IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

MAXXAM PARTNERS, GLENWOOD ACADEMY,	)	
Plaintiffs,	)	**Case No. 17 C 5707**
v.	)	
	)	**Judge Jorge L. Alonso**
KANE COUNTY, KANE COUNTY BOARD, KANE COUNTY ZONING BOARD OF APPEALS,	)	
Defendants.	)	

ORDER

Fox River & Countryside Fire/Rescue District's motion to intervene [90] is denied.

STATEMENT

Plaintiffs Maxxam Partners ("Maxxam") and Glenwood Academy ("Glenwood") initially brought this suit against defendant Kane County ("the County"), alleging that the County, its Board, and its Zoning Board of Appeals discriminated on the basis of disability under the Fair Housing Act, Americans with Disabilities Act, and Rehabilitation Act, and violated principles of due process and state zoning law, when they denied Maxxam's request for a special use permit, which Maxxam sought in order to develop property it intended to purchase from Glenwood into a drug and alcohol rehabilitation center. The parties have reached an agreement to settle this case, and toward that end, they have filed a joint motion for entry of a consent decree.

On April 27, 2017, during the pendency of Maxxam's special use permit application, Maxxam and the Fox River & Countryside Fire/Rescue District ("the District") entered into a written agreement ("the Agreement"), which required Maxxam to do the following, among other things: (1) pay the costs of any emergency medical response and transport services the District might render to inhabitants of the proposed rehab facility; (2) hire the District for any non-emergency medical transport services Maxxam might require; and (3) pay additional fees to the District based on the facility's occupancy rate.

Maxxam and Glenwood filed this suit on August 4, 2017. This Court referred the case to the magistrate judge on October 31, 2017, for discovery supervision and a settlement conference. The docket reflects that the parties were contemplating settlement discussions as early as November 8, 2017 (*see* Minute Entry, ECF No. 38) and that they had discussed tentative dates for a settlement conference by February 1, 2018 (*see* Minute Entry, ECF No. 54). On February 7, 2018, the magistrate judge set a settlement conference for April 12, 2018. (Minute Entry, ECF

No. 55.) Beginning on April 12, the magistrate judge held numerous settlement conferences with the parties, both in person and by telephone, and on August 8, 2018, plaintiffs filed a motion for approval and entry of consent decree pursuant to settlement before the magistrate judge. On August 21, 2018, the parties re-filed the motion before the undersigned judge, noticed for presentment on August 28, 2018.

On the morning of August 28, 2018, the District filed a motion to intervene in this suit, alleging that approval of the settlement and entry of the consent decree would impair its interests, particularly its interests under the Agreement it had entered into with Maxxam.

Federal Rule of Civil Procedure 24(a) provides, in pertinent part, that "on timely motion, the court must permit anyone to intervene who . . . claims an interest relating to the . . . transaction that is the subject of [this] action and is so situated that disposing of the action may . . . impair or impede the movant's ability to protect its interest." Rule 24(b) provides, in pertinent part, that a court "***may*** permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B).

The Seventh Circuit has explained the requirements for intervention of right as follows:

> There are four requirements for intervention of right under [Rule] 24(a) . . . : (1) timeliness, (2) an interest relating to the subject matter of the main action, (3) at least potential impairment of that interest if the action is resolved without the intervenor, and (4) lack of adequate representation by existing parties. The burden is on the party seeking to intervene of right to show that all four criteria are met.

Reid L. v. Illinois State Bd. of Educ., 289 F.3d 1009, 1017 (7th Cir. 2002) (internal citations omitted).

The District claims that it meets all four requirements. First, it argues that its motion is timely because it moved as soon as it could after the Kane County Board passed the ordinance approving the consent decree on August 14, 2018. According to the District, it could not have moved earlier because it had no standing to do so until Kane County reversed its decision as to the special use permit.

With respect to the second and third requirements, the District argues that its Agreement with Maxxam gives it an interest relating to the subject of this action, and the consent decree potentially impairs its interest because it does not incorporate the terms of the Agreement and may be inconsistent with them. In the consent decree's Conditions of Approval ¶ 17 (p. 7; *see* ECF No. 86-1 at 8) the decree states that Maxxam shall pay the District for "emergency transport fees," but it does not mention the Agreement, nor does the consent decree language reflect all of the Agreement's terms. There is no mention, for example, of the transition payment or additional occupancy-based payments that Maxxam agreed to make. The District therefore concludes that the parties are "asking this Court to impose a new agreement" on the District "without its consent," and that the consent decree "may render" provisions of the Agreement impossible or unenforceable, or "require reformation of the Agreement." (ECF No. 90 at 6.)

Finally, the District argues that Kane County is no longer representing its interests because of its "abandonment of the defense of this action." (ECF No. 90 at 7.)

Plaintiffs and defendants (collectively, "the Parties") have filed a joint opposition brief. The Parties argue that the District's intervention is not timely because (1) the District should have intervened as soon as it knew of its interest in this case, not merely when it learned that the parties had reached a settlement; (2) the Parties would be prejudiced by the District's intervention, which would jeopardize a settlement that required a significant investment of time, effort, and funds; and (3) any prejudice the District would suffer if its motion is denied is no more than speculative.

Unlike the District, the Parties support their arguments with citations to pertinent case law. The Court agrees with the Parties that the case law supports their position, and their arguments are convincing.

Although it pretends otherwise, the District is unable to identify anything in the consent decree that will impair its interest in the Agreement. The consent decree does not mention the Agreement, and contrary to the District's stated position in its briefs, the consent decree is not inconsistent with the Agreement. Whether Maxxam holds up its end of the bargain it entered into when it signed the Agreement is not directly tied to any question this Court might resolve by entering the consent decree. As the Parties argue, any "detrimental impact" from the District's exclusion from this suit would be pure "speculation." *See Sokaogon Chippewa Community v. Babbit*, 214 F.3d 941, 947 (7th Cir. 2000).

That being the case, it appears that Maxxam is objecting not so much to any particular aspect of the consent decree that is at odds with the Agreement as it is objecting to the fact of the consent decree, *i.e.*, to the fact that Kane County will issue the special use permit to Maxxam after all. This interpretation of Maxxam's position is reinforced by its argument that the reason Kane County no longer represents its interests is because it has "abandon[ed] the defense of this action," *i.e.*, abandoned its opposition to issuing the special use permit. But if that is the District's real objection to the settlement, then there is no apparent reason why the District could not have sought to intervene as soon as this case was filed, rather than wait to "derail[]" this suit when it was already "within sight of the terminal." *Sokaogon*, 214 F.3d at 949. The District argues that it had no standing until Kane County reversed itself on Maxxam's special use permit application, but this argument is doubly weak: even assuming that the District is correct as to when it acquired standing, it is not settled that the District even needed standing to file a motion to intervene under Rule 24. *See Bond v. Utreras*, 585 F.3d 1061, 1070 (7th Cir. 2009); *Habitat Educ. Ctr., Inc. v. Bosworth*, 221 F.R.D. 488, 492-93 (E.D. Wis. 2004).

The District should have filed its motion to intervene as soon as it believed "as a practical, not legal matter, [that] its interest could be impaired." *Habitat Educ. Ctr.*, 221 F.R.D. at 492-93. Even if the District initially believed that this suit was patently meritless, the court-facilitated settlement negotiations taking place over several months should have put it on notice that the Parties saw the matter differently. The District claims that the Parties' "secret settlement negotiations" could not have put it on notice of anything, but this argument is unconvincing because it was only the content of the Parties' settlement negotiations that was secret; the fact of the ongoing settlement negotiations would have been clear to anyone who took the time to review

the Court's docket. To the extent that the District believes it needs to intervene in this case to protect its interests, it should have done so before the Parties expended many thousands of dollars and hundreds of hours working out a settlement of the matter.

Finally, even if the consent decree protects only some of the District's rights under the Agreement, it does not follow that defendants inadequately represented the District's interests. "[T]otal, individualized relief is too much to expect from a consent decree which attempts to remedy many wrongs and redress many groups." *United States v. City of Chicago*, 908 F.2d 197, 199 (7th Cir. 1990).

In short, for these reasons and the reasons given by the Parties in their joint opposition brief, the District's arguments on intervention of right are unpersuasive. For the same reasons, the Court declines to exercise its discretion to permit the District to intervene under Rule 24(b). The motion "came too late," *id.* at 199-200, and it is futile, in any case, because the District has not demonstrated that it has any need to intervene in this action to represent and protect its interests. The District's motion to intervene is denied.

SO ORDERED. **ENTERED: November 14, 2018**

HON. JORGE ALONSO
United States District Judge