



## CITY OF NORMAN, OK STAFF REPORT

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**MEETING DATE:** 01/14/2025

**REQUESTER:** AshLynn Wilkerson, Assistant City Attorney

**PRESENTER:** AshLynn Wilkerson, Assistant City Attorney

**ITEM TITLE:** CONSIDERATION OF APPROVAL, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF CONSENT TO ENCROACH EN-2425-1: FOR LOT 5A (formerly 5 & 6), BLOCK 4, FOUNTAIN VIEW ADDITION, SECTION 1, CITY OF NORMAN, CLEVELAND COUNTY, OKLAHOMA. (4202 Farm Hill Road)

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### **BACKGROUND:**

An encroachment request has been filed in the office of the City Clerk by property owners, Jordan Johnson and Megan Johnson, requesting a Consent to Encroach into a utility easement at the above-described property.

### **DISCUSSION:**

The application for the Consent to Encroach concerns the encroachment upon a City of Norman and Norman Utilities Authority (NUA) utility easement for proposed steps and retaining wall to accompany the addition of a pool and pool house. The owner(s) are requesting that the proposed steps and retaining wall be allowed to encroach upon the existing utility easement located across the middle of the property (north side of former Lot 6).

On March 15, 2024, the City granted a Lot Line Adjustment to reflect the property owners' application to combine lots formerly known as Lot 5 and Lot 6. The new lot (now known as Lot 5A) includes a residence in the northern half and unimproved land in the southern half. A platted 10-foot utility easement exists between the two halves and will be encroached upon for the proposed steps and retaining wall. While the encroachment by the proposed retaining wall will be minimal, the proposed steps will encroach the easement by approximately 5-feet.

The applicants have obtained a response from Oklahoma Electric Cooperative and Cox Communications. AT&T Oklahoma was notified of this request but did not respond. The City and NUA have no facilities located in the easement to be encroached upon.

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 install or 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;
3. The Owner Parties shall be responsible for the cost the City and the NUA incurs to remove any steps, retaining wall, structure, paving, curb, landscaping, and/or any other item if needed to maintain or repair NUA facilities;
4. The Owner Parties shall be hereby solely responsible for the cost to repair or replace any steps, retaining wall, structure, paving, curb, landscaping, or any other item after such repair;
5. The Owner Parties hereby waive and release any claims against the City and the NUA for any damages to the steps, retaining wall and related improvements caused by failure or repair and maintenance of the City's and the NUA's facilities within the easement area;
6. Oklahoma Electric Cooperative does not oppose to the encroachment. Cox Communications responded that it has facilities in the area but has not objected to this request. AT&T Oklahoma was notified but provided no response or objection;
7. By encroaching on said easement, the Owner Parties release Oklahoma Electric Cooperative, Cox Communications and AT&T Oklahoma for any damages caused by any excavation by these utility companies for purposes of installing, maintaining or replacing the City's and the NUA's utility facilities within the easement area; and
8. Damages to Oklahoma Electric Cooperative, Cox Communications and AT&T Oklahoma facilities 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 are 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 installation or 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-2425-1, for Council consideration.