



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: EN-2021-4

File ID: EN-2021-4

Type: Encroachment

Status: Consent Item

Version: 1

Reference: Item 28

In Control: City Council

Department: Legal Department

Cost:

File Created: 08/17/2020

File Name: Consent to Encroach 2018 Morning Dew Trail

Final Action:

Title: CONSENT TO ENCROACH EN-2021-4: FOR LOT 9A, BLOCK 1, TRAILS ADDITION, SECTION 3, CITY OF NORMAN, CLEVELAND COUNTY, OKLAHOMA (2018 MORNING DEW TRAIL)

Notes: ACTION NEEDED: Motion to approve or reject Consent to Encroachment EN-2021-4; and, if approved, direct the filing thereof with the Cleveland County Clerk.

ACTION TAKEN: _____

Agenda Date: 08/25/2020

Agenda Number: 28

Attachments: Signed encroachment, City Clerk Memo, Request to Encroach, Site Plan, Letters from Franchises, Memo from Planning, Memo from Public Works, Memo from Utilities

Project Manager: Beth Muckala, Assistant City Attorney

Entered by: sarah.encinias@normanok.gov

Effective Date:

History of Legislative File

| Version: | Acting Body: | Date: | Action: | Sent To: | Due Date: | Return Date: | Result: |
|----------|--------------|-------|---------|----------|-----------|--------------|---------|
|----------|--------------|-------|---------|----------|-----------|--------------|---------|

Text of Legislative File EN-2021-4

Body

BACKGROUND: An encroachment request has been filed in the office of the City Clerk by Applicant, Michael Jade Noles, Trustee of the property, requesting a Consent to Encroach into utility easements at the above-described property.

DISCUSSION: The application for the Consent to Encroachment concerns the encroachment upon City of Norman and Norman Utilities Authority (NUA) utility easements for the installation of an in-ground swimming pool and other associated improvements. The applicant is requesting that the swimming pool (and associated improvements) be allowed to encroach upon the newly existing utility easements located at the back of the parcel.

Presently, two (2) platted 10-foot easements exist along the original platted south property line which will be encroached upon for the proposed swimming pool. After the original plat issuance, the applicant/owner acquired additional property from the nearby golf course, of which the owner has dedicated to NUA an additional 20-feet of easements south of the existing easements to allow the relocation of facilities. The existing 8-inch PVC sanitary sewer line is located in the rear of the property within the newly dedicated 20-foot sewer and utility easements.

The applicant has obtained a response from Oklahoma Electric Cooperative and Oklahoma Natural Gas, which have indicated that they have facilities located in the easements, however they are not opposed to the encroachment as their utilities have been or will be relocated into the new 20-foot utility easement. Cox Communications did not indicate that it had existing facilities within the easement, but made no objection to the encroachment request. This property is not served by AT&T and OG&E.

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 owner’s 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 and the NUA’s utilities 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 swimming pool, fence, curb, landscaping, retaining wall, and/or any other structure if needed to maintain or repair NUA facilities;
4. The Owner Parties will be responsible for the cost to repair or replace any swimming pool, fence, curb, retaining wall, landscaping or any other structure 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 areas;
6. Oklahoma Electric Cooperative and Oklahoma Natural Gas have or will have facilities located in the newest easements however they are not opposed to the encroachment, so long as Owner Parties contact OKIE811 location services prior to excavation. Cox Communications has also stated that it does not object;

7. By encroaching on said easements, the Owner Parties release Oklahoma Electric Cooperative, Oklahoma Natural Gas, and Cox Communications 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 Oklahoma Electric Cooperative, Oklahoma Natural Gas, and Cox Communications 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 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, 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-2021-4, for Council consideration.