



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 08/10/2021

REQUESTER: Beth Muckala, Assistant City Attorney

PRESENTER: Beth Muckala, Assistant City Attorney

ITEM TITLE: CONSIDERATION OF APPROVAL, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF CONSENT TO ENCROACH EN-2021-11: FOR LOT 3, BLOCK 1, SMOKING OAK 2 ADDITION, CITY OF NORMAN, CLEVELAND COUNTY, OKLAHOMA. (1715 SMOKING OAK DRIVE)

BACKGROUND:

An encroachment request has been filed in the office of the City Clerk by property owner, Laura Hudgens of the Laura McCall-Hudgens Family Trust, for a Consent to Encroach into utility easements at the above-described property. This item previously received approval by the Board of Adjustment on April 28, 2021, to allow five (5) square feet of an addition to the existing house to extend into the 20' rear yard setback at the northeast corner of the house. The encroachment request concerns other structures on the property.

DISCUSSION:

The application for the Consent to Encroachment concerns the encroachment upon City of Norman and Norman Utilities Authority (NUA) utility easements for an existing accessory building, existing pool patio pavement, and the expansion of the paved driveway. The owner is requesting that the existing accessory building, existing pool patio pavement, and the expansion of the paved driveway be allowed to encroach upon the existing utility easements located across the north and east side of the property.

A platted 10-foot utility easement exists along the north and east property lines and will be encroached upon for the existing accessory building, the existing pool patio pavement, and the expansion of the paved driveway. An 8-inch sanitary sewer line is located within this easement.

The applicants have obtained a response from Oklahoma Gas & Electric who indicated that they have facilities located in the easement however they are not opposed to the encroachment so long as the owner abides by the certain requirements as indicated in #6 below. Cox Communications has also indicated that they have facilities located in the easement and they also do not oppose the encroachment so long as they are contacted should said facilities need to be relocated. Oklahoma Electric Cooperative did not indicate that it had existing facilities in the easement and they are not opposed to the encroachment. Oklahoma Natural Gas and AT&T were provided with sufficient notice of the encroachment request but neither provided a

response.

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”) will 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 will be required to apply for and receive any applicable permits prior to commencing work;
3. The Owner Parties will be responsible for the cost the City and the NUA incurs to remove any accessory building, swimming pool, paving, curb, landscaping, retaining wall, and/or any other item if needed to maintain or repair NUA facilities;
4. The Owner Parties will be responsible for the cost to repair or replace any accessory building, swimming pool, paving, curb, landscaping, retaining wall, or any other item after such repair;
5. The Owner Parties will waive and release any claims against the City and the NUA for any damages to the residence and related improvements caused by failure or repair and maintenance of the City’s and the NUA’s utilities within the easement area;
6. Cox Communications does not oppose the encroachment so long as Owner Parties contact OKIE811 location services prior to any work. Oklahoma Gas & Electric also does not oppose the encroachment so long as Owner Parties take into consideration to not disturb their above and below ground facilities. Oklahoma Electric Cooperative also does not object;
7. By encroaching on said easements, the Owner Parties release Cox Communications, Oklahoma Gas & Electric, Oklahoma Natural Gas, Oklahoma Electric Cooperative, and AT&T for any damages caused by any excavation by these utility companies for purposes of maintaining or replacing the City’s and the NUA’s utility facilities within the easement areas; and
8. Damages to Cox Communications, Oklahoma Gas & Electric, Oklahoma Natural Gas, Oklahoma Electric Cooperative, and AT&T facilities resultant from any current/future construction may carry possible financial charges to the Owner Parties.

The benefit of 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 easements, 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 easements.

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 applicant relating to this project.

RECOMMENDATION:

Based upon the above and foregoing, the City Attorney's office is forwarding the above Consent to Encroach, EN-2021-11, for Council consideration.