



January 23<sup>rd</sup>, 2023

To: Mayor Kudron and Town Trustees  
From: Kimberly White, Community Development Director

RE: Quasi-Judicial: Consideration to Grant an Encroachment License into the Snow Storage and Utility Easement for Certain Improvements Located Adjacent to Lot 2, Amended Bl 2, Ridge at Elk Creek Subdivision, more Commonly Referred to as 45 Mad Moose Lane, Grand Lake, Colorado.



### **Purpose**

The Town has received a Public Property Encroachment Application from Jason and Kimberly Monden (“Owner’s”) for the use a portion of the snow storage area and utility easement on Foxy Lane for a portion of their deck and it’s pier. Major encroachments, such as permanent concrete drives, require Board of Trustee Approval.

### **Background Information**

Encroachment agreements are for the purpose of allowing items of a more permanent nature to be placed in such an easement corridor with the understanding that the owner will retain public liability insurance on said encroachment, and, upon proper notification by the Town, the Owner shall remove said encroachment within 45 days. The Owner’s have recently constructed their home and a portion of their deck was built outside of the originally approved plans. After the completion of the project, the adjacent lot was combined to reconcile the non-conformance on the southern portion of the property, however an addition 1.5’ of deck is also overhanging the western portion of the property into the utility easement and snow storage for the HOA.

### **Municipal Code**

Section 11-6-1: Public Property Encroachments

*A. Encroachment Defined - An encroachment is any item that is placed, erected or built on the public right-of-way by a private property owner. A property owner shall seek permission from the Town to encroach onto Rights of Ways or municipal property prior to the encroachment occurring. Where an encroachment exists without Town approval, the owner shall be required to remove the encroachment at his own expense or seek permission from the Town for the encroachment to remain.*

*B. Types of Encroachments*



*1. Major Encroachments are considered encroachments that are more permanent in nature. Examples include, but are not limited to: buildings or structures, driveways, fences and retaining walls, decks and patios, some components of public utilities, as well as other immovable objects other than minor landscaping.*

*C. When Encroachments Will Not Be Granted*

*The following encroachment license or agreement requests will not be granted:*

- 1. Additions to existing buildings or other structures that would encroach or do encroach onto municipal property or road Rights of Ways, or*
- 2. The encroachment poses a danger to the public, or*

*D. When Encroachments May Not Be Granted*

*The following encroachment license or agreement requests may not be granted, as determined by the Town Board of Trustees:*

- 1. The proposed encroachment is in conflict with applicable Town Departments and/or applicable utility companies, or*
- 2. When construction has commenced prior to the issuance of a required permit from the Town.*

*E. Application*

- 1. A Narrative Request; and*
- 2. A Site Plan indicating exact measurements of the proposed encroachment and its position to the property boundaries; and*
- 3. Applicable Deposits and/or Fees, as set by Town of Grand Lake Board of Trustees Resolution; and*
- 4. Any other information determined by Town staff applicable to the review of the request.*

*F. Review and Approval Process*

- 1. Major Encroachments shall be reviewed by the Town Board of Trustees.*

*The item will be placed on the Town Board of Trustees agenda. The Board shall approve, approve with conditions, or deny the application at a public meeting. No later than 14 days prior to the meeting, Town staff shall cause certified mailings to be sent, return receipt requested, to all utility companies.*

*The Board may continue the application review to a later date (not to exceed 45 days) in order to obtain more information about the request or to conduct site inspections. If approved, an Encroachment License will be issued.*

*G. Indemnification and Insurance Requirements*

*The property owner is required to indemnify and save harmless The Town of Grand Lake against any and all damages which may result from the encroachment. Insurance may be required. The certificate of insurance shall be submitted to the Town prior to the execution or issuance of the Encroachment License or Agreement.*

**Additional Information**

The Municipal Code requires the Town to contact all utility companies informing them encroachment requests. Staff sent certified letters to each utility company. Staff has not received any contrary letters back from the utility companies to prevent this encroachment request.

**Staff Comments**

The Public Works Director and the Water Superintendent has reviewed the application. The Water Superintendent has indicated that it does not interfere with the Town utilities at this time. The Public Works Director has stated that the deck is in the snow storage.

**Staff Recommendation**

Staff recommends if the Board grants the encroachment license for the existing improvements, they should adopt the resolution as presented which contains the following conditions:

- 1. The License is limited to the Existing Improvements as shown on the site plan (hereinafter the "Encroachment"); and,*
- 2. The Licensee must maintain the Encroachment at its sole expense; and,*



3. This License shall remain in full force and effect for the benefit of the Licensee, their heirs, successors and assigns, until such time as the Town, in its sole determination, determines that this license should end. At such time, within 45 days of the Town providing notice to the Licensee, Licensee shall remove the Encroachment and restore that portion of snow storage and utility easement to pre-existing condition or better at Licensee's expense. The Licensee may perform normal maintenance and repairs to the Encroachment, but may not expand the Encroachment further into or enlarge the Encroachment above the snow storage and utility easement; and,
4. The granting of this License shall not be considered a precedent for any future encroachments; and
5. The granting of this License does not limit any public use of the snow storage and utility easement way; and
6. The Licensee agrees to pay the License fee to the Town in the amount of One Hundred Dollars (\$100.00); and,
7. To maintain public liability insurance in an amount not less than \$300,000 per person and \$900,000 per accident to protect Licensee and the Town from any liability to the public as a result of the encroachment onto the snow storage and utility easement and to furnish the Town proof of such insurance upon request. Said insurance shall be maintained at all times during the term of this easement.
8. The Licensee delivers the Town a fully executed Encroachment License and Agreement.

### **Board Discussion**

The Board should discuss the public property encroachment request.

### **Board Action**

The Board has several options to consider including:

1. Granting the encroachment request by adopting the resolution; or
2. Grant the request with other conditions; or
3. Deny the request.

Suggested Motion:

1. **I move to adopt Resolution 05-2023, To Grant An Encroachment License Into The Snow Storage And Utility Easement For Certain Improvements Located Adjacent To Lot 2, Amended Bl 2, Ridge At Elk Creek Subdivision, More Commonly Referred To As 45 Mad Moose Lane, Grand Lake, Colorado, as presented.**

**Or**

2. **I move to adopt Resolution 05-2023, To Grant An Encroachment License Into The Snow Storage And Utility Easement For Certain Improvements Located Adjacent To Lot 2, Amended Bl 2, Ridge At Elk Creek Subdivision, More Commonly Referred To As 45 Mad Moose Lane, Grand Lake, Colorado, with the following conditions**

**Or**

3. **I move to deny the encroachment request and the applicant must remove the encroaching portion of deck and pier once the weather allows in the Spring of 2023, and the applicant will hold the Town harmless for any damage to the portion of the deck that is currently encroaching into the snow storage and utility easement.**