



**TOWN OF MILLIKEN
BOARD OF TRUSTEES
AGENDA MEMORANDUM**

To: Mayor Tokunaga and Town Board of Trustees		Public Hearing Date: June 24, 2015	
From: Martha Perkins, Community Development Director			
Via: Kent Brown, Town Administrator			
Agenda Item #	Action: x	Discussion:	Information:
Agenda Title: Public Hearing for the Review and Recommendation for Approval of Resolution No. 15-15, "A Resolution of the Town of Milliken, Weld County, Colorado Confirming the Legal Position of the Town of Milliken with Respect to the Use of the Town's Real Property by Unauthorized Persons or Entities".			
Staff Recommendation: Staff recommends approval by the Town Board			
Attachments: Resolution 15-15			

PURPOSE

To consider Resolution No. 15-15 for the purpose of providing notice that various individuals and entities have made and are making use of real property owned by the Town of Milliken without either the written or verbal permission of the Town's Board of Trustees. However, the Town of Milliken will continue to assert all of its legal rights to all real property which it owns in fee simple or through which it has easements or rights of way and may at some point in the future move, destroy, and/or demand removal of structures, pipelines, or other facilities located on the Town's real property along with an assessment for the costs of doing so.

BACKGROUND INFORMATION

Town staff has found that property owners have encroached into the Town's alley ways, easements, and other rights of way. Some of these persons or entities have been using the Town's real property for some time, in some cases more than one generation. Structures, facilities and/or uses may have been built on the Town's real property without the Town being aware of it.

This Resolution provides notice to all persons or entities making use of the Town's real property knowingly or unknowingly that the Town may need to have access or the use of an easement, right of way, or other real property. Most likely the Town will provide the adjacent property owners notice, so these property owners may move a structure or use out of the Town's property;

but, in the event of an emergency the Town may not be able to provide notice. Because the Town's real property is not owned by those persons encroaching upon it, those persons may be liable for the cost of removing or sustain damage to their structures, facilities or uses.

If a person or an entity finds through a survey or other means that they are using the Town's real property, they can formally submit an application or formal request to the Town asking for a vacation of an easement, right of way, or other real property. The Town may or may not grant the request for the vacation of the real property, with or without payment. This vacation will require with its approval payment for a certified survey with recordation of the vacation and/or transfer and/or exchange of an easement, right of way, or real property in the Clerk's office.

In summary, the intent of this Resolution is to let the public know that any of the Town's real property being used or encroached upon by a structure, facility and/or used does not grant them ownership of such property. The person, entity or persons using the Town's real property may at any time lose the right to use such property with or without notice and may or may not be liable for all of the costs of removing such structures, facilities and/or other uses.

BUDGET IMPLICATIONS

No impact, except to provide notice that any person, entity, or persons using the Town's real property whether knowingly or not knowingly. They are liable for the costs of removing these structures, facilities, and or other uses from the Town's real property.

RECOMMENDATION

Town Staff recommends approval by the Town Board of Resolution No. 15-15, "A Resolution of the Town of Milliken, Weld County, Colorado Confirming the Legal Position of the Town of Milliken with Respect to the Use of the Town's Real Property by Unauthorized Persons or Entities".

SUGGESTED MOTION

"I move to approve Resolution No. 15-15, "A Resolution of the Town of Milliken, Weld County, Colorado Confirming the Legal Position of the Town of Milliken with Respect to the Use of the Town's Real Property by Unauthorized Persons or Entities".

RESOLUTION 15-15

A RESOLUTION OF THE TOWN OF MILLIKEN, WELD COUNTY, COLORADO CONFIRMING THE LEGAL POSITION OF THE TOWN OF MILLIKEN WITH RESPECT TO THE USE OF THE TOWN'S REAL PROPERTY BY UNAUTHORIZED PERSONS OR ENTITIES

Recitals

The Board of Trustees of the Town of Milliken is aware that various individuals and entities have made and are making use of real property owned by the Town of Milliken without either the written or verbal permission of the Town's Board of Trustees.

Many of these parties are using either the Town's real property which it owns in fee simple, or they are using its easements and rights-of-ways. Some have been doing so for significant periods of time with or without knowledge that they have no prior or subsequent written authorization by the Town of Milliken's Board of Trustees.

NOW THEREFORE BE IT RESOLVED THAT, THE TOWN OF MILLIKEN CONTINUES TO ASSERT ALL OF ITS LEGAL RIGHTS TO ALL REAL PROPERTY WHICH IT OWNS IN FEE SIMPLE OR THROUGH WHICH IT HAS EASEMENTS OR RIGHTS OF WAY, AND HEREBY PLACES ALL PERSONS OR ENTITIES WHO ARE MAKING USE OF THE TOWN'S REAL PROPERTY ON NOTICE THAT AT SOME POINT IN THE FUTURE THE TOWN OF MILLIKEN MAY DETERMINE THAT IT IS IN ITS BEST INTERESTS TO REMOVE, DESTROY, REQUIRE THE REMOVAL OR DAMAGE ANY STRUCTURES, FENCES, PIPELINES OR OTHER FACILITIES LOCATED ON THE TOWN'S REAL PROPERTY. THE PERSONS AND ENTITIES WHO HAVE USED OR ARE USING THE TOWN'S REAL PROEPRTY WILL NOT BE COMPENSATED BY THE TOWN AND, IN FACT, MAY BE ASSESSED WITH THE COSTS INCURRED BY THE TOWN IN REMOVING OR DAMAGING THESE STRUCTURES OR FACILITIES LOCATED IN OR ON THE TOWN'S REAL PROPERTY.

WHEN EXIGENT CIRCUMSTANCES ARE NOT PRESENT THE TOWN MAY ELECT TO GIVE THE PERSONS OR ENTITIES WHO ARE USING THE TOWN'S REAL PROPERTY PRIOR WRITTEN NOTICE OF THE TOWN'S INTENTIONS TO REMOVE, DESTROY, REQUIRE THE REMOVAL OR DAMAGE THE IMPROVEMENTS THAT HAVE BEEN MADE ON THE TOWN'S REAL PROPERTY.

IN ANY EVENT, THE TOWN TAKES NO RESPONSIBILITY AND DOES NOT GIVE ANY PERSON OR ENTITY THE RIGHT TO USE THE TOWN'S REAL PROPERTY, WHETHER IT IS OWNED BY THE TOWN IN FEE SIMPLE, OR IT IS AN EASEMENT OR RIGHT-OF-WAY WITHOUT RECORDED CONVEYANCES OR VACATION OF THE REAL PROPERTY BY THE BOARD OF TRUSTEES.

At the regular meeting of the Board of Trustees on June 24, 2015, this resolution was passed by the Board of Trustees with a vote of _____ in favor and _____ opposed.

TOWN OF MILLIKEN

Milt Tokunaga, Mayor

ATTEST:

Cheryl Powell, Town Clerk

Published:

Approved as to form:

R. B. Fickel II, Attorney