a five-minute run of a drug addict who is looking to escape and looking for a fix." (Tr. at 314:13-19.)

d. "I worked at a treatment facility, and one night some of the guys break out, and they break into a drugstore, and they steal Sterno and aftershave because they couldn't get to the alcohol. And that's how we found them, buzzed out on Sterno and aftershave. Now, I'm not saying all these people in this place are going to do that. But what do I do when I'm leaving for a trip? What do I tell my daughter? Do I go buy a Rottweiler? Do I take my daughters and my wife to a gun class so if someone does show up in the first or second house, me and my neighbor, that they can break into to get what they want to fix their – get a buzz?" (Tr. at 146:13-147:2.)

e. If a disabled individual suffering from drug or alcohol addiction were "relatively fast, they could be outside of the 100-foot [security camera-monitored] range by the time your office dispatches and [Maxxam's] security gets to that point." (Tr. at 220:13-16.)

f. "Suppose someone were to drape an ['aluminized Mylar thermal blanket'] over them. Would your thermal imaging system be able to detect them?" "[I]f I draped such a thing over my body, I'm pretty sure I could get in, and you wouldn't detect me." (Tr. at 233:21-234:3; 234:10-12.)

g. If a "19-year-old kid leaves the drug and alcohol rehab facility and goes and steps on the forest preserve of Kane County, that's public land. What are we going to do? Arrest him? Are we going to arrest him? He might encounter some coyotes out there, to be honest. But what are we going to do about these people who are going to leave the facility? I think it's really naïve to assume that they're all going to stay there doing yoga…" (Tr. at 1088:8-17.)

86. Kane County residents also argued that disabled individuals seeking to recover from addiction are necessarily criminals who are sure to have committed (and are sure to continue

committing) other crimes, and who necessarily bring more criminals with them in their wake. For example, members of the public speaking on the record against Plaintiffs' application stated:

a. "Let's not ignore the fact that despite all of the downplay of crime-like behavior, and attitude, and choices, what landed these patients in the facility in the first place is just that, a crime. They procured and used illicit substances. A crime has been committed…once one crime has been committed, who is to say another, and a third, and a fourth, and beyond…" (Tr. at 800:6-16.)

b. "They are crime committers and alcohol abusers…" (Tr. at 315:23-24.)

c. "Are the people that we are necessarily concerned about merely the addicts that are inside the facility, or are they perhaps the people who are providing drugs to those people from outside the facility? The facility…is not secure, and the virtual fence with the thermal imaging is easy to fool." (Tr. at 139:6-12.)

d. "It's not just about being afraid of the addicts; it's about being afraid of the drug suppliers who are providing drugs to them." (Tr. at 140:11-14.)

e. Has Plaintiff's security consultant considered any "post orders for working with the Kane County Forest Preserve on contraband that might be placed in the forest preserve that could be acquired by the residents?" (Tr. at 589: 17-20.)

87. Indeed, the residents' comments reduced individuals seeking to recover from addiction to a "type" of person necessarily possessing a variety of frightening negative stigmas – from having "dark demons" to not being "good Christian people." For example, members of the public speaking on the record against Plaintiffs' application stated:

a. "You have to know the type of people that are going into these. I don't care how much money you have in your pocket." (Tr. at 309:23-310:1.)

b. "[Maxxam] brought their paid witnesses here from other states, and we've heard all this before. I mean, they had the two druggies [Maxxam's expert witnesses James Marcus and Trina Diedrich, both of whom are in recovery]; they came out good and some do. But I want to tell you I lived with my sister since I was 15 years old and she's done – she did and still does drugs, but she's been in facility after facility over the years, and I'm telling you, you would not want her knocking on your door…I was having to deal with

this type of person stealing and all of that. So you have to know the type of people that are going into these." (Tr. at 308:20-309:3; 309:22-24.)

c. "People who have drug and alcohol recovery, they have dark, dark demons they're battling folks." (Tr. at 1081:13-15.)

d. "I mean, we're not talking about good Christian people…so why would you put this thing like in the middle of the farm area where there's nobody, and why would you come to our neighborhood where there's a potential of only one – only one of these people has to be so sadly deranged they could kill somebody within a mile or a half a mile." (Tr. at 1063:3-1063:13.)

e. "What I would like to know from [Maxxam] is how many people come out of it the first time and never have problems again. And it's probably about 10 percent, 10, maybe 15 percent that ever – that do well. So you've got the other 75 percent." (Tr. at 310:13-17.)

f. "According to my experience…substance abuse patients, like more than 60 percent, they do have personality – distortion personality disorder, narcissistic personality disorder, and other mental illness." (Tr. at 11-17.)

g. "They are going to bring people in from other parts of the country. Who is to say that a Lindsay Lohan isn't flown in here, or a Charlie Sheen, or say a Kennedy kid we all know have had problems with substance abuse, and what's going to stop the paparazzi from coming in? We've all seen paparazzi, what it does to people. What's going to stop them from coming into our forest preserve where we've got kids bicycling…or on to people's property?" (Tr. at 804:17-805:2.)

88. This mosaic of discriminatory hysteria was reinforced again and again throughout the hearings, and it fueled the principal NIMBY sentiment that led to the County Board's decision to deny Plaintiffs' application:

a. "The bottom line is we need to protect the people in this community from unnecessarily putting them at risk. There's a place for a facility like this…It's not my back yard." (Tr. at 317:9-13.)

b. "We see that somebody wants to bring into our back yard a facility that's going to bring drug abusers not from Kane County, drug abusers from all over the United States. They're going to fly them in; they're going to limousine them out to my backyard." (Tr. at 315:7-12.)

c. "People are concerned about having 200 addicts in the neighborhood." (Tr. at 87:18-19.)

d. "I don't wish to be known as the home of the second largest drug rehab center in the state." (Tr. at 301:17-18.)

e. "This is my back yard…[w]e moved out here because we looked at the area, we saw a beautiful place to live, a semirural area, not a place that has a for-profit business where they bring drug abusers and who are by their very nature of taking drugs committing crimes." (Tr. at 315:16-23.)

f. I have relatives that "would benefit by a facility like this, absolutely. But I'm sorry…not in my back yard." (Tr. at 800:23-24.)

89. While these comments were made publicly on the record, residents were even more forceful in their opposition outside of the hearings. On multiple occasions, Maxxam's principal, Steven Marco, and his supporters were threatened by members of the public. On one occasion, the former President of the Glenwood Academy school, Robert Buchta, was also threatened.

90. Members of the Zoning Board itself also gave voice to the discrimination against disabled individuals suffering from drug and alcohol addiction that would later cause the Zoning Board's and County's arbitrary and unlawful decisions. For example, Zoning Board member Gerald Regan stated:

a. "The thing that's so basic about this is the people in the neighborhood are afraid of this, and they're definitely afraid of it because addicts are addicts, whether you're heroin or whatever. If somebody doesn't want to be there and they just decide to leave sometime, that's what has the people frightened about this whole thing." (Tr. at 54:8-11.)

b. "But the fact is, if somebody just decides to get out of there, and they're addicted to heroin, or booze, or whatever their hang-up is, it's fearful." (Tr. at 56:14-16.)

c. "A lot of those people are really out in left field regardless of what facility they're in…a drug addict is a drug addict, and so that's why I think it's – the crime rate could increase." (Tr. at 1278:1-8.)

d. "I can tell you that the people that I know – and I know a lot of them – have told me in no uncertain terms that they do not want a facility like this out there in the middle of the county." (Tr. at 1279:6-9.)

91. On February 9, 2016, the Zoning Board voted to withhold its recommendation that the County Board approve Plaintiffs' application for a special use. The Zoning Board's decision was not unanimous.

92. With respect to whether the treatment facility would be unreasonably detrimental to or endanger the public health, safety, morals, comfort or general welfare (*see* Ordinance § 4.8-2(a)) and weighing in favor of the special use, certain members of the Zoning Board found that:

a. Plaintiff satisfactorily described the operations of the facility, including the licensing procedures and requirements to which the facility would submit.

b. The facility's staffing will exceed the state's licensure requirements.

c. The facility would cause no substantial increase in crime in the area.

d. Plaintiff satisfactorily addressed concerns regarding the security of the facility.

e. The facility would not overburden the area's emergency services.

93. With respect to whether the treatment facility would be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, or substantially diminish and impair property values within the neighborhood (*see* Ordinance § 4.8-2(b)), some Zoning Board members found:

a. The only credible expert testimony established that the facility would have little or no impact on property values.

b. The facility would not result in an increase in crime that would impact value.

c. The Glenwood Academy school is currently vacant, and putting the campus back into use would positively impact value.

d. The property is uniquely buffered from the surrounding properties.

94. Nevertheless, the discriminatory sentiments of Zoning Board members like Gerald Regan prevailed:

a. "A lot of those people are really out in left field regardless of what facility they're in…a drug addict is a drug addict, and so that's why I think it's – the crime rate could increase." (Tr. at 1278:1-8.)

b. "I can tell you that the people that I know – and I know a lot of them – have told me in no uncertain terms that they do not want a facility like this out there in the middle of the county." (Tr. at 1279:6-9.)

c. "I [referring to a constituent] just do not want this facility next to my house." (Tr. at 1283: 22-23.)

95. With respect to whether the facility would impede the normal and orderly development and improvement of surrounding property for uses permitted in the district (*see* Section 4.8-2(c)) and weighing in favor of the special use, certain members of the Zoning Board found that the only testimony offered on this issue established that the facility would not impede normal development in surrounding properties.

96. With respect to whether the facility would have adequate utility, access roads, drainage and/or other necessary facilities (*see* Ordinance § 4.8-2(d)) and weighing in favor of the special use, the majority of the Zoning Board found that "adequate utility access roads, drainage, or other necessary facilities have been or are being provided, that [Maxxam] has shown over the course of the hearings that they have those necessary facilities, that from a traffic impact, the [Kane County Department of Transportation] report and the staff report backs that up." (Tr. at 1298:17-22.)

97. With respect to whether adequate measures have been or will be taken to provide ingress and egress designed to minimize traffic congestion in the public streets and roads (*see* Ordinance § 4.8-2(e)), the Zoning Board unanimously found that this factor was satisfied.

98. With respect to whether the special use will in all other respects conform to the applicable regulations of the district (*see* Ordinance § 4.8-2(f)), the Zoning Board unanimously found that the factor was satisfied.

99. The Zoning Board also found that "the proposed special use is a use similar to other special uses provided for in the ordinance, specifically, hospitals and convalescent homes." (Tr. at 1308:5-7.) In reaching this conclusion, both the Zoning Board and Zoning Enforcement Officer found that the proposed use was most similar to "nursing and convalescent homes" under Section 25-8-1-2(q) of the Ordinance. That section permits "Monasteries, nunneries, religious retreats, nursing and convalescent homes, assisted living facilities, boarding schools and orphanages" as special uses in this district.

100. This was the same provision of the Ordinance under which Glenwood Academy had been granted a special use.

101. Finally, upon concluding its review of the Section 4.8-2 factors and immediately prior to voting against recommending the special use to the County Board, the Zoning Board held its "final discussion." (Tr. at 1308:15-16.)

102. The Zoning Board began this final discussion with member Robert Moga warning the Board that recovering addicts are like uncaged animals in a zoo:

> Chairman Joe and the Board, I'm telling you, you don't know what you're talking about until you've seen it yourself. Five years ago I was operated on at the University of Illinois in Chicago, and after three or four days I started wandering around the hallways, and I got on the elevator and went up to the fourth floor, which is where the alcoholics and the drug addicts are. I want to tell you it looked like a man overboard drill. We don't know what we're talking about here tonight, honest to God. It galls me. In fact, as far as I'm concerned – and Chris [Lauzen, Chairman of the County Board] is back there – I do not want to be re- I do not want to be reelected to this Board if we approve this. This is so disgusting to me because I saw a zoo.

(Tr. at 1308:18-1309:9.)

103. Moga's discriminatory comments were met with the audience's applause. After which, Moga continued:

> Well, I think I've said enough. And I'll tell you what, it's disgusting to me that we're trying to – somebody is trying to put this thing over, and it doesn't deserve to be put over. These – we're supposed to represent the people, and I believe in government of the people, by the people, and for the people.

(Tr. at 1309:17-23.)

104. To this one member of the public yelled "Thank You."

105. Another member of the Zoning Board, Gerald Regan, also held a debate with another board member about whether persons suffering from alcoholism and substance abuse could be identified by appearance alone. The debate centered on a hypothetical that involved physically lining up addicts on one side of a gymnasium with "normal" people on the other side of the gymnasium. Regan expressed his view that you could easily tell the difference between addicts and "normal" people by appearance alone.

106. Regan also concluded the Zoning Board's final discussion by stating "I believe there's no doubt that there's a need for a place like this somewhere, but the people that live in my area, and they're all – a lot of them are good friends and lots of them I don't really know, but they do not want this sitting out in the middle of the county." (Tr. at 1314:15-21.) Other members echoed these sentiments, making clear that they were relying heavily on public animus in casting their votes.

107. The Zoning Board then voted against recommending Plaintiffs' requested special use to the County Board.

The County Development Committee's Discriminatory Consideration of Plaintiffs' Application

108. On February 16, 2016, the Kane County Development Committee ("Development Committee") took up consideration of Plaintiffs' application. The Development Committee is

made up of a subset of the members of the full County Board, and it regularly considers matters pertaining to zoning, development and the County's comprehensive plan.

109. Maxxam again made its many expert witnesses available to testify and to answer questions, and again rebutted the unsubstantiated, pretextual arguments of those objecting to Plaintiffs' application. For example, Maxxam noted that the Campton Hills Police Chief had given an opinion after contacting 13 treatment facilities across the country that the proposed facility would result in only 5 to 10 emergency medical services calls per year.

110. After hearing testimony, the Development Committee discussed Plaintiffs' application. Like the Zoning Board, the Development Committee's deliberation over Plaintiffs' application was rooted in the same discriminatory animus toward disabled individuals seeking to recover from drug and alcohol addiction voiced by the Kane County residents.

111. The Development Committee then voted unanimously to recommend that the County Board deny Plaintiffs' application.

The County Board's Discriminatory Consideration of Plaintiffs' Application

112. On March 8, 2016, the County Board took up consideration of Plaintiffs' application.

113. Attorneys for Maxxam again put forth their case in support of Plaintiffs' application. Objectors again offered only discriminatory animus and irrational fear in opposition. For example, the County Board heard from members of the public that:

a. The "quiet country and natural wildlife habitat" of the site was "cherished," and the treatment facility "would place that natural habitat in jeopardy." (3/8/16 County Board Minutes, at 6.)

b. The treatment facility was "not fitting with the rural character of the area." (*Id.*)

c. Permitting a "detox center" at the site was "another step down a slippery slope." (*Id*. at 8.)

d. The treatment facility should be opposed due to "the potential for friends/family to bring contraband to the property, and the fact that the property surrounding the facility was open and had no fences." (*Id*. at 9.)

114. After hearing these accounts, the County Board stated that there were "unanswered questions and insufficient answers from [Maxxam] that were put forth by the Development Committee and [the Zoning Board]" and denied Plaintiffs' application. (*Id*. at 10.)

115. The County Board did not identify any specific unanswered questions or insufficient answers. The County Board did not provide any specific ground for its final determination.

116. The County Board's claim of unanswered questions and insufficient answers is directly contradicted by the hearing transcripts. It was a pretext designed to conceal the Defendants' illegal and discriminatory conduct.

117. The County Board did not engage in a reasonable accommodation analysis in connection with its denial of Plaintiffs' special use application.

Recognizing the County's Liability for Its Discriminatory Treatment of Plaintiffs' Application, the County Rescinds Its Earlier Vote and Remands to a New Zoning Board

118. On March 8, 2016, attorneys for the County Board told Maxxam's lawyers that the County Board was interested in discussing Plaintiffs' application further before Maxxam sought legal relief.

119. On May 31, 2016, at the County Board's request, one of Maxxam's attorneys met with attorneys for the County Board and the County Board Chairman, Chris Lauzen. During this meeting, attorneys for the County Board acknowledged the County's exposure to liability under

the FHA and asked Maxxam to submit a letter to the County Board outlining Maxxam's legal position with respect to that liability. Maxxam submitted the letter on July 22, 2016.

120. On August 18, 2016, attorneys for Maxxam and the County Board met. In that meeting, the County Board's attorneys presented Maxxam with a list of proposed conditions for the issuance of a special use permit. The parties discussed and revised that list the following day. Attorneys for the County Board then indicated that the County Board would reconsider Plaintiffs' application in light of the agreed upon conditions. Maxxam agreed not to file suit while the County Board reconsidered its decision.

121. The County Board waited months to place Plaintiffs' application back on its agenda.

122. On November 8, 2016, after conferring in executive session regarding "potential/pending litigation," the County Board decided, by a vote of 17 to 3, to rescind its March 8, 2016 denial of Plaintiffs' special use application. (11/8/16 County Board Minutes, at 14, 17.) The County Board then sent the matter back to the Zoning Board for "further consideration." (*Id*. at 17.)

123. Shortly after rescinding its vote, and recognizing that the original Zoning Board was openly hostile and discriminatory to Maxxam and its recovering patients, the County Board took the unprecedented step of firing and replacing the existing members of the Zoning Board. The County Board, which would make the ultimate decision to grant or deny the special use application, remained the same.

124. Although a new Zoning Board was ordered to consider Plaintiffs' application, that new board immediately acknowledged that its decision would be based upon the record from the previous Zoning Board hearings, and that its task would to determine only whether the conditions

Maxxam was forced to agree to would be sufficient to overcome the discrimination of the prior boards.

125. The new Zoning Board spent considerable time reviewing the record of proceedings before the original Zoning Board, and it stated from the outset that it would not reopen those hearings.

The Zoning Board Again Refuses to Recommend Maxxam's Special Use to the County Board

126. On January 10, 2017, the newly constituted Zoning Board held the first of 6 hearings regarding the conditions to be placed on the facility. At the first of these 6 hearings, Maxxam presented the nine conditions developed in cooperation with attorneys for the County Board and to which Maxxam had agreed at the time. These conditions included, among other things, that:

a. Maxxam would provide Kane County with 1,000 doses of Narcan (a life-saving drug administered to counteract an opioid overdose) per year for 10 years;

b. There would be no outpatient treatment of methadone patients at the facility;

c. The special use would not be transferable to any other entity;

d. State license approvals would be required prior to Kane County issuing a certificate of occupancy; and

e. Maxxam would pay all costs for emergency calls to its facility.

127. The Zoning Board, however, still was not satisfied. On information and belief, the Zoning Board believed that it could in essence "blackmail" Maxxam into agreeing to additional "conditions" to gain approval of its application. With a proverbial gun to its head, Maxxam ultimately agreed to such other things as:

a. To provide information as to what drugs would be used at the facility and where they would be stored;

b. To establish and fund a foundation for outreach to the Kane County community in connection with drug addiction issues;

c. To install a fence around the boundary of the entire 120-acre property with a minimum height of six feet;

d. To install a state-of-the-art campus-wide security system;

e. To develop a "process of communication" with the local police department to ensure effective enforcement and intervention in the event of "incidents"; and

f. To restrict signage for the facility.

128. Nevertheless, members of the public speaking on the record against Plaintiffs' application continued the by-now familiar parade of discriminatory, NIMBY comments:

a. "[H]ow do you look out for your safety with a patient who is half rehabbed and going crazy out in the streets?" (Tr. at 1658:2-4.)

b. "They're going to want to get out in the middle of the night. They will. There's no way that you can prevent that. They just want to go out for a couple of hours and do whatever, just walk around in the farmlands or just in the communities. How will we be alerted?" (Tr. at 1789:24-1790:5.)

c. "The Glenwood property is vacant, and it looks like a cheap, quick, and dirty opportunity for an outsider to make some money. I just don't feel it should be at the community's expense." (Tr. at 1841:1-5.)

129. On February 21, 2017, the Zoning Board reconvened to render its decision as to whether to recommend approval of Plaintiffs' application.

130. No member of the Zoning Board opposed the application on the basis of factors 4.8-2(c)-(f).

131. The Zoning Board's findings with respect to factors 4.8-2(a) and 4.8-2(b) overwhelmingly supported recommending approval of Maxxam's application. For example, the Zoning Board's members determined that:

a. There was credible record evidence that treatment facilities such as Maxxam's proposed facility do not positively correlate with an increase in crime.

b. The site "already had a special use to start with," "the longer it sits open and it isn't utilized," there is greater risk to endangering the public health, and the treatment facility is a "decent use for the site considering that the site before was for at-risk youths, and that seemed to go on there for many years successfully." (Tr. at 2043:10-24.)

c. "As I've been reading through all of this information and processing all of the comments and concerns, what's hit me is that a lot of times I feel like we're talking about a prison. Like if you didn't know what this was about, you'd be talking about a prison. This is not a correctional facility; these are not court-ordered rehab people. These are people who have a lot of money and who want to pay to go to a luxury substance abuse rehab place. This isn't jail; this isn't a juvenile facility. This is wealthy people who want a spa and hopefully kick an addiction habit…I think it's wrong to assume that anyone who would need this facility would by definition be a criminal." (Tr. at 2050:12-2051:6.)

d. "I think it's a bonus the way the actual physical property is built out that it's only 20 percent built and it's 80 percent open, that it's buffered by the Kane County forest preserve for so much of it, that its driveway is a half mile long, which is a very long driveway off of the main road, and if they wanted…to expand the buildings on site, they'd have to come back." (Tr. at 2058:22-2059:6.)

e. "In a perfect world we would want it to be on a [four-lane highway] . . .[a]t the same time, there was a facility there that generated emergency calls and had people going in and out...if this use doesn't go in, somebody else will want to do that, and that will be the same issue no matter what operation…goes into that facility." (Tr. at 2059:24-2060:7.)

f. "[Impact on property values] is an area on which I thought [Plaintiff's] experts did a very good job. I understood the reports and I took them as credible. I read [the Objector's expert] report, and I wasn't as taken with that one, given the lack of experience in Illinois." (Tr. at 2063:13-18.)

g. "The crux of the matter for me for the property value part of [Section 4.8-2(b)] is should a facility be punished because people think it will be bad…[f]or me it was telling that [Objector's expert] couldn't say [the treatment facility] increased risk without adding 'perceived risks.' I don't think it's fair to say because I think somebody is going to be a troublemaker that they get tagged as a troublemaker. I understand the security concerns. It's clearly in the record. I get it. But I also get that this is not a correctional

facility. I don't think people paying…for treatment are going to go rob houses nearby…they're going to have to go quite a way just to get off the property. But I don't think that's a real risk of this facility." (Tr. at 2064:10-2065:11.)

h. "[Maxxam] has also asked for…a special accommodation under the FHA that people have a right to…be housed in urban areas as well as rural area, and the law applies equally to those without means as well as to those that have means. One of the [answers given by Maxxam was] '[w]e're asking to be treated like everybody else.'" (Tr. at 2067:3-11.)

132. By contrast, the Zoning Board's sole "findings" in opposition to Maxxam's application were not based on any factor in the Ordinance. Instead, the Zoning Board launched an extensive job interview of Maxxam's principal, Steven Marco, and insisted that the board be informed as to every operational detail of the as yet unopened facility.

133. Plaintiffs' application made clear that Mr. Marco was a developer and investor in the facility, and that highly reputable medical professionals would be hired to provide treatment and oversee day-to-day operations. In addition, Mr. Marco had been compelled to appear by the original Zoning Board, but it had not sought to question him about any matter. Even so, and although the second Zoning Board had earlier informed the parties that it would limit its review to the conditions of use, the Zoning Board changed course in the middle of the second round of proceedings and insisted on questioning Mr. Marco.

134. The Zoning Board took the highly unusual step of issuing an order to compel Mr. Marco to appear on 48 hours' notice from out of state to give testimony. When he appeared to testify, the Zoning Board members did not question him about any legitimate zoning matter. Rather, over four hours of questioning, they sought to discredit him as lacking experience with treatment facilities.

135. When Marco could not answer each of the board's questions about, for example, the identity of each staff member he would hire, certain members of the Zoning Board used this as grounds to justify denying the special use. Member Wendy Meglin commented, for example:

a. The "one issue I have" is that I don't know who "the day-to-day person that these people are going to see" is. "I live in the community – who would I see? Who is going to be running it?" (Tr. at 2041:17-21.)

b. "What I had a problem with was [Maxxam's] confidence that he could run [the facility] and was an expert without ever having done it before." (Tr. at 2054:2-4.)

c. "[D]emonstrating transparency is what I would request, more transparency in how this operation will be run." (Tr. at 2062:3-5.)

136. Similarly, member Mark Falk said: "It would have been nice to have structure, how it was structured. For me I never got that sense…my level of comfort at this point is very, very low." (Tr. at 2051:19-23.)

137. These concerns were irrelevant to the Zoning Ordinance, which does not require an applicant to address such financial and operational issues concerning the proposed use. They were also contrary to the record.

138. Maxxam offered substantial information, including expert testimony from an employee of the Department of Human Services, regarding the strict operational requirements for a licensed facility. This included testimony concerning the necessary qualifications for those who would run the facility. Additionally, the Zoning Board's purported concerns were disingenuous because, as Marco explained in testimony, he could not openly reveal the identity of the facility's Chief Executive Officer or other individuals who would be hired because he did not want to jeopardize their jobs at other leading facilities around the country. He also could not ensure those individuals a position until he obtained special use approval.

139. Finally, although the identity of the facility's officers and managers was not a proper zoning consideration, Maxxam later arranged for representatives of the County Board, including Chairman Chris Lauzen and Kane County State's Attorney Joseph McMahon, to meet privately and confidentially with the Chief Executive Officer Maxxam proposed to hire to run the facility. Neither Chairman Lauzen nor any other representative of the County Board ever voiced any concerns regarding the proposed CEO's qualifications or ability.

140. Despite findings that overwhelmingly supported approving Maxxam's application, and despite Maxxam's agreement to abide by 18 conditions proposed by the Zoning Board and certain objectors, the Zoning Board again voted to withhold its recommendation that the County Board approve Plaintiffs' application.

141. To the extent Mr. Marco's purported lack of experience was a reason the Zoning Board relied on to recommend against Plaintiffs' application, it was improper and, on information and belief, a pretext designed to conceal the Zoning Board's continued discrimination against recovering alcoholics and drug abusers.

The County Board's Second Discriminatory Consideration of Maxxam's Application

142. On April 18, 2017, the County Development Committee voted to recommend that the County Board approve Maxxam's application, finding that all of the elements of the Zoning Ordinance had been met.

143. Nevertheless, on May 9, 2017, the County Board voted for the second time to deny Plaintiffs' application. The Board consisted of the same members who voted against the application in March 2016, and it again relied on pretextual and blatantly discriminatory reasoning.

144. At the outset of the May 9 hearing, the County's Zoning Enforcement Officer, Mark VanKerkhoff, introduced a chart he prepared showing the conditions that had been proposed by

Maxxam at the County's request, as well as by the Zoning Board, Development Committee, and certain objectors, including the Fire Rescue District and the Village of Campton Hills. (A true and correct copy of the chart is attached as Exhibit B to this complaint.) As VanKerkhoff explained, the chart contained three categories of conditions: (1) 25 conditions were proposed by certain objectors but were not recommended by the Zoning Board, Development Committee or County Board staff; (2) 18 conditions were recommended by the Zoning Board, Development Committee or County Board staff and agreed to by Maxxam; and (3) two conditions were recommended by the Zoning Board or Development Committee but not recommended by the County Board staff and not agreed to by Maxxam.

145. The chart reflects the highly arbitrary and discriminatory nature of the proceedings. Among those conditions proposed by the Village of Campton Hills, for example, were that (a) Maxxam pay the Village $100,000 annually as a "police impact fee," (b) drug-sniffing dogs be used to check the facility on a random, monthly basis, and (c) the facility not accept convicted sex offenders.

146. Although those conditions were rejected by the County Board's staff, the agreed upon conditions contained similar requirements that were motivated by an irrational fear of addicts, rather than any legitimate zoning concerns, as demonstrated by the fact that they were not required of Glenwood Academy. These included, for example, the requirement that Maxxam install a six-foot tall fence around the perimeter of the entire 120-acre property at significant cost to Maxxam.

147. In addition, Maxxam was required to reach an agreement with the Fire Rescue District to guaranty all fees for fire and EMS calls to the facility and to pay substantial additional fees that had not been required of Glenwood Academy or, upon information and belief, of any

other applicant for a special use in the history of Kane County. This condition was memorialized in a written agreement, now expired, between Maxxam and the Fire Rescue District. (A true and correct copy of that agreement is attached as Exhibit C to this complaint.)

148. The agreement required Maxxam to pay unprecedented "impact" fees to the District, including a $50,000 up front payment and an annual fee of $163,000 once the facility met 90% occupancy. (Ex. C, § 7.)

149. This requirement was purportedly motivated by the Fire Rescue District's concern that the facility would generate emergency calls that would burden the District, a concern that was itself based upon stereotypes concerning addicts and that was unsupported by any record evidence.

150. On information and belief, the Fire Rescue District was motivated largely by financial concerns that had nothing to do with the proposed facility itself. Rather, the Fire Rescue District was on the verge of insolvency, and it saw Plaintiffs' application as an opportunity to fill its depleted coffers.

151. Regardless of its motivation, the Fire Rescue District confirmed in the agreement that it would "[e]nsure that the DISTRICT will continue to provide the highest quality of fire and rescue services within the DISTRICT and to otherwise fulfill its statutory mission." (Ex. C at 1, § 4.) Not only did the agreement specify that the District would "serve the Facility with high quality emergency medical response and emergency medical transport services consistent with its statutory obligations and the needs of the DISTRICT and its residents," but it *required* that Maxxam use the District, and no other provider, for emergency transport. (*Id.*) This underscored that the District had no legitimate concern that it could not meet the needs of Maxxam's proposed facility or any other similar facility.

152. The Zoning Enforcement Officer's chart also showed two conditions to which Maxxam would not agree, and which the staff of the County Board did not recommend. Those conditions were to limit the number of residents of the facility to 75, and to protect wetlands on the property in perpetuity through a conservation easement. Maxxam refused to agree to the former condition, which would have limited the facility to less than half of the residents that had previously been approved for Glenwood Academy, because it was openly discriminatory and arbitrary. Maxxam refused to agree to the latter condition because it was not directed to any legitimate zoning concern. The staff of the County Board agreed with Maxxam on these two points.

153. On May 9, 2017, VanKerkhoff explained to the County Board that limiting the number of residents was improper, noting that the facility would be granted an occupancy license based upon the fire and life safety codes for a facility of its size, and not as a matter of the Zoning Ordinance. The State's Attorney's office agreed, noting that it would not be legally proper to limit the occupancy as a zoning matter. As to the wetlands, VanKerkhoff likewise explained that the Zoning Ordinance did not address the issue, and noted that Glenwood Academy had not been required to make any conservation easement as a condition of its use of the same facility.

154. The chart also showed that, even in the view of the County Board, many of the conditions it sought to impose were not enforceable. These included the discriminatory and arbitrary conditions that Maxxam not treat patients on an outpatient basis and that it not be permitted to transfer the facility to another entity.

155. After addressing the conditions, the County Board opened the May 9 meeting for public comment. The public's comments primarily consisted of classic NIMBY arguments from residents opposed to the application.

156. Numerous residents insisted that the facility simply did not belong in their community, focused on perceived threats of crime, complained that the application had been reopened in the first place, insisted that the County Board should affirm the decision of the original Zoning Board, and expressly urged the County Board members to vote on the basis of the community's overwhelming opposition to the application. For example, the President of the neighboring Village of Campton Hills spoke out against the application, asserting that no one really knew whether Maxxam's patients would "wander off and create havoc in the community."

157. Those County Board members voting against the application made clear that they had heard the public's discriminatory commentary and were prepared to rely on and follow it. Despite the fact that the property in question is specifically zoned for nursing and convalescent homes, assisted living facilities and hospitals, certain board members asserted their opposition to the facility "because it was located in an urban/rural setting," and allowing Maxxam's treatment facility "in a rural area" was not in "the best interest of [Kane County's] citizens." (5/9/17 County Board Minutes, at 15.) Multiple County Board members confirmed that they were basing their decision on the decision of the original Zoning Board and, even more strongly, on the vocal, discriminatory opposition of those members of the public who simply did not want addicts living in their community, even on a temporary basis.

158. Nowhere was this more apparent than in the final comments of the County Board's Chairman, Chris Lauzen. Immediately prior to the County Board's vote, Chairman Lauzen confirmed that he and other County Board members would vote against the application simply to appease their constituents. Chairman Lauzen noted he was "deeply grateful" that so many residents had come out to the various hearings to voice their opposition, stated that he was "humbled by the succinct wisdom and eloquence" of those residents, and said: "I am only here

because 129,000 people, voters put me here. I understand what my responsibilities are. I understand what your responsibilities and positions are."

159. Thereafter, Lauzen mentioned the "six requirements" in the Ordinance but did not discuss any of them in detail. Rather, Lauzen admitted that he and others were voting to deny the application because of the community's opposition to the facility. Lauzen also threatened to retaliate against County Board members who voted in favor of Plaintiffs' application. He stated:

> "Finally, I would just like to suggest that it is important that we never practice like a legislative hubris. Board members from a distant part of the county, we should not presume that our judgment is better and more appropriate than the host board member's conclusion. I recognize that this is an ultimate test of Barb Wojnicki's relationship with each one of you as her colleagues. Barb and hundreds of her constituents have taken a clear position that not all six of the ordinance requirements have been met. To vote yes on a zoning location issue, you have to strictly assert that you know better than all these people who live and pay taxes in this county board district. To be gentle in describing it, there would be extreme self-confidence bordering on hubris to conclude that you know better, that any of us know better, than these people who will be most affected.
>
> At a future time when you ask other board members to follow your lead in conclusion on issues that affect your district, if you vote yes against Barb Wojnicki's opposition and other board members, we'll be able to point to your vote today to determine if you treated them as they should treat you on a sensitive future vote affecting your district."

160. The County Board then voted for the second time to deny Plaintiffs' application for a special use, even though it now included the 18 conditions insisted upon by the County Board and agreed to by Maxxam. No evidence was presented or discussed as to why the application with the conditions did not satisfy the Ordinance's requirements or the unjustified and discriminatory concerns of the County Board and Kane County residents.

161. In addition, the County Board again failed to engage in any reasonable accommodation analysis in connection with its second denial of Plaintiffs' application. Indeed, the only mention of a "reasonable accommodation" from the County Board came from County

Board Chairman Chris Lauzen, who argued that by holding 20 hearings over many months, Defendants had somehow "reasonably accommodated" Maxxam's patients. Neither Chairman Lauzen nor any other County Board member engaged in any actual analysis of whether Maxxam's patients could be reasonably accommodated at the proposed facility, as required by law.

162. Upon information and belief, this is the first and only time the County Board has ever voted to deny a special use against the recommendation of its Development Committee.

Defendants' Illegal Conduct Has Caused Substantial and Ongoing Harm.

163. Plaintiffs have suffered, and continue to suffer, substantial harm as the result of Defendants' illegal acts.

164. Absent Defendants' illegal conduct, Plaintiffs would have closed on the purchase and sale of the property by late 2015. Because of Defendants' delay and illegal denials, however, the purchase and sale agreement had to be extended on multiple occasions. This has caused substantial harm to both Plaintiffs.

165. For its part, Maxxam has had to delay the opening of its facility. This has caused substantial and ongoing, irreparable harm to Maxxam's patients, who have been denied treatment.

166. Defendants' illegal conduct also has irreparably harmed Maxxam itself. Absent immediate relief, Maxxam will lose the opportunity to purchase this unique property. Moreover, even if it obtains relief now, the delay caused by Defendants' illegal conduct threatens to defeat Maxxam's ability to take advantage of this opportunity, both in terms of market timing advantages and the hiring of key personnel. Such harms cannot be adequately remedied with money damages, thereby justifying the grant of preliminary and permanent injunctive relief.

167. In addition, Maxxam has suffered, and continues to suffer, substantial monetary damages. To extend the purchase contract with Glenwood Academy, Maxxam was required to

increase the purchase price from $9.5 million to $10.9 million. This $1.4 million increase would not have been necessary absent Defendants' illegal conduct.

168. In addition, Maxxam has been required to pre-pay $10,000 per month of this amount on a nonrefundable basis to assist Glenwood Academy in meeting its carrying costs for the vacant facility. Maxxam has also incurred additional out-of-pocket expenses because of Defendants' conduct. These damages include substantial increased renovation expenses and other expenses for extensive pre-development work that will have to be redone.

169. Maxxam also has lost, and continues to lose, substantial profits. Absent Defendants' conduct, Maxxam would have opened the facility by the Summer of 2016. Maxxam has therefore already lost a full year of profits from the facility, and it continues to lose profits with each passing day. Because profits would have increased with time as occupancy increased and expenses were reduced, Maxxam's per diem lost profits will also continue to increase over time. In addition, every day of delay has caused Maxxam to lose valuable market share.

170. Glenwood Academy also has been damaged. Because of Defendants' conduct, Glenwood Academy has incurred substantial carrying and maintenance costs for the property. Absent relief, Glenwood Academy will also lose the opportunity to sell the property to Maxxam and will, at a minimum, suffer additional marketing, sale, maintenance and carrying costs.

171. The harm to both Plaintiffs is substantial and ongoing.

172. The conduct of Defendants was intentional, in bad faith and sufficiently outrageous as to justify the imposition of punitive damages.

COUNT I – VIOLATION OF THE FAIR HOUSING ACT
42 U.S.C. § 3601, *et seq.*

173. Paragraphs 1 through 172 above are incorporated by reference as if fully set forth herein.

174. The Fair Housing Act ("FHA," and sometimes referred to as the "Fair Housing Amendments Act," or "FHAA"), 42 U.S.C. § 3601 *et seq*., guarantees fair housing to handicapped individuals.

175. Under the FHA, the term "handicap" means, with respect to a person, a "physical or mental impairment which substantially limits one or more of such person's major life activities, a record of such impairment, or being regarded as having such an impairment." 42 U.S.C. § 3602(h).

176. The term "physical or mental impairment" includes "alcoholism" and "drug addiction (other than addiction caused by current, illegal use of a controlled substance)." 24 C.F.R. § 100.201.

177. Maxxam's patients are qualified individuals with disabilities within the meaning of 42 U.S.C. § 12101.

178. Under the FHA, it is unlawful to discriminate against or otherwise make unavailable or deny a dwelling to any buyer or renter because of a handicap of that buyer, renter, or person residing in or intending to reside in that dwelling after it is sold, rented, or made available. 42 U.S.C. § 3604(f)(1).

179. The proposed residential buildings within the rehabilitation center qualify as dwellings under the FHA.

180. Defendants have violated, and are continuing to violate, the FHA by, among other things:

a. Allowing official and community prejudice against Maxxam's disabled patients to dictate the outcome of the zoning hearings;

b. Discriminating against Plaintiffs and the disabled patients that Maxxam is committed to serve;

c. Denying the requested special use because of the disabled status of the residents that the proposed facility would house and treat; and

d. Imposing, or seeking to impose, discriminatory conditions upon Plaintiffs solely because of the disabled status of the residents that the proposed facility would house and treat; and

e. Refusing to engage in a reasonable accommodation analysis in connection with their denial of Plaintiffs' special use application.

181. Defendants' arbitrary and discriminatory policies in respect to, and interpretation of, the Kane County Zoning Ordinance have also had a disparate impact on those suffering from addiction, including Maxxam's disabled patients, in several ways that are unlawful under the FHA. These include, among others:

a. By allowing assisted living facilities, nursing and convalescent homes and hospitals in the R-1 Residential District, and by extension in the F Farming District, but not allowing residential facilities for the treatment of substance abuse and addiction in those same districts, Defendants' interpretation and enforcement of its Zoning Ordinance has a disparate impact on those suffering from the disability of addiction; and

b. By utilizing its Zoning Ordinance to impose, and interpreting its Zoning Ordinance to require, onerous conditions on facilities for the treatment of addiction that are not imposed upon other permitted special uses, such as the boarding school that operated on this site for 20 years, Defendants' interpretation and enforcement of its Zoning Ordinance has a disparate impact on those suffering from the disability of addiction.

182. In addition, Defendants violated the FHA's reasonable accommodation requirement. The FHA prohibits "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B). Despite Plaintiffs' repeated requests for a reasonable accommodation throughout the zoning hearings, Defendants failed to provide reasonable accommodations for Maxxam's disabled patients.

183. Defendants have failed to make reasonable accommodations to Plaintiffs and Maxxam's patients in several ways by, among other things:

a. Imposing onerous security requirements and other conditions on the facility's operation that are not required of other, similar special uses;

b. Failing to permit the facility to operate in the identical manner as the boarding school it would replace solely because of the disabled status of the patients the facility would house and treat;

c. Denying Plaintiffs' special use application in part on the stated but unsupported ground that Maxxam's patients would require greater than average police, fire and ambulance calls without considering Plaintiffs' contrary evidence or its request that the facility be reasonably accommodated in the district, with appropriate conditions, to account for any increased need for such services;

d. Denying Plaintiffs' special use application in part on the stated but unsupported ground that, due to the public stigma associated with those suffering from addiction, the proposed facility would result in an 8% reduction in property value for a single homeowner, without considering Plaintiffs' contrary evidence, or evaluating whether any risk of such a decline could be reduced or eliminated by conditions placed on Plaintiffs or by other measures, or whether the overall benefits to the health and welfare of the community provided by the facility outweighed any such risk; and

e. Voting to deny Plaintiffs' application even after Maxxam agreed to all 18 of Kane County's recommended conditions for the approval of the special use, all of which were supposedly recommended by the Zoning Board, Development Committee, and County Board staff to address Defendants' concerns regarding the proposed facility.

184. Plaintiffs and Maxxam's patients have suffered, and continue to suffer, substantial damages and other harm as a result of Defendants' unlawful conduct.

COUNT II – VIOLATION OF THE AMERICANS WITH DISABILITIES ACT 42 U.S.C. § 12102, *et seq*.

185. Paragraphs 1 through 172 above are incorporated by reference as if fully set forth herein.

186. The Americans with Disabilities Act ("ADA") provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of any service, program, or activity of a public entity, or be subjected to discrimination by any such entity. The ADA also makes it unlawful for a public entity, in determining the site or location of a facility, to make selections that have the purpose or effect of excluding individuals with disabilities. 42 U.S.C. § 12132; 28 C.F.R. § 35.130.

187. Maxxam's patients are qualified persons under the ADA with disabilities that substantially impair one or more major life activities.

188. The first criteria for admission to the treatment facility for patients will be that the patient has been diagnosed as suffering from drug or alcohol addiction and has agreed to participate in substance abuse treatment. As part of this requirement, Maxxam's medical personnel must determine that the patient is suffering from drug or alcohol addiction to such a degree that he or she is unable to care for him- or herself.

189. While being treated at the facility, Maxxam's patients will not be illegally using controlled substances. As such, Maxxam's patients are "qualified persons with disabilities" within the meaning of the ADA. 42 U.S.C. § 12102(2); 28 C.F.R. § 35.104.

190. Defendants are qualifying public entities within the meaning of the ADA. 42 U.S.C. § 12131(1)(A).

191. Section 12132 of the ADA constitutes a general prohibition against discrimination on the basis of disability by public entities.

192. Defendants have violated, and are continuing to violate, the ADA by, among other things:

a. Allowing official and community prejudice against Maxxam's disabled patients to dictate the outcome of the zoning hearings;

b. Discriminating against Plaintiffs and the disabled patients that Maxxam is committed to serve;

c. Denying the requested special use because of the disabled status of the residents that the proposed facility would house and treat; and

d. Imposing, or seeking to impose, discriminatory conditions upon Plaintiffs solely because of the disabled status of the residents that the proposed facility would house and treat; and

e. Refusing to engage in a reasonable accommodation analysis in connection with their denial of Plaintiffs' special use application.

193. Defendants' arbitrary and discriminatory policies in respect to, and interpretation of, the Kane County Zoning Ordinance have also had a disparate impact on those suffering from addiction, including Maxxam's disabled patients, in several ways that are unlawful under the ADA. These include, among others:

a. By allowing assisted living facilities, nursing and convalescent homes and hospitals in the R-1 Residential District, and by extension in the F Farming District, but not allowing residential facilities for the treatment of substance abuse and addiction in those same districts, Defendants' interpretation and enforcement of its Zoning Ordinance has a disparate impact on those suffering from the disability of addiction; and

b. By utilizing its Zoning Ordinance to impose, and interpreting its Zoning Ordinance to require, onerous conditions on facilities for the treatment of addiction that are not imposed upon other permitted special uses, such as the boarding school that operated on this site for 20 years, Defendants' interpretation and enforcement of its Zoning Ordinance has a disparate impact on those suffering from the disability of addiction.

194. In addition, Defendants violated the ADA's reasonable accommodation requirement. The ADA provides: "A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." 28 C.F.R. § 35.130(b)(7).

Despite Plaintiffs' repeated requests for a reasonable accommodation throughout the zoning hearings, Defendants failed to provide reasonable accommodation for Maxxam's disabled patients. Moreover, Defendants cannot demonstrate that accommodating Plaintiffs and Maxxam's patients would fundamentally alter the nature of the Kane County Zoning Ordinance.

195. Defendants have failed to make reasonable accommodations to Plaintiffs and Maxxam's patients in several ways by, among other things:

a. Imposing onerous security requirements and other conditions on the facility's operation that are not required of other, similar special uses;

b. Failing to permit the facility to operate in the identical manner as the boarding school it would replace solely because of the disabled status of the patients the facility would house and treat;

c. Denying Plaintiffs' special use application in part on the stated but unsupported ground that Maxxam's patients would require greater than average police, fire and ambulance calls without considering Plaintiffs' contrary evidence or its request that the facility be reasonably accommodated in the district, with appropriate conditions, to account for any increased need for such services;

d. Denying Plaintiffs' special use application in part on the stated but unsupported ground that, due to the public stigma associated with those suffering from addiction, the proposed facility would result in an 8% reduction in property value for a single homeowner, without considering Plaintiffs' contrary evidence, or evaluating whether any risk of such a decline could be reduced or eliminated by conditions placed on Plaintiffs or by other measures, or whether the overall benefits to the health and welfare of the community provided by the facility outweighed any such risk; and

e. Voting to deny Plaintiffs' application even after Maxxam agreed to all 18 of Kane County's recommended conditions for the approval of the special use, all of which were supposedly recommended by the Zoning Board, Development Committee, and County Board staff to address Defendants' concerns regarding the proposed facility.

196. Plaintiffs and Maxxam's patients have suffered, and continue to suffer, substantial damages and other harm as a result of Defendants' unlawful conduct.

COUNT III – VIOLATION OF THE REHABILITATION ACT
29 U.S.C. § 791, *et seq*.

197. Paragraphs 1 through 172 above are incorporated by reference as if fully set forth herein.

198. The Rehabilitation Act, 29 U.S.C. § 791, *et seq*., provides that no qualified individual with a disability shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. 29 U.S.C. § 794(a).

199. Kane County receives federal financial assistance, including through federal grant programs such as the Community Development Block Grant program, which is funded by the United States Department of Housing and Urban Development.

200. Section 508 of the Rehabilitation Act defines "program or activity" as "all of the operations" of specific entities, including "a department, agency, special purpose district, or other instrumentality of a State or of a local government." 29 U.S.C. § 794(b)(1)(A).

201. Defendants are qualifying public entities within the meaning of the Rehabilitation Act.

202. Zoning decisions by a municipality are normal functions of a governmental entity and thus are covered by the Rehabilitation Act.

203. Maxxam's patients are qualified persons under the Rehabilitation Act with disabilities that substantially impair one or more major life activities. *See* 29 U.S.C. §705(9)(B); 42 U.S.C. § 12102.

204. The first criteria for admission to the treatment facility for patients will be that the patient has been diagnosed as suffering from drug or alcohol addiction and has agreed to participate in substance abuse treatment. As part of this requirement, Maxxam's medical personnel must

determine that the patient is suffering from drug or alcohol addiction to such a degree that he or she is unable to care for him- or herself.

205. While being treated at the facility, Maxxam's patients will not be illegally using controlled substances. As such, Maxxam's patients are "qualified persons with disabilities" within the meaning of the Rehabilitation Act. 29 U.S.C. § 705(9)(B); 42 U.S.C. § 12102(2); 28 C.F.R. § 35.104.

206. Section 508 of the Rehabilitation Act constitutes a general prohibition against discrimination on the basis of disability by public entities.

207. Defendants have violated, and are continuing to violate, the Rehabilitation Act by, among other things:

a. Allowing official and community prejudice against Maxxam's disabled patients to dictate the outcome of the zoning hearings;

b. Discriminating against Plaintiffs and the disabled patients that Maxxam is committed to serve;

c. Denying the requested special use because of the disabled status of the residents that the proposed facility would house and treat; and

d. Imposing, or seeking to impose, discriminatory conditions upon Plaintiffs solely because of the disabled status of the residents that the proposed facility would house and treat; and

e. Refusing to engage in a reasonable accommodation analysis in connection with their denial of Plaintiffs' special use application.

208. Defendants' arbitrary and discriminatory policies in respect to, and interpretation of, the Kane County Zoning Ordinance have also had a disparate impact on those suffering from addiction, including Maxxam's disabled patients, in several ways that are unlawful under the Rehabilitation Act. These include, among others:

a. By allowing assisted living facilities, nursing and convalescent homes and hospitals in the R-1 Residential District, and by extension in the F Farming

District, but not allowing residential facilities for the treatment of substance abuse and addiction in those same districts, Defendants' interpretation and enforcement of its Zoning Ordinance has a disparate impact on those suffering from the disability of addiction; and

b. By utilizing its Zoning Ordinance to impose, and interpreting its Zoning Ordinance to require, onerous conditions on facilities for the treatment of addiction that are not imposed upon other permitted special uses, such as the boarding school that operated on this site for 20 years, Defendants' interpretation and enforcement of its Zoning Ordinance has a disparate impact on those suffering from the disability of addiction.

209. In addition, Defendants violated the Rehabilitation Act's reasonable accommodation requirement. The Rehabilitation Act prohibits a government entity from refusing to modify an existing program or to make reasonable accommodations to the disabled where to do so would render the program unreasonable or discriminatory. Despite Plaintiffs' repeated requests for a reasonable accommodation throughout the zoning hearings, Defendants failed to provide reasonable accommodation for Maxxam's disabled patients.

210. Defendants have failed to make reasonable accommodations to Plaintiffs and Maxxam's patients in several ways by, among other things:

a. Imposing onerous security requirements and other conditions on the facility's operation that are not required of other, similar special uses;

b. Failing to permit the facility to operate in the identical manner as the boarding school it would replace solely because of the disabled status of the patients the facility would house and treat;

c. Denying Plaintiffs' special use application in part on the stated but unsupported ground that Maxxam's patients would require greater than average police, fire and ambulance calls without considering Plaintiffs' contrary evidence or its request that the facility be reasonably accommodated in the district, with appropriate conditions, to account for any increased need for such services;

d. Denying Plaintiffs' special use application in part on the stated but unsupported ground that, due to the public stigma associated with those suffering from addiction, the proposed facility would result in an 8% reduction in property value for a single homeowner, without considering

Plaintiffs' contrary evidence, or evaluating whether any risk of such a decline could be reduced or eliminated by conditions placed on Plaintiffs, or by other measures, or whether the overall benefits to the health and welfare of the community provided by the facility outweighed any such risk; and

e. Voting to deny Plaintiffs' application even after Maxxam agreed to all 18 of Kane County's recommended conditions for the approval of the special use, all of which were supposedly recommended by the Zoning Board, Development Committee, and County Board staff to address Defendants' concerns regarding the proposed facility.

211. Plaintiffs and Maxxam's patients have suffered, and continue to suffer, substantial damages and other harm as a result of Defendants' unlawful conduct.

COUNT IV – VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION— SUBSTANTIVE DUE PROCESS—and 42 U.S.C. § 1983

212. Paragraphs 1 through 172 above are incorporated by reference as if fully set forth herein.

213. Defendants' denial of Plaintiffs' application for a special use violated Plaintiffs' right to substantive due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution by arbitrarily, irrationally, and unreasonably interfering with Plaintiffs' right to sell, purchase, use and develop the property and associated facility.

214. Defendants' illegal and improper actions are not roughly proportional to the public good sought to be achieved and are grossly disproportionate to any asserted public interest because they unduly deprive Plaintiffs of their constitutional rights far beyond what is reasonable, legal or necessary.

215. Defendants' actions are illegal because they prevent, frustrate, and impede Plaintiffs' by-right use and enjoyment of the property and its facilities, in violation of the Fifth Amendment to the United States Constitution.

216. Defendants' actions deprived Plaintiffs of a legally-permitted, economically beneficial use of the property.

217. Defendants' conduct was arbitrary, capricious, unreasonable, malicious, discriminatory, in bad faith, and shocks the conscience.

218. Defendants' actions violate the Fifth and Fourteenth Amendments to the United States Constitution. Plaintiffs are entitled to vindicate these rights pursuant to 42 U.S.C. § 1983.

219. Plaintiffs and Maxxam's patients have suffered, and continue to suffer, substantial damages and other harm as a result of Defendants' unlawful conduct.

COUNT V – VIOLATION OF STATE LAW

220. Paragraphs 1 through 172 above are incorporated by reference as if fully set forth herein.

221. Under Illinois law, Defendants are bound to follow the requirements of the Zoning Ordinance. *See* 55 ILCS 5/5-12001, *et seq.* Section 5-12012.1 of the Illinois Counties Code, 55 ILCS 5/5-12012.1, provides that a county board's decision in regard to a special use application shall be subject to *de novo* judicial review as a legislative decision of the county.

222. Plaintiffs' proposed use of the subject property as a residential treatment center for those recovering from alcohol and drug addictions fully satisfies the requirements of the Zoning Ordinance. Plaintiffs' proposed use remains in harmony with the neighborhood and with the general purpose and intent of the Zoning Ordinance. The proposed use will not be injurious to the neighborhood or detrimental to the public welfare in any way. To the contrary, the facility will promote public health and welfare in the neighborhood and community.

223. Plaintiffs' proposed use satisfies each of the six requirements of Section 4.8-2 of the Zoning Ordinance.

224. Defendants' decision to deny Plaintiffs' application for a special use was against the manifest weight of the evidence, an abuse of discretion, arbitrary and capricious, and incorrect as a matter of law.

225. Defendants unlawfully and improperly ignored uncontroverted evidence establishing that the treatment facility would operate as a proper special use under the Ordinance.

226. Defendants' proffered reasons for denying the special use were arbitrary and unlawful.

227. The Count Board's decision that a particular type of institution (such as a nursing home, hospital or other similar institution) is a permitted special use in a particular district constitutes a legislative finding that "the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood," and that "the use, as such, is neither inconsistent with the public's health, safety, morals or general welfare, nor out of harmony with the [county's] general zoning plan." *City of Chicago Heights v. Living Word Full Gospel Church and Ministries, Inc.*, 196 Ill. 2d 1, 17 (2001).

228. Once a county's zoning ordinance permits a particular type of institution in a district as a special use, it may not deny special use approval to any such institution on the basis that the characteristics of such institutions *generally* render them inappropriate for the requested location. *Id.* at 18-22.

229. A county can deny a proposed special use only where the county meets the burden of proving that the specific, unique attributes of the proposed facility will result in an adverse effect upon adjoining and surrounding properties unique and different from those that would be imposed by any similar facility. *Id.*

230. Defendants admitted that Plaintiffs' proposed use was similar to nursing and convalescent homes and hospitals, and was thus a permitted special use within the F Farming District. Defendants provided no rational basis for believing that the proposed facility would have any impact on the neighborhood that any other such facility would not have.

231. Defendants' only proffered grounds were those that would apply to all such facilities. For example:

a. Certain Zoning Board and County Board members complained that Plaintiffs' facility was a for-profit facility, but the Zoning Code expressly permits for-profit nursing homes, convalescent homes, assisted living facilities, hospitals and other similar uses in the district;

b. Certain Zoning Board and County Board members complained that property values might be diminished due to the nature of the facility, but the only witness to so testify did not identify any unique attributes of the facility (other, perhaps, than the illegal consideration of the protected status of Maxxam's patients) that could cause such diminishment;

c. Certain Zoning Board and County Board members complained, based upon unfounded speculation, that the facility would receive many ambulance and other emergency calls, but Defendants offered no evidence that the number of emergency vehicles traveling to or from the facility would exceed those of any nursing home, convalescent home, assisted living facility, hospital or other similar use; and

d. Certain Zoning Board and County Board members complained that too many individuals would be residing at the facility, and even sought to force Maxxam to reduce the number of patients it could treat, even though the Zoning Ordinance places no limitation on the number of residents in any such facility, and even though the facility had previously been approved to house, and had housed, more individuals than was proposed by Maxxam.

232. Maxxam has been improperly denied the use and enjoyment of the property, and Plaintiffs and Maxxam's patients have suffered, and continue to suffer, substantial damages and other harm as a result of Defendants' unlawful conduct.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and against Defendants, jointly and severally, on Counts I-IV, above, and grant the following relief:

(i) A declaration that Defendants' improper denials of Plaintiffs' application for a special use constituted violations of the FHA, ADA, Rehabilitation Act, and Fifth and Fourteenth Amendments to the United States Constitution, and that Maxxam and its patients are entitled to reasonable accommodations to facilitate the operation of the rehabilitation center in the same manner granted to Glenwood Academy, as proposed in Plaintiffs' application;

(ii) Preliminary and permanent injunctive relief permitting Maxxam's operation of the rehabilitation center in the same manner granted to Glenwood Academy, as proposed in Plaintiffs' application, and enjoining Defendants from obstructing or interfering with Maxxam's operation thereof;

(iii) Compensatory damages;

(iv) Punitive damages;

(v) Attorneys' fees and costs; and

(vi) Such other relief as the Court deems appropriate.

AND WHEREFORE, in addition, Plaintiffs respectfully request that the Court enter judgment in their favor and against Defendants, jointly and severally, on Count V, above, and grant the following relief:

(i) Declaratory relief stating that Defendants' actions were arbitrary, capricious, unreasonable, and in violation of the Ordinance and the laws of the State of Illinois;

(ii) Preliminary and permanent injunctive relief permitting Maxxam's operation of the facility in the same manner granted to Glenwood Academy, as proposed in Plaintiffs' application, and enjoining Defendants from obstructing or interfering with Maxxam's operation thereof;

(iii) Compensatory damages; and

Such other relief as the Court deems appropriate.

VI. JURY DEMAND

Plaintiffs respectfully request a trial by jury on all claims so triable.

Dated: August 4, 2017	Respectfully Submitted,
Caesar A. Tabet Christopher D. Liguori Brian C. Haussmann Jordan E. Wilkow TABET DIVITO & ROTHSTEIN LLC 209 S. LaSalle St., 7th Floor Chicago, IL 60604 (312) 762-9450 ctabet@tdrlawfirm.com cliguori@tdrlawfirm.com bhaussmann@tdrlawfirm.com jwilkow@tdrlawfirm.com	**MAXXAM PARTNERS, LLC** By: /s/ Christopher D. Liguori One of Its Attorneys
Samuel Mendenhall Anthony DeMarco Pesce Adrianne K. Rosenbluth WINSTON & STRAWN LLP 35 West Wacker Drive Chicago, IL 60601 (312) 558-5600 smendenh@winston.com apesce@winston.com arosenbluth@winston.com	**GLENWOOD ACADEMY** By: /s/ Samuel Mendenhall One of Its Attorneys