

AGENDA NO. 3

PLANNING COMMISSION
RESOLUTION NO. 2009-P08

A RESOLUTION OF THE PLANNING COMMISSION OF THE
CITY OF OCEANSIDE, CALIFORNIA APPROVING A
VARIANCE ON CERTAIN REAL PROPERTY IN THE CITY OF
OCEANSIDE

APPLICATION NO: V-14-07
APPLICANT: Robert W. Kruger
LOCATION: 142 Carey Road

THE PLANNING COMMISSION OF THE CITY OF OCEANSIDE, CALIFORNIA DOES
RESOLVE AS FOLLOWS:

WHEREAS, there was filed with this Commission a verified petition on the forms prescribed by the Commission requesting a Variance under the provisions of Articles 10, 41, 43 of the Zoning Ordinance of the City of Oceanside to permit the following:

to exceed the 36-foot maximum height limit for a 54-foot to a 75-foot tall reception tower and antenna;

on certain real property described in the project description.

WHEREAS, the Planning Commission, after giving the required notice, did on the 9th day of February, 2009 conduct a duly advertised public hearing as prescribed by law to consider said application.

WHEREAS, pursuant to the California Environmental Quality Act of 1970, and State Guidelines thereto; this project is categorically exempt from CEQA per class 28 Section 15328 (a) Small Hydroelectric projects at existing facilities;

WHEREAS, there is hereby imposed on the subject development project certain fees, dedications, reservations and other exactions pursuant to state law and city ordinance;

WHEREAS, pursuant to Gov't Code §66020(d)(1), NOTICE IS HEREBY GIVEN that the project is subject to certain fees, dedications, reservations and other exactions as provided below:

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1	<u>Description</u>	<u>Authority for Imposition</u>	<u>Current Estimate Fee or Calculation Formula</u>
2			
3	Parkland Dedication/Fee	Ordinance No. 91-10 Resolution No. 06-R0334-1	\$3,503 per unit
4			
5	Drainage Fee	Ordinance No. 85-23 Resolution No. 06-R0334-1	Depends on area (range is \$2,843-\$15,964 per acre)
6			
7	Public Facility Fee	Ordinance No. 91-09 Resolution No. 06-R0334-1	\$2,072 per unit for residential
8			
9	School Facilities Mitigation Fee	Ordinance No. 91-34	\$2.63 per square foot residential
10			
11	Traffic Signal Fee	Ordinance No. 87-19 Resolution No. 06-R0334-1	\$15.71 per vehicle trip
12			
13	Thoroughfare Fee	Ordinance No. 83-01 Resolution No. 06-R0334-1	\$255 per vehicle trip
14			
15	Water System Buy-in Fees	Oceanside City Code §37.56.1 Resolution No. 87-96 Ordinance No. 05-OR 0611-1	Fee based on water meter size. Residential is typically \$4,395 per unit.
16			
17	Wastewater System Buy-in fees	Oceanside City Code § 29.11.1 Resolution No. 87-97 Ordinance No. 05-OR 0610-1	Based on capacity or water meter size. Residential is typically \$6,035 per unit.
20			
21	San Diego County Water Authority Capacity Fees	SDCWA Ordinance No. 2005-03	Based on meter size. Residential is typically \$4,154 per unit.
22			
23	Inclusionary housing in lieu fees—Residential only.	Chapter 14-C of the City Code.	\$1,000 per development project + \$100 per unit plus \$10,275 per unit.

24 WHEREAS, the current fees referenced above are merely fee amount estimates of the
25 impact fees that would be required if due and payable under currently applicable ordinances and
26 resolutions, presume the accuracy of relevant project information provided by the applicant, and are
27 not necessarily the fee amount that will be owing when such fee becomes due and payable;

28

1 WHEREAS, unless otherwise provided by this resolution, all impact fees shall be calculated
2 and collected at the time and in the manner provided in Chapter 32B of the Oceanside City Code
3 and the City expressly reserves the right to amend the fees and fee calculations consistent with
4 applicable law;

5 WHEREAS, the City expressly reserves the right to establish, modify or adjust any fee,
6 dedication, reservation or other exaction to the extent permitted and as authorized by law;

7 WHEREAS, pursuant to Gov't Code §66020(d)(1), NOTICE IS FURTHER GIVEN that
8 the 90-day period to protest the imposition of any fee, dedication, reservation, or other exaction
9 described in this resolution begins on the effective date of this resolution and any such protest must
10 be in a manner that complies with Section 66020;

11 WHEREAS, pursuant to Oceanside Zoning Ordinance §4603, this resolution becomes
12 effective 10 days from its adoption in the absence of the filing of an appeal or call for review;

13 WHEREAS, studies and investigations made by this Commission and in its behalf reveal
14 the following facts:

15 FINDINGS:

16 For the Variance for a 54-foot to 75-foot adjustable amateur radio tower and antenna

- 17 1. The proposed variance from the 36 foot height limitation is warranted due to the unique
18 topographical features of the subject property: namely, the property's low elevation
19 within a valley. The steep sloping hillside immediately adjacent to the tower site limits
20 the applicant from obtaining the proper reception for the operation of the Ham Radio
21 antenna.
- 22 2. The proposed adjustable tower and antenna up to 75 feet tall will not be precedent setting,
23 because conditions have been placed on this particular use that are specific to the user and
24 appropriate because of the user's special status as an amateur radio operator licensed by
25 the FCC (Extra Class license valid through May 23, 2016, Call Sign K6DEX).
- 26 3. The granting of the variance for a 54 to 75-foot tall adjustable tower will not constitute a
27 grant of special privilege inconsistent with limitations on other properties in the vicinity
28 and in the same zoning district. State and Federal law require local entities to provide
reasonable accommodation to HAM radio operators in recognition of their special status
as emergency communicators in times of crisis. Furthermore, applicant has been

1 conditioned to obtain all appropriate building permits and to follow all other applicable
2 codes and statutes relevant to this type of structure.

3 NOW, THEREFORE, BE IT RESOLVED that the Planning Commission does hereby
4 approve Variance (V-14-07) subject to the following conditions:

5 **Building:**

- 6 1. Applicant has already constructed the tower and antenna without obtaining permits and
7 without requesting any safety inspections. This prior construction is an unpermitted
8 structure and shall in no way be considered "permitted" by virtue of the granting of the
9 height variance herein. Applicant shall be required to submit all proper plans and
10 specifications relative to the construction of the tower and antenna as though same were not
11 already constructed, and shall submit to all applicable health and safety inspections as
12 deemed appropriate by the Building Official or his designee.
- 13 2. Applicable Building Codes and Ordinances shall be based on the date of submittal for
14 Building Division plan check.
- 15 3. The granting of approval under this action shall in no way relieve the applicant/project from
16 compliance with all State and Local building codes.
- 17 4. The building plans for this project are required by State law to be prepared by a licensed
18 architect or engineer and must be in compliance with this requirement prior to submittal
19 for building plan review.
- 20 5. All electrical, communication, CATV, etc. service lines within the exterior lines of the
21 property shall be underground (City Code Sec. 6.30).
- 22 6. Compliance with the Federal Clean Water Act (BMP's) must be demonstrated on the
23 plans.
- 24 7. A complete Soils Report and Structural Calculations will be required at time of plans
25 submittal to the Building Division for plan check.
- 26 8. The developer shall monitor, supervise, and control all building construction and supporting
27 activities so as to prevent these activities from causing a public nuisance, including, but not
28 limited to, strict adherence to the following:
 - a) Building construction work hours shall be limited to between 7:00 a.m. and 6:00
p.m. Monday through Friday, and on Saturday from 7:00 a.m. to 6:00 p.m. for work

1 that is not inherently noise-producing. Examples of work not permitted on Saturday
2 are concrete and grout pours, roof nailing and activities of similar noise-producing
3 nature. No work shall be permitted on Sundays and Federal Holidays (New Year's
4 Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, Christmas Day) except
5 as allowed for emergency work under the provisions of the Oceanside City Code
6 Chapter 38 (Noise Ordinance).

- 7 b) The construction site shall be kept reasonably free of construction debris as
8 specified in Section 13.17 of the Oceanside City Code. Storage of debris in
9 approved solid waste containers shall be considered compliance with this
10 requirement. Small amounts of construction debris may be stored on-site in a neat,
11 safe manner for short periods of time pending disposal..

12 **Planning:**

- 13 9. This Variance shall expire on June 1, 2009, if no building permits are obtained, unless a
14 time extension is granted by the Planning Commission.
- 15 10. This Variance approves relief from the 36-foot height limitation in the RS zone to construct
16 a Ham radio tower up to a maximum of 75 feet for amateur radio operations at the property
17 at 142 Carey Road. No deviation from this approved plan shall occur without Planning
18 Division approval. Substantial deviations shall require a revision to the Variance and or a
19 new Variance.
- 20 11. Variance V-14-07 is subject to the following general findings and conditions that are
21 consistent with both FCC PRB-1 and California Government Code § 65850.3, to wit:
- 22 a) The Variance is personal to Robert Kruger and does *not* run with the land.
- 23 b) The Variance is not transferable or assignable to any other person who may
24 purchase the real property or acquire any interest in the real property, except to
25 any other FCC-licensed amateur radio operator and who lists the Variance
26 location with the FCC as the amateur's primary station location (hereinafter, a
27 "Qualified Transferee").
- 28 c) All applicable usual City Variance requirements for antenna structures of this type
apply.

- 1 d) This Variance shall automatically terminate if: applicant Krueger or any
2 subsequent Qualified Transferee is no longer licensed by the FCC as an amateur
3 radio operator, or the applicant Krueger or any subsequent Qualified Transferee
4 no longer occupies this real property as his or her primary residence.
- 5 e) Applicant agrees without reservation that the terms of this Variance do not
6 constitute any burden or restraint on his rights regarding alienation or partition of
7 the real property subject to this Variance.
- 8 f) Any subsequent Qualified Transferee claiming rights under this Variance must
9 agree in writing to all of the above as condition precedent to the effective transfer
10 of rights granted herein.
- 11 g) The Ham Radio tower shall be cranked down to its minimum height when not in
12 use.
- 13 12. The applicant, permittee or any successor-in-interest shall defend, indemnify and hold
14 harmless the City of Oceanside, its agents, officers or employees from any claim, action or
15 proceeding against the City, its agents, officers, or employees to attack, set aside, void or
16 annul an approval of the City, concerning Variance (V-14-07). The City will promptly
17 notify the applicant of any such claim, action or proceeding against the City and will
18 cooperate fully in the defense. If the City fails to promptly notify the applicant of any
19 such claim action or proceeding or fails to cooperate fully in the defense, the applicant
20 shall not, thereafter, be responsible to defend, indemnify or hold harmless the City.
- 21 13. A covenant or other recordable document approved by the City Attorney shall be prepared
22 by the subdivider and recorded prior to the issuance of any building permits. The covenant
23 shall provide that the property is subject to this resolution, and shall generally list the
24 conditions of approval.
- 25 14. Prior to the transfer of ownership and/or operation of the site the owner shall provide a
26 written copy of the applications, staff report and resolutions for the project to the new owner
27 and or operator. This notification's provision shall run with the life of the project and shall
28 be recorded as a covenant on the property.
15. Failure to meet any conditions of approval for this development shall constitute a violation
of the Variance and will subject applicant to institution of revocation proceedings.

1 16. Unless expressly waived, all current zoning standards and City ordinances and policies in
2 effect at the time building permits are issued are required to be met by this project. The
3 approval of this project constitutes the applicant's agreement with all conditions herein.

4 PASSED on February 9, 2009 by the following vote, to wit:

5 AYES: Balma, Neal, Martinek, Parker, Bertheaud and Rosales

6 NAYS: Troisi

7 ABSENT: None

8 ABSTAIN: None

9 ADOPTED Resolution No. 2009-P08 on February 23, 2009.

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12 _____
Claudia Troisi, Chairperson
Oceanside Planning Commission

13 ATTEST:

14 _____
15 Jerry Hittleman, Secretary

16 I, JERRY HITTLEMAN, Secretary of the Oceanside Planning Commission, hereby certify that
17 this is a true and correct copy of Resolution No. 2009-P08.

18 Dated: February 23, 2009
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LEGAL DESCRIPTION

PARCEL 1: APN: (148-193-05-00)

142 CAREY ROAD

THOSE PORTIONS OF TRACT 2 LOT 6 OF MISSION DK, IN THE COUNTY OF
SAN DEIGO STATE OF CALIFORNIA, FILLED IN THE OFFICE OF THE COUNTY
RECORDER OF SAN DIEGO COUNTY