



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 05/14/2024

REQUESTER: Beth Muckala, Assistant City Attorney

PRESENTER: Beth Muckala, Assistant City Attorney

ITEM TITLE: CONSIDERATION OF ADOPTION, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF CONSENT TO ENCROACH EN-2324-5: FOR LOT 10, BLOCK 7, MARLATT ADDITION, FOR A METAL STORAGE BUILDING IN THE CITY OF NORMAN, CLEVELAND COUNTY, OKLAHOMA. (5512 36th Avenue NW)

BACKGROUND:

An encroachment request has been filed in the office of the City Clerk by property owner(s), Gregory L. Rushing, requesting a Consent to Encroach into a utility easement at the above-described property.

DISCUSSION:

The application for the Consent to Encroachment concerns the encroachment upon a City of Norman and Norman Utilities Authority (NUA) utility easement for a proposed metal storage building. The owner(s) are requesting that the proposed metal storage building be allowed to encroach upon the existing utility easement located across the west side of the property. Currently, there are no City utilities within the platted easement however, preliminary sewer alignments include a potential sanitary sewer within said easement. Previous requests for sewer assessment districts have been received from the Marlatt Addition but none have proceeded to design or completion.

A platted 10-foot utility easement exists along the west property line and will be encroached upon for the proposed metal storage building. This structure will encroach the easement by approximately 10-feet.

The applicants have obtained a response from AT&T Oklahoma who has indicated they have a facility in the easement but have retired their cable. No other facility exists in the easement.

Staff has reviewed the application and the “hold harmless” clauses. From a legal perspective, it protects the City’s and the NUA’s concerns with respect to damage to the property owners’ property should the City and the NUA or other authorized entity be required to perform work within its easement. There are some conditions applied to this Consent to Encroachment as listed below:

1. The property owner(s), and property owners' heirs, successors, or assigns (hereafter collectively the "Owner Parties") shall be responsible for the cost to repair any damages to the City's utilities or infrastructure caused by any excavation, piercing or other construction activities conducted by the Owner Parties or their agents;
2. The Owner Parties shall be required to apply for and receive any applicable permits prior to commencing work and shall construct the proposed metal building precisely as depicted in the application, and shall make no alterations to the same without further review and approval by the City and/or the NUA;
3. At the City's sole discretion, the property owner shall be responsible for the cost the City incurs to remove any improvements or structure if needed to install, maintain, or repair NUA facilities in the existing easement or provide satisfactory additional easement at no cost to the City or other entity installing a sewer line for public dedication. The Owner acknowledges that where the City, in its sole discretion, deems a revised sewer alignment unfeasible, provision of easement may not be a satisfactory solution and may necessitate removal or a portion or all of the building;
4. Where the City, in its sole discretion, determines to and is able to revise sanitary sewer alignment to route around the proposed metal building, the reasonably necessary costs of said rerouting shall be borne by the property owner (at this time, said costs are approximately \$43,700 in 2024 dollars but actual construction costs, whether lower or higher than the estimated cost, will be required to be paid or will be assessed against the property in accordance with applicable law);
5. Where the City, in its sole discretion, determines the need to remove a portion or all of said proposed metal building, the City shall bear no responsibility for damages for the loss or replacement of said proposed metal building. Instead, the property owner shall be solely responsible for the cost to repair or replace any improvements or structure after any utility installation, repairs, or maintenance by the City or NUA. The Owner acknowledges that the City, in its sole discretion, may determine those areas of the originally platted easement in which the proposed metal building, or any portion of it, cannot be reconstructed;
6. The Owner Parties hereby waive and release any claims against the City and the NUA, or any affected franchisee utilities, for any damages to the metal building and related improvements caused by installation of utilities, failure or repair and maintenance of the City's and the NUA's facilities within the easement area;
7. AT&T Oklahoma has inactivated their facility located in the easement and does not oppose to the encroachment. Upon information and belief, no other facility currently exists in the easement; and
8. Damages to existing facilities of the City or NUA or any affected franchise utility resultant from any current/future construction may carry possible financial charges to the Owner Parties.

The benefit to having the consent to encroach on file is that it is evidence of the property owners' understanding that, while the City and the NUA is allowing them to encroach upon the easement,

the City and the NUA are not liable and will not be responsible for damage to the property owners' property in the event maintenance has to be performed within the easement.

All necessary City departments have responded on this item and have no objection to the proposed Consent Agreement and Covenant, with the conditions stated therein. Please note that this Consent Agreement and Covenant concerns only the City's consent to encroach where a project is otherwise permissible under City Code. Further evaluation will occur once such an application has been submitted by applicants relating to this project.

RECOMMENDATION:

Based upon the above and foregoing, the City Attorney's office is forwarding the above Consent to Encroach, EN-2324-5, for Council consideration.