

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

Haymarket DuPage LLC.,

Plaintiff,

v.

Village of Itasca, Itasca Plan Commission,
Itasca Fire Protection District No. 1, Itasca
Mayor Jeffrey Pruyn in his official capacity,
Itasca Public School District 10, and Itasca
Public School District 10 Superintendent
Craig Benes in his official capacity,

Defendants.

Case No. 22-CV-160

JURY TRIAL DEMANDED

COMPLAINT

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Haymarket DuPage LLC, for its Complaint against Defendants Village of Itasca, Itasca Plan Commission, Itasca Fire Protection District No. 1, Itasca Mayor Jeffrey Pruyn in his official capacity, Itasca Public School District 10, and its Superintendent Craig Benes in his official capacity (collectively, “Defendants”), states as follows:

INTRODUCTION AND SUMMARY OF CLAIMS

1. Plaintiff Haymarket DuPage LLC (“Haymarket” or “Haymarket DuPage”) brings an action for declaratory judgment, permanent injunctive relief, and damages under the Fair Housing Amendments Act, 42 U.S.C. §3602 *et seq.* (“FHA”); Title II of the Americans with Disabilities Act, 42 U.S.C. §12101 *et seq.* (“ADA”); and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 *et seq.* (“Section 504”). This Complaint arises out of Defendant Village of Itasca and Defendant Itasca Plan Commission’s (collectively, the “Itasca Defendants”): (a) refusal to allow Haymarket DuPage to operate a healthcare facility in Itasca, which is permitted as a special use under existing zoning law in Itasca; (b) requirement that Haymarket DuPage submit a zoning application as a planned development (rather than as a healthcare facility) and an application for Class 1 Site Plan Review; (c) denial of both applications; and (d) failure to comply with applicable zoning procedures while hearing and denying Haymarket DuPage’s zoning applications. It also arises out of all Defendants’ intentional and orchestrated discriminatory conduct across Itasca’s key governmental entities designed to interfere with the rights of Haymarket, the people with disabilities it serves, and their families. Defendants’ concerted actions to delay and refuse operation of Haymarket DuPage’s healthcare facility have had, and will continue to have, devastating consequences to Haymarket, and to citizens in Itasca,

DuPage County, and the collar county region who increasingly need treatment for substance use disorders and related mental health disabilities, but who are unable to find sufficient treatment.¹

2. This Complaint is also filed pursuant to this Court's supplemental jurisdiction under 28 U.S.C. §1367 and the Illinois Municipal Code, 65 ILCS §5/11-13-25, authorizing *de novo* review of municipal zoning decisions.

3. Haymarket Center, whose main location is in Chicago's West Loop, is the metropolitan area's largest and most comprehensive non-profit provider of treatment for substance use disorders and mental health disabilities. Haymarket Center is unique among substance use and mental health treatment facilities in the area because it accepts individuals for treatment regardless of their ability to pay, and provides wrap-around services including primary health care, GED preparation, and career counseling and placement. About 70-75% of Haymarket's patients rely on Medicaid, and 25-30% have no insurance and rely on state-funded programs.

4. From 2017 to 2018, nearly 2,000 men and women from DuPage County and other collar counties received treatment at the West Loop location. In April 2019, to respond to the need for its services in DuPage County and the collar counties, Haymarket Center contracted to buy a 168 room, multi-story Holiday Inn hotel at 860 W. Irving Park Road in Itasca ("Property"), a suburb in DuPage County. The seven-acre Property is adjacent to Interstate 290 West on one side and a business park on the other, and is far from residential neighborhoods. It is in a zoning area designated by Itasca as a B-2 district, which allows healthcare facilities as a special use.

¹ On November 17, 2021, the Centers for Disease Control and Prevention reported the U.S. recorded its highest number of drug-overdose deaths in a 12-month period. Kamp, Jon, *Drug Overdose Deaths, Fueled by Fentanyl, Hit Record High in U.S.*, Wall Street Journal (November 17, 2021) available at <https://www.wsj.com/articles/drug-overdose-deaths-fueled-by-fentanyl-hit-record-high-in-u-s-11637161200>.

Haymarket Center seeks to operate the Haymarket DuPage facility in addition to its existing Chicago facility.

5. After considerable planning for contingencies and multi-disciplinary medical, psychiatric, social service, support, and security staffing levels, Haymarket DuPage sought approval to operate a healthcare facility that would offer a full continuum of health care services including diagnosis, treatment, and recovery support for persons over 18 with substance use and mental health disabilities. Haymarket DuPage's patients are considered people with disabilities under the FHA, ADA, and Section 504.

6. Haymarket DuPage's proposal to operate its healthcare facility in Itasca garnered support from local, regional, state, and national experts on substance use treatment. The supporters included health care organizations, state agencies, advocacy groups, and other providers such as: Edward-Elmhurst Hospital; Advocate Medical Group; Cook County Health; National Alliance on Mental Illness – DuPage; Thresholds; Northwestern Medicine at Central DuPage Hospital; Loyola Medicine; Kenneth Young Center; Rush University Health System; DuPage County Medical Society; Illinois Primary Health Care Association; Illinois Association for Behavioral Health; Heartland Alliance Health; League of Women Voters of Roselle-Bloomington, Elmhurst, Arlington Heights-Mt. Prospect, Buffalo Grove-Wheeling-Prospect Heights-Elk Grove Village, Naperville; Hope for Healing; LTM Foundation; Live4Lali; DuPage County Sheriff; DuPage County Health Department; NAMI DuPage; DuPage County HOPE

Task Force; DuPage County NAACP; National Safety Council (based in Itasca); National Council for Behavioral Health; The Kennedy Forum; and many others.²

7. Haymarket DuPage’s proposal also drew considerable opposition from the Itasca Defendants, Mayor Jeffrey Pruyn, Itasca Public School District 10 and its Superintendent Craig Benes, Itasca Fire Protection District No. 1, and Itasca residents. Itasca’s governmental entities and residents pulled their forces together in a strategy to drive out Haymarket and the people with disabilities it treats. Opposition in this regard included: an organized march on September 18, 2019, during which more than a thousand individuals walked the streets of Itasca wearing “small town proud” t-shirts and carrying “No Haymarket” signs, led by an individual using a bullhorn and chanting the words “no Haymarket” and “small-town proud”; a dedicated opposition website managed by Itasca residents; a “No Haymarket Itasca” Facebook page focused on opposition; campaign-style yard signs that read “No Haymarket” posted throughout Itasca; and public testimony and questioning against Haymarket DuPage during the zoning hearings in Itasca. Defendants strategically fostered, intentionally contributed to, and were unduly negatively influenced by this “not in my backyard” opposition.

8. The zoning hearing process began in 2019 and lasted over two years, during which time Haymarket was required to undergo more than 35 hearings and incur considerable expense. The unprecedented number of hearings, fraught with discriminatory procedural irregularities, was due in large part to Itasca Defendants’ deliberate misclassification of Haymarket DuPage’s proposal as a “planned development” instead of a special use permitted as a “healthcare facility” under its Zoning Ordinance. As a result, Haymarket DuPage was held to a

² List of Individuals, Community Groups, Health Care Providers, Organizations, Elected Officials, and Governmental Agencies supporting Haymarket DuPage’s proposed facility in Itasca *attached as* Exhibit A; *see also* <https://www.haymarketdupage.org>.

higher and more onerous standard than would have been required had it been allowed to apply for a special use as a healthcare facility. Further, when Haymarket DuPage requested that Itasca Defendants modify this zoning classification as a reasonable accommodation under civil rights laws, they refused.³

9. Itasca Defendants strategically granted Defendant Fire Protection District No. 1 (“Fire District”), Defendant Itasca Public School District 10 (“School District”), and a group of Itasca residents and businesses (“Neighborhood Opposition”) (collectively the “Objectors”) unprecedented standing as parties to oppose Haymarket DuPage in the zoning proceedings, which they took full advantage of by providing false and/or erroneous evidence. In addition to the traditional right to provide testimony and cross-examine witnesses, the Itasca Defendants allowed the Objectors to, among other things, submit proposed findings of fact⁴ and provide closing statements before the Plan Commission vote on the Haymarket DuPage proposal.

10. The Neighborhood Opposition included a group of individual residents self-identified as the Concerned Citizens of Itasca (“Concerned Citizens”), several individual single-family home owners, and two businesses located within 250 feet of the Property. They were all represented by a common attorney. Throughout the course of the hearings, this attorney presented conflicting information on who his actual clients were and, in fact, he himself owned several of the named “objecting” properties. Itasca permitted the Neighborhood Opposition a formal means to insert discriminatory and misleading information into the required zoning

³ On November 24, 2021, the United States Department of Justice issued a letter to Itasca Mayor Jeff Pruyn to notify Itasca that the U.S. Attorney’s Office for the Northern District of Illinois had initiated an investigation of Itasca’s compliance with Title II of the Americans with Disabilities Act in regard to its handling of the zoning applications of Haymarket DuPage. The letter notes that Title II of the Americans with Disabilities Act prohibits discrimination against individuals with disabilities, including individuals with substance use disorder. On December 2, 2021, Pruyn published the letter, *attached as* Exhibit B, on Itasca’s web site.

⁴ While granted the right to submit proposed findings of fact, the Objectors decided not to submit recommended findings.

process and record, and directly and offensively to interrogate witnesses, such as witnesses whose family members or friends had died because of the lack of services that Haymarket would provide in DuPage County, and witnesses who were themselves people with substance use disorder.

11. Defendants worked in concert with each other and the Neighborhood Opposition to orchestrate the opposition to Haymarket DuPage, and to craft and present pretextual bases to ultimately deny Haymarket the right to operate its desperately-needed facility.

12. Defendants School District and its Superintendent Craig Benes (“Benes”) opposed Haymarket DuPage. Through Benes’ public statements about how Haymarket DuPage might affect the School District, they intentionally disseminated inaccurate and misleading information to create fear of Haymarket DuPage, its patients, and their families. In particular, Benes and through him, the School District, raised the fear that: children whose mothers were patients in Haymarket DuPage’s proposed Mother and Child Program would necessarily have disabilities, need special education services, and/or be homeless; the children of other patients at Haymarket DuPage would necessarily be homeless and be allowed to seek educational services in Itasca based on that status; and Haymarket DuPage patients themselves who are over the age of 18 would have disabilities and require special education services, and demand educational opportunities at the local high school district. The School District and Benes alleged all of this would cost the School District significant additional funding per pupil.

13. Due to the School District’s and Benes’ conduct, Haymarket DuPage voluntarily withdrew its Mother and Child Program when it submitted its amended zoning application. Even so, because of the School District’s and Benes’ public and formal opposition to the children who could accompany their mothers into treatment at Haymarket DuPage, the Itasca Defendants

insisted on a condition that should Haymarket DuPage be approved, it would have to undergo a new zoning process to seek approval to operate the program if Haymarket later determined the Mother and Child Program was needed in Itasca. Moreover, even after Haymarket DuPage voluntarily withdrew its Mother and Child Program, the School District and Benes continued to oppose Haymarket DuPage.

14. Against the backdrop of their discriminatory stereotyping of Haymarket's mission and the patients it would serve, Defendants focused their pretextual basis for denial of Haymarket's healthcare facility on a false claim that the presence of Haymarket DuPage in Itasca would unduly and adversely affect the provision of emergency medical services ("EMS") to Itasca residents. This claim was based on biased speculation about how many EMS calls would be made to the Fire District by Haymarket DuPage.

15. Haymarket DuPage took several steps to assuage the pretextual claim that its presence would adversely affect the provision of EMS to the residents of Itasca:

- a. First, Haymarket DuPage presented evidence that its potential EMS needs would fall well below the Fire District's current and future capacity to address EMS calls.
- b. Second, Haymarket DuPage contracted with Elite Ambulance, the second-largest private ambulance company in Illinois, to respond to its basic life support calls, thus reducing the EMS response burden on the Fire District.
- c. Third, Haymarket DuPage emphasized it would have trained medical staff on-site 24 hours a day, seven days a week, and 365 days a year. Because of this support, Haymarket DuPage would be able to address certain medical needs in-house, which would eliminate the need to call for EMS. In addition, because of in-house medical staff, Haymarket would implement a triage plan to direct when to call Elite Ambulance or 911 for EMS services, which would avoid unnecessary calls for 911 assistance by the Fire District.
- d. Fourth, Haymarket DuPage agreed to maintain a contract with a private ambulance service at all times.
- e. Fifth, Haymarket DuPage offered to contract with a second ambulance company, if necessary, to obviate any EMS burden on the Fire District.

- f. Sixth, Haymarket offered to meet regularly with Itasca police and fire representatives to develop a mutually-agreed upon EMS plan.
- g. Finally, Haymarket DuPage formally offered to abide by the above terms as conditions for zoning approval.

16. Defendant Plan Commission presided over the multi-year hearing process. During those hearings, Haymarket submitted all required evidence to meet the Itasca zoning ordinance standards for (a) a special use as a planned development and (b) site plan review in Itasca's B-2 District. It also squarely addressed pretextual concerns about EMS, and even further offered to be bound by a set of conditions to alleviate all pretextual concerns raised. As such, there was no legitimate basis under the plain operation of Itasca's zoning ordinance for Itasca to reject the applications.

17. Nevertheless, on September 22, 2021, while a group led by the Neighborhood Opposition held "No Haymarket" signs, spoke with the media, and honked their horns outside Village Hall, the Plan Commission held a 45-minute hearing during which they failed to discuss and ignored the extensive record of evidence, and recommended unanimously to deny Haymarket DuPage's applications for zoning relief. Thereafter, on November 2, 2021, in a meeting that lasted only 17 minutes, the Village Board accepted the Plan Commission's recommendation and voted to reject Haymarket DuPage's request for zoning approval. The meeting began with a charged statement by Mayor Pruyn in opposition to Haymarket DuPage.

18. Because of the Defendants' unlawful and discriminatory actions, Haymarket DuPage is unable to offer its life-saving treatment to scores of patients in and around Itasca, DuPage County, and the collar counties, and has suffered significant damages. To remedy the discrimination and continuing harm, Haymarket DuPage seeks declaratory and injunctive relief, compensatory damages, punitive damages, and attorneys' fees and costs.

JURISDICTION AND VENUE

19. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §1331, 42 U.S.C. §3613(a), 42 U.S.C. §12133, and 29 U.S.C §794a. This Court has supplemental jurisdiction over *de novo* review of the zoning procedures under 28 U.S.C. §1367.

20. Haymarket DuPage’s claims for declaratory and injunctive relief are authorized under 28 U.S.C. §§2201-02 and 42 U.S.C. §3613(c)(1).

21. Venue is proper in the Northern District of Illinois under 28 U.S.C. §1391(b) because Defendants reside there and all of the events or omissions giving rise to Haymarket DuPage’s claims arose there.

PARTIES

22. Haymarket DuPage LLC is an Illinois limited liability company, managed by McDermott Center d/b/a Haymarket Center, an Illinois not-for-profit corporation that is a state-licensed substance use and mental health treatment and intervention service provider under 77 ILCS §2060. Since 1975, Haymarket has been a leader in the field of substance use and behavioral health treatment through (a) evidence-based interventions based on significant research on effectiveness, and (b) state of the art programming geared towards strong outcomes. Haymarket’s treatment programs are accredited by the Commission on Accreditation for Rehabilitation Facilities (“CARF”).

23. The Village of Itasca (“Itasca”) is a unit of local government in DuPage County, located within the Northern District of Illinois. Itasca is responsible for the acts of its agents and employees. Through its Zoning Administrator, Plan Commission, Village Board, and Attorneys, Itasca is responsible for enforcement of its Zoning Ordinances. Itasca is a housing provider under

the Fair Housing Act, a public entity under the Americans with Disabilities Act, and a recipient of federal funding under Section 504 of the Rehabilitation Act. Itasca is situated amidst three Interstates - 290, 355, and 390 (Elgin-O'Hare Expressway) - and neighbors the communities of Roselle, Wood Dale, Bensenville, Addison, Bloomingdale, Elk Grove Village, and Schaumburg.

24. The Itasca Plan Commission ("Plan Commission") is an administrative body in Itasca made up of seven Itasca residents appointed by Defendant Mayor Pruyn with the advice and consent of the Village Board, and is charged with, among other things, the authority to hear applications for zoning relief in Itasca, and to make recommendations regarding those applications to the Board. By virtue of its organization under the Village of Itasca, the Plan Commission is a recipient of federal funding under Section 504. The Plan Commission, as a body authorized to recommend approval or denial of special use, planned development, and site plan review applications, acted with discriminatory intent, and acted arbitrarily and capriciously to violate Itasca zoning procedures and standards. The Plan Commission is also joined under F.R.C.P. 19 as necessary for the complete injunctive relief sought by Haymarket.

25. The Itasca Fire Protection District No. 1 ("Fire District") is a special district under Illinois law that provides fire suppression and prevention, rescue, and emergency ambulance services to the residents of the District, which includes Itasca. The Fire District was a formally recognized "Objector" to Haymarket DuPage's request to operate. The Fire District acted in concert with other Defendants to interfere with Haymarket's rights under applicable civil rights statutes, and through its agents and employees acted with discriminatory intent to cause denial of Haymarket's zoning application. The Fire District is also joined under F.R.C.P. 19 as necessary for the complete injunctive relief sought by Haymarket.

26. Jeffrey Pruyn (“Pruyn”) is the elected Mayor of Itasca. Pruyn is sued in his official capacity. Pruyn serves as a non-voting member of the Village Board. Pruyn utilized his position and platform as Itasca Mayor to disseminate and further stereotypical, discriminatory, and unwarranted opposition to the operation of Haymarket DuPage and the patients and clients it seeks to serve. Pruyn is also joined under F.R.C.P. 19 as necessary for the complete injunctive relief sought by Haymarket.

27. Itasca Public School District 10 (“School District”) is organized under the Illinois School Code, and is operated by the School District’s Board of Education. The School District operates three schools for students in primary grades who live in Itasca and neighboring Wood Dale.⁵ The School District is a recipient of federal funding under Section 504. The School District as an Objector, and through its Superintendent and Board, discriminatorily interfered with the rights of Haymarket DuPage, the patients and clients it seeks to serve, and their children. The School District is also joined under F.R.C.P. 19 as necessary for the complete injunctive relief sought by Haymarket.

28. Craig Benes (“Benes”) is employed by the Board of the School District as the School District’s Superintendent and is empowered to function as chief executive officer managing all aspects of School District operations. Benes is sued in his official capacity. Benes utilized his position and platform as School Superintendent to disseminate and further stereotypical, discriminatory, and unwarranted opposition to Haymarket DuPage, based on the protected status of the patients Haymarket DuPage seeks to serve. Benes is also joined under F.R.C.P. 19 as necessary for the complete injunctive relief sought by Haymarket.

⁵ Itasca students attend Lake Park High School District 108, East Campus, in the neighboring DuPage County suburb of Roselle.

STATUTORY AND REGULATORY FRAMEWORK

Fair Housing Act

29. The federal Fair Housing Act (“FHA”) prohibits discrimination in housing. In 1988, the FHA was amended to prohibit discrimination against people with disabilities. 42 U.S.C. §3604(f).

30. Under the FHA, “disability”⁶ means (1) “a physical or mental impairment which substantially limits one or more of such person’s major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment.” 42 U.S.C. §3602. People with substance use disorder are considered people with disabilities under the FHA. *Id.*

31. Discrimination under the FHA includes “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).

32. The FHA also makes it unlawful “to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a [disability] of—(A) that buyer or renter, (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or (C) any person associated with that buyer or renter.” 42 U.S.C. §3604 (f)(1).

33. The FHA also makes it unlawful to “[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or

⁶ The FHA and Section 504 use the term “handicap,” which is disfavored by people with disabilities. “Disabled” or “disability” has the same legal meaning. *Compare* 42 U.S.C. §3602(h) *with* 42 U.S.C. §12102(1). *See also* *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that the definition of “disability” in the ADA is “drawn almost verbatim from the definition of . . . ‘handicap’ contained in the Fair Housing Amendments Act of 1988”).

facilities in connection with such dwelling, because of a [disability] of—(A) that person; or (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or (C) any person associated with that person.” 42 U.S.C. §3604(f)(2).

34. It is a violation of the FHA to “make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based upon...[disability]... or an intention to make any such preference, limitation or discrimination.” 42 U.S.C. §3604(c).

35. Under the FHA, it is further unlawful to “coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed ... any right granted or protected by” the Act. 42 U.S.C. §3617.

36. It is a violation of the FHA to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin. 42 U.S.C. §3604(b).

37. The federal regulations implementing the FHA specifically prohibit “[e]nacting or implementing land-use rules, ordinances, procedures, building codes, permitting rules, policies, or requirements that restrict or deny housing opportunities or otherwise make unavailable or deny dwellings to persons because of . . . [disability].” 24 C.F.R. §100.70(d)(5).

38. The regulations also make it unlawful “to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood or development” because of disability. 24 C.F.R. §100.70(a).

39. The *Joint Statement of the Department of Housing and Urban Development and the Department of Justice, State and Local Land Use Laws and Practices and the Application of the Fair Housing Act* (hereinafter “*Joint Statement on Land Use*”), issued on November 10, 2016, emphasizes, among other things, that the Fair Housing Act prohibits discrimination against individuals because of their disabilities or the disability of anyone associated with them, and that the FHA may be applied to local governments in the context of exclusionary zoning or other land-use decisions.⁷

40. Haymarket DuPage is an “aggrieved person” as defined by 42 U.S.C. §3602(i). Haymarket DuPage also has standing as a party associated with individuals with disabilities. 42 U.S.C. §3604(f)(1).

41. Haymarket DuPage intends to provide temporary housing and services to people with disabilities, as defined by the FHA, 42 U.S.C. §3602(h).

Americans with Disabilities Act

42. Title II of 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 the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. §12132.

43. Under the ADA, a disability is defined as “a physical or mental impairment that substantially limits one or more major life activities . . . ; a record of such an impairment; or being regarded as having such an impairment.” 42 U.S.C. §12102(1). The term “[p]hysical or

⁷ Available at <https://www.justice.gov/crt/page/file/909956/download>.

mental impairment” includes “[a]ny physiological disorder or condition . . . affecting one or more body systems, such as: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), [and] cardiovascular.” 28 C.F.R. §35.108(b)(1)(i). “Major life activities” include functions such as “[c]aring for oneself, performing manual tasks, . . . eating, sleeping, . . . reaching, lifting, bending, speaking, [and] working.” *Id.* §35.108(c)(1)(i). People with substance use disorder are considered people with disabilities under the ADA. 28 C.F.R. §35.131.

44. Under the ADA, a “public entity” includes “any State or local government” and “any department, agency, special purpose district, or other instrumentality of a State or States or local government.” 42 U.S.C. §12131(1) (A)-(B).

45. Under Title II of the ADA,

A public entity shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who - (i) [h]as successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully; (ii) [i]s participating in a supervised rehabilitation program; or (iii) [i]s erroneously regarded as engaging in such use.

28 C.F.R. §35.131(a)(2).

46. The regulations implementing Title II of the ADA provide, *inter alia*, that A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others; . . .

(vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

28 C.F.R. §35.130(b)(1).

47. Under the ADA regulations,

[a] public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

- (i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;
- (ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities; or
- (iii) That perpetuate the discrimination of another public entity if both public entities are subject to common administrative control or are agencies of the same State.

28 C.F.R. §35.130(b)(3)(i)-(ii).

48. The ADA regulations further require public entities to “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)(i).

49. The federal regulations implementing Title II of the ADA also provide that:

A public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.

28 C.F.R. §35.130(b)(8).

50. Moreover, under the ADA regulations, “[a] public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” 28 C.F.R. §35.130(d).

51. The federal regulations implementing Title II of the ADA provide that “[a] public entity shall not exclude or otherwise deny equal services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.” 28 C.F.R. §35.130(g).

52. The federal regulations implementing the ADA also prohibit a public entity from “administer[ing] a licensing . . . program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability,” and from “establish[ing] requirements for the programs or activities of licensees that subject qualified individuals with disabilities to discrimination on the basis of disability.” 28 C.F.R. §35.130(b)(6).

53. Title V of the ADA prohibits “discriminating against any individual because such individual has opposed any act or practice made unlawful by” the ADA, and “interfere[ing] with any individual in the exercise . . . of any right granted or protected” by the ADA. 42 U.S.C. §12203(a)-(b). The federal regulations implementing the ADA contain similar prohibitions. *See* 28 C.F.R. §35.134(a)-(b).

54. While “a public entity may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities” it “must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.” 28 C.F.R. §35.150(h).

Section 504

55. Section 504 of the Rehabilitation Act of 1973 (“Section 504”) prohibits discrimination against people with disabilities by recipients of federal funding. Section 504 provides that “[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the 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).

56. Itasca is a recipient of federal assistance, and thus must comply with Section 504 and its implementing regulations.

57. Under Section 504, an “individual with [a disability]” is defined as “any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment.” 24 C.F.R. §8.3. The term “physical or mental impairment” includes “[a]ny physiological disorder or condition . . . affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; [and] cardiovascular.” *Id.* “Major life activities” include “functions such as caring for one’s self.” *Id.* People with substance use disorder are considered people with disabilities under Section 504. 24 C.F.R. §8.3(a)(2).

58. Under Section 504, recipients of federal financial assistance may not deny individuals with disabilities the benefit of housing, aid, benefits, or services, or afford the opportunity to benefit from housing, aid, benefits, or services in a manner unequal to the opportunity provided to others. 24 C.F.R. §8.4(b)(1)(i)–(ii). Similarly, a recipient of federal financial assistance may not: “[p]rovide different or separate housing, aid, benefits, or services to

individuals with [disabilities] or to any class of individuals with [disabilities] from that provided to others;” “deny a dwelling to an otherwise qualified buyer or renter because of the [disability] of that buyer or renter or a person residing in or intending and eligible to reside in that dwelling after it is sold, rented, or made available;” or “otherwise limit a qualified individual with [disabilities] in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the housing, aid, benefit, or service.” *Id.* at §8.4(b)(1)(iv), (vii)–(viii).

59. The federal regulations implementing Section 504 also provide that:

[A] recipient may not . . . utilize criteria or other methods of administration the purpose or effect of which would:

- (i) Subject qualified individuals with [disabilities] to discrimination . . . ; [or]
- (ii) Defeat or substantially impair the accomplishment of the objectives of the recipient’s federally assisted program or activity for qualified individuals with a particular [disability] involved in the program or activity, unless the recipient can demonstrate that the criteria or methods of administration are manifestly related to the accomplishment of an objective of a program or activity.

24 C.F.R. §8.4(b)(4)(i)–(ii).

60. Section 504 also requires that recipients of federal financial assistance “administer programs and activities receiving Federal financial assistance in the most integrated setting appropriate to the needs of qualified individuals with [disabilities].” 24 C.F.R. §8.4(d).

61. Under Section 504, recipients of federal funding must grant reasonable accommodations to qualified individuals with [disabilities] in order for them to have meaningful access to the benefits of a covered program. *Alexander v. Choate*, 469 U.S. 287, 301 (U.S. 1985).

Illinois Municipal Code

62. Under Illinois law, Itasca is granted the power to enact a zoning ordinance to classify, regulate, and control the location of trades and industries, and to divide the municipality

into districts “of such number, shape, area, and of such different classes . . . as may be deemed best suited to carry out the purposes of the grant of” its zoning power. 65 ILCS 5/11-13-1(5). Once the zoning ordinance is adopted, the municipality is vested with the authority to enforce it. 65 ILCS §5/11-3-3.

63. A zoning ordinance, such as the zoning ordinance for Itasca, classifies the uses allowed on property as either permitted or special uses. Special uses, such as the one at issue here, require the owner to petition the municipality for permission to establish a use (here, for a healthcare facility or planned development). As required by law, Itasca’s Zoning Ordinance establishes standards for when a special use, and site plan review, will be granted, and the applicant must meet those standards. Itasca Zoning Ordinance, §§14.11(4)(a); 14.12 (7)(a)-(e); 14.13(7)(a)-(i). The Itasca Plan Commission, which holds the public hearing required for consideration of an application for a planned development and site plan review, must make findings of fact and conclusions of law, and vote to recommend that the Village Board approve or deny the applications. Itasca Zoning Ordinance §§14.12 (4)(e); 14.13(5)(c). The Board is vested with the ultimate power to grant or deny a planned development and site plan review. Itasca Zoning Ordinance §§14.12; 14.13.

64. The Illinois Municipal Code provides that a municipality’s decision regarding an application for a special use shall be subject to *de novo* judicial review as a legislative decision. 65 ILCS §5/11-13-25.

65. Denial of the zoning applications are reviewed under *LaSalle Nat’l. Bank v. County of Cook*, 12 Ill. 2d 40 (Ill. 1957), and cases thereafter. Factors to be considered include: (1) existing uses and zoning of nearby properties; (2) the extent to which the property’s value is diminished by the Board’s action; (3) the extent to which such diminution of property values

promotes the public health, safety and welfare; (4) the relative gain to the public as compared to the hardship imposed upon the individual property owner; (5) the suitability of the property for the proposed use; and (6) the length of time the property has been vacant as zoned.

66. When a municipality engages in conduct contrary to applicable zoning ordinances, its actions may violate the FHA, the ADA, and Section 504. *See, e.g., Joint Statement on Land Use*, pp. 1-5.⁸

STATEMENT OF FACTS

The Need for Substance Use Treatment in DuPage County

67. The opioid epidemic in the United States is well documented. In 2019, roughly 70,630 people died of an overdose, which represented a 4% increase over 2018.⁹ Since 1999, nearly 841,000 people have died from a drug overdose.¹⁰

68. The COVID-19 pandemic has exacerbated this grave situation. The Centers for Disease Control and Prevention report that increased stress caused by the pandemic can lead to increases in alcohol and substance use.¹¹ As a result, 100,306 people died of a drug overdose in the United States during the 12-month period that ended in April 2021, an increase of 28.5% from the previous year.¹² This marks the “first time the number of overdose deaths in the United States has exceeded 100,000 a year, more than the toll of car crashes and gun fatalities combined. Overdose deaths have more than doubled since 2015.”¹³

⁸ *See* footnote 7, *supra*.

⁹ Centers for Disease Control, “Drug Overdose Deaths Remain High” <https://www.cdc.gov/drugoverdose/deaths/index.html>.

¹⁰ *Id.*

¹¹ Rabin, Roni Caryn, “Overdose Deaths Reached Record High as the Pandemic Spread” N.Y. Times (November 17, 2021) *available at*: <https://www.nytimes.com/2021/11/17/health/drug-overdoses-fentanyl-deaths.html>.

¹² Centers for Disease Control and Prevention, “Drug Overdose Deaths in the U.S. Top 100,000 Annually,” (November 17, 2021) *available at* https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2021/20211117.html.

¹³ Rabin, Roni Caryn, “Overdose Deaths Reached Record High as the Pandemic Spread” N.Y. Times (November 17, 2021) *available at*: <https://www.nytimes.com/2021/11/17/health/drug-overdoses-fentanyl-deaths.html>.

69. In 2019, the DuPage County Health Coalition reported that 57,000 individuals in the County needed treatment for alcohol and substance use disorders but went without due to a lack of available treatment facilities.¹⁴ In DuPage County, there were 96 overdose deaths in 2019, and 435 between 2015 and 2019.¹⁵ Between January and June 2020 alone, there was a 52% increase in overdose deaths in DuPage County.¹⁶

70. Within a ten-mile radius of the proposed Haymarket facility, there are only 179 residential treatment beds and 8 recovery home beds for those with a substance use disorder.¹⁷ That translates to a shortage of 433 treatment beds and 1,828 recovery home beds in that area.¹⁸

71. Eight to ten overdoses occurred in the last year in Itasca. There are 25 Alcoholics Anonymous (“AA”) and 1 Narcotics Anonymous (“NA”) locations within five miles of Itasca, and another three AA and three NA sites located just outside the five-mile boundary.¹⁹ There are three sites in Itasca itself. *Id.*

Haymarket Center

72. Haymarket Center is an Illinois not-for-profit organization that currently operates a facility in Chicago’s West Loop at 932 W. Washington Boulevard, Chicago, Illinois 60607 (“Haymarket Center” or “Haymarket Chicago”). It serves approximately 12,000 patients annually.²⁰

¹⁴ Letter from Kara R. Murphy to Dr. Lustig (October 27, 2020) *available at* <http://www.itasca.com/DocumentCenter/View/9628/HCD-45---Letter-of-Support-DuPage-Health-Coalition---Presented-11420>

¹⁵ Impact DuPage, “Monthly Lives Saved by DuPage Narcan Program,” *available at*: <https://www.impactdupage.org/indicators/index/view?indicatorId=4867&localeId=668>.

¹⁶ Public Safety Announcement: DuPage Overdose Statistics 2020 (February 4, 2021), DuPage County Coroner *available at* https://www.dupageco.org/Coroner/Coroner_News/2021/64269/.

¹⁷ Kisiel Evaluation Report, pg 24 (hereinafter “Kisiel Report”) *available at* <http://www.itasca.com/DocumentCenter/View/9249/J--August-7-2020-Supplement---Evaluation-Report>.

¹⁸ Kisiel Report, pg 25. Itasca attempted to downplay the need for the healthcare facility by alleging there are 40 treatment facilities located within 10 miles of Itasca. However, those facilities are primarily DUI counseling and outpatient clinics, and do not have the residential treatment and recovery home beds so desperately needed. *Id.*

¹⁹ *Id.* at 22.

²⁰ Haymarket Center, “Impact,” *available at* <https://www.haymarketcenter.org/impact>.

73. Haymarket Chicago is one of the region's largest and most comprehensive providers of substance use and mental health treatment. It is a fully accredited nonprofit organization, licensed by the Illinois Department of Human Services and the Commission on Accreditation for Rehabilitation Facilities (CARF).

74. Haymarket Center is unique among recovery homes in the area because it accepts individuals for treatment regardless of their ability to pay. Treatment is open to all 24 hours a day, 7 days a week, 365 days a year. About 70-75% of Haymarket's patients rely on Medicaid, and 25-30% have no insurance and rely on state-funded programs.

Haymarket DuPage

75. Individuals from DuPage County and the collar counties often seek treatment at Haymarket Chicago. In 2017-2018, nearly 2,000 men and women from DuPage County and the collar counties were patients at Haymarket Chicago.

76. In and around 2019, to address the need for its services in DuPage County and the collar counties, Haymarket Center conducted an exhaustive search for a site for a recovery home and treatment center in DuPage County.

77. In early 2019, Haymarket Center's search identified a five-story Holiday Inn hotel with 168 units located at 860 W. Irving Park Road in Itasca ("Property") as a potential site for a facility to serve DuPage and the collar counties. The Holiday Inn was for sale because, as the owners had informed Itasca Defendants and Pruyn, it had been underperforming and the costs of maintaining it were too great.²¹ The Property is directly adjacent to Interstate 290 and visible from the highway, near where Interstate 290 and Interstate 355 converge. The Property is located

²¹ Letter from Rehan Zaid and Bimal Doshi to Pruyn (April 26, 2019) *available at* <http://www.itasca.com/DocumentCenter/View/10512/HCD-17---Letter-from-Holiday-Inn-to-Mayor-re-support-of-Haymarket-dated-42619---Presented-102819>

in the Village's zoned B-2 District in which a "Health Center" is an authorized special use. *See* Itasca Zoning Ordinance §8.04(2)(m).

78. The Property is ideal for Haymarket because it requires no new construction or changes to the outside structure and is located in an area zoned as a business/industrial district. The nearest residential parcel to the east of the Property is more than 2,287 feet away and separated by a highway overpass and a set of train tracks. The nearest residential parcel to the west is more than 1,950 feet away and is separated by a business park. It is also reasonably accessible for patients, has sufficient parking, already includes individual rooms, each with a bathroom, and has a commercial kitchen and rooms appropriate for patient intake and treatment. The acquisition of the Property also allowed for the transfer of all interior furnishings, including beds.

79. Haymarket DuPage intends to provide a continuum of care at the Property, including detoxification services, inpatient treatment, outpatient treatment, recovery home treatment health care services, GED classes, and employment placement. Recovery home treatment denotes a temporary environment that supports individuals as they transition to long-term recovery. Recovery homes are an important aspect of substance use treatment and Haymarket's continuum of care. There would be a maximum of 240 beds on site: 96 inpatient treatment beds and 144 recovery home beds. All patients are admitted voluntarily and undergo background checks, and no violent criminals or sex offenders are allowed to participate in treatment at Haymarket.

80. Treatment will be convenient and open to all 24 hours a day, 7 days a week, 365 days a year, regardless of an individual's ability to pay.

81. As part of Haymarket’s continuum of care, it initially proposed to include its Mother and Child Program, which would allow women to undergo treatment at Haymarket, accompanied by up to two children under the age of five. This program, offered at Haymarket Chicago, addresses the principal barrier to treatment for women with children: the need for childcare.

82. Because of the overwhelming need and Haymarket Chicago’s strong reputation, Haymarket DuPage’s effort to operate a treatment center in Itasca garnered support from local, regional, state, and national experts on substance use treatment, such as: Edward-Elmhurst Hospital; Advocate Medical Group; Cook County Health; National Alliance on Mental Illness – DuPage; Thresholds; Northwestern Medicine at Central DuPage Hospital; Loyola Medicine; Kenneth Young Center; Rush University Health System; DuPage County Medical Society; Illinois Primary Health Care Association; Illinois Association for Behavioral Health; Heartland Alliance Health; League of Women Voters of Roselle-Bloomington, Elmhurst, Arlington Heights-Mt. Prospect, Buffalo Grove-Wheeling-Prospect Heights-Elk Grove Village, Naperville; Hope for Healing; LTM Foundation; Live4Lali; DuPage County Sherriff; DuPage County Health Department; NAMI DuPage; DuPage HOPE Task Force; DuPage County NAACP; National Safety Council (based in Itasca); National Council for Behavioral Health; The Kennedy Forum; and many others.²²

Itasca Deliberately Misclassifies the Project

83. In April 2019, Haymarket DuPage representatives met with Itasca’s Director of Community Development, Shannon Malik Jarmusz, (“Ms. Jarmusz”) about its proposal for the treatment facility. The threshold issue discussed was the classification of Haymarket DuPage,

²² Exhibit A.

because the Itasca Zoning Ordinance does not specifically delineate treatment centers for substance use disorders and mental health disabilities. The Zoning Ordinance, however, does specifically address healthcare facilities.

84. Because the proposed facility met the Zoning Ordinance’s definition of a “Healthcare Facility,” which is permitted in the B-2 District as a special use, Haymarket DuPage asserted it should be allowed to submit an application for a special use as a Healthcare Facility. However, during the meeting in April 2019, Ms. Jarmusz stated Itasca did not know how to classify the facility.

85. Itasca’s Zoning Ordinance defines “healthcare facility” as:

HEALTHCARE FACILITIES (HEALTH CENTERS)

Hospital: A hospital is any institution, place, building, or agency, public or private, whether organized for profit, or not, devoted primarily to the maintenance and operation of facilities for the diagnosis and treatment or care of two (2) or more unrelated persons admitted for overnight stay or longer in order to obtain medical care, including obstetric, psychiatric, and nursing or care of illness, disease, injury, infirmity, or deformity.

The term “hospital”, without regard to length of stay, shall also include:

1. Any facility which is devoted primarily to providing psychiatric and related services and programs for the diagnosis and treatment or care of two (2) or more unrelated persons suffering from emotional or nervous disease; and
2. All places where pregnant women are received, cared for, or treated during delivery irrespective of the number of patients received.

The term “hospital” includes general and specialized hospitals, tuberculosis sanatoria, mental or physical hospitals and sanatoria, and includes maternity homes, lying-in-homes, and homes for unwed mothers in which aid is given during delivery.

Itasca Zoning Ordinance §3.02.

86. On May 9, 2019, Ms. Jarmusz informed Haymarket DuPage that Itasca claimed the facility was “a mixed use of residential and medical, which would require a special use under

Section 8.04(2) of the Itasca Zoning Ordinance.” Letter from Shannon Malik Jarmusz to Donald Musil (May 9, 2019), *attached as Exhibit C*. She also stated that “given the expected number of variances needed to accommodate this mixed use,” Haymarket should apply for approval as a Planned Development (not as a Healthcare Facility).²³ *Id.*

87. Itasca’s Zoning Ordinance defines “planned development” as:

a parcel of land or contiguous parcels of land of a size sufficient to create its own character, controlled by a single landowner or by a group of landowners in common agreement as to control, to be developed as a single entity, the character of which is compatible with adjacent parcels, and the intent of the zoning district or districts in which it is located; the developer or developers may be granted relief from specific land-use regulations and design standards and may be awarded certain premiums in return for assurances of an overall quality of development, including any specific feature which will be of exceptional benefit to the Village as a whole and which would not otherwise be required by the Zoning Ordinance. The area of a Planned Development shall remain under one (1) ownership or unified control unless safeguards are provided that, in the opinion of the Plan Commission (See Section 4.04.5) and Board of Trustees of the Village of Itasca, will provide for the continuation of the original Planned Development concept.

Itasca Zoning Ordinance §3.02.

88. The purported “residential” use cited by Itasca is the recovery home component of Haymarket DuPage, where patients continue treatment after completion of a short-term, inpatient period. The average stay in the recovery home at Haymarket Chicago is 90 days. Haymarket DuPage expected the average length of stay in Itasca to be the same as in Haymarket Center.

89. The Zoning Ordinance defines “dwelling unit” as “one (1) or more rooms, which are arranged, designed or used as living quarters for one (1) family only. Individual bathrooms and complete kitchen facilities, permanently installed, shall be included in each dwelling unit.”

Itasca Zoning Ordinance §3.

²³ Ultimately, Itasca recognized that the majority of the planned development variances did not apply to this project.

90. While the FHA applies to treatment centers and recovery homes such as Haymarket DuPage, the individual units at Haymarket DuPage would not be “dwellings” as defined in Itasca’s Zoning Ordinance. Each would be a shared, hotel-style room without a kitchen. Patients, whether in “treatment rooms” or “recovery rooms,” would rely on one communal kitchen. As such, Itasca’s determination that Haymarket DuPage would be “residential” under its Zoning Ordinance contradicted the plain language of the Zoning Ordinance. In addition, planned developments are typically projects that involve new construction on larger sites with more complex and multiple uses, not an adaptive re-use of an existing building for one use.

91. Under the Zoning Ordinance, it is more onerous to apply for a special use as a planned development than to apply for a special use as a healthcare facility.

92. In order to qualify as a special use under Itasca’s Zoning Ordinance, a project must show that it:

- (1) is deemed necessary for the public convenience at the location;
- (2) is so designated, located and proposed to be operated such that the public health, safety and welfare will be protected; [and]
- (3) will not cause substantial injury to the value of other property in the neighborhood in which it is located; and has been recommended by the Plan Commission and approved by the President and the Board of Trustees, and conforms, except in the case of a Planned Development, to the applicable regulations of the district in which it is located.

Itasca Zoning Ordinance §14-15.

93. If an applicant files for approval as a planned development, and “the Plan Commission finds that the planned development may create special problems for traffic, parking, landscaping, and/or economic feasibility,” it can request additional information from an applicant, including “a tax impact study detailing the impact which the planned development will

have upon all taxing bodies.” *See* Itasca Zoning Ordinance §§14-31 - 14-35. This is known as an “economic impact statement.”

94. In addition, designation as a planned development requires an applicant to satisfy significantly more standards than if the proposal were designated as a simple special use, such as a healthcare facility.

95. Haymarket DuPage did not agree with Ms. Jarmusz’ decision. Accordingly, on July 3, 2019, Haymarket DuPage submitted two applications for zoning approval: one for a special use as a healthcare facility (which was accompanied by a request for a variance to waive certain height and yard standards because the exterior of the Property would not change), and another for a special use as a planned development.

96. On July 16, 2019, Itasca Attorney Yordana Wysocki (“Ms. Wysocki”) informed Haymarket DuPage via email that Itasca rejected its application for a special use in the B-2 District as a healthcare facility, and determined Haymarket must apply for a special use as a planned development. Email from Yordana Wysocki to Michael Roth (July 16, 2019), *attached as* Exhibit D. She also wrote that the application for special use as a planned development was “deficient” because it did not contain an economic impact statement or landscape plan. *Id.*

97. On August 13, 2019, Haymarket DuPage appealed the following decisions by Itasca to the Plan Commission: (1) Itasca’s rejection of its application for a special use as a healthcare facility, (2) Itasca’s refusal to allow the special use and planned development applications to proceed concurrently, (3) Itasca’s requirement that it apply only for a special use as a planned development, and (4) Itasca’s denial of its request to be exempt from certain planned development requirements.

98. On August 21, 2019, the Plan Commission voted unanimously to deny the appeal.

99. On September 17, 2019, the Village Board upheld that decision.

100. Accordingly, Haymarket DuPage was forced to proceed to secure zoning approval as a planned development, which resulted in lengthy delays and considerable extra expense.

101. On December 16, 2019, Haymarket DuPage filed a complaint in Illinois state court against Itasca for its failure to classify its plan for use of the Property as a special use for a healthcare facility rather than as a Planned Development. During the pendency of the litigation, Itasca's public hearings on the zoning application were suspended.

102. On March 16, 2020, the court dismissed Haymarket DuPage's case without prejudice. The Court determined the matter was not ripe because zoning hearings were ongoing.

103. After the state court case was dismissed, the Plan Commission hearings were further delayed due to the COVID-19 pandemic, and the decision by Haymarket DuPage to file amended zoning applications.

104. On June 30, 2020, pursuant to the FHA, Haymarket DuPage sent a reasonable accommodation request letter to Itasca that asked Itasca to classify Haymarket's use of the Property as a special use for a healthcare facility instead of as a planned development. The request was predicated on the fact that Haymarket's recovery home beds did not constitute a residential use under Itasca's Zoning Ordinance and that:

[T]he proposed Healthcare Facility is in appearance and practice identical to that of a hospital: it will contain individualized rooms with no kitchens, is licensed by the State of Illinois, and will provide medical and psychiatric treatment for people in treatment for substance use and mental health disorders under the supervision of a Medical Director. Indeed, the Zoning Ordinance contemplates various medical settings under its "hospital" definition, including "general and specialized hospitals, tuberculosis sanitarium, mental or physical hospitals and sanitarium, and includes maternity homes, lying-in-homes, and homes for unwed mothers in which aid is given during delivery," and it defines a hospital this way "*without regard to length of stay*"... Haymarket DuPage is exactly that – a facility for people in treatment and recovery for a temporary period of time. In other words, it is, for all

intents and purposes under the Zoning Ordinance, precisely what is contemplated by the term “hospital.”

Letter from Kenneth M. Walden to Charles Hervas (June 30, 2020) (emphasis in original), *attached as* Exhibit E.

105. Haymarket DuPage also stated that when a municipality imposes a more onerous zoning process for approval of a facility or home that will serve people with disabilities, and does so due to their disabilities, that constitutes discrimination:

Because the Property is the equivalent of a hospital under the Zoning Ordinance, by forcing Haymarket to file as a Planned Development, rather than as a Healthcare Facility, the Village is treating people with substance use and mental health conditions in a different, more onerous and costly manner than those who require regular hospital care (or a maternity home, or a home for unwed mothers, etc.). This is the essence of discriminatory treatment.

Further, because the Village’s interpretation of its own Zoning Ordinance is so at odds with its plain meaning, a fair conclusion to draw is that the Village has forced Haymarket to endure a more burdensome application process *because* the individuals served by Haymarket will be people who are in treatment for substance use and mental health disorders. This is the exact type of differential and discriminatory treatment the FHA was designed to prevent.

Ex. E.

106. On July 8, 2020, Itasca denied the reasonable accommodation request, and again stated Haymarket must apply for zoning approval as a planned development. Letter from Charles Hervas to Kenneth M. Walden (July 8, 2020), *attached as* Exhibit F.

107. During the hearings before the Plan Commission, extensive testimony was provided by two experts for Haymarket DuPage who opined Haymarket’s proposed use of the Property, under the Itasca Zoning Ordinance, is not a mixed-use development, and should have been classified as a special use for a healthcare facility rather than as a Planned Development.

Public Opposition by Itasca's Mayor

108. From the very beginning, Jeffrey Pruyn, the Mayor of Itasca ("Pruyn"), publicly opposed Haymarket DuPage. Pruyn's public opposition encouraged Itasca, its governmental entities, and Itasca residents to oppose the project.

109. On or about April 30, 2019, Haymarket DuPage had an initial meeting with Pruyn, during which it described the need for treatment in DuPage County and how Haymarket DuPage would help address this need.

110. Pruyn regularly posted open letters to the community on Itasca's website to express his opposition to the proposed healthcare facility. Itasca also emailed these oppositional statements to residents and others who subscribed to Itasca's mailings. Pruyn also sent anti-Haymarket letters to Haymarket DuPage executives and to public officials, and these too were posted on the Itasca website and sent to Itasca residents on the mailing list.

111. On June 21, 2019, a month before Haymarket DuPage filed its zoning applications, Pruyn published an open letter that claimed "revenue will be permanently lost if the property is converted to a not-for-profit use and removed from the tax rolls." He then stated:

It is impossible for me to comprehend how [DuPage County] Chairman Cronin and other regional elected officials have endorsed Haymarket's proposal BEFORE they have any idea what the impact will be on Itasca's 8,700 residents, or how removing the hotel from a thriving business park will affect the companies located there, or whether Itasca's police and fire departments have the resources to service the facility without raising taxes on Itasca's existing residents and businesses.

Statement from Pruyn (June 21, 2019) (capitalization in original), *attached as* Exhibit

G.²⁴

²⁴ All of Pruyn's statements to the public are available on the Itasca website: <http://www.itasca.com/1953/Holiday-Inn---Haymarket-Center-Proposal>.

112. In a June 23, 2019 letter to the Editor of the Daily Herald, Pruyn wrote: “As mayor of Itasca, I refuse to bow to political pressure. Instead, I promise to listen with an open mind not only to Haymarket, but also to "our neighbors, our family members, our friends, our co-workers" through a public and transparent process. Whatever the outcome, I hope that everyone involved will respect the democratic process moving forward.”

113. On July 16, 2019, Pruyn published another open letter to express his concerns regarding Haymarket DuPage, and encouraged residents to show up to a scheduled public hearing regarding the proposed facility:

At a recent board meeting, a group of residents expressed their frustrations and fears around this project. We heard all of you. That is why I want to emphasize once again how important it is for everyone, no matter your views, to be a part of the public hearing on September 18th. Illinois law is clear that the Plan Commission may only consider testimony provided through the official public hearing process.

Statement from Pruyn (July 16, 2019) *attached as* Exhibit H.

114. On July 22, 2019, Pruyn publicly issued a series of questions to Haymarket DuPage that reflected and spread negative stereotypes about the individuals Haymarket would serve. Most questions concerned security, including whether patients at Haymarket DuPage would be allowed to leave the Property while in treatment, how many security staff would be employed, whether security staff would be armed, and whether Haymarket DuPage intended to build a fence around the Property. Letter from Pruyn to Michael Roth (July 22, 2019), *attached as* Exhibit I.

115. On July 24, 2019, in an article in the Daily Herald, Pruyn stated “we don’t have all the facts” regarding Haymarket, which continued the coordinated effort to sow mistrust of the proposed healthcare facility.

116. On August 2, 2019, in response to Pruyn’s July 22 letter, Haymarket DuPage sent the Mayor a fact sheet on Haymarket DuPage to address his inquiries. Haymarket DuPage FAQ, *attached as Exhibit J.*

117. On August 8, 2019, the Daily Herald reported “Mayor Pruyn said most of the residents he's hearing from are ‘concerned’ about the impact Haymarket's plan would have on the village. ‘Can a town of 8,700 people -- with limited resources -- service a 200-bed facility?’”²⁵

118. On August 12, 2019, Pruyn sent a public letter to Haymarket DuPage to request another meeting. In it, he said: “I have been extremely disappointed by Haymarket's lack of transparency and responsiveness throughout this process. Since day one, Haymarket's plans have been cloaked in secrecy.” Pruyn intended this statement to cultivate distrust of Haymarket and fear that Haymarket DuPage had an undisclosed harmful agenda. Letter from Pruyn to Haymarket President and CEO Dr. Dan Lustig (August 12, 2019), *attached as Exhibit K.*

119. On August 15, 2019, Haymarket President and CEO Dr. Dan Lustig (“Dr. Lustig”) responded to Pruyn by letter. He agreed to meet with Pruyn, but noted his objection to Itasca’s negative characterizations of Haymarket DuPage. Letter from Dr. Lustig to Pruyn (August 15, 2019), *attached as Exhibit L.*

120. On August 23, 2019, Haymarket DuPage again met with Pruyn and Village Administrator Carie Anne Ergo (“Ergo”) at Haymarket Chicago. During the course of this

²⁵ Sanchez, Robert, “Big Crowds Expected at Meetings for Controversial Haymarket Center Proposal” (August 8, 2019) Daily Herald, available at <https://www.itasca.com/DocumentCenter/View/8605/August-9-2019---Daily-Herald-Article---Big-crowds-expected-at-meetings-for-controversial-Haymarket-Center-proposal>. While the population in Itasca has increased by 1,262 from 8,543 in 2009 to 9,805 people in 2019, more than twice that amount worked in Itasca. Employment has fluctuated over the ten-year period from 2009 to 2019, but has increased by 1,714 to 18,786 jobs. Gruen+Gruen Report, page 2, *available at* <https://www.itasca.com/DocumentCenter/View/9248/I--August-7-2020-Supplement---The-Fiscal-and-Economic-Impact-of-the-Proposed-Haymarket-DuPage>.

meeting, in order to assuage Pruyn's concern that the proposed facility would unduly compromise EMS in Itasca, Haymarket DuPage offered to buy a second ambulance for Itasca. Ergo responded that the ambulance would require additional staffing and an additional building to store it, and thus Itasca rejected the offer without making any counter proposal.

121. On September 5, 2019, Haymarket DuPage sent detailed responses to the earlier set of questions posed by Pruyn on July 22, 2019. "Haymarket DuPage Response to Village of Itasca Questions for Haymarket," (September 5, 2019), *attached as Exhibit M*.

122. On September 24, 2019, Pruyn made Haymarket DuPage a primary topic of discussion at his State of the Village Address, where he reiterated many of his previously mentioned positions. A Daily Herald article covering the address quoted Pruyn as stating:

The mere fact alone that this is putting a heavy weight on our village's staff and checkbook echoes the same sentiment we're all concerned about with the Haymarket proposal . . . What kind of strain would Haymarket's 272-bed facility have on our village? And those are questions that we don't have all the answers to yet because we're missing facts from Haymarket.²⁶

123. On or about October 10, 2019, Illinois State Representative Deborah Conroy, Pruyn, Ergo, Illinois State Senator Tom Cullerton, and Illinois State Representative Diane Pappas met to discuss the proposed facility. During the course of the meeting, Representative Conroy stated she could secure half a million dollars in grant funds to offset the potential lost tax revenue to Itasca due to the non-profit status of Haymarket DuPage.

124. The next day, Pruyn sent a letter to Representative Conroy. He asked her to "hold off on requesting any state funding for this project until Village staff has sufficient time to analyze all the data presented at the upcoming public hearings to better determine the total

²⁶ Smith, Kaitlyn, "Mayor, Haymarket CEO Spar on Itasca Treatment Center," Daily Herald, (September 24, 2019) *available at* <https://www.dailyherald.com/news/20190924/mayor-haymarket-ceo-spar-on-itasca-treatment-center-?cid=search>.

financial impact to Itasca taxpayers.” He stated: “I stand ready to be a part of any discussion on potential solutions that would not place the financial burden of solving this crisis squarely on the residents and businesses of our small town.” Letter from Pruyn to Rep. Conroy (October 11, 2019), *attached as* Exhibit N.

Fire District Opposition

125. The Fire District also opposed Haymarket DuPage. On May 28, 2019 - the same day Haymarket DuPage representatives met with Pruyn - Haymarket DuPage also met with James F. Burke, Chief of the Fire District, and Mike Lisek (“Lisek”), Fire Prevention Bureau Director, to discuss the project. During the course of the meeting, Fire District staff acknowledged there were many overdoses in the area, but expressed concerns the Fire District had only one ambulance to respond to EMS calls. Haymarket DuPage’s purported burden on EMS became the major pretextual reason for Defendants’ objections going forward.

126. Lisek also noted that while fire code deficiencies had existed but were unenforced at the Holiday Inn, Haymarket DuPage would be placed under increased and detailed scrutiny by the Fire District. In particular, he noted the staircase at the Holiday Inn was not up to code. While Haymarket DuPage had no issue with repairing the site to be in full compliance with all fire and other safety measures, given that the Fire District had not enforced the fire code at the Holiday Inn, those statements presented as threatening and punitive.

127. Since the one meeting on May 28, 2019, Haymarket DuPage offered on several occasions to meet again with the Fire District to discuss its concerns, but on each occasion the Fire District refused to meet – all the while continuing its vocal opposition to the zoning applications.

Opposition by Itasca Residents

128. In accord with Defendant Pruyn, residents in Itasca vocally opposed Haymarket DuPage based on stereotypes about and bias against people with substance use disorder.

129. Shortly after the Haymarket DuPage proposal became public, the Concerned Citizens created a Facebook group titled “No Itasca Haymarket.” It has over 1,400 members. It also created a website at www.noitascahaymarket.com to encourage Itasca residents to oppose the project.

130. In or around July 2019, the Concerned Citizens issued an “open letter” to public officials in DuPage County regarding the project. The letter was posted on the “No Itasca Haymarket” website. In it, the Concerned Citizens state:

[t]here are a number of youth- and public-focused facilities in the immediate vicinity;

[i]t is our contention that the construction of this facility will lead to an increase in drug-related crimes in the immediate area, thus straining our limited police resources; and

the stigma associated with such a facility will result in drastic reductions in property values in the immediate vicinity, which by extension also impacts the finances of the Village and other taxing bodies. Studies show negative impacts of up to 17% on home values in the immediate area of these facilities.

“Open Letter to All Elected Officials Representing the Citizens of Itasca, Illinois,” *attached as Exhibit O.*

131. On or around July 29, 2019, the Concerned Citizens also produced a flyer titled “The Truth About Haymarket,” which contained false statements. “The Truth About Haymarket”, *attached as Exhibit P.* It states Haymarket DuPage will provide “addiction and mental-health treatment, including ‘alternative to incarceration’ programs,” and would be within “close proximity to children-based businesses and schools.” It further stated the treatment center

will be “within a ½ mile of 5 businesses selling/serving alcohol and 3 video-gaming facilities,” and that “[r]esearch shows a property value loss of up to 17% on homes near opiate and methadone treatment centers.” The flyer further credited Pruyn and the Fire District’s pretextual concern regarding EMS services, and raised additional concerns about patients at Haymarket. *Id.*

132. Beginning in August 2019, Itasca citizens began to reiterate the concerns detailed in the flyer and stated by Pruyn in the media. For example:

- a. On September 9, 2019, in a Daily Herald article, Itasca Resident Nicole Dietsel said the Holiday Inn is not appropriate for Haymarket DuPage because it “is close to children-based businesses along with schools, the water park, the library and park district.” Itasca resident Dustin Sneath said Haymarket was not being transparent.²⁷
- b. On September 19, 2019, in a Chicago Tribune article, Tony Walis, the owner of American’s Best Train, Toy and Hobby Shop located across the street from the Property, stated: “(Patients) are going to wander here, they’re going to shoplift because they’re just going to be looking for money for drugs.” He added: “They don’t care what they take.”²⁸

133. Posts on social media and emails to Itasca during this period also revealed the bias residents harbored against people with substance use disorder. They included these statements:

- a. There is nothing you can say that justifies this crack house being brought to Itasca. Nothing, and that's what it is, a CRACK HOUSE[!] Safety will no longer be an option with these unstable individuals and their drug dealers walking around our town. It's not just Itasca. This little area will become a ghetto. Is this what we want for our kids? Really? We're all crazy about being environment friendly and going green, but should we be okay when turning our towns and schools into ghettos? You better wake up. (capitalization in original).
- b. Everyone screams about the environment, going green, saving the planet for our kids and future generations. But it's ok to ruin a good neighborhood,

²⁷ Sanchez, Robert “Opposition Growing to Haymarket's Plans for Rehab Facility in Itasca.” Daily Herald (September 9, 2019) *available at* <https://www.itsasca.com/DocumentCenter/View/8607/September-9-2019---Daily-Herald-Article---Opposition-growing-to-Haymarkets-plans-for-rehab-facility-in-Itasca>.

²⁸ Keilman, John “Prudence or Fear? Itasca Residents Aim to Prevent Opening of 200-Bed Drug Rehab Center” Chicago Tribune (September 19, 2019) *available at* <https://www.chicagotribune.com/news/breaking/ct-haymarket-drug-treatment-center-itasca-20190916-l4axomiwe5hvnj4m7gr3bihh4-story.html#:~:text=Prudence%20or%20fear%3F-.Itasca%20residents%20aim%20to%20prevent,200%2Dbed%20drug%20rehab%20center.&text=His%20sales%20p itch%20was%20simple,was%20ready%20to%20provide%20it>.

make it a ghetto and leave a ghetto for our kids. All this tells me we're like the slaves, work our butts off, pay property taxes but can be messed with and pushed around. It's really frustrating.

- c. I do not live here to have children exposed to abnormal behavior. If so, I would have stayed in Chicago. There's enough crimes in the metropolitan area, do we need to add it to our small town?
- d. To deny the fact that drug problems start in Chicago as well as primary schools in DuPage and carry on through adulthood is naïve. We don't need any more negative influences on our children as well as vagrants and panhandlers every time we want to go to the post office or take a Metra tour.
- e. This facility would be extremely close to children's center and public sections of Itasca. The nature of this facility is such that it attracts the criminal element into the community. Anyone saying differently has not researched the fact that's out there and met someone who has had first-hand experience with these elements.
- f. The walking distance from our train station to the Holiday Inn is only three-quarters of a mile. For most people, this would be a nice 20-minute walk on a concrete sidewalk year-round. What that means is that a large 'variety' of people in Chicago could board a train to Itasca and then leisurely take a 20-minute walk to the Holiday Inn.
- g. Do you really want Chicago's drug addicts in your city?
- h. I don't want it in my neighborhood and our schools and a lot of other places where kids hang out. I have a two-year-old. I don't want this crap. Take it somewhere else.

134. On September 18, 2019, the first hearing before the Plan Commission was set to begin at Peacock Junior High School in Itasca. On the day of the hearing, approximately 1,500 individuals marched through the streets to oppose Haymarket DuPage. Many carried “NO HAYMARKET” signs. Also, well before the hearing date, over 1,000 “NO HAYMARKET” signs had been posted on properties throughout Itasca. A newspaper article from that date stated:

The opposition, which has already printed flyers, issued an open letter and created a busy Facebook page, made its case with spectacle, marching to the school in a line that stretched for blocks and filled the width of E. North St. Inside, many people wore T-shirts bearing that slogan or stickers that read “No Itasca Haymarket.” Resident Jerry Johnson, noting that the local fire district has a single ambulance,

said it couldn't afford to keep up with what he said would likely be a slew of medical calls from the facility.²⁹

135. Ultimately, the hearing on September 18, 2019 was postponed because the school could not accommodate the number of people who attended. On September 25, 2019, Pruyn published an open letter on the Itasca website that stated Itasca was looking for a hearing venue that could accommodate 2,000 people. Pruyn Letter to Itasca Residents (September 25, 2019), *attached as Exhibit R*.

136. On October 16, 2019, the hearing process before the Plan Commission began at Lake Park High School in Roselle. Over 1,000 people attended the hearing, most in opposition to Haymarket DuPage.

137. Along with the Fire District and the School District, the Neighborhood Opposition were parties to the case in opposition to Haymarket DuPage (collectively "the Objectors"). All Objectors were represented by counsel.

138. The Neighborhood Opposition included: (1) The Concerned Citizens; (2) the single-family home at 260 N. Oak, (3) the single-family home at 308 West Center, (4) the single-family home at 943 Willow, (5) the single-family home at 107 W. George, (6) the single-family home at 505 Catalpa, (7) 865 W. Irving Park Road LLC, (8) Mr. David's Flooring, and (9) 960 Maplewood LLC. The majority of the single-family homes included in the Neighborhood Opposition are owned by either Steven Ellenbecker, an Itasca resident and the attorney who represented the Neighborhood Opposition, or by members of his family.³⁰ One of the homes is

²⁹ Keilman, John, "Massive Crowd Forces Itasca to Postpone Hearing Over Proposed Haymarket Drug Treatment Center," Chicago Tribune, (September 19, 2019) *attached as Exhibit Q*; *see also* Jones, Will, "Itasca Residents Protest Plans to Turn Hotel into Drug Rehab Facility," ABC 7 News (September 18, 2019) *available at*: <https://abc7chicago.com/itasca-il-news-protest-drug-rehab/5551160/>.

³⁰ Over time, the attorney presented conflicting information as to who he actually represented. By the time his closing statement was provided to the Village Board on October 26, 2021, the attorney stated that he only represented 865 W. Irving Park Road LLC and 960 Maplewood LLC, and did not reference the Concerned Citizens or the individual home owners.

owned by James Diestel, an Itasca resident who administers the private Facebook group titled “No Itasca Haymarket.” Another is owned by Dustin Sneath who helps administer the same “No Itasca Haymarket” Facebook group.

Zoning Applications Meet Their Burden under the Zoning Ordinance

139. The first set of hearings before the Plan Commission occurred from October 16, 2019 through December 4, 2019. Thereafter, the hearings were suspended: initially, due to the complaint Haymarket DuPage filed in state court to challenge Itasca’s requirement that it apply for approval as a planned development rather than as a healthcare facility; and later because of the emergence of COVID-19 and Haymarket DuPage’s decision to file amended zoning applications.

140. On August 7, 2020, Haymarket DuPage filed amended zoning applications: one for a special use as a planned development, and a second for a special use as a healthcare facility. A third amended application was filed that sought approval of Haymarket’s application for Class 1 Site Plan review.³¹

141. As explained in the cover letter attached to the amended applications: “Haymarket DuPage filed an application for a special use as a healthcare facility ‘to maintain its position that it is the proper zoning approval to seek under the Village Zoning Ordinance for its proposed Health Center.’ [Haymarket does] not expect the Village to change the position espoused on this issue in 2019.” The application for a special use as a healthcare facility was never considered by the Plan Commission or Village Board.

³¹ The Amended Applications and attached reports are available at <http://www.itasca.com/2019/Haymarket-Documents>.

142. The principal differences between the amended zoning applications and the initial applications were: (1) to reflect that on April 6, 2020, Haymarket bought the Property; (2) to alert Itasca that Haymarket withdrew the Mother and Child Program in Itasca to resolve concerns raised by the School District that its legal obligation to provide educational services to the children of Haymarket patients would be an undue burden; (3) to revise the Landscape Plan to provide enhanced landscaping and a fenced-in patio to serve Haymarket clients; and (4) to file supplemental expert reports to address issues raised during the earlier hearings.

143. Haymarket did not agree with the School District's assessment that its Mother and Child program would place an undue burden on Itasca's school system, which was based on the School District's belief that the children in this program would need special education services. Nonetheless, Haymarket DuPage hoped its decision voluntarily to forego this program in Itasca would appease the School District, and that the School District would no longer object to the zoning application.

144. On October 28, 2020, the Plan Commission hearings regarding Haymarket's zoning application for a Planned Development and Class 1 Site Plan review resumed. These hearings continued for over a year until a final vote by the Village Board to deny the zoning applications on November 2, 2021.

145. Over the course of the hearings before the Plan Commission, Haymarket presented expert reports and witnesses to provide facts to support its applications and met the legal standards required by the Zoning Ordinance for approval of its applications for a Planned Development and its Class 1 Site Plan review. These experts included:

- Dr. Dan Lustig, President and CEO of Haymarket, has 30 years of experience in the substance use treatment field and testified during numerous hearings on the following:

- Background information on Haymarket Chicago, where he has been employed for 25 years;
 - Background on Haymarket DuPage, the primary barriers to successful treatment, the lack of access to treatment, the shortage of recovery home beds, and the stigma that prevents people from seeking treatment;
 - Overview of Haymarket Chicago's over 46 years of experience operating a major healthcare facility to serve individuals with substance use disorder and behavioral health issues; and
 - Overview of Haymarket Center's licensing and accreditation, Haymarket DuPage's proposed licensing and accreditation, the levels of service to be provided on site, the evidentiary based programs to be offered, staffing, security, and the overall operational plan for Haymarket DuPage.
- Dr. Daniel Sullivan, a physician and Chief Medical Officer³² of Edward-Elmhurst Hospital, located in DuPage County, testified about the need for treatment facilities in DuPage County, the lack of available treatment and recovery home beds, and the ability of Haymarket to address this need. He testified that the top deficits in DuPage County to meet the challenge of the opioid epidemic are the lack of trained providers and access to treatment. He opined that Haymarket Center is well-respected for its success in treatment, specifically in its ability to treat the underinsured population, and recommended approval of the Haymarket DuPage zoning applications.
 - George Kisiel, President of Okrent-Kisiel Associates and a land use planner with 40 years of experience in his field, submitted an expert report to the Plan Commission and testified that:
 - Haymarket DuPage's proposed healthcare facility is consistent with the underlying B-2 zoning in Itasca, and with Itasca's Comprehensive Plan;
 - A "special use" is a type of property use that is deemed compatible with other uses in the zoning district, and is expressly permitted within a zoning district by the controlling zoning ordinance so long as the use meets the special use standards outlined in the Itasca Zoning Ordinance;
 - The proposed healthcare facility meets all legal standards in Itasca for a special use as a Planned Development and site plan review;

³² Now Chief Physician Executive.

- The proposed healthcare facility is consistent with the surrounding commercial and light industrial uses, and there will be no adverse impact on the path of development in the immediate area or in Itasca's downtown;
 - There will be no adverse impact on residential areas in Itasca, particularly given their distance from the proposed Haymarket facility, and the buffer provided by I-290 and the business park;
 - The proposed development will result in the rehabilitation of a vacant building, extensive landscaping will improve the aesthetics of the area, and the proposal satisfies Itasca's landscape requirements; and
 - The building suits Haymarket's needs with limited internal renovations required, and because there will be no changes to the existing building, and its operations will be located inside the building, there will be no impact on light, air, noise, emissions, or vibrations in the area.
- Aaron Gruen, of Gruen + Gruen, an expert urban economist and attorney with over 50 years of experience in the field, submitted an expert report and testified on the issue of economic impact. He concluded Haymarket DuPage will not pose an undue burden on the taxing bodies, and would provide employment and commercial benefits. He found:
 - Itasca has a very healthy tax base. The tax base of Itasca and the Fire District increased by 19 percent - or almost \$110 million - between the 2016 and 2020 tax years. This increase is equal to 36 tax-paying Holiday Inns being added to the tax base.
 - The proposed use would have a negligible economic impact on each taxing body.³³
 - The proposed use would have a combined estimated net impact for both Itasca and the Fire District that equates to a maximum of \$10.51 per resident. Because of this finding, Mr. Gruen concluded there would be no adverse fiscal impact on the Itasca General Fund and the Fire District.
 - In April 2021, the Fire District adopted an ordinance that more than doubled the cost of an individual ambulance call to \$5,390 per call. Because (a) Fire District Chief Burke testified this was done to provide access to federal Ground Emergency Medical Transport

³³ Although Itasca's economic impact consultant, Sarah Ketchum, testified Haymarket did not study the impact of the project on taxing bodies, her testimony was incorrect.

monies, which are Medicaid funds, and (b) many of Haymarket's patients are eligible for Medicaid dollars, Mr. Gruen concluded the higher fees generated by providing EMS to Haymarket patients will help offset any potential costs generated by Haymarket DuPage.

- The tax impact of the project is further mitigated because Itasca approved the construction and operation of a new Holiday Inn in another location;
- The on-going operation of Haymarket DuPage will generate direct impacts of 163 new high-paying jobs with benefits, with an annual payroll of \$9,600,000. He also concluded indirect impacts will support an estimated 191 total jobs (direct and indirect), and \$10,600,000 of total annual earnings (both direct and indirect). Total annual output impact is estimated to be \$27,700,000 in DuPage County. In addition, Dr. Lustig testified Itasca and local vendors will be given preferential treatment. Haymarket is currently using Itasca and local vendors.
- Dr. David Merriman, Ph.D, a professor at the University of Illinois, Chicago, and expert in the field of local property taxation, provided un rebutted testimony that when a non-profit obtains an exemption from property taxes, the local taxing bodies do not lose any tax revenue.³⁴
- Kenneth Polach, an MAI appraiser and President of Polach Appraisal Group with over 50 years of experience in the field, submitted an expert report and provided un rebutted testimony that Haymarket DuPage will not: impact the use of the adjoining property, cause substantial injury to the value of other properties in the neighborhood in which it is located, or hurt property values or improvements in the vicinity of the Property.
- Luay Aboona, Principal of KLOA, Inc., a traffic engineering and consulting firm, and an expert with approximately 30 years of experience in the field, submitted an expert report and testified Haymarket DuPage will have sufficient on-site parking, and not cause traffic problems in the area.

³⁴ Healthcare facilities, permitted by the Property's B-2 zoning, are frequently non-profit organizations. However, as Kisiel's report noted, "this amount represents less than 0.3% of the total property taxes collected from Itasca properties. Similarly, it represents less than 1% of the budget/revenues of each taxing body including school, fire protection, park district, library and others." Kisiel Report, pg. 15. Moreover, as noted herein, Defendant Pruyin rejected a legitimate offer of substantial supplemental state funding from Rep. Conroy. In addition, Haymarket has paid and will continue to pay the property taxes for Special Service Area No. 3.

Impact on EMS

146. During the hearings before the Plan Commission, the Fire District focused its opposition to the zoning applications on the projected impact of Haymarket DuPage on the Fire District's EMS services, alleging Haymarket would negatively impact the provision of EMS services to Itasca residents.³⁵

147. In initial conversations with Itasca in 2019, in order to address concerns about EMS impact, Haymarket DuPage offered to purchase an additional ambulance for Itasca. Itasca rejected this offer because Haymarket did not also offer to cover the cost of staffing the ambulance.

148. When its offer to purchase an ambulance for Itasca was rejected, Haymarket took several additional steps to address the concerns of the Fire District:

- a. First, it executed a contract with Elite Ambulance, the second largest ambulance provider in Illinois, to respond to Haymarket's basic life support ("BLS") calls. Although not detailed in the contract, Elite Ambulance also can provide Advanced Life Support ("ALS") services. Because of this contract, and the capabilities of Elite Ambulance, the Fire Department would only have to respond to calls from Haymarket for ALS services. Because BLS calls do not require an immediate emergency response, and most EMS calls placed by Haymarket DuPage would be for BLS services, this contract and the additional ALS capabilities of Elite Ambulance would minimize the impact of Haymarket DuPage on Itasca's EMS services.
- b. Second, Haymarket emphasized it would have trained medical staff on-site 24 hours a day, seven days a week, 365 days a year. Because of this support, Haymarket would be able to address certain medical needs in-house, which would eliminate the need to call for EMS. In addition, because of in-house medical staff, Haymarket would know whether it was appropriate to call Elite Ambulance or 911 for EMS services, which would avoid unnecessary 911 calls for EMS from the Fire Department.

³⁵ This issue was the primary reason cited by the Plan Commission when it recommended denial of Haymarket's zoning applications.

- c. Third, Haymarket DuPage offered to agree to a requirement that it maintain a contract with a private ambulance service as a condition of approval of its zoning application.
- d. Fourth, if needed, Haymarket DuPage agreed to execute a contract with a secondary private ambulance company to minimize its impact on EMS in Itasca.

149. To further address EMS concerns, Haymarket DuPage hired Polaris Public Safety Solutions, and through it, James Dominik (“Dominik”), a retired fire chief with 29 years’ experience, as well as national and international experience as a consultant to fire and police departments. Dominik conducted additional research on Haymarket DuPage’s potential impact on EMS services, and reviewed the qualifications of Elite Ambulance to provide timely and reliable responses to Haymarket DuPage’s BLS calls and minimize any burden on the Fire Department. Dominick, who was certified as an expert by the Plan Commission, concluded Haymarket would not unduly impact the provision of EMS services in Itasca. He based his expert opinion on, among other factors, the following:³⁶

- His analysis of 11 treatment facilities and recovery homes which, although smaller than the proposed facility, represent a broad range of treatment centers that provide the same levels of licensed services to the same populations as proposed for Haymarket DuPage and, thus, provide the best sites to be studied. Based on this analysis, Dominick projected the number of calls the new facility would generate. He found this number of calls would not unduly impact the Fire District’s reliability and timely response to Itasca residents and businesses.
- Itasca is a part of MABAS Division 12 (an acronym for “Mutual Aid Box Alarm System”). MABAS is a statewide mutual aid system designed to coordinate the effective and efficient response of mutual aid fire, EMS, and specialty team personnel and equipment during emergencies and disasters. Based on a report from the Office of the State Fire Marshall, covering 2014 – 2018, Dominik found that the Itasca Fire District has one of the lowest call volumes in MABAS 12. The Fire District has a call volume of 2.55

³⁶ As part of its extensive analysis, Polaris’ study addressed the following issues: call volumes, concurrent calls, mutual aid usage, unit hour utilization, response times, historic growth patterns for the Fire District, call volume data for 11 comparable sites, historic CAD data from Haymarket Chicago, EMS call volumes generated by Haymarket Chicago in 2018, and the operations and capabilities of Elite Ambulance.

EMS calls per day, which includes those occasions when the Fire District sends its own personnel and equipment to other communities on mutual aid calls.

- From 2014-2018, the Itasca Fire District provided 48% - 60% more mutual aid to other communities than it received.
- The Itasca Fire District shared its Chief with the Wood Dale Fire Protection District.³⁷ The Itasca Fire District also has agreements with the Wood Dale Fire Protection District and Village of Roselle that ensure the sharing of resources, as necessary, to promote the efficient provision of EMS calls to each respective area.
- Analysis of Itasca's unit hour utilization, a method used by fire departments around the country to determine when additional staff and equipment are needed to ensure reliable and timely responses. Dominick found the Fire District has a current unit hour utilization of .1, while the national standard is .3. At its current level, Dominick testified the number of calls the Fire District responds to would have to triple before such calls would unduly impact reliability and availability of EMS services to Itasca residents. Dominick stated reliability and availability would be maintained even if one applied the potential call volume predicted by Bruce Moeller ("Moeller"), the expert witness called by the Fire District.

150. Fire District expert Moeller's projection of the number of annual EMS calls to be generated by Haymarket DuPage was higher than any other projections offered into evidence. Nonetheless, Moeller testified that "currently the Itasca Fire Protection District has sufficient capacity to absorb the increased demand from the proposed Haymarket DuPage project," and that no new staff or equipment would be required to meet the anticipated call volume. In other words, the Fire District's own expert concluded the Fire District, as currently staffed and equipped, could handle the anticipated increase in EMS calls from Haymarket DuPage.

151. Fire District Chief Burke ("Burke") disagreed with Moeller, the Fire District's own expert, and with the testimony provided by Dominick. Without providing any additional evidence, Burke stated he did not believe MABAS could be relied on to serve the needs of Itasca

³⁷ This shared arrangement terminates in January 2022, and Fire Chief Burke will then only serve the Wood Dale Fire Protection District.

in the event Itasca's ambulance was busy on a call to Haymarket. He also testified, based on no empirical analysis, that he did not credit Dominik's projected numbers or Dominik's finding that Elite Ambulance would minimize any burden on the Fire District. Instead, Burke insisted the Fire District would need to purchase and staff a second ambulance to meet the need, and that the approximate cost of doing so would be \$1 million per year. Burke made these assertions even though they were odds with the fire dept's own testimony, and with that of Dominik. Dominik found that (a) calls for EMS in Itasca would have to triple before additional staff and equipment would be required, and (b) Elite Ambulance would capably respond to BLS calls from Haymarket DuPage.

152. During the hearings, both Moeller and Burke were asked to identify the point at which the number of EMS calls in Itasca would require additional equipment and staff. Neither could provide an answer.

153. Since the Spring of 2019, Haymarket engaged in a repeated effort to meet with the Fire District to discuss its EMS concerns, and the protocols developed between Haymarket and Elite Ambulance to minimize any impact on EMS in Itasca. The Fire District repeatedly refused to meet.

154. Dominik also studied the potential impact of Haymarket DuPage on the Itasca Police Department. Based on data produced by the Wood Dale Police Department,³⁸ confirmed the low call volumes handled by the Itasca Police Department, and he concluded the impact on the Itasca Police Department would be minimal and not affect its ability to provide high-quality

³⁸ The Wood Dale Police Department is a Commission on Accreditation for Law Enforcement Agencies ("CALEA") internationally accredited police agency. As part of the CALEA accreditation process, the Wood Dale Police Department completes an extensive annual report that includes comparison data with surrounding communities. Data included in the 2014-2018 annual reports was reviewed and utilized in Dominik's report.

services to the community. Also, Robert O'Connor, Itasca's Director of Police, testified his department handles its call load with only a minimal need to reach out for assistance from neighboring police departments.

155. In summary, during the zoning hearings, Haymarket DuPage provided extensive testimony and documentary evidence to the Plan Commission, including expert reports, to demonstrate compliance with the standards for approval of its applications for a special use as a Planned Development, and Class 1 Site Plan Review. Accordingly, the Plan Commission and the Village Board were obliged to approve Haymarket's application. The evidence also demonstrated Itasca treated other zoning proposals, such as the Bridge Development, in a vastly different manner than it treated Haymarket DuPage.

The Bridge Development

156. The process Itasca required of Haymarket stands in sharp contrast to that followed when Itasca approved an application for a planned development for the Bridge Development, part of which was approved during the same time period that the Haymarket DuPage hearings were suspended. The Bridge Development is a multi-phase project that will ultimately comprise: three industrial buildings for warehousing, distribution, light manufacturing, and logistics purposes, with an estimated total square footage of 761,591; and a commercial area, including a gas station, restaurants, retail stores, and notably a new five-story Holiday Inn, with an estimated total square footage of 47,451.

157. The Bridge Development is a total of 809,042 square feet, or more than 15 times larger than Haymarket's proposed adaptive re-use of the former Holiday Inn, which has a total square footage of 52,262. Although Itasca required Haymarket DuPage to submit an economic impact statement, at no point during its consideration of the Bridge Development did Itasca

require the developer to prepare an economic impact statement, or question the impact of this development on Itasca, any other taxing body, or EMS services.

158. During Haymarket's cross-examination of Burke, Burke revealed that during his ten years as Fire District Chief, the Fire District never hired a consultant to examine the potential call volume to be generated by any other Planned Development, including the Bridge Development. Thus, the Fire District's expenditure on a consultant to oppose Haymarket DuPage was a first for the Fire District.

159. Burke testified the Fire District had no concerns about the Bridge Development. Indeed, the Fire District submitted only a one-page report to the Plan Commission regarding this development.³⁹ That report, in its entirety, stated:

The following are comments based on my review of the proposed plan submitted by Bridge Development Partners:

1. Construction type of proposed hotel.
2. Access road to handle 80,000 GVM.
3. Turning radius needs, see attached Fire Department documentation.
4. Traffic lights/Automatic gates would require Opticom type system. Manual gates would require a lock that is operable with our KNOX BOX key.
5. Fire Protection/ fire pump(s) needs for buildings 1/2/3

Memorandum from Michael Lisek to Shannon Malik-Jarmusz (June 11, 2018), *attached as Exhibit S*.

160. Notably, that report raised no concerns about the impact of the much larger Bridge Development on EMS services.

³⁹ The Bridge Development was considered over the course of 6 hearings: 1) Plan Commission preliminary workshop session, 2) preliminary planned development approval, 3) final planned development approval, 4) approval of retail, hotel, gas station and restaurant, 5) amendment for construction of gas station, and 6) amendment for gas station and drawings for retail/restaurant building.

161. In addition, O'Connor testified he had concerns about Haymarket DuPage's impact on EMS, but did not have the same concerns about other zoning proposals in Itasca, including the Bridge Development.

Itasca School District Opposition

162. The School District Board of Education has adopted policy statements that the School District "shall provide a free appropriate public education . . . to all children with disabilities enrolled in the District," and that

[e]ach child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education, as provided to other children and youths, including a public pre-school education. . . . A homeless child may attend the District school that the child attended when permanently housed or in which the child was last enrolled. A homeless child living in any District school's attendance area may attend that school.

Itasca School District Policy Statements §§6-120; 6-140. These policy statements largely echo the School District's obligations under state and federal school laws, such as the Individuals with Disabilities Education Act (IDEA) and the McKinney-Vento Act. *See e.g.* Individuals with Disabilities Education Act, 20 U.S.C. §1400, *et seq.*; McKinney – Vento Homelessness Assistance Act, 42 U.S.C. §11431 *et seq.*

163. Notwithstanding these policy statements, the School District, through Benes, opposed Haymarket DuPage, claiming the School District would suffer an undue economic burden should Haymarket DuPage open in Itasca. First, it claimed children, infant to age 5, who would reside at Haymarket DuPage through its Mother and Child Program would pose an undue economic burden on the School District because they would be children with disabilities who required special education services.

164. Second, the School District, through Benes, claimed homeless patients at Haymarket DuPage would be able to claim residency in Itasca, and thus their children would be

able to receive free education at the cost of the School District. This interpretation of school residency law in Illinois is incorrect.

165. Third, although no representative of Lake Park High School testified during the hearing, the School District, through Benes, claimed patients at Haymarket DuPage who were aged 18 - 22, and subject to Individualized Education Placement plans due to their disabilities, would be able to secure free educational services through the local high school district, and thus unduly burden the district.

166. Even after Haymarket DuPage withdrew its Mother and Child Program, the School District continued to oppose Haymarket due to its fear that Haymarket would open the program in the future. During this time, save for a phone call in early November 2020, the School District and Benes also refused to meet with Haymarket to discuss their concerns.

167. Immediately prior to Benes' testimony before the Plan Commission, the School District and Benes sent a letter to all families in the School District, and a press release to the media. The press release provided an overview of Benes' testimony. The press release asserted the children of Haymarket DuPage patients might enroll in the School District and be homeless or have disabilities, and this would be costly to the School District. Specifically, it stated:

Under varying circumstances, the children of patients at the facility may be eligible to attend Itasca District 10 schools as governed by several laws including residency guidelines, IDEA and the McKinney-Vento homeless law. Increases in enrollment with no tax revenue will adversely impact the school district. The per pupil cost in District 10 is just over \$11,000 and that cost may increase to nearly \$28,000 if a student has special needs...

We have a strong commitment to students with disability [sic] and inclusivity of all students. We believe strongly in this mission and district goals and use both to guide our efforts each and every day. However, our district goals also call for fiscal responsibility as our commitment to this directly impacts the quality of education for both current and future students. The existing proposal is economically adverse to our students and the district.

Benes Press Release (April 7, 2021), *attached as Exhibit T*.

168. Benes' letter to parents in the School District also repeated the wrongful assertion that the presence of Haymarket DuPage could compromise the ability of the Fire District and Police Department to respond to emergencies at the three schools within the District. It even suggested the Fire District and Police Department might have to cease their involvement in educational programming at the schools if Itasca allowed Haymarket DuPage to open. Benes stated:

I will also share details about our strong relationship between District 10 and the Itasca Police and Fire Departments. One concern being shared is regarding the potential for services at the proposed development, which could impact response time for emergency situations at any of our three schools. In addition, District 10 benefits from both departments being highly involved in our education programs for students through classroom and school-wide presentations and other connections. An additional concern is that if that would continue given the potential impact on the police and fire resources.

Letter Benes to Itasca District 10 Parents (April 7, 2021), *attached as Exhibit U*.

169. Finally, the press release also incorrectly claimed that if Haymarket DuPage, due to its nonprofit status, was determined to be exempt from property taxes, "lost tax revenue and potential new student costs" would be "an economic hardship." Ex T. As described in Dr. Merriman's testimony above, this assertion is wrong.

170. In summary, the School District's statements misinterpreted school residency law, and implied the children of patients at Haymarket DuPage would necessarily have disabilities, require special education services, and/or be homeless. These statements furthered negative stereotypes of the patients Haymarket would serve, and encouraged the community in Itasca to oppose the project because of who would be served there, in violation of anti-discrimination laws.

Public Questioning and Comment

2019 Public Questioning

171. During the initial hearings in 2019, the Plan Commission allowed residents to question each witness who testified.

172. During this part of the hearings, residents repeatedly questioned Haymarket DuPage witnesses about why the project had to be in Itasca, and asked other questions that revealed bias toward the individuals to be served at Haymarket DuPage.

- a. Have you ever considered Indian Lakes in Bloomingdale?
- b. My question here is why do they call it Haymarket Healthcare Center when it's a drug treatment facility? Are you trying to influence everybody's minds here or what?
- c. My question is why here . . . why here for the Haymarket? Why is the best place over here to open up?
- d. [W]ouldn't Haymarket, would you feel that Haymarket would be better addressed in a different area of DuPage? There's a million people in DuPage. We have 9,000, and all the towns around here that you mentioned, I know that everyone can benefit in DuPage, but wouldn't you feel, especially knowing the whereabouts of Bloomingdale for instance, that it would be better suited in another area where it's much closer to the population?
- e. [H]ow much interaction is there between the residents of Haymarket and the local community. What is the procedure?
- f. I guess a question that we have is the individuals, since this is an open facility, could come and go and leave the establishment, say a short walk to the train and they might use that train. If they're before the meeting they might hang and have coffee at a Starbucks in town or go to the 7-11 for a beverage. I assume some of these people that would come to the facility are maybe using at that time because they're starting to step to the process. I don't know if you're a mother, you have children, let's say they are . . . If my child or anybody's child from town happen to be hanging out at the same facility with these individuals and started interacting with them, is it a good experience for that let's say seven to 18-year-old to spend 20, 30, 40, 50 minutes with somebody that may be using at the time? Because I think that's a very possibility that could happen.

173. During the 2019 hearings, Itasca resident Anthony D'Amato testified in support of Haymarket and the need for its services. Specifically, Mr. D'Amato testified regarding the experience of his close childhood friend, a person with substance use disorder who was treated at Haymarket Chicago. He also testified that although he was only 26 years old, 12 of his friends had died of overdoses.

174. In response to Mr. D'Amato's testimony, Itasca residents asked questions that challenged Mr. D'Amato's credibility and revealed a belief that efforts should not be made to help people with substance use disorder:

[JAMES KEATHLEY]: I'll start with a credibility question, but if he supplies the names of his 12 friends now or later just to check to make sure he actually had 12 friends that did pass away.

MR. BERGNER: I'm Brian Bergner; I'm an Itasca resident. The friend that you described, someone who has a lot of friends, a lot of family members, a lot of interpersonal social connections, people who would be affected by their behavior and by this person passing. So, without Haymarket, would your friend still be alive or would he be dead?

MR. DAMATO: I cannot a hundred percent answer that as a correct yes or no question, but I can tell you that I know the path that he was going down, and I know that Haymarket played an extremely substantial role on his life towards saving him.

MR. BERGNER: And is the world a better place with him in it or would the world be a better place if he had died?

175. Members of the Plan Commission themselves voiced fears regarding whether the population at Haymarket DuPage would be able to leave the facility. For example:

COMMISSIONER DRUMMOND: If a patient wants to take the train to and from his home or her home and then walked to the Holiday Inn, which is doable, it's just down the street, would that be allowed?

DR. LUSTIG: You mean if they're coming in for treatment?

COMMISSIONER DRUMMOND: Yes.

DR. LUSTIG: If they're coming in for treatment, it will be allowed because obviously –

COMMISSIONER DRUMMOND: If they're like an outpatient?

DR. LUSTIG: Yes, if they're an outpatient, then they would be allowed to commute, yes. They would be able to use the train, yes.

COMMISSIONER DRUMMOND: And what about patients that want to just stop the program if they're not happy with it, they just want to leave, would they be able to exit the building –

DR. LUSTIG: All of our clients that we – why don't we look at staff advice, have a clinical staffing done prior to their leaving. Part of that clinical staffing is being able to transport them out of the facility using a Haymarket Center van. Now, if there is an individual that wants to walk out and doesn't want to receive services, I believe that's possible.

COMMISSIONER SWETS: I would like to ask a quick question with that also. In comparing the West Loop to the DuPage, you said that it's different in the kind of, probably treatment. What would stop the DuPage Center from becoming what the West Loop is?

MR. BALDWIN (a witness for Haymarket DuPage): What's that suggesting?

COMMISSIONER SWETS: So, when you said the West Loop had more severe mental cases, I think that's it, what would stop DuPage from becoming that silo of center in DuPage?

COMMISSIONER SWETS: No, no, I'm just trying to understand. . . if somebody refuses the transportation, if I walked in and you said I can't treat you, and I want to walk out, what happens?

DR. LUSTIG: ...we would, we have a team of case managers and recovery coaches that would work to place this patient into appropriate facility and work with that patient to transport them out.

COMMISSIONER SWETS: And if they refuse?

DR. LUSTIG: If they refuse transportation?

COMMISSIONER SWETS: Yes.

DR. LUSTIG: Then we would try to give them some type of other transportation. We would call family members that might assist with this.

COMMISSIONER SWETS: But there's a possibility they could walk out themselves without you stopping it. I would assume you'd call the police at that point, but --

DR. LUSTIG: The answer is, is there a chance? Yes. Why we would call the police when they haven't done anything?

COMMISSIONER SWETS: I mean, if they're, if they are aggravated or, I mean, if they're causing a situation, you would call, if they were being disorderly, I would assume.

Public Questioning and Comment in 2020/2021

176. Before the Plan Commission hearings resumed in October 2020, Haymarket and the Objectors agreed to modify the hearing format from 2019 that had allowed questions by the public after each witness. Instead, the parties agreed that after all parties concluded putting on their respective cases, there would be: (a) a public questioning period where members of the public could question the parties and witnesses, and (b) a public comment period where members of the public could issue comments about the proposed facility, and (c) closing statements by the parties.

177. Thereafter, the usual zoning protocol would occur. First, the Plan Commission would recommend approval or denial of the application. Next, the matter would go before the Village Board to issue a final decision.

178. In the summer of 2021, the hearing process finally reached the public questioning and public comment periods. This phase of the hearing revealed residents in Itasca were fearful of the population to be served by Haymarket DuPage, assumed its presence would adversely impact the community, harbored discriminatory animus about those with substance use disorder, and/or preferred Haymarket DuPage find anywhere but Itasca to operate a facility. For example, the following comments occurred during the public questioning period:

- a. How do you think Haymarket is going to affect [the crime level within] the Village if it ever comes to Itasca?
 - b. [A]fter recently speaking to the DuPage County Sheriff, [Dr. Lustig] reported to me that over 80 percent of the detainees in jail have an opioid disorder. Are we going to think that none of these inmates live in Itasca or have had an impact on Itasca?
 - c. Is there recourse of any kind to the residents of Itasca if Haymarket changes their "vision" or any of their intentions for the facility that they've stated during this hearing that do not fall under the restrictions of zoning? For example, if they change their programs to accept sexual offenders or they decide to accept mothers with young children, etc.
179. The following statements were made during the public comment period:

- a. Our town will never be the safe, small town that it is right now with kids riding their bikes freely. You may think I'm being dramatic or exaggerating. I am not. I lived this, and I know it. It's like bringing death to Itasca. Our crime rate will skyrocket.
- b. I must sadly confirm that there are at least a handful, if not more, Itasca residents who have made comments, both publicly and privately, that stigmatized addiction. If you haven't noticed it personally already, then this is something you need to be aware of.

Certain residents speak of how this facility might ruin our beautiful town, as if there is something ugly about treating addiction or about those facing substance use disorders.

Certain residents question whether those people should be allowed to use our library, as if those struggling with addiction are somehow a threat.

Certain residents have even implied that Haymarket should be denied due process. Some of the comments are blatant, others are a little more subtle, but they are all inexcusable. There is no place for those views here.

- c. [T]hen there's this other side that was just ugly where I saw kids shouting negative slogans and saying negative things and not even understanding what was going on, all because an organization who works downtown wanted to move out into DuPage County and has had some issues trying to find a place because of -- you can say it's not stigma, but it is.
- d. My concern is regarding economy [sic] impact on town residence. One aspect of economy [sic] impact is property value. Dr. Lustig himself has expressed concern about general public's negative bias towards substance abuse treatment center facilities. If we take his own argument it's not hard to imagine that once Haymarket DuPage opens here in Itasca, future would investors would not invest in Itasca. This is because of same bias that Dr.

Lustig has talked about. Future home buyers would prefer nearby towns compare[d] to Itasca because of the same negative bias. This could result in property prices plummet in Itasca. For some of us investment in house and businesses is the only retirement savings we have. This concern has not been talked about much so far in hearing. I and my whole family [sic] (3 more adults besides me) strongly oppose Haymarket's proposal.

- e. I truly believe that somewhere else is the perfect location/city/town for this type of facility with larger proximity from its residents and their everyday life... and do not want our kids to live and grow up in this environment which is toxic to them and their future.
- f. I have been living in Itasca since 1980 and I believe that this Haymarket will do more harm than help for us the Itasca residents. Our emergency services will be jeopardized as the Haymarket's patients may be in need and use the little equipment we have. I also believe that the location where it currently wants to open is not ideal for the residents['] safety. There is a lot of facilities being [used] by children within walking distance from the potential site. Such as the library, the pool, the music classes, the gymnastics center and not too far is the park district. This will put our community children in danger. Let's keep our small village safe.

180. Some public comments echoed the comments Pruyn previously made, without basis, that Haymarket DuPage was not being transparent:

- a. Based on Haymarket's presentations, I question their transparency and willingness to be good neighbors. I wonder how this proposed facility in Itasca will be productive for our community and its patients. Over the past two years we've been given many promises from them, but we've also seen very many inconsistencies in their testimony. They have removed their mothers-with-children program for now, but we know it can be brought back as fast as it was taken away.
- b. At the beginning of Haymarket's testimony, Dr. Lustig talked numerous times about being good neighbors to the residents of Itasca. However, his lack of transparency couldn't make that statement further from the truth.

181. Itasca Resident Helen Zakos, one of the Concerned Citizens of Itasca, presented the Plan Commission with a petition and stated “[f]irst off, please don’t be fooled by the lack of people gathered tonight. The people of Itasca are still heavily against this proposal. I have over 3,000 signatures and petitions in my hand that I want to present tonight against the Haymarket DuPage proposal.”

182. Haymarket objected to the submission of the petition into evidence because: (a) it contained incorrect information about Haymarket, (b) it was not dated, (c) it included far fewer than 3,000 signatures, (d) it contained signatures from people who do not live in Itasca, and (e) in many instances it was obvious one person signed for two people. Nonetheless, it was admitted into evidence.

Procedural Anomalies

183. A number of procedural decisions by Itasca regarding the hearing process deviated from the usual protocols for a zoning matter and, essentially, were intended to “stack the deck” against Haymarket DuPage. They included, but were not limited to, the following:

- Itasca granted the Objectors full standing as parties to oppose Haymarket. In addition to the usual right to present testimony and cross-examine witnesses, the Objectors were granted the authority to (a) review and comment on the hearing procedures, (b) make closing statements, (c) present proposed findings of fact, and (d) exercise other procedural rights not consistent with practices traditionally followed in zoning hearings;
- Charles Hervas (“Hervas”), the attorney for Itasca, acted as the “impartial” legal counsel to the Plan Commission throughout the zoning hearings, including suggesting specific rulings to the Plan Commission Chair, and who, himself, ruled on several objections to testimony. Despite the veil of impartiality, Hervas recommended a witness, Kevin Wrigley, to Steven Ellenbecker, the attorney for the Neighborhood Opposition, who Mr. Ellebecker called to testify in opposition to Haymarket DuPage. Haymarket sent Hervas a letter to object to his suggestion of a witness for the Neighborhood Opposition, and asked him to provide his communications with Mr. Wrigley, which he refused to do;
- Mr. Hervas also represented two witnesses – Police Chief O’Connor and Sarah Ketchum - who testified on behalf of the Village. In this role, Mr. Hervas reviewed their statements, and objected to questions posed to them. Given Mr. Hervas’ active participation in the hearing on behalf of these two witnesses, the Village engaged special counsel to fill the “impartial’ role otherwise held by Mr. Hervas;
- With respect to the public questioning phase of the hearing in the summer of 2021, Itasca refused to require members of the public to sign-up in advance to identify those witnesses from Haymarket DuPage and the Objectors they planned to question. This forced Haymarket DuPage to incur the financial burden of preparing its witnesses to appear and testify during this phase, regardless of

whether the public intended to question them. In fact, several Haymarket witnesses were present for questions from the public, and no questions were asked. This caused Haymarket to endure unnecessary expenses;

- In contrast, Itasca did not require the Neighborhood Opposition to appear in-person for questions from the public as required by Plan Commission rules governing large hearings, even though it required all other parties to do so, and Haymarket specifically requested in writing that the Neighborhood Opposition appear. Instead, Itasca only required that Steven Ellenbecker, the attorney for the Neighborhood Opposition, respond to written questions only from the public;
- Itasca allowed all parties, including the Objectors, to present proposed findings of fact to the Plan Commission; and
- Itasca allowed all parties, including the Objectors, to present closing statements to the Plan Commission, and initially proposed each party, including Haymarket, would get an equal allotment of 20 minutes. (Haymarket DuPage was ultimately allowed an hour, an amount of time equal to the cumulative time allowed for the Fire District, School District, and Neighborhood Opposition.).

184. These procedural anomalies contributed to unfair and discriminatory proceedings before the Plan Commission.

Plan Commission Recommends Denial of Haymarket's Application

185. On September 22, 2021, after two years and over 35 hearings, the Plan Commission unanimously rejected Haymarket DuPage's zoning applications in a 45-minute hearing.

186. Prior to the meeting, individuals from the community held what they labeled a "silent protest" outside the Village Hall that included "No Haymarket" signs.

187. During deliberations, the members of the Plan Commission determined there was a need for a treatment center in DuPage County, but claimed there was not enough evidence of the need for treatment in Itasca itself. Commissioners also criticized the size of the proposed facility.

188. The Plan Commission based its decision to deny the zoning applications on Haymarket's supposed burden on EMS services. With respect to the purported EMS burden,

Plan Commission Chairman Brendan Daly (“Daly”) stated, “[t]he only number I feel comfortable with in this entire hearing is the number one. Itasca has one ambulance. ... I have a real hard time feeling confident that should this development go through in its proposed size and current condition, it will not have a detrimental impact on the village.” Notwithstanding Haymarket DuPage’s contract with Elite Ambulance, expert testimony to the contrary, and Itasca’s earlier refusal of Haymarket’s offer to purchase a second ambulance, Daly also claimed the Fire District would need to purchase a second ambulance:

It is our responsibility to provide a reasonable accommodation; however, I believe that the capital expense of \$300,000 for a new ambulance, an additional \$700,000 and up for the staff to man that ambulance from Chief Burke's testimony on May 5th, 2021, line 17, page 26, and that just ballpark figure would be roughly \$300,000 for that unit, page 27, line 11 -- that's just the fire department. And then that annual cost for staffing would be an ongoing thing. So you know you'd probably be in that 700- to \$750,000 range annually. To me, I can't rationalize that as a reasonable accommodation for the proposed development.

189. Further, Daly stated he “just can't get [his] head around how having a contract with Elite is going to lesson [sic] the proposed burden -- not the proposed -- the possible burden on the Village Fire Protection District's ability to respond to both calls at Haymarket and the balance of the Village.”

190. Plan Commissioner Drummond also stated the Plan Commission had “never seen a contract” [with Elite], despite that the contract with Elite had been entered as an exhibit and made part of the record.

191. As to the School District, Daly stated: “I believe that the schools can also -- we've heard testimony from Mr. Benes, and I do believe that the standard for the schools, the lack of impact to the schools, that burden of proof has not been met.” The other commissioners agreed with this assertion, even though it was unsupported by the facts or school residency law, and no children would live at Haymarket DuPage.

192. Even though Itasca forced Haymarket to apply for a special use as a Planned Development due to the purported “residential” nature of the proposed facility, Plan Commissioner Drummond⁴⁰ stated she did not think the proposed facility could truly be characterized as residential. Plan Commissioners Carello and Daly agreed with this statement, but also again claimed the facility would unduly burden EMS.

193. Immediately before voting, Ms. Wysocki, attorney for Itasca, directed the Plan Commission to discuss reasonable accommodations. Ms. Wysocki stated:

[The FHA and ADA] create an affirmative duty on the part of the Village to reasonably accommodate these disabled individuals in zoning matters; therefore, even if Haymarket does not meet the standards of the zoning ordinance, this Commission must consider whether accommodations should be made to alleviate the discrimination. The Commission can consider whether the requested accommodation is necessary to alleviate the discrimination and whether the requested accommodation is reasonable and proportional to the cost implemented. So that is two factors. I would ask that -- I know that Chairman Daly talked a little bit before about the reasonability of the accommodation, but I would ask that the commissioners consider both factors.

194. Ms. Wysocki did not clarify to what “accommodation” she was referring; however, the only “accommodation” discussed during the hearing at all was the cost of purchasing and servicing a second ambulance. Moreover, Ms. Wysocki seemed incorrectly to suggest that even if Itasca found Haymarket had not met the standards, that a reasonable accommodation to buy and staff a second ambulance would be the only accommodation possible, and that it was unreasonable. This characterization constitutes a material misstatement of the facts and relevant civil rights law.

195. To this, Plan Commissioner Ray responded that her concerns “go back to health and safety and to being able to accommodate residents, and I don't believe with the lack of EMS

⁴⁰ The transcript identifies the speaker as Commissioner Ray; however, Commissioner Drummond made this statement.

services that we have in this town and the burden on those services that we're going to be able to protect and residents are going to be able to thrive in that environment.” Plan Commissioner Drummond agreed.

196. Plan Commissioner Carello opined that “size, I think, is a big issue...if this was a substantially smaller property, we would not be here today. This would have been done a long time ago.”

197. Daly reiterated that the cost of purchasing and staffing a second ambulance was not reasonable and that “again, I go back to capital expense of \$300,000, plus or [minus], for a new ambulance because I do believe that if this was to be approved, that second ambulance would be required.”

198. The Plan Commission did not discuss any reasonable accommodations other than purchasing and staffing a second ambulance.

Haymarket Reaffirms Conditions

199. On October 11, 2021, in response to the misplaced concerns expressed by Itasca’s Plan Commission, Haymarket DuPage, through counsel, sent a letter to the Village reaffirming the conditions Haymarket would agree to if the Village approved the zoning application.

Haymarket DuPage agreed:

- to always maintain a contract with a private ambulance company to handle BLS calls generated by Haymarket DuPage;
- to execute an additional contract with a second private ambulance company if needed to provide additional capacity to handle BLS calls from Haymarket DuPage;
- to meet immediately, or at any time prior to the opening of the facility, with the Itasca Fire Protection District to review protocols that will govern Haymarket’s relationship with any private ambulance company. Haymarket further agreed to consider any reasonable recommendations suggested by

the Fire District to ensure collaboration and the provision of efficient emergency services to Itasca residents and businesses;

- to meet as needed upon the request of the Fire District and/or the Police Department to review call volumes generated by Haymarket DuPage. Haymarket further committed to work collaboratively to further the provision of efficient emergency services to Itasca residents and businesses; and
- to continue to pay the property taxes for Special Service Area No. 3

Letter from Bridget O’Keefe to Charles Hervas (October 11, 2021), *attached as* Exhibit V.

200. On October 26, 2021, the Village, through counsel, responded that it would not agree to any of the conditions, claiming they were not enforceable under *Keystone Montessori Store v. Village of River Forest*, 2021 IL App (1st) 191992 (1st Dist. 2021). Letter from Yordana Wysocki to Bridget O’Keefe (October 26, 2021), *attached as* Exhibit W.

201. That same day, Haymarket through counsel, responded that *Keystone* did not apply. Among other points, Haymarket noted that: (a) the Illinois Municipal Code explicitly states a special use may be subject to conditions reasonably necessary to meet the standards set forth for approval of a special use; (b) conditions on a special use are commonly considered by municipalities across the state; and (c) the conditions offered here (with the exception of the offer to pay the tax assessments for the Special Service Area) directly relate to the zoning standards for a special use in Itasca, namely the impact of Haymarket DuPage on the health, safety, and welfare of the community (i.e., the impact on EMS). Letter from Bridget O’Keefe to Yordana Wysocki (October 26, 2021), *attached as* Exhibit X.

202. The Village failed to respond to Haymarket DuPage’s letter.

Village Board Denies Haymarket Proposal

203. On October 26, 2021, Itasca allowed all parties, including the Objectors, to present closing statements to the Village Board. Itasca initially proposed each party, including

Haymarket DuPage, would get an equal allotment of 20 minutes for such statement. After Haymarket objected, Haymarket was allowed to have an hour to make a statement to the Board.

204. On November 2, 2021, the Village Board, in a meeting that lasted 17 minutes, denied the Haymarket proposal.

205. Prior to calling for the vote, Pruyn made a public oppositional statement that constituted approximately eight minutes, or half the total meeting time, wherein he claimed, without basis, that Haymarket's proposal was unreasonable because it would cause too great an economic burden on Itasca. In particular, Pruyn stated Itasca would be required to buy and staff a second ambulance, which it could not afford:

As time went on, we learned more and more about the immense size and scope of Haymarket's plan, and I kept coming back to one question: How could Itasca reasonably handle a facility like this. . .

The bottom line is, the forecasting is more than what our fire district can handle now with our one ALS ambulance.

Haymarket suggested they could provide a second ambulance, but that would also require staff, maintenance, and other costs Itasca just doesn't have ...

It was clear to state-elected officials, county-elected officials, and local officials that one of the smallest communities was going to have to absorb 100 percent of the cost, risk, and burden of servicing a facility that would be accepting residents beyond Itasca. More importantly, it was also clear to Haymarket that costs went beyond Itasca means.

206. Like the Plan Commission, Pruyn did not address (a) the conditions with which Haymarket DuPage offered to comply if zoning were approved, or (b) any reasonable accommodations requested, other than to state that buying and staffing a second ambulance was unreasonable. Pruyn also referenced Representative Deborah Conroy's offer in 2019 to secure a half million dollars in state monies to offset the potential lost tax revenue for Itasca due to Haymarket's non-profit status, an offer he rejected the day after it was made. He claimed Itasca

did not have enough information about Haymarket DuPage at the time the grant was offered, and the offer had no value because he could not know whether the grant would be renewed indefinitely.

207. After Pruyn's speech, only Trustee Ellen Leahy made a statement, in which she echoed Pruyn's remarks. She falsely stated: "Itasca is being asked to support a 200-bed facility that could potentially cost Itasca and its residents \$1 million annually." Also, despite Representative Conroy's offer to secure half a million dollars in state funding, Trustee Leahy stated: "[Neither] Itasca nor the Itasca Fire Protection District has ever received a financial commitment from the State of Illinois to help support Haymarket."

208. The Village Board voted unanimously, 6-0, to deny the requested zoning relief.

209. At 7:29 p.m., roughly ten minutes after the Village Board vote, Itasca issued a press release announcing the decision and publishing Pruyn's remarks. Itasca Press Release (November 2, 2021), *attached as Exhibit Y*.

Defendants' Actions Injured Haymarket

210. Even though Haymarket DuPage satisfied all zoning requirements for a planned development and Class 1 Site Plan Review, the Village denied Haymarket's use of the Property. This decision was without legal basis or justification.

211. The Village's decision to reject Haymarket's applications for the planned development and Site Plan Review was arbitrary, capricious, without basis, and unreasonable. The decision denied Haymarket its substantive due process rights and violated Illinois law.

212. The Itasca Defendants intentionally discriminated against Haymarket DuPage and its prospective patients based on discriminatory bias because they were materially influenced by

discriminatory community opposition, and discriminatorily applied the Itasca Zoning Ordinance to prohibit Haymarket DuPage from opening a healthcare facility in Itasca.

213. Moreover, the Itasca Defendants refused reasonably to accommodate Haymarket DuPage. These Defendants refused to treat the proposal as a special use as a “healthcare facility,” and insisted Haymarket DuPage apply under the more onerous and less appropriate “planned development” standard. These Defendants refused to meet with Haymarket DuPage to discuss any reasonable accommodations or to approve any proposed conditions. In doing so, the Itasca Defendants failed to accommodate Haymarket in violation of disability discrimination laws.

214. Defendants’ actions prevented Haymarket DuPage from opening Haymarket DuPage in Itasca, accepting patients, and operating a treatment facility in Itasca.

215. Defendants’ actions denied housing opportunities to people with substance use disorder in Itasca. As a result of Defendants’ actions, prospective patients of Haymarket DuPage are restricted in their opportunities to live and receive treatment in the facility of their choice, thus interfering with their rights to integrated housing and services.

216. Defendants and their agents knew Haymarket DuPage would provide treatment and a healthcare facility for people with disabilities, but acted intentionally and willfully, and with callous and reckless disregard for the statutory rights of Haymarket and its prospective patients. This entitles Haymarket DuPage to punitive damages.

217. As a result of Defendants' conduct, Haymarket DuPage has suffered compensatory damages, reputational harm, and injury to and frustration of its mission. Defendants’ actions also denied Haymarket DuPage the use and enjoyment of its Property, and forced Haymarket to expend considerable undue costs and resources, and to divert its resources.

Likewise, Defendants' discrimination harmed the patients Haymarket DuPage would serve, and their children.

218. Haymarket DuPage has no adequate remedy at law. Unless this Court provides equitable relief, Haymarket will continue to suffer irreparable injury due to Defendants' discriminatory conduct. Accordingly, Haymarket is entitled to injunctive relief.

219. Defendants' actions are ongoing and continuing and constitute continuing violations under the FHA, ADA, and Section 504.

CLAIMS

COUNT I: FAIR HOUSING ACT

Itasca and Itasca Plan Commission ("Itasca Defendants")

220. Haymarket re-alleges and incorporates the preceding paragraphs and allegations as if fully set forth herein.

221. By applying its zoning ordinance to prohibit the operation of Haymarket DuPage in Itasca in the B-2 district, requiring an onerous and discriminatory zoning hearing process, denying Haymarket's requests for zoning relief, refusing to make reasonable accommodations to allow Haymarket to operate a treatment facility for people with disabilities, and through Itasca's agents' false and discriminatory statements, Itasca Defendants have:

- a. Interpreted and applied Itasca's Zoning Ordinance in a manner that discriminates against persons with disabilities by refusing to permit a treatment center and recovery home for people with disabilities in the B-2 district, in violation of 24 C.F.R. §100.70(d)(5);
- b. Made unavailable the facility owned by Haymarket DuPage to the potential Haymarket patients because they are people with disabilities, in violation of 42 U.S.C. §3604(f)(1);
- c. Discriminated in the provision of services in connection with Haymarket because the potential patients of Haymarket are people with disabilities, in violation of 42 U.S.C. §3604(f)(2);

- d. Failed or refused to make reasonable accommodations in rules, policies, practices, or services when such accommodations are necessary to afford people with disabilities an equal opportunity to use and enjoy temporary housing, in violation of 42 U.S.C. §3604(f)(3)(B);
- e. Restricted or attempted to restrict the choices of people with disabilities so as to discourage or obstruct choices in a community, neighborhood or development, in violation of 24 C.F.R. §100.70(a);
- f. Denied Haymarket DuPage's requests for zoning approval because of discriminatory animus against persons with disabilities, in violation of 42 U.S.C. §3604(f) and 24 C.F.R. §100.70(d)(5);
- g. Coerced, intimidated, or interfered with Haymarket DuPage because it asserted its right, under the Fair Housing Act, to operate a center in Itasca, in violation of 42 U.S.C. §3617; and
- h. Through its agents, made, printed, published, or caused to be made, printed, or published statements that intentionally discriminated against people with disabilities with respect to housing, in violation of 42 U.S.C. §3604(c).

222. Itasca Defendants strategically acted in concert together and with other key Village agencies, Pruyn, and Objectors to orchestrate discriminatory conduct, with discriminatory intent, to deny housing to persons with disabilities, in violation of the Fair Housing Act.

223. Itasca Defendants' conduct was intentionally discriminatory, willful, wanton, and/or in reckless disregard of Haymarket's rights under the Fair Housing Act.

COUNT II: FAIR HOUSING ACT

Itasca Fire Protection District No. 1

224. Haymarket DuPage re-alleges and incorporates Paragraphs 1 - 219, above as if fully set forth herein.

225. As alleged herein, the Fire District:

- a. Strategically acted in concert with other key Village entities, Pruyn, and Objectors to orchestrate discriminatory conduct, with discriminatory intent, to deny housing to persons with disabilities, in violation of the Fair Housing Act.

- b. Materially contributed as a recognized Objector to, supported, and acted in concert with Objectors and other named Defendants to create false and pretextual reasons, not based in fact but rather based on discrimination, to reject Haymarket DuPage;
- c. Threatened undue scrutiny of Haymarket DuPage's compliance with fire safety protocols, but admitted to not similarly scrutinizing fire safety provisions of the previous owner of the Holiday Inn site, which was not associated with people with disabilities;
- d. Intentionally presented, and persisted in presenting, inaccurate information during the zoning proceedings that Haymarket DuPage would deprive Itasca residents of EMS;
- e. Failed and refused to meet with Haymarket concerning potential reasonable accommodations relating to supplementing EMS services; and
- f. Failed and refused to recognize Haymarket's contract with Elite Ambulance, though entered into the record, and failed to withdraw its objection to Haymarket even after Haymarket cured its objections with proposed conditions.

226. Defendant Fire District violated the Fair Housing Act as follows:

- a. Materially and discriminatorily contributed to making unavailable the facility owned by Haymarket DuPage to the potential Haymarket patients because they are people with disabilities, in violation of 42 U.S.C. §3604(f)(1);
- b. Discriminated in the provision of and/or withholding of EMS and fire protection services in connection with Haymarket because the potential patients of Haymarket are people with disabilities, in violation of 42 U.S.C. §3604(f)(2);
- c. Failed or refused to make reasonable accommodations in rules, policies, practices, or services when such accommodations are necessary to afford people with disabilities an equal opportunity to use and enjoy temporary housing, in violation of 42 U.S.C. §3604(f)(3)(B);
- d. Through its agents, made, printed, published, or caused to be made, printed, or published statements that intentionally discriminated against people with disabilities with respect to housing, in violation of 42 U.S.C. §3604(c); and
- e. Coerced, intimidated, or interfered with Haymarket DuPage because it asserted its right under the Fair Housing Act to operate a treatment and recovery center in Itasca, in violation of 42 U.S.C. §3617.

227. Defendant's Fire District's conduct was intentionally discriminatory, willful,

wanton, and/or in reckless disregard of Haymarket's rights under the Fair Housing Act.

COUNT III – FAIR HOUSING ACT

Itasca Public School District 10

228. Haymarket DuPage realleges and incorporates by reference paragraphs 1 – 219 above, as if fully set forth herein.

229. As alleged herein, Defendant School District:

- a. Strategically acted in concert with other key Village agencies, the Mayor, and Objectors to orchestrate discriminatory conduct, with discriminatory intent, to deny housing to persons with disabilities, in violation of the Fair Housing Act;
- b. Materially contributed as a recognized Objector to, supported, and acted in concert with Objectors and other named Defendants to create false and pretextual reasons, not based in fact but rather based on discrimination, to reject Haymarket DuPage;
- c. Caused Haymarket DuPage to withdraw its Mother and Child Program to satisfy claims the children who would accompany their mothers during treatment would be children with disabilities who would place an undue economic burden on the School District;
- d. Intentionally presented and persisted in presenting false and inaccurate information during the zoning proceedings to further the strategy of steering Haymarket out of Itasca, and garnering community opposition, by claiming:
 - i. Children of mothers in treatment at Haymarket DuPage would require free special education services through the School District;
 - ii. Children of Haymarket DuPage patients who are homeless would claim free educational services through the School District for their children, despite the fact that their children would not be residents of Itasca;
 - iii. Haymarket DuPage patients aged 18-22 would place an undue economic burden on the high school district if they were students with disabilities with an Individualized Education Plan, as they would claim free school services; and
 - iv. EMS services demanded by Haymarket DuPage would divert fire and police programming from the School District.

230. Defendant School District violated the Fair Housing Act as follows:

- a. Materially contributed to making unavailable Haymarket DuPage to the potential Haymarket patients because of discriminatory perceptions of people with disabilities, including those who may have children, in violation of 42 U.S.C. §3604(f)(1) and 3604(b);

- b. Confirmed its intention to discriminate in the provision of and/or withholding of educational services to children if they would reside with patients of Haymarket DuPage who are people with disabilities, to further the strategy of steering Haymarket DuPage away from Itasca, in violation of 42 U.S.C. §§3602(k), 3604(b) (familial status), 3604(f)(2) (association with person with a disability), and contrary to the *Joint Statement on Reasonable Accommodations under the Fair Housing Act*⁴¹;
- c. Endorsed and disseminated false and discriminatory statements about adverse impacts of Haymarket DuPage's provision of housing and services to people with disabilities and their children, which statements were strategically used to drive Haymarket DuPage out of Itasca, in violation of 42 U.S.C. §3604;
- d. Through its agents, made, printed, published, or caused to be made, printed, or published statements that intentionally discriminated against people with disabilities with respect to housing, in violation of 42 U.S.C. §3604(c); and
- e. Coerced, intimidated, or interfered with Haymarket DuPage because it asserted its right under the Fair Housing Act to operate a treatment center in Itasca, in violation of 42 U.S.C. §3617.

231. Defendant School District's conduct was intentionally discriminatory, willful, wanton, and/or in reckless disregard of Haymarket's rights under the Fair Housing Act.

COUNT IV – FAIR HOUSING ACT

Jeffrey Pruyn (Official Capacity)

232. Haymarket DuPage realleges and incorporates by reference paragraphs 1 - 219, above, as if fully set forth herein.

233. The federal Fair Housing Act allows government officials to be sued both in their individual and official capacities.

234. As alleged herein, Defendant Pruyn:

- a. Utilized his position as Mayor to publish and mail false and discriminatory information that denigrated Haymarket and the patients it would serve, encouraged Itasca residents to oppose Haymarket DuPage, and fostered false and pretextual bases to reject Haymarket DuPage, in concert with and in furtherance

⁴¹ HUD/DOJ *Joint Statement on Reasonable Accommodations under the Fair Housing Act*, available at https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf (hereinafter "Joint Statement on Reasonable Accommodations").

of the Village-wide strategy to steer Haymarket away from Itasca, and deny use of its Property for a healthcare facility in compliance with Village zoning;

- b. Intentionally presented, and persisted in presenting, inaccurate discriminatory information including but not limited to: (a) depicting Haymarket as deceitful and not transparent in the process, and (b) falsely claiming Haymarket DuPage could be an undue burden on Itasca's EMS services and tax base.
 - c. Strategically acted in concert with Itasca, the Plan Commission, other key Village agencies, and Objectors to orchestrate discriminatory conduct, and false pretextual bases, to reject Haymarket DuPage, and did so with discriminatory intent to deny housing to persons with disabilities, in violation of the Fair Housing Act;
 - d. Rejected Haymarket's offer to purchase a second ambulance for Itasca, and then used the lack of a second ambulance as a basis to oppose Haymarket's application; and
 - e. Rejected State Representative Deborah Conroy's offer of state funding and, just prior to the vote by the Itasca Village Board on Haymarket's DuPage's zoning applications, made a speech to encourage the Village Board to deny the zoning application.
235. Defendant Pruyn violated the Fair Housing Act as follows:
- a. Materially contributed to making unavailable the facility owned by Haymarket DuPage to the potential Haymarket patients because they are people with disabilities, in violation of 42 U.S.C. §3604(f)(1);
 - b. Utilized his position as Mayor to cause discrimination in the provision of services in connection with Haymarket DuPage because the potential patients of Haymarket DuPage are people with disabilities, in violation of 42 U.S.C. §3604(f)(2);
 - c. Failed or refused to make reasonable accommodations in rules, policies, practices, or services when such accommodations are necessary to afford persons with disabilities an equal opportunity to use and enjoy temporary housing, in violation of 42 U.S.C. §3604(f)(3)(B);
 - d. Restricted or attempted to restrict the choices of people with disabilities so as to discourage or obstruct choices in a community, neighborhood or development, in violation of 24 C.F.R. §100.70(a);
 - e. Coerced, intimidated, or interfered with Haymarket DuPage because it asserted its right, under the Fair Housing Act, to operate a treatment center in Itasca, in violation of 42 U.S.C. §3617; and
 - f. Made, printed, published, or caused to be made, printed, or published statements that intentionally discriminated against people with disabilities with respect to housing, in violation of 42 U.S.C. §3604(c), as described herein.

236. Defendant Pruyn's conduct was intentionally discriminatory willful, wanton, and/or in reckless disregard of Haymarket's rights under the Fair Housing Act.

COUNT V – FAIR HOUSING ACT

Craig Benes (Official Capacity)

237. Haymarket DuPage realleges and incorporates by reference paragraphs 1 - 219 above, as if fully set forth herein, including paragraphs 229 - 232 of Count III, above, against the School District.

238. As alleged herein Defendant Benes:

- a. Directed and carried out Itasca School District 10's material interference with the rights of Haymarket DuPage, Haymarket's patients and, specifically, their children in violation of policies adopted by the School District relative to provision of special education and educational services to the homeless, the Fair Housing Act, and state and federal school laws;
- b. Utilized his position as School Superintendent to publish and mail false and discriminatory information concerning Haymarket DuPage, its patients with disabilities and their children with whom they are associated, and intentionally fostered false and pretextual bases to reject Haymarket DuPage, in concert with and in furtherance of the Village-wide strategy to steer Haymarket away from Itasca and deny use of its property for a healthcare facility, which included the statement that: "[a]s has been shared by others testifying, we have concerns that the proposed facility will have an impact on the police and fire resources, potentially meaning a reduction in the services provided to our students";
- c. Strategically acted in concert with Itasca, the Plan Commission, other key Itasca agencies, and Objectors to orchestrate discriminatory conduct, with discriminatory intent, to reject Haymarket DuPage, and deny housing to persons with disabilities, in violation of the Fair Housing Act;
- d. Materially contributed to Haymarket's decision to voluntarily withdraw its Mother and Child Program at Haymarket DuPage based on false and discriminatory assumptions and assertions about provision of special education services to the children of Haymarket DuPage's patients; and
- e. Intentionally presented, and persisted in presenting, inaccurate discriminatory information as the Superintendent of the School District during the zoning proceedings. Specifically, he (a) testified to the purely hypothetical adverse economic impact to educate children of Haymarket DuPage patients, based either on the assumption they would be children with disabilities in need of special education services (despite the withdrawal of the Mother and Child program),

and/or be deemed homeless and claim residency in Itasca, (b) falsely disseminated fear and “concern” that the Police Department and Fire District would have decreased response time to Itasca’s schools because of Haymarket, (c) falsely disseminated fear and “concern” that, due to Haymarket, the involvement of the Itasca Police Department and Fire District in school presentations and activities would no longer occur, and (d) falsely disseminated fear and “concern” regarding the economic burden to be borne by the local high school district by Haymarket DuPage patients with disabilities aged 18-22 who would claim free special education services while securing treatment at Haymarket DuPage.

239. Defendant Benes violated the Fair Housing Act as follows:
- a. Materially contributed to making unavailable the facility owned by Haymarket DuPage to the potential Haymarket patients because they are people with disabilities, in violation of 42 U.S.C. §3604(f)(1);
 - b. Utilized his position to cause discrimination in the provision of services in connection with Haymarket because the potential patients of Haymarket are people with disabilities, and may have children who in varying circumstances could live with them, in violation of 42 U.S.C. §3604(f)(2), and contrary to the *Joint Statement on Reasonable Accommodations*;
 - c. Coerced, intimidated, or interfered with Haymarket DuPage because it asserted its right, under the Fair Housing Act, to operate a treatment center in Itasca, in violation of 42 U.S.C. §3617;
 - d. Made, printed, published, or caused to be made, printed, or published statements that intentionally discriminated against people with disabilities with respect to housing, in violation of 42 U.S.C. §3604(c), as described herein; and
 - e. Utilized his position to cause discrimination in the provision of services in connection with Haymarket because the potential patients of Haymarket may be individuals with children, in violation of the prohibition in the Fair Housing Act against discrimination on the basis of familial status, 42 U.S.C. §3604(b).

240. Defendant Benes’ conduct was intentionally discriminatory, willful, wanton, and/or in reckless disregard of Haymarket’s rights under the Fair Housing Act.

COUNT VI: TITLE II OF THE ADA

All Defendants

241. Haymarket DuPage realleges and incorporates by reference paragraphs 1 - 219, above, as if fully set herein.

242. Haymarket is associated with and/or attempting to provide temporary housing and services to people with disabilities, as defined in 42 U.S.C. §12102(1).

243. Defendants Itasca, Itasca Plan Commission, Fire District, and School District are public entities under 42 U.S.C. §12131(1). Defendants Pruyn and Benes are public officials employed by, and agents for, the respective public entities they represent, and are sued in their official capacity for violations of the Americans with Disabilities Act.

244. Defendants, through their actions described above, have:

- a. Discriminated against qualified individuals with disabilities, in violation of 42 U.S.C. §12132 and 28 C.F.R. §35.130;
- b. Failed or materially contributed to the failure to make reasonable modifications to their policies, practices, or procedures necessary to avoid discrimination against persons with disabilities, in violation of 42 U.S.C. §12132 and 28 C.F.R. §35.130(b)(7);
- c. Denied, or materially contributed to the denial of the prospective patients of Haymarket an opportunity to participate in a program in the most integrated setting appropriate to their needs, in violation of 28 C.F.R. §35.130(d);
- d. Utilized or materially contributed to the utilization of zoning requirements that are not imposed upon other groups of related or unrelated non-disabled persons to deny Haymarket, due to the disabilities of the prospective patients of Haymarket, the enjoyment of its civil rights, in violation of 28 C.F.R. §35.130(b); and
- e. Interfered with Haymarket DuPage because it asserted its right, under the Americans with Disabilities Act, to operate a treatment center in Itasca, in violation of 42 U.S.C. §12203(b) and 28 C.F.R. §35.134(b).

245. The past and continuing acts and conduct of Itasca, Itasca Plan Commission, Fire District, School District, Pruyn, and Benes, described above, were and are intentional, and were carried out with malice and/or reckless indifference to the federally protected rights of Haymarket and its projected patients.

246. Defendants intentionally and knowingly engaged in the practices described above, with the intent of denying rights under the ADA.

247. Defendants' conduct was intentionally discriminatory, willful, wanton, and/or in reckless disregard of Haymarket's rights under the ADA.

COUNT VII: SECTION 504 OF THE REHABILITATION ACT

Itasca Defendants

248. Haymarket DuPage realleges and incorporates by reference paragraphs 1 – 219 above, as if fully set forth herein.

249. Haymarket is associated with and/or attempting to provide temporary housing and services to individuals with disabilities, as defined in 24 C.F.R. §8.3.

250. Itasca Defendants, through their actions described above, have:

- a. Discriminated against or materially contributed to discrimination against persons with disabilities by refusing to make reasonable accommodations or modifications to Itasca zoning procedures, in violation of 29 U.S.C. §794(a);
- b. Failed to or materially contributed to a discriminatory failure to make a reasonable accommodation or modification to their policies and practices when necessary to avoid discrimination, in violation of 29 U.S.C. §794(a);
- c. Denied housing, or materially supported the denial of housing, to the potential Haymarket patients, and potentially their children, because they are persons with disabilities, in violation of 24 C.F.R. §8.4(a) and (b)(1)(vii);
- d. Utilized zoning requirements that are not imposed upon other groups of related or unrelated non-disabled persons in a manner that denies the prospective patients of Haymarket an equal opportunity to benefit from the housing, aid, benefits, or services of Itasca, in violation of 24 C.F.R. §8.4(b)(1)(ii);
- e. Denied housing or materially contributed to the denial of housing to Haymarket because the prospective patients of its treatment and recovery center are persons with disabilities, in violation of 24 C.F.R. §8.4(b)(1)(vii);
- f. Limited the prospective patients of Haymarket in the enjoyment of rights, privileges, advantages, or opportunities enjoyed by others receiving the housing, aid, benefit, or services of Itasca, in violation of 24 C.F.R. §8.4(b)(1)(viii); and
- g. Denied the prospective patients of Haymarket an opportunity to participate in a program in the most integrated setting appropriate to their needs, in violation of 24 C.F.R. §8.4(d).

251. The past and continuing acts and conduct of Defendants, described above, were and are intentional and have been carried out with malice and/or reckless indifference to the federally protected rights of Haymarket DuPage and its projected residents.

252. Itasca Defendants intentionally and knowingly engaged in the practices described above, with the intent of denying rights under Section 504 of the Rehabilitation Act.

253. Itasca Defendants' conduct was intentionally discriminatory, willful, wanton, and/or in reckless disregard of Haymarket's rights.

COUNT VIII: ILLINOIS STATE LAW

Itasca Defendants

254. Haymarket DuPage re-alleges and incorporates the preceding paragraphs 1 - 219, above, as if fully set forth herein.

255. This Court has supplemental jurisdiction over Haymarket DuPage's claims against Defendants Itasca and the Plan Commission under Illinois law pursuant to 28 U.S.C. §1367 because the claims arising out of the failure of Itasca Defendants to fairly apply its zoning ordinance are so related to the claims in the action over which the Court has original jurisdiction that they form a part of the same case or controversy.

256. Under Illinois law, Itasca is bound to comply with its Zoning Ordinance, which permits healthcare facilities, such as Haymarket DuPage, to operate as a special use in areas zoned B-2. *See* 65 ILCS §5/11-13-1 *et seq.*; Itasca Zoning Ordinance §8.04(2)(m).

257. Itasca's Zoning Ordinance also permits special use zoning by application for a Planned Development and site plan review. Itasca Zoning Ordinance §14.12(2).

258. The Illinois Municipal Code provides that a municipal board's decision in regard to an application for a special use as a planned development and site plan review is subject to *de novo* judicial review as a legislative decision of the municipality. 65 ILCS §5/11-13-25.

259. Haymarket's evidence clearly established that its proposed use of the subject property as a residential treatment center for people with substance use disorder satisfies the requirements of the Itasca Zoning Ordinance. Haymarket's proposed use is necessary for the public convenience at its location. The proposed use will be operated such that the public health, safety, and welfare will be protected. Finally, 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.

260. Itasca Defendants' decision to deny Haymarket DuPage's applications for a special use for Planned Development and Class 1 Site Plan review was against the manifest weight of the evidence, an abuse of discretion, arbitrary and capricious, and incorrect as a matter of law.

261. Itasca Defendants unlawfully and improperly ignored uncontroverted evidence that established the healthcare facility would operate as a proper special use in the B-2 District under the ordinance.

262. Itasca Defendants proffered reasons for denying approval of the Planned Development and Class 1 Site Plan review were arbitrary and unlawful.

263. Itasca Defendants engaged in irregular conduct concerning the zoning process and its actions deviated from the Itasca Zoning Ordinance as well as standard practices.

264. Itasca Defendants' improper conduct with respect to the zoning procedures as set forth in the preceding paragraphs is further evidence of discrimination in violation of the Fair

Housing Act, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act, as set forth in Counts I, VI, and VII.

265. Itasca Defendants provided no rational basis for concluding the proposed healthcare facility would impact the Village of Itasca in a manner different than any other similarly-situated facility, such as a hospital.

266. Haymarket DuPage has been improperly denied the use and enjoyment of the Property as a result of Itasca Defendants' unlawful conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Haymarket DuPage LLC respectfully requests that this Court enter judgment in its favor and grant the following relief:

(1) Declare Defendants Itasca, Plan Commission, Fire Protection District, Itasca Public School District 10, Mayor Jeffrey Pruyn, and Superintendent Craig Benes, based on their actions described above, violated the Fair Housing Act and the Americans with Disabilities Act;

(2) Declare Defendants Itasca, and Itasca Plan Commission, based on their actions described above, violated Section 504 of the Rehabilitation Act;

(3) Enjoin all Defendants from discriminating on the basis of disability and familial status, and from violating the Fair Housing Act, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act, in accord with Counts I through VII, above;

(4) Enjoin all Defendants from refusing to permit and interfering with the opening and operation of Haymarket DuPage in Itasca;

(5) Declare Defendants Itasca and Plan Commission violated Itasca's Zoning Ordinance, and that their actions to deny Haymarket DuPage zoning approvals necessary to operate its

healthcare facility in Itasca were arbitrary, capricious, and against the manifest weight of the evidence;

(6) Enjoin Defendants from applying and enforcing or encouraging the application and enforcement of the Itasca Zoning Ordinance in a manner that prohibits or interferes with the opening and operations of Haymarket DuPage in Itasca;

(7) Require Itasca Defendants to make reasonable accommodations or reasonable modifications to the Itasca Defendants' policies, practices, rules, or services as necessary to promote the opening and operations of Haymarket DuPage in Itasca;

(8) Enjoin Defendants from issuing false and biased public statements that denigrate Haymarket, its patients, its leadership, its staff, and its supporters;

(9) Declare Defendants' actions were intentional, arbitrary, capricious, unreasonable, and in reckless disregard of the rights of Haymarket DuPage;

(10) Award compensatory damages to Haymarket for its out-of-pocket expenses, reputational harm, other economic harms, and interference with and frustration of Haymarket's mission to treat people with substance use disorder;

(11) Award punitive damages to Haymarket in an amount to be determined at trial to punish Defendants for their intentional, arbitrary, capricious, unreasonable, and reckless disregard for Haymarket's rights, and to deter Defendants from engaging in similar conduct in the future;

(12) Award Haymarket its reasonable attorneys' fees and costs, including but not limited to attorneys' fees and costs incurred as a result of Defendants' discriminatory conduct during the zoning proceedings in Itasca; and

(13) Award any other such relief as this Court deems appropriate.

JURY DEMAND

Plaintiff demands a Trial by Jury.

Respectfully Submitted,

/s/ Mary Rosenberg

Mary Rosenberg
Kenneth M. Walden
Access Living of Metropolitan Chicago
115 W. Chicago Avenue
Chicago, IL 60654

Jennifer K. Soule
Soule, Bradtke & Lambert
402 Campbell Street
Suite 100
Geneva, IL 60134

Dated: January 11, 2022

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

Haymarket DuPage, LLC.,

Plaintiff,

v.

Village of Itasca, Itasca Plan Commission,
Itasca Fire Protection District No. 1, Itasca
Mayor Jeffrey Pruyn, in his official capacity,
Itasca Public School District 10, and Itasca
Public School District 10 Superintendent
Craig Benes in his official capacity,

Defendants.

Case No.

JURY TRIAL DEMANDED

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EXHIBIT A



SUPPORTERS OF HAYMARKET DUPAGE

Haymarket Center is proposing a new behavioral health clinic in Itasca that will offer comprehensive substance use and mental health treatment for adults 18 and over.

The project has been endorsed by the following:

Individuals & Community Groups

- Rev. Bob Butler, *Itasca*
- Dr. Darryl T. Jenkins & LaDawne W. Jenkins, *Faith Community Church of Itasca*
- Rev. Catharine Phillips, MA MDiv, *Roselle*
- Paul Darley, *Owner & CEO, W.S. Darley & Co., Itasca*
- Jason Kinander, *Itasca*
- Richard Ranieri & Dena Ranieri, *Itasca*
- Nikita Dulin, *Itasca*
- Colleen Koziara, *Itasca*
- David Venetucci
- Mark Grote
- Lisa Danna-Brennan
- Mike “Pop” Murray
- Rena Humbert
- Jerry Masterson
- DuPage Pads
- LTM Foundation, *President Felicia Miceli*
- Live4Lali, *Co-Founder Jody Daitchman and Executive Director Laura Fry*
- Heroin Epidemic Relief Organization (HERO), *Co-Founder John Roberts*
- HopeWins, *Patti Clousing*
- Hope for Healing Foundation, *Dr. Roger Stefani, Steve Stefani & Marge Stefani*
- Roberta Borrino, *President, League of Women Voters of Roselle-Bloomingtondale*
- The League of Women Voters of Roselle-Bloomingtondale, Elmhurst, Arlington Heights-Mt. Prospect, Buffalo Grove-Wheeling-Prospect Heights-Elk Grove Village, Naperville
- Lorri Grainawi, *Co-President, Housing Task Force*
- Evelyn Sanguinetti, *Executive Director, Hope Fair Housing Center*
- JUST of DuPage
- Gone Too Soon, *Sandy Fink & Robin Dale*
- Angel M. Traub, *Principal Attorney, A. Traub & Associates*
- Conlon Public Strategies, *Kevin Conlon, Founder & President*
- DuPage County NAACP, *Michael L. Childress, President*
- A Safe Haven, *Brian Roland, Co-President & CEO*
- Mike Messina, *MADMAXMAR*
- A Man in Recovery (AMIR) Foundation, *Tim Ryan, Founder*
- PATH to Recovery Foundation, *Deb Lewin, Co-Founder*
- Lincoln-Way Family Addiction Support Group, *Tom Moore*
- Sheree Stilwell, *Founder of Families United Overcoming Addiction & Member of the Will County Substance Abuse Prevention Coalition*
- Pamela F. Rodriguez, *President & CEO TASC, Inc. (Treatment Alternatives for Safe Communities)*
- Roger Romanelli, *Executive Director, Fulton Market Association*
- Cassandra Wingert, *Founder, Wake the Nation*
- Inspiration Corporation
- Alvin H. Baum Family Fund



SUPPORTERS OF HAYMARKET DUPAGE

Health Care Providers & Organizations

- Edward-Elmhurst Health
- Dr. Dan Sullivan,
*Chief Physician Executive,
Edward Elmhurst Health*
- Dr. Aaron Weiner, *ABPP*
- Dr. Terrence Swade,
Advocate Medical Group
- Northwestern Medicine at Central
DuPage Hospital
- Rush University Health System,
*Sharon Gates, Senior Director of
Student Diversity and Community
Engagement*
- Loyola Medicine
- Heartland Alliance Health,
Ed Stellon, Executive Director
- Erie Family Health Center,
*Lee Francis, MD, MPH, President &
CEO*
- Dr. Juleigh Nowinski Konchak,
*MAT Collaborative Lead, Cook
County Health*
- Dr. Mark Loafman,
*Chair of Family and Community
Medicine, Cook County Health*
- Access Living
- DuPage County Medical Society
- Dr. Lanny Wilson, M.D.,
*Vice President, DuPage County
Board of Health & Co-Chair of
HOPE Task Force*
- NAMI DuPage
- Kara R. Murphy
*President, DuPage Health
Coalition*
- MADO Healthcare
- Illinois Partners for Human
Service
- Illinois Association for Behavioral
Health
- Gerald (Jud) DeLoss, JD,
*Chief Executive Officer & Chief
Legal Officer, Illinois Association
for Behavioral Health*
- Illinois Primary Health Care
Association
- Jordan Powell,
*President & CEO, Illinois Primary
Health Care Association*
- Dr. Diana Uchiyama, JD, PsyD,
*Executive Director, Illinois Lawyers'
Assistance Program*
- The Kennedy Forum
- Kenneth Young Center
- Jessica Hayes,
CEO, Illinois Certification Board
- Rosecrance Health Network,
Dave Gomel, President and CEO
- New Directions Addiction Recovery
Services
- Chris Reed,
*Executive Director, Northern Illinois
Recovery Center*
- Mark Ishaug,
Chief Executive Officer, Thresholds
- Mark Buschbacher,
Executive Director, Serenity House
- Anita Pindiur MS, LCPC, CAD,
Executive Director, Wayback Inn
- Metropolitan Family Services,
Theresa Nihill, COO
- Gateway Foundation,
*Thomas P. Britton, DrPH, President
& CEO*
- National Council for Behavioral
Health
- Patrick Sorrentino, MHA, ACHE,
*President & Co-Founder,
Trilab Health*
- DuPage County Heroin/Opioid
Prevention and Education (HOPE)
Taskforce



SUPPORTERS OF HAYMARKET DUPAGE

Haymarket Board & Leadership

- Dr. Dan Lustig,
President & CEO, Haymarket Center
- Dr. Michelle Andreoli,
Northwestern Medicine - Regional Medical Group
- James B. Bolin,
First Vice President (Retired), Merrill Lynch
- Erin Lavin Cabonargi,
Managing Director of URBAN ReSOLVE
- Stephen L. Davis,
Chairman & Founder of The Will Group
- Harmony Harrington,
Blue Cross Blue Shield of Illinois Vice President, Government & Community Relations
- Tanya Davis,
Co-Founder at William and Mary Davis Foundation
- Ed Heil,
President, E.F. Heil LLC
- Susan Heil,
Activist and Philanthropist
- Heather Way Kitzes
Assistant Director, Community & Government Affairs, Chicago Cubs
- Dr. William Robert Martin, III,
General Leonard Wood Ambulatory Community Hospital
- Stacey A. McCullough,
Of Counsel, Mirabella, Kincaid, Frederick & Mirabella, LLC
- Mia McPherson,
Principal Attorney, The Law Offices of Mia S. McPherson, P.C.
- Daniel Nudelman,
Associate General Counsel, Facebook
- Peter O'Brien Sr.,
President, MADO Healthcare
- Matt Powers,
Principal, Health Management Associates
- Susan J. Rose, PhD,
Professor of Social Work and Research Scientist, University of Wisconsin - Milwaukee
- Joseph Stack,
Realtor, d'aprile properties
- Thomas J. Stack,
CPA & Owner of Thomas J. Stack, Jr. Ltd
- Kim Walz,
Regional Director, Government Relations, Walgreens

Elected Officials & Government

- Hon. Dan Cronin,
DuPage County Chairman
- DuPage County Sheriff James Mendrick
- DuPage County State's Attorney Bob Berlin
- DuPage County Health Department
- Karen Ayala,
Executive Director, DuPage County Health Department
- Hon. Greg Hart,
DuPage County Board Member, District 3, Co-Chair of HOPE Taskforce
- Hon. Sam Tornatore,
DuPage County Health Dept. Board President & DuPage County Board Member, District 1
- Hon. Christopher Kachiroubas,
Former Clerk of the Circuit Court of DuPage County
- Hon. Deb Conroy,
State Representative, District 46
- Hon. Terra Costa Howard,
State Representative, District 48
- Hon. Lee A. Daniels,
Former Illinois Speaker, Haymarket Board Chairman
- Hon. Patti Bellock,
Former State Representative, District 47
- Paula McGowen,
DuPage Regional Board of Schools Trustee
- Mila Tsagalis,
Director of Community Initiatives, DuPage County Health Department
- Hon. Elizabeth Chaplin,
DuPage County Board Member, District 2
- Hon. Sean Noonan,
Former DuPage County Board Member, District 2
- Hon. John Milner,
Former Police Chief of Elmhurst, Former Illinois State Senator
- Hon. Kathleen Willis,
State Representative, District 77
- Hon. Patrick Kennedy,
Former U.S. Representative and Founder of The Kennedy Forum
- Lake County Adult Probation Department
- Judge Christy Bishop,
Lake County Drug Court

Learn more at

www.haymarketdupage.org

January 2022

EXHIBIT B

Holiday Inn - Haymarket Center Proposal

Posted on: December 2, 2021

DOJ Investigating Itasca ADA compliance related to Haymarket DuPage Application

Dear Itasca Village Residents,

Throughout the entire Haymarket Special Use Permit application process, with direction from Village’s legal counsel, members of the Village staff, Plan Commission, and Board have done everything possible to ensure a fair proceeding. We want to inform you that the Village has received communication from the U.S. Department of Justice (DOJ) that they are looking into the Village’s compliance with the Americans with Disabilities Act (ADA) requirements.

This does not come as a surprise. On October 26, 2021, during its final appearance before our Village, Haymarket referenced the Act on its last presentation slide—seven days before the Board took a vote.

Since receiving the communication, the Village has informed interested party taxing bodies and is complying with the Department’s request for information.

Continuing our Village’s dedication to transparency, we have posted the communication on the Village’s website under the Haymarket section [here](#).

Sincerely,

Mayor Jeff Pruy

Tools

- RSS
- Notify Me
- View Archived

Categories

- All Categories
- Home
- COVID-19
- Itasca Country Club Redevelopment
- Holiday Inn - Haymarket Center Proposal
- Village of Itasca News Alert
- Roadway and Infrastructure Improvements Program
- Lead Service Line Project
- Sanitary Manhole Rehabilitation Program



U.S. Department of Justice

*United States Attorney
Northern District of Illinois*

*Patrick W. Johnson
Assistant United States Attorney
Deputy Chief, Civil Division*

*Dirksen Federal Courthouse
219 South Dearborn Street, Fifth Floor
Chicago, Illinois 60604*

Phone (312) 353-5327

November 24, 2021

By Electronic, Regular, and Certified Mail

Jeff Pruyn
Itasca Village Mayor
550 West Irving Park Rd.
Itasca, Illinois 60143
mayor@itasca.com

Charles E. Hervas
Hervas, Condon & Bersani, P.C.
333 Pierce Road, Suite 195
Itasca, Illinois 60143
[REDACTED]

Re: Investigation of Compliance with the Americans with Disabilities Act by the
Village of Itasca, Illinois

Messrs. Pruyn and Hervas:

We are writing to inform you that the U.S. Attorney's Office for the Northern District of Illinois has initiated an investigation of the Village of Itasca for compliance with the requirements of Title II of the Americans with Disabilities Act of 1990 ("ADA").¹ Among other things, the ADA prohibits discrimination against individuals with disabilities, including individuals with substance use disorder.

Pursuant to our authority under the ADA, the investigation is related to the zoning application of Haymarket DuPage LLC ("Haymarket DuPage") filed with the Village of Itasca to use property to operate a treatment center for individuals with substance use and behavioral health disorders. Specifically, Haymarket DuPage's application was considered in Plan Commission Case No. PC 19-014, which sought approval for a planned development by special use in order to permit a mixed-use residential and healthcare facility and other accessory uses in the B-2 Community Business District at 860 W. Irving Park Road. The Itasca Plan Commission recommended on September 22, 2021 that the Haymarket DuPage application be denied, and the Itasca Village Board denied the application on November 2, 2021.

¹ See 42 U.S.C. §§ 12131-12134, and its implementing regulations, 28 C.F.R. Part 35. The text of the ADA, the Department of Justice's regulations, and many technical assistance publications can also be accessed at www.ADA.gov.

Messrs. Pruyn and Hervas
November 24, 2021
Page 2

We ask that you provide the following information within thirty (30) calendar days of the date of this letter. If any of the information requested is not available in writing, please provide corresponding documents, written policies, or other written material that addresses the substance of the information requested. This request falls within DOJ's federal law enforcement authority. Such authority creates exceptions to statutes that may otherwise limit disclosure of private information.

Information Requested

1. The name, address, and telephone number of the individual to whom this office should direct any future questions and correspondence. Please indicate if this person has authority to negotiate a settlement of this matter.
2. Other than the Village's current Zoning Map and Bylaws, produce any previous zoning maps and bylaws in effect since 2016.
3. Any lists or other documents that contain the address and/or location of any business or organization in the Village that provides diagnosis, treatment, recovery support, or any other services to individuals suffering from substance use or mental health disorders.
4. Copies of any applications for site plan approval, special use permits, plan developments, certificates of completion, certificates of occupancy, rezoning, variances, amendments to the Village's Zoning Bylaws or Zoning Map, or similar applications to use land in the Village to provide diagnosis, treatment, recovery support, or any other services to individuals suffering from substance use or mental health disorders since 2005. For each such application, provide a statement of whether the application was approved or denied, the zoning district where the entity sought to locate, the date of such approval or denial, and the reasons for approval or denial.
5. State whether the Village has had any pre-application meetings or inquiries since 2005 (that did not result in an application) about using land in the Village to provide diagnosis, treatment, recovery support, or any other services to individuals suffering from substance use or mental health disorders. If so, identify when, where, and with whom those meetings occurred, and describe the type of facility being discussed and the outcome of those discussions.
6. Copies of any applications for site plan approval, special use permits, plan developments, certificates of completion, certificates of occupancy, rezoning, variances, amendments to the Village's Zoning Bylaws or Zoning Map, or similar applications to use land in the Village by or concerning any Healthcare Facility as defined under the Itasca Zoning Ordinance since 2005. For each such application, provide a statement of whether the application was approved or denied, the zoning district where the entity sought to locate, the date of such approval or denial, and the reasons for approval or denial.
7. Identify Village policies or procedures for requesting a reasonable accommodation to the Village's Zoning Ordinance pursuant to the federal Fair Housing Act or the Americans with Disabilities Act, and produce all documents that contain or are sufficient to show these policies or procedures.

8. All communications² and documentation related to the Village's 2019 decision to classify Haymarket DuPage as a planned development for purposes of zoning proceedings rather than a healthcare facility.
9. All communications related to Haymarket DuPage between the Village of Itasca, its employees, representatives, or counsel (collectively, the "Village")³ and either of the following two interested parties in the Haymarket DuPage Plan Commission hearing: (1) Itasca Fire Protection District, including its employees, representatives, or counsel (collectively, the "Fire Department"); or (2) Itasca School District No. 10, its employees, representatives, or counsel (collectively, "School District"). Responsive documents or communications that are publicly available on the Village website or that Haymarket DuPage was copied on need not be produced.
10. State whether there were any meetings or verbal communications related to Haymarket DuPage between the Village and either of the two interested parties listed in item 9 above that occurred outside of the hearing process and outside the presence of Haymarket DuPage. If so, for each such meeting or communication, provide the date and location, identify the participants, and produce any recordings, documents, or notes.
11. All internal communications of the Village and documentation created by the Village related to Haymarket DuPage.
12. All communications and documentation related to Haymarket DuPage between the Village and Sarah Ketchum, including both consulting firms she worked for (The Kenrich Group LLC, which has been acquired by HKA Global, Inc.), or their counsel. Responsive documents and communications that are publicly available on the Village website or that Haymarket DuPage was copied on need not be produced.
13. All communications and documentation between the Village and Lissa Druss, directly or through counsel, related to Haymarket DuPage. Responsive documents and communications that are publicly available on the Village website or that Haymarket DuPage was copied on need not be produced.
14. All communications and documentation between the Village and North DuPage Special Education Cooperative representatives or counsel related to Haymarket DuPage.
15. All communications and documentation between the Village and Lake Park High School District 108 representatives or counsel related to Haymarket DuPage.
16. All communications and documentation between the Village and Superior Ambulance Service representatives or counsel related to Haymarket DuPage.

² "Communications" in the requests in this letter means correspondence, notes, records, letters, memoranda, reports, emails (both work and personal), and texts (both work and personal), instant messages, posts on messaging apps, and other documents (including transcriptions, logs, and audio and video recordings).

³ "Employees" and "representatives" used throughout this letter shall include both current and former employees/representatives. "Representatives" includes any staff or experts hired or retained in connection with the Haymarket DuPage zoning hearing before the Plan Commission.

17. State whether the Village has ever hired an expert to evaluate the economic impact of an application for a special use permit or a planned development since 2005. If so, produce all communications and documentation relating to any such expert and the work performed by the expert.
18. All communications and documentation relating to any application for a special use permit to operate a business, service, or organization that is nonprofit and exempt from paying property taxes, including but not limited to (1) American Academy of Pediatrics; (2) Gift of Hope Organ and Tissue; and (3) National Safety Council.
19. Identify all applications for a special use permit or a planned development since 2005 in which the Village requested that the applicant submit an economic impact statement as part of the application process. For each such application, produce all communications and documentation relating to the economic impact statement.
20. Identify all applications for a special use permit or a planned development since 2005 where the Fire Department participated by submitting documentation or statements to the Plan Commission. For any such application, produce all communications and documentation relating to the Fire Department's participation.
21. All documentation and information provided by the Fire Department to the Illinois State Fire Marshal related to mutual aid given to or received from other communities for the years 2014 to the present. State whether the Village ever asked for this information in connection with the Haymarket DuPage hearing.
22. Identify all applications for a special use permit or a planned development since 2005 where the School District participated by submitting documentation or statements to the Plan Commission. For any such application, produce all communications and documentation relating to the School District's participation.

We have attempted to limit the areas of inquiry to expedite the initial phase of this investigation, and we are willing to work with you to minimize any burdens that would be imposed upon you or your staff in providing this information.

In addition to providing us with the requested information, we invite you to provide us with any other information that you believe is relevant to our inquiry. We may want to interview certain Village employees, agents, or officials as well. We will let you know as soon as possible of any need to interview such persons.

Finally, we request that the Village maintain any and all records, documents, files, or tapes that could be relevant to this investigation in their current form. To the extent that such records are contained in a computer system, computer files should not be altered or destroyed pending completion of our investigation.

Messrs. Pruyn and Hervas
November 24, 2021
Page 5

If you have any questions, please do not hesitate to contact me at (312) 353-5327 or patrick.johnson2@usdoj.gov.

Very truly yours,

JOHN R. LAUSCH, Jr.
United States Attorney

By: s/ Patrick W. Johnson
PATRICK W. JOHNSON
Assistant United States Attorney

EXHIBIT C



Village of Itasca Community Development Department

550 W. IRVING PARK RD. ITASCA, IL 60143
PHONE: 630/773-5568 FAX: 630/773-0852
e-mail: comdev@itasca.com
www.itasca.com

May 9, 2019

Donald Musil, Executive Vice President
Haymarket Center
932 W. Washington Blvd.
Chicago, IL 60607

Re: Haymarket's zoning application for 860 W. Irving Park Rd., Itasca, IL 60143

Dear Mr. Musil

This letter is to inform you of the Village staff's position concerning Haymarket Center's proposed change in use at the site of the Holiday Inn at 860 W. Irving Park Road in Itasca. During our meeting on April 30, 2019, it was indicated that Haymarket envisions converting the 168-room hotel currently on the site into a non-profit facility for substance abuse and mental health care. It was described as a providing 3 levels of care: detox, residential treatment, and recovery homes. Importantly, the recovery homes portion of the facility will consist of a minimum of 120-130 beds (60-65 double occupancy rooms), will house clients for long-term (up to a year) stays, will consist of one bathroom per room, and no kitchens.

It is the Village staff's position that this proposed use (as described during our meeting on April 30, 2019) is a mixed use of residential and medical, which would require a special use under Section 8.04(2) of the Itasca Zoning Code. It is recommended that Haymarket proceed under Section 8.04(2)(u), for a Planned Development, given the expected number of variances needed to accommodate this mixed use. Further information about the Planned Development process and submittals can be found in Section 14.12 of the Zoning Code. Please note that a Planned Development is a type of special use and therefore must meet the standards and findings for a special use under Section 14.11, as well as those criteria for a Planned Development under Section 14.12(7).

Feel free to contact me with any additional questions or concerns. We look forward to receiving Haymarket's full petition by July 17, 2019, for placement on the August 21, 2019 Plan Commission agenda.

Sincerely,

Shannon Malik Jarmusz, AICP
Director of Community Development

EXHIBIT D

EXHIBIT COVER SHEET

4393 (Rev. 6/18)

STATE OF ILLINOIS

UNITED STATES OF AMERICA

COUNTY OF DU PAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

Haymarket DuPage LLC, an Illinois Limited Lia

Plaintiff,

v.

Village of Itasca, et al.,

Defendant,

2019MR001373

Case Number

File Stamp Here

EXHIBIT COVER SHEET

Local Court Rules 5.06 and 5.09

EXHIBIT NAME: Exhibit 6 Correspondence from Village Attorney Dated July 16, 2016

TITLE OF DOCUMENT THIS EXHIBIT BELONGS WITH:

Amended Verified Complaint for Mandamus and Declaratory Judgment

Document File Date: January 3, 2020

(The file date of the document this exhibit belongs with)

EXHIBIT FILED ON BEHALF OF: Haymarket DuPage LLC

(Case Party Name)

Submitted by: Mary E. Dickson

Name: Bond, Dickson & Conway Pro Se

DuPage Attorney Number: 004

Attorney for: Haymarket DuPage, LLC

Address: 400 S. Knoll Street, Unit C

City/State/Zip: Wheaton, IL 60187

Telephone Number: 630-681-1000

Email: marydickson@bond-dickson.com

Subject: FW: [EXT] Haymarket's petition to the Village of Itasca

From: Yordana Wysocki [<mailto:YWysocki@hcbattorneys.com>]
Sent: Tuesday, July 16, 2019 11:00 AM
To: Roth, Michael
Cc: Carie Anne Ergo; Shannon Malik Jarmusz; Charles Hervas; Julia Hurley; Whitney L. Kum
Subject: [EXT] Haymarket's petition to the Village of Itasca

****EXTERNAL EMAIL****

Mike –

Shannon Malik-Jarmusz is out sick today, and we wanted to respond to your July 12th email as soon as possible.

We appreciate that Haymarket has filed two special use applications – one for a planned development, as required by Village staff, and one for a healthcare facility, in the alternative. As previously discussed, Village staff, specifically Ms. Malik-Jarmusz, has determined that Haymarket's proposal is appropriately characterized as a planned development by special use rather than a healthcare facility. If you would like to appeal this decision by Ms. Malik-Jarmusz, please see the procedure outlined in Sections 14.06 and 14.08 of the Itasca Zoning Ordinance. Please submit your appeal at least 7 days before the Plan Commission meeting when you would like it to be heard.

Given that Ms. Malik-Jarmusz has determined that the appropriate petition is one for planned development, the Village rejects your alternative application for a healthcare facility and is returning the additional filing fee (\$300).

Rather, Village staff has accepted Haymarket's special use application for the planned development. However, as you acknowledged, the application is facially deficient in that it is missing the economic impact statement and landscape plan. You have indicated that these items will not be submitted until the end of the month. The cut-off for the August Plan Commission meeting agenda was July 5th. The Village granted a one week courtesy extension until July 12th to provide the missing materials. As of today, July 16th, the Village has not receive the economic statement and landscape plan. Therefore, Haymarket has missed the deadline for the August Plan Commission meeting.

The Village staff cannot place the item on the Plan Commission agenda until all materials are received. As noted on the Village website, the submittal deadline for the September 18, 2019, Plan Commission meeting is August 2, 2019. The deadline for the October 16, 2019, agenda is August 30, 2019.

In order to move your application along, Village staff will begin to review the materials Haymarket has submitted to date in support of the planned development special use application and variance application. Staff will correspond with you about any questions or concerns raised

in Haymarket's incomplete submittal. However, the application is not complete until the economic impact statement and landscape plan is received.

Let me know if you have questions.

Yordana Wysocki
Hervas, Condon & Bersani, P.C.
333 Pierce Rd., Suite 195
Itasca, Illinois 60143-3156
Tel : 630.773.4774
Direct : 630.860.4354
Mobile : 608.347.9615
Fax : 630.773.4851
ywysocki@hcbattorneys.com
www.hcbattorneys.com

EXHIBIT E



VIA Electronic Delivery (EMAIL)

June 30, 2020

Charles Hervas
Hervas, Condon & Bersani, P.C
333 W Pierce Rd, Itasca, IL 60143
chervas@hcbattorneys.com

Dear Mr. Hervas:

Please be advised that Access Living has been retained as additional counsel to represent Haymarket DuPage LLC (“Haymarket”) in its effort to secure zoning approval of the property at 860 W. Irving Park Road for the purpose of providing treatment to those experiencing substance use and mental health disorders. We write on behalf of Haymarket to request that the Village of Itasca provide a reasonable accommodation to Haymarket regarding its request for approval of its proposed healthcare facility. More specifically, we request the Village interpret its Zoning Ordinance to classify the proposed Haymarket facility as a Healthcare Facility under its Zoning Ordinance, rather than as a Planned Development.

By way of background, Access Living is a Center for Independent Living (CIL) for people with disabilities in the Chicago area. CILs are established under the Rehabilitation Act, 29 U.S.C. § 769(f). Access Living promotes the independent living philosophy of equal access of individuals with disabilities to all services, programs, activities, resources, and facilities, whether public or private. *See id.* § 769(f)-4(b)(1)(D). In furtherance of its independent living work, Access Living provides legal representation to individuals with disabilities.

I. Factual Background

Haymarket Center was established to operate as a State of Illinois licensed substance abuse treatment and intervention service provider under 77 Illinois Administrative Code Part 2060. It provides comprehensive medical and psychological treatment to individuals with substance use and mental health disorders. Increasingly in recent years, Haymarket Center has provided such treatment to residents of DuPage County and other collar counties at its West Loop facility. Haymarket fills a unique niche in the treatment community, because it provides a comprehensive array of services to those in need of treatment including those whose primary

source of payment is Medicaid, or who are unable to pay for treatment. These services are provided by a team of licensed professionals under the supervision of a medical director.

Recognizing the need for a treatment facility in DuPage County to expand access to life-saving treatment for suburban residents, Haymarket identified the property at 860 W. Irving Park Road, which as you know formerly housed a Holiday Inn (“Property”). Haymarket was drawn to the Property because it is reasonably accessible to patients in need, requires no new buildings or changes to the outside structure, and has sufficient parking. The guest rooms at the Property include individualized rooms, each with a bathroom but no kitchen.

The Property will operate as an in-patient treatment facility and recovery home. In-patient treatment may range from 14 to 90 days, based on an individual’s needs, with an average treatment stay of 28 days. Stays in recovery homes may range from one to twelve months with a typical stay of an estimated 90 days.

A. Zoning Ordinance

The Zoning Ordinance for the Village (“Zoning Ordinance”) defines a “Dwelling Unit” as:

one (1) or more rooms, which are arranged, designed or used as living quarters for one (1) family only. Individual bathrooms and complete kitchen facilities, permanently installed, shall be included in *each* dwelling unit. Zoning Ordinance, Section 3, “Definitions” (emphasis added).

The Property is located in the B-2 Community Business District for Itasca. In the B-2 District, a Healthcare Facility is permitted as a special use. Zoning Ordinance, Section 8.4.2(m).

The definition for a “Healthcare Facility” has two components, “Hospital” and “Clinic.” Zoning Ordinance, Section 3, “Definitions.” The Zoning Ordinance does not reference recovery homes, at least not specifically.

“Clinic” does not apply here because its definition excludes in-patient care. Zoning Ordinance, Section 3, “Definitions.”

On the other hand, the definition for a Hospital does apply. A Hospital is:

any institution, place, building or agency, public or private, whether organized for profit, or not, devoted primarily to the maintenance and operation of facilities for the diagnosis and treatment or care of two (2) or more unrelated persons admitted for overnight stay or longer in order to obtain medical care, including obstetric, psychiatric, and nursing or care of illness, disease, injury infirmity, or deformity.

The term “Hospital” without regard to the length of stay shall also include:

1. Any facility which is devoted primarily to providing psychiatric and related services and programs for the diagnosis and treatment or care of two (2) or more unrelated persons suffering from emotional or nervous disease; and
2. All places where pregnant women are received, cared for, or treated during delivery irrespective of the number of patients received.

The term "Hospital" includes general and specialized hospitals, tuberculosis sanitarium, mental or physical hospitals and sanitarium, and includes maternity homes, lying-in-homes, and homes for unwed mothers in which aid is given during delivery.

Zoning Ordinance, Section 3, "Definitions."

In the B-2 District, a Planned Development is permitted as a special use. Zoning Ordinance, Section 8.4.2(u). A Planned Development is:

a parcel of land or contiguous parcels of land of a size sufficient to create its own character, controlled by a single landowner or any group of landowners in common agreement as to control, to be developed as a single entity, the character of which is compatible with adjacent parcels, and the intent of the zoning district or districts in which it is located; the developer or developers may be granted relief from specific land-use regulations and design standards and may be awarded certain premiums in return for assurances of an overall quality of development, including any specific feature which will be of exceptional benefit to the Village as a whole and which would not otherwise be required by the Zoning Ordinance. The area of the planned development shall remain under one (1) ownership or unified control unless safeguards are provided that, in the opinion of the Plan Commission (*See* Section 4.04.5) and Board of Trustees of the Village of Itasca, will provide for the continuation of the original planned development concept.

Zoning Ordinance, Section 3, "Definitions."

Further, a Planned Development is a:

subdivision, development and use of land containing three (3) or more acres as an integral unit, combining (1) or more primary land uses, and which may provide for, but are not limited to single-family residential, multiply family residential, education, business. Commercial, industrial, recreational, park and public use areas may be described as Planned Development (also refer to Definitions Section 3.02).

Zoning Ordinance, Section 14.12, "Planned Developments."

B. Procedural History

In April 2019, Haymarket conferred with the Village Zoning Administrator, Shannon Malik Jarmusz, about securing a special use permit to operate in the B-2 District as a Healthcare Facility.

In May 2019, Ms. Malik Jarmusz claimed the Property represented a mixed use of residential and medical, which would require a number of variances for operation. She directed Haymarket to apply for approval as a Planned Development under Section 8.04(2)(u) of the Zoning Ordinance, rather than as a Healthcare Facility. She characterized the Property as partially “residential” because patients would remain in the recovery home for extended periods of time.

On July 3, 2019, Haymarket filed an application for special use as a Healthcare Facility, an application for special use as a Planned Development, and an application for variances.

On July 16, 2019, a Village Attorney informed Haymarket that Ms. Malik Jarmusz rejected the application for special use for a Healthcare Facility. This was based on her determination that:

Since the B-2 District is primarily a business district, the proposed residential use (the recovery homes component) is not a traditional fit for the district [and]

When a proposed use does not fit into any existing category under the Zoning Ordinance, the petitioner may either (1) seek a text amendment or (2) planned development. Because a text amendment is forever part of the Zoning Ordinance and this type of proposal seemed unlikely to be reoccurring ... Haymarket should apply for a planned development by special use.

Memorandum from CD Director/Zoning Administrator Shannon Malik Jarmusz to President of the Village Board of Trustees Jeff Pruyn, September 3, 2019.

On August 13, 2019, Haymarket appealed Ms. Malik Jarmusz’s decision to the Village’s Plan Commission.

On August 21, 2019, the Village’s Plan Commission heard the appeal and voted unanimously to recommend denial. On September 17, 2019, the Village Board voted to deny the appeal.

Because Haymarket now owns the Property, Haymarket intends to file amended applications for zoning approval to reflect this new ownership. It is anticipated the Plan Commission will re-start the hearing process on these applications in mid to late August, 2020.

II. Legal Background

The Fair Housing Act (“FHA”) prohibits discrimination against people with disabilities, including people in treatment for substance use and mental health disorders. Under the FHA, it is unlawful to refuse “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); *See also Joint Statement of the Department of Housing and Urban Development and Department of Justice – State and Local Land Use Laws and Practices and the Application of the Fair Housing Act*, Washington D.C. (Nov. 10, 2016) available at <https://www.justice.gov/opa/file/912366/download> Question 2, Page 3 (“Joint Statement”)(noting it is unlawful to (1) impose restrictions on housing because of alleged public safety concerns based on stereotypes of disability, or (2) refuse to provide reasonable accommodations to zoning policies when accommodations may be necessary for those with disabilities to have equal opportunity to use the housing.).

Under the Fair Housing Act, individuals using Haymarket’s services are considered people with disabilities. 42 U.S.C. § 3602(h) [protecting those with “physical or mental impairment[s]” that substantially limit major life activities, including mental illness, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism].

Two additional federal civil rights laws also prohibit discrimination against people with disabilities: the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12132; and Section 504 of the Rehabilitation Act of 1973 (“Section 504”), 29 U.S.C. § 794. Title II of the ADA applies to all public entities, including State and local governments, and prohibits discrimination in all programs, services, or activities of public entities, including those that concern the zoning process. Joint Statement at 1. Section 504 prohibits discrimination on the basis of disability in federally-assisted programs or activities. The FHA, ADA, and Section 504 all “embrace the concept that, in certain instances, the policies and practices of covered entities must be modified to accommodate the needs of the disabled.” *Wis. Comm. Servs., Inc. v. City of Milwaukee*, 465 F.3d 737, 746 (7th Cir. 2006).

Here, the Village interpreted the definition of “Healthcare Facility” to exclude a facility (i.e. Haymarket DuPage) that treats people with substance use and mental health disorders. In doing so, it denied people in treatment an equal opportunity to enjoy and use the Property, in violation of the FHA, ADA, and Section 504. Thus, and as more fully explained below, Haymarket requests the Village classify Haymarket as a Healthcare Facility, and allow it to apply for a special use permit to operate as such.

Courts have found time and time again that when a municipality imposes a more onerous zoning process for a facility or home that will serve or treat people with disabilities, and does so due to their disabilities, such constitutes discrimination. In *Daveri Development Group, LLC v. Village of Wheeling*, a housing provider sought to build a permanent supportive housing center for adults with disabilities. 934 F. Supp. 2d 987 (N.D. Ill. 2013). The Board of Trustees in Wheeling determined the facility should be classified a “social service facility,” rather than a “multiple-family dwelling,” because there would be an on-site resident manager at the property, and the residents would receive off-site case management. *Id.* at 999. The Board then denied the zoning application because social service facilities were not allowed in the district where the provider wanted to build. *Id.* The court found that under this rationale “no permanent supportive housing development for the mentally disabled would ever qualify as a multi-family dwelling or be permitted in a residential district in the Village of Wheeling” and, as a result, the municipality

had to allow the provider to apply as a “multiple-family dwelling,” as a reasonable accommodation. *Id.* at 1002-05.¹

In addition, in *United States v. City of Chicago Heights*, 161 F. Supp. 2d 819 (N.D. Ill. 2001), Thresholds, a non-profit serving people with psychiatric disabilities, sought to establish a group home. *Id.* at 823. The city planner classified Thresholds as a “family community residence,” defined as a dwelling unit with not more than eight unrelated persons with disabilities, rather than a “family residence,” which included a group of not more than five unrelated persons without disabilities. *Id.* at 823. On this basis, the city denied Thresholds’ application because Threshold’s proposed location would be too close to another “family community residence.” *Id.* The Seventh Circuit found that the defendant municipality could not “treat the [Thresholds property] as a ‘family community residence,’ subject to location restrictions, rather than as a ‘family,’ not subject to those restrictions, without violating the FHAA” and thus the property “[could] not legally be considered a ‘family community residence.’” *Id.* at 833.

Here, the Village refused to allow Haymarket to apply as a Healthcare Facility because the property’s purported “residential use (the recovery homes component) is not a traditional fit for the district.” However, rooms at the Property cannot be considered residential because the Zoning Ordinance defines a dwelling unit to include “complete kitchen facilities, permanently installed.” As you are well aware, the rooms at the Property do not and will not include kitchens.

Plus, in common language, there is no distinction between the term “residence” and “dwelling.” Indeed, the Meriam-Webster dictionary defines a residence as “the act or fact of dwelling in a place for some time.” <https://www.merriam-webster.com/dictionary/residence>. Hence, as defined by the Zoning Ordinance, the Property will not operate residences (i.e. dwellings), and the Village’s determination to the contrary contravenes that Ordinance.²

Moreover, individuals served at the Property will remain on a temporary basis only until their treatment is complete, which for those in the treatment portion of the Healthcare Facility will be on average 28 days, and in the recovery home portion of the Healthcare Facility will be on average 90 days. Hence, the individuals served by the Property are much like those served in a hospital, where extended stays continue until treatment concludes.

In fact, the proposed Healthcare Facility is in appearance and practice identical to that of a hospital: it will contain individualized rooms with no kitchens, is licensed by the State of Illinois, and will provide medical and psychiatric treatment for people in treatment for substance use and mental health disorders under the supervision of a Medical Director. Indeed, the Zoning Ordinance contemplates various medical settings under its “hospital” definition, including

¹ The Court also found that to allow nursing homes in the relevant district, but not housing for people with psychiatric disabilities, had a wrongful discriminatory effect on people with psychiatric disabilities. *Id.* at 1002.

² Notwithstanding the definition of dwelling in the Zoning Ordinance, a recovery home enjoys the protections of the Fair Housing Act. *Joint Statement of the Department of Housing and Urban Development and Department of Justice – State and Local Land Use Laws and Practices and the Application of the Fair Housing Act*, Washington D.C. (Nov. 10, 2016) available at <https://www.justice.gov/opa/file/912366/download> Question 8, Page 7. To put it another way, just because the Village defines dwelling in a certain way, it does not escape its obligation to comply with the Fair Housing Act with respect to the Property.

“general and specialized hospitals, tuberculosis sanitarium, mental or physical hospitals and sanitarium,³ and includes maternity homes, lying-in-homes, and homes for unwed mothers in which aid is given during delivery,” and it defines a hospital this way “*without regard to length of stay.*” Zoning Ordinance, Section 3 (emphasis added). Haymarket DuPage is exactly that – a facility for people in treatment and recovery for a temporary period of time. In other words, it is, for all intents and purposes under the Zoning Ordinance, precisely what is contemplated by the term “hospital.”

Because the Property is the equivalent of a hospital under the Zoning Ordinance, by forcing Haymarket to file as a Planned Development, rather than as a Healthcare Facility, the Village is treating people with substance use and mental health conditions in a different, more onerous and costly manner than those who require regular hospital care (or a maternity home, or a home for unwed mothers, etc.). This is the essence of discriminatory treatment.

Further, because the Village’s interpretation of its own Zoning Ordinance is so at odds with its plain meaning, a fair conclusion to draw is that the Village has forced Haymarket to endure a more burdensome application process *because* the individuals served by Haymarket will be people who are in treatment for substance use and mental health disorders. This is the exact type of differential and discriminatory treatment the FHA was designed to prevent.

To avoid and reverse this unfair and discriminatory result, Haymarket requests the Village allow it to apply for a special use permit for a Healthcare Facility.

As Haymarket and the Village prepare to re-start the hearing process, this is an opportune time for the Village to consider allowing Haymarket to proceed with the zoning process under an application for a special use permit as a Healthcare Facility, rather than a Planned Development.

Please respond by July 10, 2020 as to whether the Village will grant this accommodation, as required by the FHA. You can reach Ken Walden at 312.640.2136/kwalden@accessliving.org, and Mary Rosenberg at 312.640.2155/mrosenberg@accessliving.org.

Sincerely,

Kenneth M. Walden

Kenneth M. Walden

Mary Rosenberg

Mary Rosenberg

³ Sanitarium have been considered as similar to recovery homes. *See Lake Cty. v. MacNeal*, 181 N.E.2d 85, 91 (Ill. 1962) (where “the sanitarium is a licensed rest home where male patients are treated for mental illness, senility, alcoholism and drug addiction); *see also Diversified Health Assocs. v. Zoning Borough of Norristown*, 781 A.2d 244 (Pa. Commw. Ct. 2001) (finding a “sanitarium,” which provides “treatment and rehabilitation for substance abuse problems” as a “hospital”).

EXHIBIT F

HERVAS, CONDON & BERSANI, P.C.
ATTORNEYS AND COUNSELORS AT LAW



CHARLES E. HERVAS
MICHAEL W. CONDON
MICHAEL D. BERSANI*
JASON W. ROSE
YORDANA J. WYSOCKI
G. DAVID MATHUES

TONY S. FIORETTI

*Admitted in Illinois and Florida

333 PIERCE RD., #195
ITASCA, IL 60143-3156

(630) 773-4774
(888) 268-4949
FAX (630) 773-4851

Writer's E-Mail Address:
ywysocki@hcbattorneys.com

July 8, 2020

VIA EMAIL

Mr. Kenneth Walden
Ms. Mary Rosenberg
Access Living
115 West Chicago Avenue
Chicago, Illinois 60654
KWalden@accessliving.org
MRosenberg@accessliving.org

Re: 860 W. Irving Park Road Zoning
Application (Haymarket DuPage)
PC 19-014

Dear Mr. Walden and Ms. Rosenberg:

We are in receipt of your letter dated June 30, 2020, which requested that the Village of Itasca classify Haymarket DuPage's application for zoning relief as a Special Use Healthcare Facility rather than a Special Use Planned Development. You may not be aware, but this request was made previously by prior counsel for Haymarket, Mr. Michael Roth. In fact, it was the subject of Haymarket's appeal to the Plan Commission and later the Village Board last summer and was the substance of the litigation dismissed by Judge Bonnie Wheaton in March.

The Village's position is unchanged: the proposed use is a mixed-use development of both residential and healthcare. We understand your client's position; however, it is the Village's position that the planned recovery homes, which will house clients for long-term stays up to a year, is residential. The Illinois Administrative Code defines "recovery homes" as "housing components" for "congregate living" for "residents" "who recently have completed substance abuse treatment services or who may be receiving such treatment services at another licensed facility." Ill. Admin. Code § 2060.509. In other words, these residents are not receiving in-house medical care as the individuals in the in-patient and detox programs. The latter programs fit neatly into the Itasca Zoning Ordinance's definition of "healthcare"; however, the former dormitory-like recovery homes do not. As a result, Haymarket's petition is for a mixed use in the B-2 District. The Village recommended that Haymarket apply for a special use under Section 8.04(2)(u) for a planned development rather than a text amendment. To ease the burden on Haymarket, the Village waived many of the Planned Development submittal requirements.

HERVAS, CONDON & BERSANI, P.C.

Mr. Kenneth Walden
Ms. Mary Rosenberg
July 8, 2020
Page 2

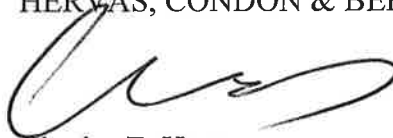
We are familiar with the Fair Housing Act, Americans with Disabilities Act, and the Rehabilitation Act, as well as the requirement that the Village reasonably accommodate disabled/handicapped individuals. The Village disagrees with your interpretation of this requirement. None of the cases cited (nor could we find any) require that the Village must suspend its processes in favor of Haymarket in order to reasonably accommodate persons with disabilities. The statutory accommodation provisions require a plaintiff to show (1) that the accommodation is *necessary* to alleviate discrimination and (2) that the accommodation is reasonable and proportional to the costs to implement it. *Wis. Cmty. Servs. v. City of Milwaukee*, 465 F.3d 737, 752 (7th Cir. 2006). To show that the accommodation is necessary, a plaintiff must show “that the reason for his deprivation is his disability” or that “‘but for’ his disability, he would have been able to access the services or benefits desired.” *Id.*; *see also Nikolich v. Arlington Heights*, 870 F. Supp. 2d 556, 565 (N.D. Ill. 2012). Importantly, “reasonable accommodation” does not require a municipality to waive its zoning application requirements. *United States v. Vill. of Palatine*, 37 F.3d 1230, 1233-34 (7th Cir. 1994).

We disagree that the Village’s interpretation of its Zoning Ordinance and its requirement that Haymarket submit a planned development application is necessary to alleviate discrimination. This requirement does not hurt disabled persons by reason of their disability. Rather, Haymarket is being treated the same as any other petitioner applying for a unique use which does not neatly fit into the Zoning Ordinance. Moreover, given the Village’s need to fairly apply its Zoning Ordinance for all applicants and to respect the rights of neighboring property owners and other taxing bodies, it is unreasonable and disproportional to request that the Village suspend its zoning application procedures for Haymarket DuPage.

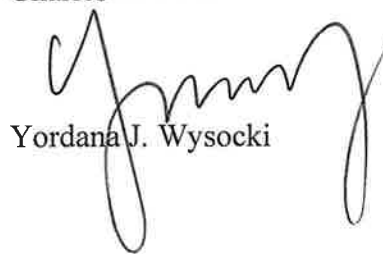
In sum, the Village denies your request for accommodation.

Very truly yours,

HERVAS, CONDON & BERSANI, P.C.



Charles E. Hervas



Yordana J. Wysocki

cc: Mary Dickson
Bridget O’Keefe

EXHIBIT G

Statement from Mayor Pruyn on Holiday Inn Haymarket Center Proposal

According to an article published in the Daily Herald this week, representatives from Haymarket Center met privately with its editorial board. Then, without making any attempt to contact the Village of Itasca, the paper published a story touting Haymarket's desire to buy the Holiday Inn-Itasca and convert it into a drug treatment facility. The article states, "No tax dollars would be involved," - a statement that is blatantly false.

Currently, Itasca schools, police, fire, village, park district, library and other taxing bodies receive approximately \$250,000 every year in revenue generated by the Holiday Inn-Itasca. That revenue will be permanently lost if the property is converted to a not-for-profit use and removed from the tax rolls.

Perhaps a more concerning revelation was the fact that the Daily Herald along with 60 elected officials, including Chairman Cronin, have already endorsed or voiced support for this project before Haymarket has submitted ANY plans to the Village of Itasca for review.

The conversion of the Holiday Inn from a hotel to a drug treatment facility is a significant departure from its current use. Illinois law dictates that the petitioner (Haymarket) has a right to have its proposal considered by Itasca's Plan Commission and the Village Board. This process also gives members of the public an opportunity to learn about and provide comment on the proposal.

At the behest of former Illinois Speaker Lee Daniels, who is now affiliated with Haymarket, a few Village officials and I met with representatives from Haymarket a few weeks ago. The meetings were primarily introductory in nature. Haymarket Center indicated its intention to acquire the Holiday Inn-Itasca and sought information on Village's zoning and building processes. To date, Haymarket has not yet submitted any concrete plans to the Village for review, therefore it was premature for any Village official to discuss the project publicly.

As one of the smallest towns in DuPage County, Itasca has limited staff and resources. And as a non-home rule community, we also have limited ability to raise revenue. At the initial meetings, we asked Haymarket to provide emergency response data from its current facilities in Chicago, so that we can determine whether our community has the emergency resources necessary to service the facility. To date, we have received no response to our request.

It is impossible for me to comprehend how Chairman Cronin and other regional elected officials have endorsed Haymarket's proposal BEFORE they have any idea what the impact will be on Itasca's 8,700 residents, or how removing the hotel from a thriving business park will affect the companies located there, or whether Itasca's police and fire departments have the resources to service the facility without raising taxes on Itasca's existing residents and businesses.

As Mayor of Itasca, I refuse to bow to political pressure. Instead, I promise that I will listen with an open mind not only to Haymarket, but also to "our neighbors, our family members, our friends, our co-workers" through a public and transparent process. Whatever the outcome, I hope that everyone involved will respect the democratic process moving forward.

EXHIBIT H



Message from Mayor Jeff Pruyn
Haymarket Center Proposal for the Holiday Inn Property
Tuesday, July 16, 2019

I want to take a moment to update you on the potential creation of the Haymarket Center rehabilitation facility at the Holiday Inn – Itasca. As promised, our goal is to keep you informed through every step of the process. Please bear with me as I explain the steps of the process. According to state and federal law, the zoning approval process is a legal proceeding that is helpful to understand.

UPDATE ON THE PROCESS

After Haymarket informed the Village that it intended to seek zoning approval to convert the Holiday Inn – Itasca into a drug rehabilitation and recovery home center, the Community Development Director advised Haymarket that its petition would be considered as a Planned Development according to the Village of Itasca’s Zoning Code. This determination was made, in part, because Haymarket’s proposal includes “recovery homes,” which are alcohol and drug free housing.

This designation requires a landscape plan and an economic impact statement. The economic impact statement is incredibly important. Without these, we have no way of knowing what, if any, impact Haymarket's petition will have for the Village, our resources, or the resources of other government services.

On July 5th, Haymarket submitted three petitions. The first was an incomplete petition for a Planned Development by Special Use. The second was a related variance petition. The third was an alternative petition asking the Village to consider its proposal as a Healthcare Special Use instead of a Planned Development Special Use. Given the Village’s earlier determination that a Plan Development Special Use was appropriate, staff rejected Haymarket’s Healthcare Special Use petition. Haymarket was given an extension to submit both its economic impact statement and landscape design proposal by July 12th.

As of today (July 16th), Haymarket has failed to submit an economic impact statement and a landscape plan as required. The deadlines for submittals are posted on the Village’s website prior to the beginning of each year. This is to ensure the petitioner, in this case Haymarket, and the Village have an appropriate amount of time to prepare and review petitions. Because Haymarket missed the extended deadline, its petition cannot be considered at the August Plan Commission meeting.

Earlier today, the Village sent a letter informing Haymarket that its petition was incomplete and therefore could not be considered at the Plan Commission’s August meeting. They were also informed that Haymarket has until August 2nd to submit the necessary documents in order to be considered at the next regularly scheduled Plan Commission meeting on the September 18th.

MARK SEPT 18 ON YOUR CALENDARS TO MAKE SURE YOUR VOICE COUNTS

The Plan Commission's public hearing on September 18th is important for everyone who wants to have a say. The public hearing will be the only opportunity for residents to share their thoughts and feelings about the potential Haymarket rehabilitation facility before the Plan Commission votes on the petition. According to Illinois law, the Plan Commission may only consider comments that are submitted through the public hearing process. I want to emphasize this point. The Plan Commission's is only allowed to consider public comments during the public hearing.

At a recent board meeting, a group of residents expressed their frustrations and fears around this project. We heard all of you. That is why I want to emphasize once again how important it is for everyone, no matter your views, to be a part of the public hearing on September 18th. Illinois law is clear that the Plan Commission may only consider testimony provided through the official public hearing process. As your Mayor, my commitment is to be open and transparent with all of you. I will continue to update you as we move through this together.

EXHIBIT I



550 W. Irving Park Road • Itasca, Illinois 60143-2018
630.773.0835 • Fax 630.773.2505 • www.itasca.com

July 22, 2019

VIA U.S. MAIL AND ELECTRONIC MAIL

Michael Roth
Ice Miller LLP
2300 Cabot Drive
Suite 455
Lisle, IL 60532-4613
Michael.Roth@icemiller.com

Re: Haymarket's proposal in Itasca

Dear Mr. Roth:

As you are aware, the potential for a new Haymarket facility at the Holiday Inn-Itasca has generated many questions and concerns from the people of Itasca. At a recent board meeting, a number of community members expressed their concerns openly and candidly. Subsequently, both at a separate meeting and a recent community event, several residents have stopped me to ask various questions about Haymarket and the proposed facility. I find myself unable to answer them as fully or completely as I would like. It is important as we move through this process that I can address the concerns of my community as completely and transparently as possible.

To that end, I am enclosing a list of questions, that will best equip me to provide information to my community. While not an exhaustive list, answers to the attached questions will provide much-needed answers to the concerns of many people in Itasca. I respectfully request that you or your client review these questions and provide answers as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Pruy", is written over a white background. The signature is fluid and cursive, with a long, sweeping tail that extends to the right.

Jeff Pruy
Village President

Encl.

Questions for Haymarket

1. How many people do you expect to treat in the new facility?
 - 1a. How many do you treat downtown?
 - 1b. How many do you treat in Uptown?
 - 1c. How many do you treat in Lake County?
 - 1d. Describe the nature of each treatment facility.
2. What amount of time does a resident spend with the facility?
 - 2a. Do you offer outpatient programs?
 - 2b. Describe the amount of daily traffic (vehicle/foot) at your facilities?
3. How do you accept those that need treatment?
 - 3a. Where do patients come from?
 - 3b. Are DuPage residents going to have priority?
 - 3c. Will you take overflow from your other locations?
 - 3d. How many of your residents are in court ordered programs?
 - 3e. Do you accept early diversion treatment residents?
4. Who pays for that treatment?
5. Where does your funding come from?
6. How is your funding structured?
 - 6a. How long do you project Haymarket to have a stable funding source?
7. You only have a 2017 Annual Report on your website.
 - 7a. Where is your 2018 Annual Report?
 - 7b. When can we expect to see a 2019 Annual Report?
 - 7c. From the 2017 Annual Report, 11% denotes Supporting Services. What are those?
8. What does your security plan look like (internally and externally)?
 - 8a. Who developed the plan?
 - 8b. How often is it reviewed?
 - 8c. Have you had to activate a security response at any of your facilities?
 - 8c1. If so, did it work as planned?
 - 8c2. Please describe the incident and response.
9. How would this building be secured?

- 9a. Will emergency services be able to easily access the building 24/7?
- 9b. Have emergency services ever had an issue with ease of access in the past?

10. Who is your security advisor?

- 10a. May we meet with the company?
- 10b. Do you employ private security guards?
 - 10b1. Are they armed?
- 10c. How do you determine the amount of private security staff?
- 10d. Do you use exterior camera surveillance?
 - 10d1. If yes, how long is the footage retained?
 - 10d2. Does staff at the location have immediate, on-site retrieval access of any surveillance footage?
- 10e. Are you asking to put a fence around the property? If so, what kind of fence?

11. What does your EMS plan entail?

- 11a. Do you have a contract with a private ambulance service?
- 11b. Will you be retaining private contract ambulance services for Itasca?
- 11c. Can you give us a five-year lookback on emergency or EMS calls on your facilities?

12. Are people using your facility allowed to leave?

- 12a. Do you expect law enforcement to assist in recovering an AWOL resident?
- 12b. Has this happened in the past, if so, how many times in the last 5 years?
- 12c. What type of support services do you provide for a patient who wishes to leave early?

13. How do you work with local municipalities for emergency services?

14. What type of internal medical staffing to you intend to have?

- 14a. What types of medical emergencies can be treated at the facility?
- 14b. If there is a medical emergency for a patient or staff member, what resources do you expect Itasca to provide?

15. How did you come up with the Itasca location?

16. How many jobs do you expect to provide?

- 16a. What types of jobs will be available?
- 16b. How do you hire?
- 16c. Will you be moving people from other facilities to this proposed site?

17. How do you run as a treatment facility?

17a. What is your management structure?

17b. How many of your staff have medical degrees?

17b1. What degrees?

18. You are interested in moving into Itasca, how is Haymarket going to become a part of our community?

18a. Do you have community outreach programs in place at other facilities?

18b. What does your corporate social responsibly plan offer for Itasca?

19. Who do you think is going to help Itasca fund for public safety services needed by Haymarket?

EXHIBIT J

HAYMARKET DUPAGE

Haymarket wants to **expand access** to life-saving treatment so substance use disorder patients can get care close to home and near their families. More inpatient and outpatient behavioral health clinics are desperately needed in DuPage County and the collar counties.

What is Haymarket Center?

Haymarket Center is one of the region's largest and most comprehensive providers of treatment for substance use disorders and mental health conditions. Founded in 1975 by Monsignor Ignatius McDermott and Dr. James West, Haymarket Center is a fully accredited, non-profit organization, licensed by the Illinois Department of Human Services.

What is proposed for Haymarket DuPage?

The Haymarket DuPage behavioral health clinic will offer the full continuum of substance use and mental health treatment for adults 18 and over. Haymarket DuPage seeks to purchase the Holiday Inn on the west side of Interstate 290 at Irving Park Road. It will undergo a \$1.5 million interior renovation.

How was DuPage County selected?

The demand for our services continues to rise due to an increase in opioid fatalities in DuPage County. In 2017-2018, nearly 2,000 men and women from DuPage and the collar counties were patients at Haymarket clinics.

What kind of services will be provided?

Our individualized care ranges from outreach through recovery, adapted to suit each patient and their unique needs. Our services go far beyond the scope of most treatment programs, including:

- Evidence-based, comprehensive interventions
- Medication Assisted Treatment (MAT)
- Psychiatry & counseling
- Recovery support services
- GED courses & job placement
- Partnerships that assure care coordination
- Recovery coaching

How many people will receive treatment?

We anticipate there will be 200 patients receiving treatment and recovery support services at any given time.

Does your treatment work?

An independent evaluation of our recovery coaching program showed outstanding outcomes, including 87% of individuals reporting a reduction in substance use, 64% decrease in mental health symptoms and 74% increase in clients employed.

Who are your patients?

Our patients could be someone from the neighborhood, someone you work with and even someone you love. They will be residents of DuPage and nearby counties who are adults, age 18 and older. Haymarket does not admit violent or sexual offenders in any program.

How will Haymarket relieve the burden on Itasca's emergency services?

By contracting with an outside ambulance service, Haymarket believes this will minimize the impact on Itasca first responders.

How will this facility offset the economic impact on Itasca?

In addition to contracting with outside ambulance services, we will also partner with the community to identify grant opportunities that will garner additional financial support. Our facility will triple the number of jobs at that location to more than 160. The impact study, submitted as part of the zoning application, found the Holiday Inn tax revenue declined from 2016 to 2017, and declined further from 2017 to 2018.

How was the Holiday Inn selected?

The Holiday Inn was selected because the owner planned to discontinue it as a Holiday Inn, and its location in a business park with ample parking surrounded by major highways. Its surrounding green space is consistent with a health care facility and it is easily convertible to a medical use. Also, hotels in other states have been successfully converted for this use.

How will Haymarket be a community partner?

Haymarket is committed to being a good neighbor in Itasca and a strong community partner. Haymarket pledges to support community events in Itasca, offer educational and training programs, partner with first responders and identify grant opportunities that bring additional financial support to the community.

How many jobs and what types of jobs will be created at Haymarket DuPage?

Haymarket DuPage will create more than 160 new jobs for medical and counseling staff – tripling the number of current jobs at the Holiday Inn. We will begin a competitive hiring process to staff this new facility with experts in the field of behavioral health.

What types of insurance are accepted?

All forms of commercial insurance and Medicaid are accepted. Haymarket treats all patients, regardless of their ability to pay.

As a nonprofit, how are you funded? Are you financially stable?

Haymarket Center has maintained financial stability for 45 years. Funding comes from federal, state, other governmental entities, foundations, private insurance and private donation sources.

How do you secure your facilities?

Similar to hospitals, there will be highly-trained security on site 24/7. Security staff is not armed, they—and all other staff—are trained in non-violent crisis intervention. The facility will have video surveillance of the interior and exterior of the clinic, which is monitored by security staff in real time and footage is maintained. The security plan was submitted as part of our zoning application.

How will traffic be impacted?

A traffic impact analysis, submitted as part of our zoning application found the facility will have minimal impact on traffic because it will be similar to the current traffic flow. Patients are not permitted to have vehicles on site.

How long is an average inpatient stay at Haymarket?

Treatment is tailored to meet the individual needs of each patient.

If a patient decides to stop treatment, what happens?

If a patient decides to stop treatment, we immediately begin interventions to try to keep the patient on course. If they choose to leave, we make sure the patient has transportation from the doors of our facility to their home or another safe location. This strategy has been endorsed by the DuPage County Sheriff's department.

EXHIBIT K



550 W. Irving Park Road • Itasca, Illinois 60143-2018
630.773.0835 • Fax 630.773.2505 • www.itasca.com

August 12, 2019

Dr. Dan Lustig
President & CEO
Haymarket Center
932 West Washington Street
Chicago, IL 60607

Dear Dr. Lustig,

I am reaching out to request a meeting as soon as possible to discuss Haymarket's plans for the Itasca Holiday Inn property. Since our first meeting in April, the Village has sought to learn more about Haymarket's operations in order to better determine the impact your proposal would have our community. Unfortunately, our questions continue to go unanswered.

I have been extremely disappointed by Haymarket's lack of transparency and responsiveness throughout this process. Since day one, Haymarket's plans have been cloaked in secrecy. This started with Haymarket's initial request to meet. The office of Haymarket Board Member and former Illinois Speaker Lee Daniels reached out to meet but did not mention Haymarket or its intentions. In addition, Daniels' office requested that I not bring any staff or another public official to our first meeting.

Upon learning of the project, I immediately prioritized having staff meet with your representatives to discuss the project. Haymarket chose to have an attorney as its primary representative. From the beginning, your attorney indicated to our Community Development Director and Planner that Haymarket was prepared to go to court to force Itasca to allow the change in use, if the Village Board did not approve your plans.

At the end of April, we met again. At that meeting, you assured me that your organization wanted to be a good neighbor and would quickly get us answers to questions about Haymarket needs for public services, such as 9-1-1 calls, EMS and police support. Several weeks later, you and your team showed up unannounced to meet with Itasca's Director of Police. We accommodated the unscheduled meeting and again asked for any data Haymarket could provide on emergency service calls.

On June 19, I opened the Daily Herald and was shocked to learn that Haymarket had gone public with its plans. I also learned that for months Haymarket had secretly lobbied political heavyweights throughout the county, such as Chairman Dan Cronin, who signed on to support this project without ever reaching out to learn what impact it might have on the 8,700 residents of Itasca.

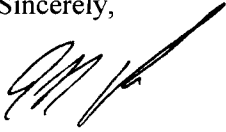
As community interest, spurred by your own media stunt, escalated, we sent Haymarket another request for information – reiterating our original questions, as well as including new questions raised by community members. Your representative responded with a fact sheet that again fails to answer basic questions about emergency response needs.

Today more than four months after my first meeting with Haymarket representatives, Itasca's questions continue to go unanswered. It is my opinion that Haymarket's refusal to engage in open and transparent communication with the

Itasca community has fueled the “unflattering and false representation of this project,” you described in Friday’s Daily Herald article.

I have again attached the questions sent last month and request that you prioritize a time for us to meet in person to improve communication and ensure that the Itasca community receives accurate and timely information about Haymarket’s plans.

Sincerely,

A handwritten signature in black ink, appearing to read 'JP', with a long, sweeping flourish extending upwards and to the right.

Mayor Jeff Pruyn
Village of Itasca

Questions for Haymarket

1. How many people do you expect to treat in the new facility?
 - 1a. How many do you treat downtown?
 - 1b. How many do you treat in Uptown?
 - 1c. How many do you treat in Lake County?
 - 1d. Describe the nature of each treatment facility.
2. What amount of time does a resident spend with the facility?
 - 2a. Do you offer outpatient programs?
 - 2b. Describe the amount of daily traffic (vehicle/foot) at your facilities?
3. How do you accept those that need treatment?
 - 3a. Where do patients come from?
 - 3b. Are DuPage residents going to have priority?
 - 3c. Will you take overflow from your other locations?
 - 3d. How many of your residents are in court ordered programs?
 - 3e. Do you accept early diversion treatment residents?
4. Who pays for that treatment?
5. Where does your funding come from?
6. How is your funding structured?
 - 6a. How long do you project Haymarket to have a stable funding source?
7. You only have a 2017 Annual Report on your website.
 - 7a. Where is your 2018 Annual Report?
 - 7b. When can we expect to see a 2019 Annual Report?
 - 7c. From the 2017 Annual Report, 11% denotes Supporting Services. What are those?
8. What does your security plan look like (internally and externally)?
 - 8a. Who developed the plan?
 - 8b. How often is it reviewed?
 - 8c. Have you had to activate a security response at any of your facilities?
 - 8c1. If so, did it work as planned?
 - 8c2. Please describe the incident and response.
9. How would this building be secured?

- 9a. Will emergency services be able to easily access the building 24/7?
- 9b. Have emergency services ever had an issue with ease of access in the past?

10. Who is your security advisor?

- 10a. May we meet with the company?
- 10b. Do you employ private security guards?
 - 10b1. Are they armed?
- 10c. How do you determine the amount of private security staff?
- 10d. Do you use exterior camera surveillance?
 - 10d1. If yes, how long is the footage retained?
 - 10d2. Does staff at the location have immediate, on-site retrieval access of any surveillance footage?
- 10e. Are you asking to put a fence around the property? If so, what kind of fence?

11. What does your EMS plan entail?

- 11a. Do you have a contract with a private ambulance service?
- 11b. Will you be retaining private contract ambulance services for Itasca?
- 11c. Can you give us a five-year lookback on emergency or EMS calls on your facilities?

12. Are people using your facility allowed to leave?

- 12a. Do you expect law enforcement to assist in recovering an AWOL resident?
- 12b. Has this happened in the past, if so, how many times in the last 5 years?
- 12c. What type of support services do you provide for a patient who wishes to leave early?

13. How do you work with local municipalities for emergency services?

14. What type of internal medical staffing do you intend to have?

- 14a. What types of medical emergencies can be treated at the facility?
- 14b. If there is a medical emergency for a patient or staff member, what resources do you expect Itasca to provide?

15. How did you come up with the Itasca location?

16. How many jobs do you expect to provide?

- 16a. What types of jobs will be available?
- 16b. How do you hire?
- 16c. Will you be moving people from other facilities to this proposed site?

17. How do you run as a treatment facility?

17a. What is your management structure?

17b. How many of your staff have medical degrees?

17b1. What degrees?

18. You are interested in moving into Itasca, how is Haymarket going to become a part of our community?

18a. Do you have community outreach programs in place at other facilities?

18b. What does your corporate social responsibly plan offer for Itasca?

19. Who do you think is going to help Itasca fund for public safety services needed by Haymarket?

EXHIBIT L



Haymarket Center

COMPREHENSIVE BEHAVIORAL HEALTH SOLUTIONS
FOUNDED IN 1975 BY MSGR. IGNATIUS McDERMOTT AND DR. JAMES WEST

August 15, 2019

VIA E-MAIL TRANSMISSION ONLY

The Honorable Jeff Pruyn
Mayor
Village of Itasca
550 W. Irving Park Road
Itasca, IL 60143-2018

Dear Mayor Pruyn:

I thank you for your correspondence of August 12, 2019, and I welcome the opportunity to meet with you again to discuss the Haymarket DuPage proposal. Of particular concern to me relative to your invitation is your assertion that Haymarket has not provided information you have sought, and your allegation that in failing to do so, Haymarket lacks transparency and responsiveness. This could not be further from the truth, and the FAQ sheet posted on the village website is such evidence of continued transparency. Haymarket also created a website, HaymarketDuPage.org, that includes those FAQs and our list of supporters, to make information about our proposal more easily accessible. We encourage you to also post it to the village website.

While I believe the questions pertinent to our proposal have been answered with great transparency, I will review the list of questions you have provided and direct you to factual answers previously provided in the zoning application or FAQs, or amplify responses with additional information.

At our meeting, I would also like to address some other concerns. For example, Haymarket is concerned relative to Village staff's interactions with Haymarket, the current zoning decisions at issue and the negative messages the Village is promoting relative to Haymarket and its desire to have an Itasca home. We also take issue with your claims that our plans have been "cloaked in secrecy," when in fact we began meeting with you in April to explain our intent to expand access to life-saving substance use and mental health treatment by opening a comprehensive medical facility and sought to share that intention broadly with your community through a published article.

Website:
www.hcenter.org

A HIPAA COMPLIANT AGENCY
CARF ACCREDITED

932 WEST WASHINGTON BOULEVARD, CHICAGO, ILLINOIS 60607



Haymarket Center

COMPREHENSIVE BEHAVIORAL HEALTH SOLUTIONS
FOUNDED IN 1975 BY MSGR. IGNATIUS McDERMOTT AND DR. JAMES WEST

I assume from your letter that the meeting will be between you and me. If I am incorrect, and you plan to invite staff and counsel to this meeting, please let me know and I will bring the appropriate representatives with me. I hope our meeting can facilitate improved understanding of the Haymarket proposal, and I am very willing and will make myself available at the time and date in your schedule to the best of my ability. I once again very cordially invite you to visit me at Haymarket Center in Chicago's West Loop for a tour of the facility and discussion of the treatment programs we provide. While you have not accepted the invitation in the past, I am certain you will leave impressed.

I understand that addiction has been stigmatized for so long that convincing you and your community that we will be a good neighbor is a monumental task. Yet I believe Itasca has an opportunity to be a municipal leader at addressing the opioid epidemic and save countless lives.

I look forward to our meeting.

Sincerely,

Dr. Dan Lustig, Psy.D., MISA II, CAADC
President & CEO of Haymarket Center

Website:
www.hcenter.org

A HIPAA COMPLIANT AGENCY
CARF ACCREDITED

932 WEST WASHINGTON BOULEVARD, CHICAGO, ILLINOIS 60607

EXHIBIT M

HAYMARKET DUPAGE RESPONSE TO VILLAGE OF ITASCA QUESTIONS FOR HAYMARKET

Haymarket DuPage (“Haymarket”) has applied for zoning approval to permit a health care center at 860 W. Irving Park Road, Itasca. As is well known by now, Haymarket Center is one of the region’s largest and most comprehensive providers of treatment for substance use disorders and mental health conditions. Haymarket was founded in 1975 by Monsignor Ignatius McDermott and Dr. James West, and is a fully accredited, nonprofit organization, licensed by the Illinois Department of Human Services. Haymarket plans to provide a full continuum of health care services to adults aged 18 and older at the Itasca location. Services will include diagnosis, treatment and recovery support for persons disabled by substance use and mental health disorders, who voluntarily seek care. Treatment provided is planned to include inpatient, outpatient and recovery programs.

Haymarket intends to be a good neighbor in the Itasca community, and while much of the information requested has no bearing on the Village’s zoning standards, Haymarket provides the following answers to the Village’s questions.

1. How many people do you expect to treat in the new facility?

Haymarket is expecting to provide substance use and mental health treatment to approximately 4,750 patients a year through all of its treatment and recovery programs, including outpatient programs. Nearly 2,000 men and women from DuPage and the collar counties were patients at Haymarket clinics in 2017-2018.

a) How many do you treat downtown?

The Haymarket West Loop facility provided treatment to 12,000 patients in 2018.

b) How many do you treat in Uptown?

The Haymarket Uptown Facility provided treatment to 151 patients in 2018.

c) How many do you treat in Lake County?

The Haymarket Lake County facility provided treatment to 111 patients in 2018.

d) Describe the nature of each treatment facility.

Haymarket’s West Loop facility provides:

- Evidence-based comprehensive interventions
- Medication Assisted Treatment (MAT)
- Psychiatry & Counseling

- Recovery Stay
- Child Care
- Parenting Classes
- Partnerships that assure care coordination
- GED Courses & Job Placement

Haymarket Uptown and O'Hare are outreach programs, in which Haymarket personnel work within the community to identify individuals in need of substance use and/or mental health care, and assist them in locating services to meet their individual needs.

Haymarket's Lake County facility provides outpatient treatment designed to provide individuals treatment services to help each client achieve permanent changes in their substance use and mental health behaviors.

2. What amount of time does a resident spend with the facility?

The amount of time each patient/client is provided health care services at each facility is dependent on individual needs through a medical assessment that meets the criteria of the American Society of Addiction Medicine.

- In-patient treatment may range from 14 days to 90 days, based on individual need, with a typical stay around 23 days.
- Recovery stays may range from one month to 12 months, with a typical stay of around 90 days.
- Patients will most often begin the recovery stay phase of their continuum of care with participation in intensive outpatient, which typically lasts six weeks, and/or standard outpatient, which typically lasts four weeks.

a) Do you offer outpatient programs?

Yes. Haymarket will offer outpatient programs in Itasca, similar to those provided at the West Loop Facility.

b) Describe the amount of daily traffic (vehicle/foot) at your facilities?

Haymarket has provided a traffic study as part of its application for zoning. Please refer to that study.

Traffic with outpatient patients: we expect to treat about 150 patients per month on an outpatient basis. Approximately two-thirds (or 100) of these patients will be staying in recovery programming, and therefore will bring no traffic to or from the facility. About one-third (or 50) may come to the facility.

Traffic due to recovery home patients: the majority of the recovery home patients are restricted from having a car on site. Some exceptions are made

based on patient need and administrative approval. Most often these patients begin their stay involved in intensive outpatient or standard outpatient programming and will have little traffic to or from the facility. Once they complete outpatient programming, they may be leaving during the day to interview for jobs or attend job training programs. This will involve one or two trips to and from the facility.

Traffic due to visitors: Typically, around 30% of recovery patients may have a weekly visit from a family member.

3. How do you accept those that need treatment?

Upon a patient's arrival, Haymarket follows its central intake procedure, which includes the conduct of a comprehensive medical and global appraisal of individual needs (G.A.I.N.). Intake also includes a background check on each patient to ensure that we do not admit any individual with a violence charge or a sexual offense in their background.

a) Where do patients come from?

Haymarket patients will be residents of DuPage and nearby communities who are adults, age 18 and older. They may be your neighbors, friends, co-workers and even someone you love. They come in seeking treatment, or are brought to treatment by friends and family and others concerned with their health and wanting to ensure provision of health care services to meet their individual needs.

Patients are also referred by hospitals, educational institutions, first responders, company and EAP programs.

b) Are DuPage residents going to have priority?

Haymarket DuPage will be a facility for residents of DuPage County and surrounding communities. However, as a well-recognized treatment provider, Haymarket adheres to federal and state regulations providing for preference in admission. For example, substance users who are pregnant and in need of treatment are required to be provided preference in admission. Haymarket currently provides immediate access to care for those who seek it. There is no wait list, and no need to prioritize one individual over another.

c) Will you take overflow from your other locations?

No. The need in DuPage County and surrounding communities is such that the health center facility is not planned to serve as an overflow facility.

d) How many of your residents are in court ordered programs?

Less than 1% of Haymarket's patients are required by court order to participate in substance use disorder treatments. Haymarket Center is a

voluntary facility for over 99% of its patients. Haymarket Center in the West Loop has a DUI program that contains 21 patients who are court ordered for treatment.

e) **Do you accept early diversion treatment residents?**

Yes, Haymarket Center works with many problem-solving courts which have a variety of eligibility criteria for participation in Cook, Lake, and DuPage Counties. In common are drug-related charges and/or other non-violent charges in which the person is screened to have a substance use disorder. All problem-solving courts maintain supervision over their participants and maintain close communication with Haymarket staff about treatment progress.

No patients with violent backgrounds or sexual offenses are allowed in Haymarket Center programs.

4. Who pays for that treatment?

Haymarket is a nonprofit organization, whose mission is to provide health care services to all patients, regardless of ability to pay. Haymarket accepts all forms of commercial insurance and Medicaid is accepted.

5. Where does your funding come from?

Haymarket Center is a non-profit that has maintained financial stability for 45 years and is compliant with all non-profit federal and state rules and regulations. Funding comes from federal, state, other governmental entities, foundation, private insurance and private donation sources.

6. How is your funding structured?

Funding is provided through patient care revenue, contracts, contributions and philanthropy.

- a) **How long do you project Haymarket to have a stable funding source?**
Indefinitely.

7. You only have a 2017 Annual Report on your website.

- a) **Where is your 2018 Annual Report?**
The 2018/2019 annual report is in process.
- b) **When can we expect to see a 2019 Annual Report?**

The 2018/2019 annual report is expected to be completed by the end of the current calendar year.

c) **From the 2017 Annual Report, 11% denotes Supporting Services. What are those?**

- Case management
- Recovery coaching
- Addressing the social determinates of health

8. What does your security plan look like (internally and externally)?

Haymarket Center does have a security plan, which was developed in-house and through security consultants and is overseen by the Administration. A security plan is inherently to protect those in the health facility and to maintain security of the building's exterior. A security plan is in place and executed procedurally but not shared with the public which would in fact reduce its effectiveness.

9. How would this building be secured?

Similar to hospitals and other health care facilities, the building will be secured 24/7 and Haymarket will have trained security at all times. Security staff is not armed, but they—and all other staff—are trained in non-violent crisis intervention mental health first aide. Haymarket also intends to have video surveillance of the interior and exterior of the health center facility, which is monitored by our security staff in real time and footage is maintained for one- to three-week periods.

a) **Will emergency services be able to easily access the building 24/7?**

Yes.

b) **Have emergency services ever had an issue with ease of access in the past?**

No. Haymarket does not contemplate any issues with ease of access to the Itasca facility.

10. Who is your security advisor?

Security at each Haymarket facility is managed by both our Director of Facilities and our Vice President.

a) **May we meet with the company?**

Haymarket representatives are available to meet with the Village to discuss security relative to the Itasca facility.

b) **Do you employ private security guards?**

Haymarket will employ trained security staff. Haymarket does not contract for private outside security service.

b1) Are they armed?

Security staff is not armed.

c) How do you determine the amount of private security staff?

We do not employ private security staff.

d) Do you use exterior camera surveillance?

Yes.

d1) If yes, how long is the footage retained?

See answer #9.

d2) Does staff at the location have immediate, on-site retrieval access of any surveillance footage?

Yes.

e) Are you asking to put a fence around the property? If so, what kind of fence?

No.

11. What does your EMS plan entail?

Haymarket's EMS plan will be tailored to the needs of the Itasca facility, predicated on best management practices.

a) Do you have a contract with a private ambulance service?

Haymarket intends to contract with a private ambulance service for the Itasca health center facility.

b) Will you be retaining private contract ambulance services for Itasca?

Yes.

c) Can you give us a five-year lookback on emergency or EMS calls on your facilities?

Yes. This information is being analyzed and will be made it available on the Village of Itasca and Haymarket DuPage web sites.

Each health care facility is different in terms of size, location and demographic population served. As such, any information relative to emergency calls at any other facility would not be relevant to the proposed Itasca health center facility, and is not relevant to the zoning application pending. Notwithstanding, Haymarket is committed to a high level of patient/client care and will secure an emergency response at any of its facilities when such care is deemed required

for the safety and well-being of any patient, client, staff member or private visitor on site.

12. Are people using your facility allowed to leave?

Yes. The Itasca health center facility is proposed to provide both in-patient and outpatient treatment programs, therefore, certain patients will not remain on premises at all times.

Residential: These patients are not permitted to leave facility except when it is medically necessary. These patients will be accompanied by a staff member.

Recovery Stay Patients: Those participating in in-patient recovery home programs are permitted to leave for specific reasons as approved by staff, for example, work, medical treatments and educational programs. Leave of this nature is prescribed, detailed and monitored by case workers and/or other treatment staff. All patients are required to provide random urine samples 2 times per week and following any external appointments.

a) Do you expect law enforcement to assist in recovering an AWOL resident?

No. Haymarket has never used law enforcement to assist with patients who leave against staff advice. Haymarket will transport patients from the health care facility in the event a patient chooses to leave the facility.

b) Has this happened in the past, if so, how many times in the last 5 years?

No. This has never happened.

c) What type of support services do you provide for a patient who wishes to leave early?

- Recovery coaching
- Clinical intervention
- Transportation
- Case management

13. How do you work with local municipalities for emergency services?

Haymarket Center's treatment programs are located in Chicago's West Loop and in Waukegan. In Waukegan, our office is in the Lake County Probation Department. Haymarket is in constant communication with the Lake County Probation Department and follows all regulations and protocols for their facility. In Chicago, Haymarket's utilization of emergency services has never been called into question. If a call for emergency services has been placed, Haymarket security staff meet the emergency services team outside the building and provide clear directions and escort EMTs to where they are needed.

In Itasca, Haymarket Center will be contracting with a private ambulance service to answer any emergency calls prior to contacting the Village's first responders. In addition, Haymarket Center proposes to meet with the Village and first responders to have direct input in developing a mutually acceptable plan.

14. What type of internal medical staffing do you intend to have?

Haymarket will hire medical professionals typical of a health center facility of its nature: a clinical director, counselor, nurses, nurse practitioners, licensed practical nurses, case workers, recovery workers, and social workers.

a) What types of medical emergencies can be treated at the facility?

With a full time medical staff, Haymarket staff is trained to respond to a full range of medical emergencies such as asthma attacks, seizures, spikes in blood pressure. However, should the need arise, Haymarket will refer cases involving life-threatening conditions such as heart attacks to our contracted ambulance services.

b) If there is a medical emergency for a patient or staff member, what resources do you expect Itasca to provide?

Those similar to what Itasca provides to any other resident or business facing a medical emergency, other than as can be responded to by private ambulance care.

15. How did you come up with the Itasca location?

The demand for our services continues to rise due to an increase in opioid fatalities and overdose reversals in DuPage County. In 2017-2018, nearly 2,000 men and women from DuPage and the collar counties were patients at Haymarket clinics. There is a need for Haymarket's services in this area. The Holiday Inn was identified as a location that might be available. The existing hotel is easily converted to a health center use, common to other older hotel/hospital conversions in other states. Haymarket learned that it had previously been for sale as a hotel and received no offers. The owner plans to discontinue it as a Holiday Inn. Haymarket learned that the site is zoned B-2 where healthcare facilities are allowed by the Village of Itasca as special uses. It is not adjacent to any residential neighborhood and is immediately south of an industrially zoned area. The site is located in a business park with ample parking, surrounded by major highways. Its surrounding green space is consistent with a health center facility.

16. How many jobs do you expect to provide?

The Haymarket health center facility will triple the number of full-time jobs at that location, to more than 160.

a) **What types of jobs will be available?**

Haymarket Center expects the following types of jobs to be available: a Clinical Director, Medical Director, Psychiatrists, Facility Director, Facility Supervisor, Licensed Clinical Professional Counselors, Licensed Practical Nurses, Nurse Practitioners, an Information Technology Specialist, a Human Resource Specialist, Case Managers, Case Aides, Counselors, Admissions Specialists, Maintenance Personnel, Housekeeping Personnel, Security Personnel and a site Executive Administrator.

b) **How do you hire?**

Haymarket posts its open positions on-line, and accepts walk in applications as do other employers. Haymarket also partners with other agencies for qualified applicants.

c) **Will you be moving people from other facilities to this proposed site?**

No. However, if existing staff is interested in working at the Itasca health center facility and it is in the best interest of the employee and management, consideration will be given to granting such relocation request.

17. How do you run as a treatment facility?

Haymarket Center brings hope to individuals and families who are suffering personally or through a loved one, friend or community member, with substance use issues or mental health problems. Through a range of specialized in-patient, out-patient and other programs, Haymarket provides exceptional care. The Itasca health center facility will provide a range of medical and clinical services, and will be licensed by the Illinois Department of Human Services to provide:

- Assessment/diagnosis
- Crisis stabilization, with stays up to seven days. Crisis stabilization will be staffed with licensed clinical staff and a registered nurse or licensed practical nurse at least 40 hours per week and with additional staff 24 hours per day, seven days per week, 365 days per year.
- Medically monitored withdrawal management (detoxification) with usual stays of three to five days. Withdrawal management units are staffed with nurse practitioners or physician assistants, registered nurses and/or licensed practical nurses 24 hours per day, seven days per week, 365 days per year. Additional staff include Illinois Certification Board-certified counselors.
- Clinically managed high-intensity in-patient substance use disorders treatment, with separate programs for men and women. This program will have usual lengths of stay, depending on the specialized program, of up to 7, 14, 28 or 90 days. In-patient substance use disorder programs are staffed with registered nurses or licensed practical nurses and Illinois Certification Board-Certified or

licensed counselors at least 40 hours per week and with additional program staff 24 hours per day, seven days per week, 365 days per year.

- Outpatient substance use disorders treatment. Outpatient programs are staffed with Illinois Certification Board-certified or licensed counselors, as well as with case managers.
- Recovery stay program with separate programs for men and women. Recovery home stays will usually be 90 days but may be up to 365 days. Recovery Homes, are defined by Title 77 Illinois Administrative Code Rule 2060, as “alcohol and drug free housing components whose rules, peer-led groups, staff activities and/or other structured operations are directed toward maintenance of sobriety recovery living environments or who recently have completed substance abuse treatment services or who may be receiving such treatment services at another license facility.” Rule 2060 requires Recovery Homes to have certified staff and structure including at least five group sessions per week. Certified staff will be on the unit 24 hours per day, seven days per week, 365 days per year. Recovery patients will provide weekly schedules and inform staff of all movement external to the health center facility and sign in and out when they enter or leave the Recovery Home.

a) What is your management structure?

Haymarket Center is a non-for profit organization with a volunteer unpaid Board of Directors. The Board directs the work of the leadership team which is headed by President and Chief Executive Officer Dan Lustig, PsyD, CAADC, MISA II. He and the leadership team members direct the work of all other Haymarket employees.

b) How many of your staff have medical degrees?

Pertinent to the Itasca health center facility, Haymarket will engage the required number of medical degreed, licensed and/or State certificated employees to satisfy State licensing requirements and best management practices.

b1) What degrees?

Medical Doctors, Nurse Practitioners, Registered Nurses, Licensed Practical Nurses, and Certified Nursing Assistants.

18. You are interested in moving into Itasca, how is Haymarket going to become a part of our community?

Haymarket is committed to being a good neighbor in Itasca and a strong community partner. Haymarket pledges to support community events in Itasca, offer educational and training programs, partner with first responders and identify grant opportunities that bring additional financial support to the community.

a) **Do you have community outreach programs in place at other facilities?**

Yes.

b) **What does your corporate social responsibility plan offer for Itasca?**

In all of our existing locations where possible Haymarket Center employs environmentally sustainable products and practices in our operations. In addition, we support philanthropic giving, volunteering training and educational programs and outreach. We will employ those same concepts in Itasca.

19. Who do you think is going to help Itasca fund for public safety services needed by Haymarket?

While Haymarket is cognizant of the fact that funding for public safety is derived from property taxes, which Haymarket will not pay as a non-profit property owner, Haymarket currently intends to contract with a private ambulance service to offset any burden on Itasca, and it is open to continuing to discuss the Village's financial concerns. More importantly, Haymarket is firmly committed to bringing to Itasca a much-needed health center facility, which will support the treatment needs of residents in DuPage County and neighboring communities. Haymarket Center intends to bring a positive economic benefit to the Village by partnering on grant opportunities, employing more than double the existing employee population at the planned site and purchasing (when available) local goods and services.

EXHIBIT N



October 11, 2019

The Honorable Deb Conroy
District Office:
28 S. Villa Ave.
Villa Park, IL 60181

Springfield Office:
275-S Stratton Office Building
Springfield, IL 62706

Dear Representative Conroy,

Thank you for taking the time to come to Itasca yesterday to discuss Haymarket's proposal to convert Holiday Inn-Itasca into a 272-bed drug treatment facility. Village Administrator Carie Anne Ergo and I appreciated the opportunity to meet with you, Senator Tom Cullerton and Representative Diane Pappas to discuss the project at length.

Prior to your meeting request, Representative Pappas had been the only state public official to reach out to me directly regarding the proposal.

I appreciate your passion to help those who struggle with opioid addiction and your offer to push State of Illinois and DuPage County officials to provide funding to offset the financial burden this project would place on our small community. Unfortunately, the State of Illinois does not have a reliable track record of following through on its financial promises to our town. In recent years, Itasca has seen its share of personal property taxes, income taxes and dedicated grants reduced or eliminated.

Equally valuable was your willingness to contact Haymarket to obtain answers to questions that have been outstanding for nearly six months. Without data on Haymarket's historical demand for public safety response services at its facilities, how can Village staff determine what public safety services may be needed to support this large regional facility or the cost to taxpayers? And, I should point out that Haymarket has been telling media, public, staff and I for months that they would share this data as soon as possible.

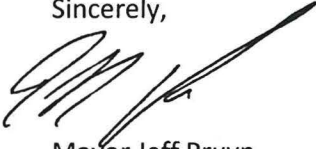
Truthfully, I was disappointed, but not surprised, when you confirmed this morning that Dr. Lustig would not even provide the data to you - Chair of the Mental Health Committee for the Illinois House of Representatives.

At this time, I have no choice but to request that you hold off on requesting any state funding for this project until Village staff has sufficient time to analyze all the data presented at the upcoming public hearings to better determine the total financial impact to Itasca taxpayers.

Finally, please know that I share your concern about the opioid crisis in the Chicagoland region and throughout the country. I stand ready to be a part of any discussion on potential solutions that would not place the financial burden of solving this crisis squarely on the residents and businesses of our small town.

Thank you again for your time.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Pruyn', written over a horizontal line.

Mayor Jeff Pruyn
Village of Itasca

EXHIBIT O

**OPEN LETTER TO ALL ELECTED OFFICIALS
REPRESENTING THE CITIZENS OF ITASCA, ILLINOIS**

July 29, 2019

To all elected representatives, local officials, and other concerned parties representing the residents and taxpayers of Itasca, Illinois:

It has come to our attention that an organization known as McDermott Center, d/b/a Haymarket Center (and herein referred to as "Haymarket"), has announced its intent to purchase the parcel of land at 860 W Irving Park Road in Itasca, currently a Holiday Inn Hotel and Conference Center, with plans to convert it into a 200-bed inpatient addiction treatment facility.

We too ask that all governing bodies with authority over the matter reject this facility, on the grounds that:

- Itasca is ill-suited to accommodate the treatment center from an emergency services standpoint,
- The location is unacceptably close to public facilities geared towards children, such as our public library and waterpark, and youth-focused businesses,
- The loss of property tax revenue, hotel/entertainment tax revenue, and other collateral sales tax revenues associated with normal hotel and convention operations will have a detrimental effect on Village finances, and,
- The construction of the facility will result in a negative impact on property values for all residents and business owners in proximity to the location.

We, as residents, taxpayers, and concerned business owners want to make clear that we do not oppose the *purpose* of the facility. We recognize the importance of substance abuse treatment services, and understand the current state of the opioid epidemic in Chicago, the suburbs, and nationwide. That said, we believe Itasca is an illogical choice for this type of treatment facility based on the size and population of our community.

Itasca is a community of approximately 8,000 residents. The proposed 200-bed facility would represent, at full capacity, roughly 2.5% of our overall population. The stated purpose of the facility is to treat substance abuse, with a focus on opioid addiction. For reference, the Village of Itasca had a total of three (3) arrests for controlled substances in 2018 and zero (0) in 2017.¹

¹ <https://www.itasca.com/1909/End-of-Year-Crime-Statistics>

While advocates for this facility and its programs will argue that those in the facility are seeking treatment and therefore are not a risk to the community, it is worth noting that not all patients of the facility are there involuntarily, and are permitted to come and go as they wish.² There are a number of youth- and public-focused facilities in the immediate vicinity:

- Itasca Village Hall, 1000ft
- Itasca Public Library, 1600ft
- Itasca Waterpark, 1500ft
- Noles Nation Training Academy, 1900ft
- Spring Brook Nature Center, 2100ft
- Itasca School District Administration, 3100ft
- Usher Park, 3800ft
- Itasca Park District, 4400ft
- Raymond Benson Primary School, 4600ft
- FE Peacock Middle School, 4700ft
- Happy Acres Park, 3600ft
- Elmer H Franzen Intermediate School, 3100ft
- Gym Stars Gymnastics, 830ft
- Music & Arts, 900ft

Additionally, within a 2000ft radius of the proposed location, there are three (3) video gaming/gambling parlors and a full-service liquor store. There are several more bars and gambling establishments within a 1-mile radius as well.

It is our contention that the construction of this facility will lead to an increase in drug-related crimes in the immediate area, thus straining our limited police resources.

We also have concerns about the ability of the Village's current emergency response infrastructure to handle the increase in calls for service that would be associated with the type of facility in question.

According to data released by the City of Chicago, there were 863 emergency responses to Haymarket's existing location at 932 W Washington Street in Chicago (and adjacent connected facilities). With only one available ambulance, neighboring communities with which we have mutual aid agreements will need to cover for our fire department, resulting in longer response times and possible navigation issues with crews being less familiar with the area. Depending on the terms of mutual aid agreements, these responses may also cost taxpayers

² <http://www.hcenter.org/faq/can-you-stay-at-home>

additional money or result in varying fees being charged to residents who need emergency services.

Just last year, Itasca Fire Protection District taxpayers approved a referendum to increase taxes to fund the District's operations. At the time, the increase was described as a way to allow the District to "keep what we have"³, and did not anticipate a need for the type of significant expansion required by this facility.

We believe that the loss of tax revenue (approximately \$250,000 annually)⁴ resulting from the conversion of the facility and transfer to a non-profit organization will negatively impact the finances of the Village of Itasca and other taxing bodies, and will force either a tax increase, or a reduction of services for those already in the community. At the top of our list of tax concerns is the fact that the losses represent a hit of approximately \$50,000 against the budgets of both our High School and Elementary School Districts.

Finally, we contend that the stigma associated with such a facility will result in drastic reductions in property values in the immediate vicinity, which by extension also impacts the finances of the Village and other taxing bodies. Studies show negative impacts of up to 17% on home values in the immediate area of these facilities.⁵

In conclusion, we ask you, our political representatives, local officials, and other decision-makers to take these concerns into consideration, and ultimately, to reject the construction of the Haymarket facility in the Village of Itasca. It is our contention that a failure to stand up for our Village in the face of pressure from outside entities, higher governing bodies, and less-informed members of the public would constitute a dereliction of your duty to represent those who elected you and who fund your public positions through taxes.

Sincerely,

Concerned Citizens of Itasca

³ <https://www.dailyherald.com/news/20181106/voters-appear-to-support-itasca-fire-district-tax-hike>

⁴ Statement from Itasca Mayor Jeff Pruyn, June 21, 2019

⁵ http://www.josre.org/wp-content/uploads/2014/12/9830-63_92.pdf

EXHIBIT P

Say NO to Haymarket!

Haymarket is an addiction and mental health treatment center looking to add a 200-bed facility to the Holiday Inn- Itasca location

Why say no?

Itasca would lose approximately \$250,000 annually in revenue generated by the current Holiday Inn*

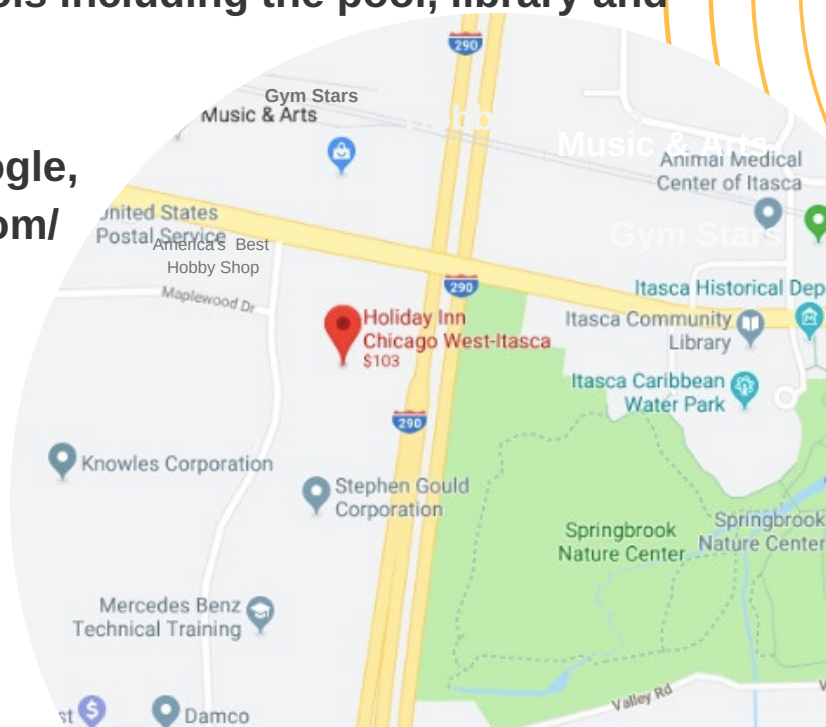
Based on last year's 911 calls, Haymarket would put undue stress on Itasca Police, Fire and EMS. Itasca has only 1 ambulance.

There were 863 emergency responses to Haymarket's Central Chicago location last year alone**

Haymarket provides addiction and mental-health treatment, including "alternative to incarceration" programs***. It will be located near many children-based businesses and schools including the pool, library and nature center

Check out Haymarket reviews on Google, rehabs.com and <https://www.rehab.com/haymarket-center/6702677-r>

**PUBLIC HEARING
SEPTEMBER 18TH
7:00 P.M.
LOCATION TBA**



**Concerned about Haymarket coming to Itasca?
Join our efforts and attend the public hearing!
This may be our only chance to speak out!**

*Mayor Pruyin's June 21st statement

**FOIA records on 932 W. Washington & 120 N Sangamon St.

***Haymarket's website

Haymarket Center potentially moving to Itasca

- Itasca would lose approximately \$250,000 in tax dollars **annually** if a non-profit takes over a taxable hotel.* Resident taxes could increase to cover this loss.
- This treatment center would be within a 1/2 mile of 3 video-gambling businesses and 5 locations selling or serving liquor.**
- Itasca has the **fourth smallest population** of all 39 towns in DuPage County.*** Haymarket claims this facility is needed in DuPage County****. Understandable, but it will have a huge impact on this small town of 9,000 as it can't be easily absorbed like it is in Chicago with a population of 2.7 million.
- Haymarket Chicago received **863 Emergency calls** requiring response by fire, EMS and/or police from July 2018 - July 2019*****

These calls include, but aren't limited to:

64 psych emergencies, 34 suicide threats, 33 seizures, 24 mental disturbances, 13 disturbances, 10 unconsciousness, 9 overdoses, 9 altered mental states, 2 bleeding victims, 7 suicide attempts and 7 injuries

- Itasca has only **23** sworn police officers (per their website)
- Itasca has only **21** fire fighters and paramedics (per their website) and recently passed a referendum to help the fire department through financial troubles
- Haymarket plans on creating a 200-bed facility, which is nearly half the size of the entire Alexian Brothers Hospital in Elk Grove Village
- Research shows a property value loss of up to 17% on homes near opiate and methadone treatment centers*****
- Haymarket describes the prospective property as a desired location being at least 600 ft from any residence****, **but** it is near the following children-based businesses and schools:**

- | | |
|--------------------------------------|--|
| .1 mi from Train, Toy & Hobby Shop. | .6 mi from Nature Center Path |
| .3 mi from Gym Stars. | 1 mi from Franzen Intermediate School |
| .3 mi from Music & Arts. | 1.1 mi from Itasca Park District |
| .5 mi from Itasca Community Library. | 1.3 mi from Benson Primary School |
| .5 mi from Historical Train Depot. | 1.3 mi from St. Luke School & Day Care |
| .6 mi from Itasca Waterpark. | 1.3 mi from Peacock Middle School |

JOIN THE FIGHT IN STOPPING HAYMARKET FROM COMING TO ITASCA BY ATTENDING THE PUBLIC HEARING ON SEPTEMBER 18TH!

CREATED BY CONCERNED CITIZENS OF ITASCA

WWW.NOITASCAHAYMARKET.COM

*per Mayor Pruyne's June 21st statement **Google Maps ***<https://statisticalatlas.com/county/Illinois/DuPage-County/Populationper>
****Daily Herald article on 6/19/2019 *****FOIA records on 932 W. Washington & 120 N Sangamon St. in Chicago
***** http://www.josre.org/wp-content/uploads/2014/12/9830-63_92.pdf

EXHIBIT Q

Massive crowd forces Itasca to postpone hearing over proposed Haymarket drug treatment center

By JOHN KEILMAN
CHICAGO TRIBUNE | SEP 19, 2019



Opponents of a Haymarket drug treatment center coming to Itasca march toward Peacock Junior High prior to a public hearing that was ultimately postponed Sept. 18, 2019. (Chris Sweda / Chicago Tribune)

The first meeting to determine the fate of a proposed Itasca addiction treatment center was postponed Wednesday when a massive crowd of about 1,500 people proved too large for the town's largest indoor public space to accommodate.

The throng equated to roughly 17 percent of the 8,700-resident village. It was plain that most had come to show their opposition to Haymarket Center's plan to convert a struggling Holiday Inn into a 200-bed rehab, saying it would prove an unaffordable and possibly dangerous tax drain.

ADVERTISING



“I understand that there’s a need for a rehab center — we do need it — (but) I just think it’s not fiscally responsible to be put into Itasca,” said April Senase, who has lived in the village for a decade. “ ... Those of us who moved here and work two and three jobs to live in this town, it’s going to push us to where we have to leave.”

The village's Plan Commission has rescheduled the meeting for Oct. 2 at a location yet to be chosen.

An hour before the meeting was supposed to begin, each side took a shot at shaping public opinion. Up first was Haymarket, the Chicago-based nonprofit that has been trying for more than a year to establish what it says is a much-needed treatment center in DuPage County.

At a news conference outside Peacock Junior High, whose gymnasium was to host the meeting, Haymarket backers told personal stories of addiction overcome through treatment, and of loved ones who died in the opioid epidemic.

State Rep. Deb Conroy, D-Villa Park, who chairs the House Mental Health Committee, told reporters that the state government is willing to help Itasca with lost tax revenue from the hotel if that's what it takes to get Haymarket the green light.

“Take that argument away, and all we have left is hate,” she said. “I believe hate is just misunderstanding and fear. Let's not let hate win.”

The opposition, which has already printed flyers, issued an open letter and created a busy Facebook page, made its case with spectacle, marching to the school in a line that stretched for blocks and filled the width of E. North St.

“Small-town proud!” a man shouted again and again into a megaphone, echoed by the crowd.

Inside, many people wore T-shirts bearing that slogan or stickers that read “No Itasca Haymarket.” Resident Jerry Johnson, noting that the local fire district has a single ambulance, said it couldn’t afford to keep up with what he said would likely be a slew of medical calls from the facility.



Felicia Miceli holds a photograph of her son, Louie Miceli, as opponents of a Haymarket drug treatment center march toward Peacock Junior High prior to a public hearing on Sept. 18, 2019. Louie died of a heroin overdose at the age of 24 in 2012. He became addicted to opiates after suffering a sports injury. (Chris Sweda / Chicago Tribune)

But he also expressed concern about the possible impact of the patients.

“A block away from the Holiday Inn is our nature trail, our water park and our library, which are frequented daily by children,” he said. “Not to mention, if you go in the other direction, there are three gaming places that serve alcohol. I don’t know that’s the best location to put a facility like this.”

He said, though, that he was willing to hear Haymarket's side. But before that could happen, village attorney Yordana Wysocki announced that given the size of the crowd, the hearing would have to be postponed.

That brought a round of chants and applause, which Wysocki immediately tried to squash.

"This is a public meeting with legal significance," she said. "... This isn't a pep rally. Please do not cheer, boo and make other disruptive noises."

The gathering dissolved quickly after that. Outside, Haymarket volunteer Mary Shaver said resistance to the rehab center was heartbreaking.

"I now work in hospital emergency rooms and see people come in and beg doctors to try to save their son, their daughter," she said. "Why not have a place to treat people where family members can be involved?"

But resident Lisa Russo said it all comes down to money. Itasca can't afford to host the center, she said, shrugging off Conroy's assurance of state aid.

"I don't buy that," she said. "You're promised something, and a year from now, 'Well, that money's not there anymore.' So then what happens? It falls on the community. And we're a very small community that, economically, cannot handle that."

[**jkeilman@chicagotribune.com**](mailto:jkeilman@chicagotribune.com)

Twitter @JohnKeilman

EXHIBIT R



Sept. 25, 2019

Dear Residents,

I wanted to let you know as soon as possible that the Village's Plan Commission is canceling the Oct. 2, 2019 hearing.

After the overwhelming turnout by residents at the first Plan Commission hearing Wednesday, Sept. 18, 2019, we were forced to postpone the hearing due to capacity. According to law, if there are people who want to attend a Plan Commission hearing and cannot get in, the hearing must be postponed. Last Wednesday evening, after more than 1,350 had filed into the F.E. Peacock Middle School, we exceeded capacity. We had approximately 300 people waiting outside who still wanted to attend.

Since that evening, Village staff has been working non-stop to try and find a venue that would fit approximately 2,000 people, and that would be close for our residents. While we are actively having discussions with a few places, Village staff is unable to secure a large enough venue in time to post an October 2 meeting agenda.

It is the Village's goal to schedule the next Plan Commission hearing as soon as possible.

Thank you for your interest and support of the Village.

Mayor Jeff Pruyn

EXHIBIT S



ITASCA FIRE PROTECTION DISTRICT NO. 1
520 W. IRVING PARK ROAD, ITASCA, IL 60143

James F. Burke, Jr
Fire Chief

John G. Radzinski
Deputy Chief

Administration: 630-773-1223

Fire Prev. Bur: 630-773-1240

Fax: 630-773-3381

June 11, 2018

To: Shannon Malik

From: Michael Lisek

Director of Fire Prevention

The following are comments based on my review of the proposed plan submitted by Bridge Development Partners:

1. Construction type of proposed hotel.
2. Access road to handle 80,000 GVM.
3. Turning radius needs, see attached Fire Department documentation.
4. Traffic lights/Automatic gates would require Opticom type system. Manual gates would require a lock that is operable with our KNOX BOX key.
5. Fire Protection/ fire pump(s) needs for buildings 1/2/3

Serving the Community Since 1909

EXHIBIT T

ITASCA SCHOOL DISTRICT 10

ADMINISTRATIVE CENTER
MR. CRAIG BENES
200 N. MAPLE ST.
ITASCA, IL 60143-1722
(630) 773-1232 Fax (630) 773-1342

FOR IMMEDIATE RELEASE

Contact: Craig Benes, Superintendent | 630-773-1232 (office)

ITASCA DISTRICT 10 SUPERINTENDENT PROVIDES TESTIMONY ON PROPOSED DEVELOPMENT

On April 7th, 2021, District 10 Superintendent Craig Benes will provide testimony on the economic impact of proposed development at 860 W. Irving Park, Itasca. The district is testifying to the Village of Itasca Plan Commission which will determine the use of the former Holiday Inn location. The proposal would establish in Itasca one of the largest substance abuse treatment facilities in the region. The economic impact of such a large facility on a small school district and the community is significant and adverse. The school district has a duty to share this information to the Itasca Plan Commission.

Benes will first share the District 10 Goals and Mission which call for us to serve all children and hi-light our strong commitment to students with disabilities. This is our culture as a school community and is reflected in the ISBE School Report Card. It is also evident in our commitment to provide both in-person and remote instruction during the pandemic.

Benes' testimony will also focus on the potential economic impacts on the school district, which serves Pre-K through 8th grade students in its three schools. Under varying circumstances, the children of patients at the facility may be eligible to attend Itasca District 10 schools as governed by several laws including residency guidelines, IDEA and the McKinney-Vento homeless law. Increases in enrollment with no tax revenue will adversely impact the school district. The per pupil cost in District 10 is just over \$11,000 and that cost may increase to nearly \$28,000 if a student has special needs.

Also, under the previous use of the land as a hotel, property taxes were paid by Holiday Inn to the school district. On May 21, 2020, the current owner of the property filed for tax exempt status for the land. The school district opposed the tax exempt application. Prior to a final determination, the petitioner withdrew the application. However, during the current Itasca Plan Commission process, the petitioner has indicated an intent to refile for tax exempt status. If that is approved, the tax rate in District 10 may increase. Homeowners and business owners in the school district would experience a relative tax

ITASCA SCHOOL DISTRICT 10

increase to make up for the reduction in tax revenue from this site. Both lost tax revenue and potential new student costs would place an economic hardship on one of the smallest school districts in DuPage County.

In addition to the economic impacts, Benes will share potential safety implications of the facility. “We have a strong connection and relationship with the Itasca Police Department and the Itasca Fire Department,” Benes says. “This includes response to emergency situations at any of our three schools. In addition, we benefit from both departments being highly involved in our education programs for students through classroom and school-wide presentations and other connections. As has been shared by others testifying, we have concerns that the proposed facility will have an impact on the police and fire resources, potentially meaning a reduction in the services provided to our students.”

The focus of Benes’ testimony will be to ensure the plan commission understands the potential economic impact and safety implications of the proposed substance abuse treatment facility on the district. It is common for the school district to provide information related to the economic impact of proposed developments including recent housing proposals and future proposed development of the Itasca Country Club.

“This testimony is about transparency and facts related to the proposed facility and the potential economic impact and potential safety impact,” Benes says. “Our mission states, in part, that we are dedicated to academic excellence and support of individual differences. We have a strong commitment to students with disability and inclusivity of all students. We believe strongly in this mission and district goals and use both to guide our efforts each and every day. However, our district goals also call for fiscal responsibility as our commitment to this directly impacts the quality of education for both current and future students. The existing proposal is economically adverse to our students and the district.”



RAYMOND BENSON PRIMARY
301 E. WASHINGTON ST.
ITASCA, IL 60143-2159
(630) 773-0554
Fax (630) 285-7474

ELMER H. FRANZEN INTERMEDIATE
730 N. CATALPA ST.
ITASCA, IL 60143-1465
(630) 773-0100
Fax (630) 285-7468

F.E. PEACOCK MIDDLE SCHOOL
301 E. NORTH ST.
ITASCA, IL 60143-1620
(630) 773-0335
Fax (630) 285-7460

EXHIBIT U

ITASCA SCHOOL DISTRICT 10

ADMINISTRATIVE CENTER
200 N. MAPLE ST.
ITASCA, IL 60143-1722
(630) 773-1232 Fax (630) 773-1342

April 7, 2021

Subject: Testimony to Plan Commission

Dear Itasca District 10 Parents,

Once again, I want to start by thanking everyone for your partnership this year as we have navigated a school year during a global pandemic. It is a year none of us will ever forget but I am thankful we continue to work through this together.

In an effort to keep you informed and ensure that you have accurate information, I wanted to share with you that I am providing testimony to the Itasca Plan Commission tonight. The testimony document and news release will also be loaded to the district website (www.itasca10.org).

During the hearing testimony, I will share District 10 Goals and Mission which call for us to serve all children and hi-light our strong commitment to students with disabilities. This is our culture as a school community and is reflected in the ISBE School Report Card. It is also evident in our commitment to provide both in-person and remote instruction during the pandemic.

The main focus of my testimony will be centered around the adverse economic impact of the proposed development at 860 W. Irving Park Road and the potential safety impact on the schools in our school district. Under varying circumstances, the children of patients at the facility may be eligible to attend Itasca District 10 schools as governed by several laws including residency guidelines, IDEA and the McKinney-Vento homeless law. This would result in additional costs to the school district.

I also will share details about our strong relationship between District 10 and the Itasca Police and Fire departments. One concern being shared is regarding the potential for services at the proposed development, which could impact response time for emergency situations at any of our three schools. In addition, District 10 benefits from both departments being highly involved in our education programs for students through classroom and school-wide presentations and other connections. An additional concern is if that would continue given the potential impact on the police and fire resources.

ITASCA SCHOOL DISTRICT 10

Given all of these concerns, it is important to appreciate our district goals call for fiscal responsibility as our commitment to this directly impacts the quality of education for both current and future students. The existing proposal is economically adverse to our students and the district.

It is not the role of the school district to endorse or sanction proposed developments. However, it is our responsibility to indicate the economic and safety impacts of this proposal on the school district to the Itasca Plan Commission. The economic impact of such a large facility on a small school district is significant and adverse.

I hope this email helps you understand the purpose and focus of my testimony as I know it can be difficult to keep track of all the information related to the proposed development. Once again the District's testimony will be posted on the D10 website (www.itasca10.org).

Sincerely,

Craig Benes, Superintendent



RAYMOND BENSON PRIMARY
301 E. WASHINGTON ST.
ITASCA, IL 60143-2159
(630) 773-0554
Fax (630) 285-7474

ELMER H. FRANZEN INTERMEDIATE
730 N. CATALPA ST.
ITASCA, IL 60143-1465
(630) 773-0100
Fax (630) 285-7468

F.E. PEACOCK MIDDLE SCHOOL
301 E. NORTH ST.
ITASCA, IL 60143-1620
(630) 773-0335
Fax (630) 285-7460

EXHIBIT V

300 South Wacker Drive, Suite 2200
Chicago, Illinois 60606
312.258.1600 ph 312.258.1955 fx

DASPINAUMENT
LLP

527 Encinitas Boulevard, Suite 204
Encinitas, California 92024
760.635.1465 ph 760.635.1475 fx
www.daspinaument.com

Bridget M. O'Keefe

312.258.3795

bokeefe@daspinaument.com

October 11, 2021

VIA EMAIL

Charles E. Hervas
Hervas, Condon & Bersani, P.C.
333 Pierce Rd. Suite 195
Itasca, IL 60143

Re: Haymarket – Possible Conditions

Dear Chuck:

As we know, over the next few weeks, the Itasca Village Board will consider Haymarket's applications for a planned development by special use with exceptions and Class I Site Plan approval to allow the operation of a healthcare facility to treat individuals suffering from substance use disorder and behavioral health issues at 860 W. Irving Park Road.

As we enter into the final stage of what has been a very lengthy approval process, Haymarket continues to attempt to partner with the Village of Itasca. Haymarket has considered the comments made by the Plan Commission and would like to submit for review by the Village Board the following list of conditions that it would agree to as part of approval of the Haymarket zoning applications:

1. Haymarket will agree to enter into a contract with a private ambulance company to handle basic life support calls generated by Haymarket DuPage as a condition of opening and operating its facility.
2. Haymarket will agree to enter into a contract with an additional private ambulance company if needed to provide additional capacity to handle basic life support calls that may arise.
3. Haymarket will agree to meet immediately or at any time prior to the opening of the facility with the Itasca Fire Protection District (IFPD) to review protocols that will govern Haymarket's relationship with the secondary private ambulance company or companies. Haymarket will agree to consider any reasonable recommendations suggested by IFPD to ensure collaboration and the provision of efficient emergency services to Itasca residents and businesses.
4. Haymarket will agree to meet as needed upon the request of the IFPD and/or the Itasca Police Department (IPD) to review call volumes generated by Haymarket DuPage and will

October 11, 2021

Page 2

commit to work collaboratively to further the provision of efficient emergency services to Itasca residents and businesses.

5. Haymarket commits to continue to pay the assessments owed for Special Service Area No. 3.

It is our client's hope that this good faith effort to negotiate a compromise to the concerns expressed by the Plan Commission will result in a positive vote by the Village Board approving Haymarket's applications. This will allow much needed life-saving services to be provided to Itasca residents and the residents of DuPage and the Collar Counties.

Very truly yours,



Bridget O'Keefe

BOK:jks

cc: Mary Dickson
Stephen P. Ellenbecker
Steve Dinolfo
Jennifer Smith
Yordana Wysocki

EXHIBIT W

HERVAS, CONDON & BERSANI, P.C.
ATTORNEYS AND COUNSELORS AT LAW



CHARLES E. HERVAS
MICHAEL W. CONDON
MICHAEL D. BERSANI*
JASON W. ROSE
YORDANA J. WYSOCKI
G. DAVID MATHUES

333 PIERCE RD., #195
ITASCA, IL 60143-3156

(630) 773-4774
(888) 268-4949
FAX (630) 773-4851

CHRISTIAN E. KETTER
ANDREA M. NIKOLAI
KALEAH M. AULT

Writer's Email Address:
ywsocki@hcbattorneys.com

*Admitted in Illinois and Florida

October 26, 2021

VIA EMAIL

Ms. Bridget O'Keefe
Daspin Aument, LLP
300 South Wacker Dr., Ste. 2200
Chicago, Illinois 60606

Re: 860 W. Irving Park Road Zoning
Application (Haymarket DuPage)
PC 19-014

Dear Ms. O'Keefe:

We are in receipt of your letter dated October 11, 2021, which offered certain conditions which Haymarket DuPage would agree to as part of approval of its zoning application. Although the Village of Itasca appreciates your offer, we have serious concerns about the enforceability of these conditions.

In *Keystone Montessori Store v. Village of River Forest*, 2021 IL App (1st) 191992, the First District Appellate Court recently found void ab initio an agreement between the Village of River Forest and Keystone Montessori School which imposed various conditions on Keystone's planned development permit, including that it not apply for a tax exemption on its property taxes. If Keystone became tax exempt, the agreement provided that the permit may be declared void and Keystone would pay an annual monetary penalty of \$100,000. The Court held that the agreement was void as contrary to public policy as violating the constitution and Illinois Tax Code. Although raised by Keystone, the Court did not address its other arguments concerning contract zoning and perpetual contract, both of which were raised in Keystone's complaint.

Similarly, here, the Village has reservations about entering into an agreement which may be construed as contract zoning or against public policy. Such an agreement may be found void

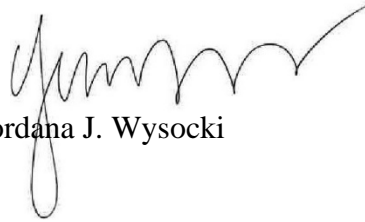
HERVAS, CONDON & BERSANI, P.C.

Ms. Bridget O'Keefe
October 26, 2021
Page 2

ab initio and unenforceable, leaving the Village in the same position it was in if no agreement was entered into.

Very truly yours,

HERVAS, CONDON & BERSANI, P.C.

A handwritten signature in black ink, appearing to read 'Yordana J. Wysocki', with a large, stylized flourish at the end.

Yordana J. Wysocki

YW/jah

cc: Mary Dickson
Stephen P. Ellenbecker
Steve Dinolfo
Jennifer Smith

EXHIBIT X

300 South Wacker Drive, Suite 2200
Chicago, Illinois 60606
312.258.1600 ph 312.258.1955 fx

DASPINAUMENT
LLP

527 Encinitas Boulevard, Suite 204
Encinitas, California 92024
760.635.1465 ph 760.635.1475 fx
www.daspinaument.com

Bridget M. O'Keefe
312.258.3795
bokeefe@daspinaument.com

October 26, 2021

VIA E-MAIL TRANSMISSION ONLY

Yordana Wysocki
Charles E. Hervas
Hervas, Condon & Bersani, P.C.
333 Pierce Rd. Suite 195
Itasca, IL 60143

Re: Haymarket DuPage LLC/Village of Itasca

Dear Ms. Wysocki:

I am in receipt of your letter dated October 26, 2021, wherein, on behalf of the Village, you express "serious concerns" about the enforceability of conditions Haymarket DuPage LLC has suggested the Village consider in approval of Haymarket's application for zoning relief, citing *Keystone Montessori Store v. Village of River Forest, 2021 IL App (1st) 191992*.

The Haymarket team is very familiar with this case, having analyzed it when issued. In my opinion, *Keystone* is not applicable to the conditions we have offered for consideration. As you note, *Keystone* centered on a 1998 contractual agreement between River Forest and Keystone which provided that a planned development for operation of the school would be granted on the condition that the school would never apply for a property tax exemption. The agreement regarding property taxes was approved, then followed by the approval of the ordinance granting the planned development with the condition that Keystone would pay property taxes on the parcel.

At issue in *Keystone* is the legality of the contract between River Forest and Keystone. The court held that this provision in the contract was void as against public policy. Finding thus, the court also held that the condition on zoning was equally not enforceable, as to allow the Village to enforce this permit condition would effectively be to enforce the tax agreement which had been deemed void.

While *Keystone* has much to offer a zoning applicant which plans a tax-exempt use of its property (such as Haymarket), it has limited applicability to typical conditions on zoning such as are at issue here. As you know, the Illinois Municipal Code, at 65 ILCS 5/11-13-1.1 empowers municipalities to permit the classification of special uses within any zoning district. This section of the Code also specifically provides that a special use may be subject to conditions reasonably necessary to meet the standards set forth for approval of a special use. As you know, conditions are commonly considered by municipalities across the state of Illinois in conjunction with special use applications.

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In addition to specifically being allowed by statute, conditions on approval of special uses are specifically addressed in case law. For example, in *Halfway House v. City of Waukegan*, 267 Ill. App. 3d 112, 641 N.E.2d 1005, 1009 (2d Dist. 1994), the court recognized Illinois law permitting placement of conditions on zoning approval, noting that any condition set forth “must be reasonably necessary to protect the public health, safety, and welfare.” “Generally, courts have upheld reasonable conditions, even though they severely restrict the scope of the operation.” *Id.* Further, the Court cited 3 R. Anderson, *American Law of Zoning* §21.31, at 751 (3d ed. 1986) for the proposition that “conditions must be related directly to, and be incidental to, the proposed use of the property and not to the manner of the operation of the business conducted thereon.” *Id.*

Thus, in review of the conditions both the Village staff has recommended, and those which Haymarket has suggested be considered, the question at issue is whether the conditions are reasonably necessary to protect the public health, safety and welfare.

Other than for Haymarket’s offer to continue to pay the Special Service Area (“SSA”) Tax until completion of the SSA, the conditions recommended by Haymarket are directly related to a Village standard for approval of a special use permit, and are integrally tied to concerns that the Plan Commission raised for denial of the zoning application, *i.e.*, the Haymarket healthcare facility’s impact on EMS provision of service to the community – which, **if proven**, could potentially implicate public health, safety and welfare concerns. Thus, these conditions are not such as should raise any concern under *Keystone*.

Further, approving the zoning application with the conditions suggested by staff or by Haymarket would not constitute “contract zoning” which has been defined as a contract between a zoning authority and a property owner where the zoning authority bargains away its police powers, or as an agreement with a property owner which would result in a non-uniform application of a village’s zoning law and create inconsistencies within a zoning classification. Neither of these scenarios are at issue here. As you know, Haymarket’s application for operation of a health care facility is proper within the zoning district at issue, subject to approval by the Village as a special use. Placement of conditions on the grant of a special use permit is permitted by law. Again, none of the conditions recommended by Haymarket for consideration by the Village reach the level of illegal contract zoning.

On the basis set forth herein, I urge you to review your legal opinion relative to the conditions proposed by Haymarket DuPage LLC, and allow a full discussion of the zoning application to be had with consideration of these conditions which are designed to further protect the public health, safety and welfare of the Village and its residents.

Very truly yours,



Bridget O'Keefe

BOK:jks

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cc: Mary Dickson
Stephen P. Ellenbecker
Steve Dinolfo
Jennifer Smith

EXHIBIT Y

Holiday Inn - Haymarket Center Proposal

Posted on: November 2, 2021

Village Board Issues Final Decision on Haymarket's Petition

November 2, 2021 – Tonight, the Itasca Village Board voted 6-0 to deny Haymarket's request for a planned development by special use with exceptions and a class I site plan to allow a mixed-use residential and healthcare facility and other accessory uses in the B2 Community Business District. Below you will find the full text of the statement that Mayor Jeff Pruyn provided at tonight's meeting:

Reasonable - the definition of reasonable is fair, sensible.

That is what the Village of Itasca was asked to consider - if Haymarket, operating in Itasca, is reasonable.

I am a lifelong resident of Itasca, and I've had the privilege of being Village President since 2009.

As Village President, with dedicated staff and Village Board members, my number one focus is that we do everything we can for the betterment of our residents.

We are a village that is compassionate - a village that gives - we help where we can.

Itasca is a small town. We represent 1.03% of the total population of DuPage County. Yet, as a small town, we have a big heart.

Our Itasca Cares collaboration is our way of lending a helping hand. Our Outreach Team helps people get back on their feet.

No one wants to believe there is a hunger problem in their community, but our Itasca Food Pantry is a necessity. And unfortunately, COVID created a closure to our Itasca Homeless Shelter, but it's what the community needed pre-pandemic.

When we first heard about Haymarket looking to come to Itasca, there are only two words that came to my mind: Itasca Cares.

Others and I were open to the idea of the facility because, make no mistake, treatment facilities are needed in and around DuPage County. We had many discussions and meetings to figure out the size and scope of a potential Haymarket facility and how this would work in one of the smallest villages in Northern Illinois.

My number one concern, as I stated earlier, is our residents - current residents, and future residents - which is what those living at Haymarket would become. They would become Itasca residents.

As Village President, I have to ensure our Village's functionality and financial responsibilities go hand in hand. As many of you know, I'm a certified public accountant. I account for money. Fiscal responsibility is what I do, and it carries over to my role as Village President.

As time went on, we learned more and more about the immense size and scope of Haymarket's plan, and I kept coming back to one question: How could Itasca reasonably handle a facility like this?

During the Plan Commission meetings, one of the biggest items to be discussed was 9-1-1 calls for service. At various times during the meetings, Haymarket presented different forecasted calls for service. The bottom line is the forecasting is more than what our Fire District can handle now with our one ALS ambulance.

Haymarket suggested they could provide a second ambulance, but that would also require additional staff, maintenance and other costs Itasca just doesn't have. And for the record, I as Village President cannot just reject the offer of an ambulance, as was suggested in testimony. That decision must be made by the Fire District. I do not have that authority.

Itasca is tax capped. According to state law, we do not have the ability to just raise taxes. If we required extra operating funds to pay for the service of a gifted ambulance, we would have to go to our residents to ask for an increase in taxes to help pay for it. That is not reasonable.

Early on, it was clear the potential financial burden of Haymarket would be heavy on Itasca. Representative Deb Conroy suggested the state could provide a grant to help the financial burden, but several things are important to point out: when that offer was made, it was very early in the process and we did not have critical data and information from Haymarket on true potential costs; and, what is promised today is not guaranteed tomorrow. Itasca has been the victim, once before, of being awarded a grant and then suddenly the funding went away. We cannot count on unknown dollars. That does not make good fiscal sense.

It was clear to state elected officials, county elected officials, and local officials that one of the smallest communities was going to have to absorb 100% of the cost, risk, and burden of servicing a facility that would be accepting residents beyond Itasca.

More importantly, it was also clear to Haymarket that costs went beyond Itasca's means.

On November 13, 2019, the Plan Commission Chairman asked Dr. Lustig, and I quote:

"So I'm also concerned that our police and fire services may not be available to existing Itasca residents and businesses and those of other communities where we have intergovernmental agreements. My second bottom-line financial question is if the Itasca fire or police department finds it necessary to increase personnel and/or equipment because of an increase in calls caused by Haymarket, would Haymarket be willing to pay for the added personnel and equipment as long as they're being served here?"

Dr. Lustig's response: "No, it would not."

To the residents of Itasca, I say to you this evening that as Village President, Haymarket's request on our Village is unreasonable.