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August 1, 2014

City of Escondido
City Clerk
201 North Broadway
Escondido, CA 92025

Re: Application to Appeal a Decision to the City Council
Project Case No. PHG 14-0017

Dear City Clerk:

As attorney for Southwest Key Programs, I am submitting the enclosed Application to Appeal a Decision to the City Council, signed by me as Southwest Key's attorney, together with a check for the filing fee of \$1,740.

Please call me at 619.398.4496 if you have any questions. Thank you for your time and attention to this matter.

Sincerely,

David Loy
Legal Director



CITY OF ESCONDIDO
City Clerk
201 North Broadway
Escondido, CA 92025
(760) 839-4617
Fax: (760) 735-5782

FOR CITY USE ONLY	
_____	Application Code(s)
_____	Fee (Non-Refundable)
_____	Receipt No.
_____	Date Filed
_____	Council Hearing Date
_____	Planning Case File No. (if applicable)

APPLICATION TO APPEAL A DECISION TO THE CITY COUNCIL

Applicant: Southwest Key Programs Phone: 512.300.4129

 (Print)

Mailing Address: 6002 Jain Lane Austin, TX 78721

 (Street) (City) (Zip)

E-mail: arodriguez@swkey.org, davidloy@aclusandiego.org Fax: 512.462.2028

Legal Owner: Torrey Pines Development Group, LLC Phone: 858.592.4771

 (Print)

Property Address: 1817 Avenida del Diablo

 (Subject of Appeal)

Assessor Parcel Number: 235-180-32-00

Project Case Number (if appropriate): PHG 14-0017

Is legal owner aware of this application? Yes No

Justification for appeal (Use additional paper, if necessary):

PLEASE SEE ATTACHED

Distribution:
 Planning Division
 City Manager
 City Clerk
 Other _____
 Applicant


 Signature of Applicant
8/1/14
 Date



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August 1, 2014

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**APPLICATION TO APPEAL A DECISION TO THE CITY COUNCIL
(Attachment)
Project Case Number PHG 14-0017**

Justification for appeal:

The Planning Commission erroneously denied a conditional use permit (CUP) for Southwest Key Programs to operate a 96-bed unaccompanied youth care facility serving minors between 6 and 17 years of age on the subject property. The decision was not justified by the facts before the Commission, which show that (1) sound principles of land use support granting the CUP, (2) the facility would serve the community, (3) the facility will not cause deterioration of bordering land uses or create special problems for the area in which it is located, and (4) the facility is compatible with surrounding properties and the local community. As explained below, the Commission's findings and concerns are not substantiated by the facts.

1. Sound principles of land use

Sound principles of land use favor approving Southwest Key's application for a CUP. The property was previously used by Palomar Health as a skilled nursing facility. Palomar Health closed the facility in August 2013. Since that time, the property has been vacant. Contrary to the Planning Commission's findings, Southwest Key's use of the site would not change the residential character of the neighborhood or create any concerns regarding traffic, parking, security, or noise. In fact, Southwest Key would improve the neighborhood by taking over a vacant property and preventing it from deteriorating, to the benefit of the surrounding area and the City as a whole.

a. Residential character

As described in the staff report to the Planning Commission on June 24, 2014, the site is surrounded by “a Sikh religious facility and single-family residences” on the north side, “Del Lago Academy High School” on the south, and “single-family residences” to the east and west. Previously, the site was “used as a residential care facility ... for more than 30 years.” Staff noted that although “an unaccompanied youth care facility is not the same use as a skilled nursing facility ... there are certain similar operational characteristics. The proposed SWK facility would have the same number of residents as the previous skilled nursing facility,” and it would provide “daily living services” to youth, “similar to the previous use.” Accordingly, the proposed facility would not be “out of character for the neighborhood,” and the residential character of the neighborhood would not be altered by converting the site to an immigrant youth shelter. Indeed, the neighborhood would be improved if Southwest Key took over a currently vacant site, preventing it from becoming an eyesore due to decay or vandalism.

b. Traffic

The staff report raised no concerns about traffic, noting “[t]he project takes access” from two roads, “Avenida del Diablo and Del Dios Road.” The maximum number of staff on site at any given time would be 40, with no indication that access to the property is insufficient to handle that number. Also, an immigrant youth shelter would generate less traffic than the previous use, as unaccompanied minors would have few if any visitors, unlike the residents of a skilled nursing facility. According to the Notice of Exemption attached to the staff report, “[t]he proposed project would not substantially increase the number of daily vehicle trips to the site nor impact vehicular circulation on or around the site.”

c. Parking

As the staff report notes and the Commission did not dispute, the site contains 53 parking spaces, “including 12 ADA accessible spaces.” Although staff noted that “12 vans will be parked on the site” for transportation to offsite activities such as recreation, leaving 41 available spaces, the staff report concluded “the parking provided on the site would be adequate because the residents would not be driving, there would be few visitors to the site, and the largest number of employees at the site at one time is 40 during the day shift.” To the extent there are concerns regarding “the parking required for on-site medical, dental, education, or social worker staffing,” as the Commission contended, the Commission failed to consider that the concerns could be addressed through a condition on the permit that would require Southwest Key to keep fewer vans on the site, or some other appropriate restriction.

d. Security

Neither the planning staff nor the police department raised any security concerns. As noted in response to a request for comments attached to the staff report, the police department stated, “No apparent law enforcement concerns at this time.” The report itself noted, “The Police

Department has expressed no concern regarding the proposed development and their ability to continue to provide service to the site.” In an email to planning staff, the police chief asked only that the property be “fully fenced” and for “a single point of contact that has ultimate authority should we have a problem on the property or with the unaccompanied minors.” The staff report noted that Southwest Key would comply and proposed “six-foot-high decorative tubular steel fencing on the site.” As the report stated, Southwest Key’s “experience with other similar facilities ... indicates that the frequency of unauthorized departures is less than 1% of total residents.” In fact, as Southwest Key informed planning staff by email on March 4, 2014, “Out of approximately 9,000 children served by SWK in its unaccompanied minor programs last year, only 0.004% left any of its programs without authorization to do so.” As a result, the Commission had no plausible basis for its assertion that “the proposed fencing for the site appears inadequate for the anticipated security needs of the proposed facility.”

e. Noise

The staff report raised no concerns about noise. According to staff, “On-site activities will primarily occur indoors, outside areas will be limited to eating, studying or other quiet activities; no active recreation, loudspeakers would be permitted.” Outdoor recreation would take place in nearby “local parks and public school spaces.” As a result, it is unlikely that an immigrant youth shelter would generate significant levels of noise compared to the previous use. The Commission therefore had no factual basis to justify concerns about noise generated by the proposed facility.

f. Size of site

Inexplicably, the Commission found the “proposed site is too small for the proposed use,” with “too many people” in “too small a space,” without any reason to believe the staff and resident population would be greater than the previous use. Indeed, as the staff report noted and the Commission did not dispute, the proposed facility “would have the same number of residents as the previous skilled nursing facility.”

g. Recreation

Without explanation or supporting evidence, the Commission asserted that Southwest Key’s plan to provide outdoor recreation at “neighboring parks or local schools ... does not appear credible” and “would have a negative impact on resident use of the same facilities.” There is no reason to believe Southwest Key cannot arrange for appropriate outdoor recreation offsite or that such recreation would interfere with use by others. In the unlikely event of potential conflict, the problem could easily be remedied with a condition that such recreation be scheduled when others are not using the facilities. For example, use of parks could be scheduled during school hours, or use of school facilities when school is closed.

h. Assurances and site plan

Inexplicably, the Commission stated “the assurances made by the applicant were insufficient” and “the site plan is inadequate.” Southwest Key worked closely with planning staff to respond to their concerns and those of the community, providing detailed information and assurances, including but not limited to answers to specific questions attached as Exhibit G to the staff report as well as recommendation letters from the Mayor of Youngtown, Arizona, where another Southwest Key facility is located, and the San Diego County Office of Education, which contracts with Southwest Key for educational services.

As the Mayor of Youngtown wrote, “we thoroughly vetted the organization and principals involved All feedback and investigation results were positive. There were no complaints from neighbors of existing facilities in other cities.” The Youngtown facility, located in a former nursing home, “quickly became a good neighbor and a valued addition to the community ... with staff and clients quietly going about their mission of providing temporary housing for immigrant children.” The Mayor concluded, “I would heartily recommend the organization to any municipality being considered for a facility location.”

2. Service to community

Contrary to the Commission’s assertion, the proposed facility would in fact serve the community by (a) preventing a vacant site from deteriorating, (b) creating over 100 new jobs for local residents, and (c) infusing over \$8.5 million into the local economy. Though residents of the previous skilled nursing facility may have been “less ambulatory” than children who would stay in the proposed facility, there are abundant “active outdoor recreation areas” available nearby. The proposed facility is no more “out of character” for the neighborhood than a nearby school. Indeed, it is denying the CUP that would have “a negative impact on the community” by allowing a disused and deteriorating facility to remain “at a gateway to the City.”

3. Bordering land uses

The proposed facility would not cause any deterioration of bordering land uses or create any special problems for the surrounding area.

a. Hours of operation

Though the Commission was correct that the facility will have “24 hour per day operation,” neither the size of the staff nor the “turnover of minors” will have any “negative impact on the residential character” of the surrounding neighborhood.” As Southwest Key explained in Exhibit G to the staff report, it would “conduct all intakes in the building,” and at no time would there be “any adolescents standing in line outside the building waiting for an intake.” The majority of intakes “occur during traditional business hours 9am-5pm,” and Southwest Key is willing to accept “a restriction on intakes from 9pm to 7am ... should the City require it.”

Moreover, the Planning Commission cited no reason to believe the staff of the proposed facility would be any larger than that of the previous use.

b. Traffic and associated activities

As discussed above, there are no facts to support the Commission's finding that "the traffic and associated activities" or "the proposed off-site services" for residents of the Southwest Key facility "would adversely affect the bordering residential land uses."

c. Interaction with local students

Again, the Commission cited no facts and stated no reason to believe that "96 unaccompanied minors when combined with students from Del Lago Academy would adversely affect the bordering residential land uses." As the staff report explained and the Commission did not dispute, residents would not leave the facility unless "accompanied by a staff member(s)," and "SWK has a regimented weekly and daily schedule for residents." Because residents would not leave the facility without escort by staff members and would follow a strict schedule for "meals, classes, homework, recreation, and bed time," there is no reason to believe they would adversely impact the neighborhood.

d. Quality of life; noise, traffic, and parking

As explained above, there are no facts supporting the Commission's contention that the proposed facility would result in any significant "increase in noise and traffic" or would suffer a "lack of adequate onsite parking." Indeed, the proposed facility would likely generate less traffic than the previous use, as the residents would receive no visitors nor would there be ambulances routinely coming and going to transport patients, unlike the previous use. To the extent there might be a limited amount of "overflow parking on surrounding local streets," there is no reason to believe that would present a significant problem. As a result, the proposed use would not "diminish the quality of life for established uses in the area."

e. Offsite recreation

The Commission cited no facts to support its assertion that at "other facilities providing care for children," outdoor recreational activities "would typically be accommodated onsite when providing care for a large group of children." It is just as likely that other similar facilities provide outdoor recreation offsite. In any event, as discussed above, there is no reason to believe that Southwest Key's use of offsite facilities for outdoor recreation would create any problems for the community.

f. Non-residential use

The Commission cited no facts or reasons to believe the proposed use would be "more intensive" than the previous use or that it would "affect the suburban character of the established

residential neighborhood.” As already explained, the proposed facility would have the same number of residents as the previous use, and the children would remain indoors, following a regimented schedule of education and other activities, except for scheduled outdoor recreation that would not adversely affect the community. Indeed, to allow the property to remain vacant and subject to deterioration would create the precise effects the Commission purportedly wishes to avoid.

g. Security

Ignoring the City’s police department and police chief, the Commission wrongly contended the “operational and security measures ... are inadequate.” As discussed above, the proposed facility presents no valid security concerns. Given the extremely low rate of unauthorized departures from similar facilities—0.004 percent—the likelihood of “potential increase in demand for local police services” is so remote as to be virtually meaningless.

4. Compatibility with surrounding properties

For the reasons already discussed, the facts do not support the Commission’s assertion that the proposed use would be “more intensive” than the previous use or that it would have adverse “impacts on the surrounding neighborhood related to traffic, parking, noise and security.” The proposed use is entirely “compatible and consistent with the surrounding neighborhood.”

CONCLUSION

For the foregoing reasons, the City Council should approve Southwest Key’s application for a CUP to operate the proposed facility at 1817 Avenida del Diablo.

Respectfully submitted,



David Loy
Legal Director
Attorney for Southwest Key