



**TOWN OF MILLIKEN
PLANNING COMMISSION
AGENDA MEMORANDUM**

To: Chairman Woodcock and Planning Commissioners From: Martha Perkins, Community Development Director Via: Kent Brown, Town Administrator			Meeting Date: August 5, 2015
Agenda Item # 1	Action: x	Discussion:	Information:
<p>Agenda Title: Public Hearing/Meeting for Review and Recommendation of a Use by Special Permit for Great Western Oil and Gas Company for 13 wells and related oil facilities for a site consisting of approximately 10.893 acres while under construction and approximately 3.757 acres after construction located on a site at Section 22, Township 4 North, Range 67 West, 6th P.M., generally east of County Road 19 and south of County Road 44. The surface land owner is Milliken Investors, LLC. with Mark D. Campbell as the Managing Partner.</p>			
<p>Attachments: Application, Owner Agreement, Maps and Related Exhibits, Operating Plan, Emergency Response Plan, and an example of a road maintenance letter.</p>			

PURPOSE

To consider a request from Great Western Oil and Gas Company for a special use permit for drilling 13 wells and constructing oil related facilities on a site consisting of approximately 10.893 acres while under construction and approximately 3.757 acres after construction located at Section 22, Township 4 North, Range 67 West, 6th P.M., generally east of County Road 19 and south of County Road 44. The surface land owner is Milliken Investors, LLC. with Mark D. Campbell as the Managing Partner.

Oil and Gas Permitting requires a special use permit per the Town of Milliken's Section 16-9-25, Article 9. One special use permit may be issued for multiple drill pad sites containing one or more wells if the drill pad sites are located within a half section area or area of equivalent size or the drill pad sites are in a single section or area of equivalent size and under one property ownership. The installation of tanks, heaters, separators and other accessory equipment at the same time are

considered extensions to the oil and gas wells and shall accordingly be subject to the same applications, review, permit, regulations and standards. The granting of such a special use permit shall not relieve the operator from otherwise complying with all applicable Town, State and Federal regulatory requirements.

BACKGROUND INFORMATION

Type of Application	Use by Special Review
Location:	In the Dutton Annexation located at the intersection of east of Weld County Road 19 and south of County Road 44.
Applicant:	Great Western Oil and Gas Company
Existing Land Use:	Vacant, Agricultural, & Zoned R-1 “Single Family Residential”
Surrounding Land Use:	North, West, South and East: Unincorporated Weld County Agricultural
Zoning:	R-1 “Single Family Residential”
Comprehensive Plan	The Comprehensive Plan Framework Map, Map 1.1-1 designates the site as Low Density Residential
Notice	Notice was mailed to Surrounding Property Owners within 300’ of the proposal on June 24, 2015. The hearing was published in the <i>Johnstown Breeze</i> on June 25, 2015. Referral notices were mailed/emailed on June 24 and July 7, 2015. The property was posted with a development notice sign by July 25, 2015. Staff met with Milliken Investments on June 23, 2015 and with Great Western Oil and Gas Company on July 23, 2015.

The Dutton annexation and zoning of the land to R-1 “Single Family Residential” was passed by the Town Board through Ordinance 549 in December 2006. The access for these wells is on a dirt road off of County Road 19 between County Road 42 and 44. The Dutton annexation contained approximately 79.80 acres, which consisted of two parcels. This parcel consists of approximately 76.010 acres. The surrounding land uses are primarily agricultural with some residential housing.

The request for a special use permit includes 13 wells, 21 oil tanks, 15 separators, 3 vapor recovery units, 8 water tanks, 2 modular large volume tanks, and 2 gas compressors. The planned date to start construction is December 1, 2015 and to begin interim reclamation is April 1, 2016. The land is currently being used for irrigated crops.

The location map below shows the new well site with a blue star and the existing well sites with a red star with the property lines in yellow. The well proximity map from the Oil and Gas Commission shows the proposed new well site with blue rectangles and the producing wells on the property as red dots. The staff report is depicting the stars with the same colors as the Oil and Gas Commission’s map.

COMPLIANCE WITH TOWN LAND USE CODE

This staff memorandum is prepared in accordance with the Land Use Code as outlined below. Staff complied the most relevant sections of the Code for the Planning and Zoning Commission's and Town Board's review of the application.

Sec. 16-1-50. Purpose.

The purpose of this Code is to create a vital, cohesive, well-designed community in order to enhance the Town of Milliken's character and further the citizens' goals as identified in the Comprehensive Plan. This Code is designed to:

- (1) Encourage the most appropriate use of land through the Town;
- (2) Encourage innovative, quality site design, architecture and landscaping;
- (3) Encourage new developments to relate to Milliken's historic development pattern;
- (4) Promote compact, well-defined, sustainable neighborhoods that enhance Milliken's character;
- (5) Create livable neighborhoods that foster a sense of community and reduce dependency on private vehicles;
- (6) Encourage the proper arrangement of streets in relation to existing and planned streets and ensure that streets facilitate safe, efficient and pleasant walking, biking and driving;
- (7) Provide a variety of lot sizes and housing types in every neighborhood;
- (8) Protect sensitive natural and historic areas and Milliken's environmental quality;
- (9) Integrate a high-quality natural environment into the developed portions of the community;
- (10) Facilitate the adequate and efficient provision of transportation, water, sewage, schools, parks and other public requirements;
- (11) Provide protection from geologic, flood and fire hazards and other dangers; and
- (12) Promote the health, safety, morals and general welfare of Milliken residents. (Ord. 480 §1.5, 2003)

Sec. 16-1-60. Interpretation.

In their interpretation and application, the provisions of this Code shall be held to be minimum requirements for the promotion of the public health, safety and welfare. Whenever the requirements of this Code are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the more restrictive or that imposing the higher standards shall govern. (Ord. 480 §1.6, 2003)

Sec. 16-1-90. Relationship to Comprehensive Plan.

It is the intention of the Town that this Code implement the planning policies adopted in the Comprehensive Plan ("Comprehensive Plan") for the Town and its extraterritorial planning area. While this relationship is reaffirmed, it is the intent of the Town that neither this Code nor any amendment to it may be challenged on the basis of any alleged nonconformity with the Comprehensive Plan.

- (1) Requirement for Comprehensive Plan Amendment. Where a development proposal would be in substantial conflict with the Comprehensive Plan, an amendment to the Comprehensive Plan will be required prior to any zoning or subdivision approvals. A substantial conflict will exist when a development proposal would result in changes from the designations of the Land

Use Plan Map, Transportation Plan Map or Parks and Open Space Map in the Comprehensive Plan.

- (2) Criteria for Evaluating Amendment Proposals. Amendments to the Comprehensive Plan resulting from development proposals under this Code shall be evaluated according to the criteria and procedure outlined in the Comprehensive Plan. (Ord. 480 §1.9, 2003)

Sec. 16-9-10. Purpose.

- (a) These regulations are enacted to protect and promote the health, safety and general welfare of the present and future residents of the Town. It is the Town's intent by enacting these regulations to facilitate and mitigate potential land use conflicts between such development and existing, as well as planned, land uses. It is recognized that under Colorado law the surface and mineral estates are separate and distinct interests in land and that one may be severed from the other. Owners of oil and gas interests have certain legal rights and privileges, including the right to use that part of the surface estate reasonably required to extract and develop their subsurface oil and gas interests, subject to compliance with the provisions of these regulations and any other applicable statutory and regulatory requirements. The State has a recognized interest in the fostering of efficient development, production and utilization of oil and gas resources and particularly in the prevention of waste and protection of the correlative rights of common surface owners and producers to a fair and equitable share of production therefrom. Similarly, owners of the surface estate have certain legal rights and privileges, including the right to have the mineral estate developed with reasonable accommodation and to have adverse land use impacts upon their property, associated with the development of the mineral estate, mitigated through compliance with these regulations so long as these regulations do not create operational conflict with the State's authority to regulate oil and gas development.
- (b) Local governments have a recognized, traditional authority and responsibility to regulate land use within their jurisdiction, including use for oil and gas drilling. These regulations are intended as exercise of this land use authority to the extent that they do not create an operational conflict.
- (c) The Town recognizes that this Article does not supersede or preempt the regulations of the Colorado Oil and Gas Conservation Commission or any other State regulations nor is this Article intended to conflict with those regulations. The Town acknowledges the authority of the COGCC and the application of its rules to oil and gas drilling and production operations within the Town's boundaries, confirms that the COGCC's regulations govern oil and gas drilling and production operations in the Town and, therefore, adopts the COGCC's regulations as of passage of this Article. To the extent the COGCC's regulations change in the future, the Town will use the provisions in this Code as a default for oil and gas operations within the Town's jurisdiction. The Town further acknowledges that a Permit to Drill issued by the COGCC shall be binding with respect to any operationally conflicting requirement under this Article.
- (d) This Article is meant to repeal all previous regulations regarding oil and gas drilling operations and inspections within the Town. This includes, but is not limited to: Ordinance #480 passed in 2003, which replaced Ordinance #253 passed in 1988, which replaced the original Ordinance #159 passed in 1983. (Ord. 636 §1, 2010)

Sec. 16-9-15. General provisions.

- (a) The provisions of this Article shall apply to all oil and gas exploration and production operations proposed on or beneath property within the Town limits.
- (b) Oil and gas facilities within Town limits and in place prior to March 11, 1983, will be considered legal nonconforming uses, however, such facilities must be registered with the Town. The operator must supply the Town with copies of the site plan, operating plan, reclamation plan, as-builts and fire and emergency response plans pursuant to this Article.
- (c) Where provisions in this Chapter are in conflict with other provisions of this Code or other applicable regulations, the more restrictive, or that provision which results in the higher standard, shall apply unless the application of the Code results in an operational conflict with the State regulation of oil and gas development.
- (d) Exceptions to the provisions of this Article may be granted by the Planning Commission. If such exception is part of the approval process of the Special Use Permit, then the exception shall only be approved if the applicant demonstrates that the exception or waiver is necessary to prevent waste or protect correlative rights and can provide adequate mitigation measures for the Town standards waived. Decisions of the Planning Commission may be appealed to the Board of Trustees as provided for in Section 16-3-520. Appeals must be filed within one (1) month of the Planning Commission's written decision.
- (e) Use tax. All operators must conform to applicable provisions of this Code relating to taxation. (Ord. 636 §1, 2010)

Sec. 16-9-20. Definitions.

All terms used in this Article have the definitions given by the Oil and Gas Conservation Act of the State of Colorado ("Act") or in the Colorado Oil and Gas Conservation Commission ("COGCC") regulations. All other words used in this Article are defined in this Section of the Article or are given their usual, customary and accepted meaning and all words of a technical nature, or peculiar to the oil and gas industry, shall be given that meaning which is generally accepted in said oil and gas industry. The following words and phrases used in this Article have the following meanings:

Act means the Oil and Gas Conservation Act of the State.

Applicant means the person making an application for a special use permit (or Existing Use Site Plan Order) on behalf of the operator or owner of a well.

Blowout means the uncontrolled discharge of gas, liquid or solids, or a mixture thereof, from a well into the atmosphere.

Blowout preventor means a mechanical, hydraulic or pneumatic or other device, or a combination of such devices, secured to the top of a well casing, including valves, fittings and control mechanisms connected therewith designed to prevent and capable of preventing a blowout.

Bottomhole means the final underground location and depth of the well.

COGCC means Colorado Oil and Gas Conservation Commission.

Commission means Town of Milliken Planning Commission.

Drill pad site means the areas that are directly disturbed during the drilling and subsequent operation of, or affected by production facilities directly associated with one (1) or more oil well, gas well or injection well.

Drill site or *platform* means the premises used during the drilling and subsequent life of a well or wells, which is necessary for the safe operation thereof.

Drilling envelope or *window* means the area designated by the COGCC in which wells can be drilled.

Exploration means the search for natural accumulations of oil, gas or other hydrocarbons.

Injection well means any hole drilled into the earth into which fluids are injected for the purposes of secondary recovery, storage or disposal, pursuant to authorizations granted by the COGCC.

Mineral owner means any person having title or right of ownership in subsurface oil, gas or other hydrocarbons and/or a leasehold interest therein.

Multiple oil and gas operations permit means a permit issued by the Town if more than one (1) well or production facility is being applied for and approved at the same time by the same applicant.

Multiwell site means a common well pad from which multiple wells may be drilled to various bottomhole locations.

New well site means any oil or gas well location that is approved by the Commission pursuant to this Article, but does not include any deepened, sidetracked, rebored, recharged, redrilled, refraced, reentered, reworked or twinned well.

Operating plan means a general description of the facility identifying purpose, use, typical staffing pattern, seasonal or periodic considerations, routine hours of operating, source of services/infrastructure, any mitigation plans and any other information related to regular functioning of that facility.

Reboring, recharging, redrilling or *refracing* means the deepening of an existing oil or gas well or otherwise drilling beyond the extremities of the existing well casing.

Reentering means accessing an existing well bore for either the original or amended purpose, provided that such well has not been abandoned.

Sidetracking means entering the same well head from the surface, but not necessarily following the same well bore, throughout its subsurface extent when deviation from such well bore is necessary to reach the objective depth.

Structure means that which is built or constructed on the surface estate including a tank, edifice

or building of any kind, except temporary structures used in the actual drilling, development or rework operations.

Surface owner means any person having the title or right of ownership in the surface estate of real property or leasehold interest therein.

Town means Town of Milliken, Weld County, Colorado.

Twinning means the drilling of wells within fifty (50) feet of each other.

Wellhead means the mouth of the well at which oil or gas is produced. (Ord. 636 §1, 2010)

Sec. 16-9-25. Special use permit requirements.

(a) New well sites.

- (1) It shall be unlawful for any person to drill a new well, construct a new facility or install new accessory equipment or pumping system that has not been previously permitted under this Article, unless a special use permit has been obtained in accordance with the procedures defined in this Article.
- (2) The granting of such a special use permit shall not relieve the operator from otherwise complying with all applicable Town, State and Federal regulatory requirements.
- (3) One (1) special use permit may be issued for multiple drill pad sites containing one (1) or more wells if the drill pad sites are located within a half section area or area of equivalent size or the drill pad sites are in a single section or area of equivalent size and under one (1) property ownership. See Section 16-9-30 for fee information.
- (4) Any such permit issued pursuant to this Article shall encompass within its authorization the right for the operator, his or her agent, employee, subcontractor or independent contractor or any other persons to perform that work necessary in the drilling, completion or maintenance operations.
- (5) For the purpose of this Article, the installation of tanks, heaters, separators and other accessory equipment shall be construed as extensions to oil and gas wells and shall accordingly be subject to the same applications, review, permit, regulations and standards. The application for these accessories when intended to be installed at the same time as the oil or gas well may be merged with an application for an oil or gas well special use permit and shall not require an additional permit fee.
- (6) Town Staff may make exceptions to this Section provided that such exceptions are reasonable and relate to the current development plan.

(b) Modifications to existing well sites.

- (1) When a well or well site is existing with an approved special use permit any twinning, sidetracking, connecting, deepening, recompleting, refracing or reworking of a well and relocation of accessory equipment or gathering and transmission lines does not require a new permit so long as all applicable regulations of this jurisdiction and the State are met and the Town is notified.
- (2) If any changes are made to a legally nonconforming well during twinning, sidetracking, deepening, recompleting, refracing or reworking of a well, or relocation of accessory equipment or gathering and transmission lines occurs, the operator shall submit a revised site and operating plan to the Town depicting any changes from the approved by the State or other granted right to proceed.

(c) Waiver requests.

- (1) During the review of the State permit by the Town, a waiver may be requested by the owner/operator under the following conditions:
 - a. Drill pad site is located in an area with little or no impact to developed areas of Town.
 - b. There are no conditions of approval or impact concerns from the Town discovered during the referral review process by Town Staff.
- (2) Waiver requests will be presented to the Planning Commission for approval or denial at a regularly scheduled meeting.
- (3) See Section 16-9-30 for fee information. (Ord. 636 §1, 2010)

Sec. 16-9-30. Special use permit application fees and deposits.

- (a) Application fee and deposit. A nonrefundable fee is collected to cover the cost of review by the Town Staff and notice and publication expenses. A deposit and fee agreement is necessary to cover costs for review of any other expert whom the Town may wish to employ. Actual costs may exceed the deposit; in this case, the applicant is liable for costs in excess of the deposit. The Town shall provide the applicant with a copy of the most current fee schedule and fee agreement form. The application fee for a special use permit application shall be as set forth in the Town Adopted Fee Schedule for:
 - (1) An individual well or oil and gas facility; or
 - (2) Multiple drill pad sites as described in Section 16-9-25(a)(4) fees shall be: one hundred percent (100%) for the first drill pad site, fifty percent (50%) for the second drill pad site and twenty-five percent (25%) for any subsequent drill pad sites.
 - (3) Town Staff may make exceptions to this Section provided that such exceptions are reasonable and related to the current development plan.
- (b) Waiver fee. A nonrefundable fee is collected to cover the costs of review by Town Staff and the Planning Commission. The waiver fee shall be as set forth in the Town Adopted Fee Schedule. (Ord. 636 §1, 2010)

Sec. 16-9-35. Special use permit process for new oil and gas operations.

- (a) The special use permit process for new oil and gas companies is as follows:
 - (1) Step 1: Optional Preapplication Conference. The applicant may attend a preapplication conference with a representative from the Town. This preapplication conference is preferred, though not required. The purpose of the conference is to discuss the special use permit submittal requirements and review process.
 - (2) Step 2: Application Submittal. See Section 16-9-40 for Application Submittal Requirements.
 - (3) Step 3: Staff Reviews and Certifies the Application is Complete. Within two (2) weeks of the submittal, Staff shall either certify that the application is complete and in compliance with all submittal requirements or reject it as incomplete and notify the applicant of any deficiencies. The applicant shall then correct any deficiencies in the application package, if necessary, and submit the required number of copies of the application to the Town. The original application and all documents requiring a signature shall be signed in blue ink.
 - (4) Step 4: Staff Refers Application to Referral Agencies. Not less than twenty-eight (28) days before the date scheduled for the Planning Commission public hearing, the Town shall send information about the application by regular mail to the necessary

referral agencies. The referral information shall include the time and place of the public hearing, the nature of the hearing, the location of the subject property and the applicant's name. If no response is received from the necessary referral agencies as of the time of the hearing, then such referral agencies shall be deemed to have approved the application.

(5) Step 5: Staff Reviews Application and Prepares Comments. Staff shall review the application for compliance with this Article and all other applicable Federal, State and Town regulations and standards. A summary of this review including deficiencies shall be sent to the applicant.

(6) Step 6: Applicant Addresses Staff and Referral Agencies Comments. The applicant shall address all of the Staff comments, then submit the following to the Town:

- a. Letter explaining how all of the comments have been addressed; and
- b. Revised maps and other documents.

(7) Step 7: Town Schedules Public Hearing and Completes Notification Process

The Town shall:

- a. Publish notice of the public hearing in the newspaper not later than twelve (12) days prior to the public hearing date.
- b. Mail notice to all parties entitled to notice of the application not later than twelve (12) days prior to the public hearing date.

The applicant shall:

- a. Post the property not later than twelve (12) days prior to the public hearing date.

(8) Step 8: Final Staff Review and Report to Planning Commission. Staff will complete a final review of the resubmitted materials and then prepare a report to the Planning Commission explaining how the application is or is not consistent with the review criteria and applicable Town codes, regulations and standards.

(9) Step 9: Planning Commission Public Hearing and Action. The Planning Commission shall hold a public hearing for the purpose of taking action on the special use permit application.

(b) Conditions of Approval:

(1) Following the public hearing, the Planning Commission may approve, conditionally approve or deny the use by special review application based on the use by special review application review criteria. A use by special review permit may be revocable, may be granted for a limited time period or may be granted subject to conditions as the Planning Commission may prescribe, so long as such conditions do not conflict with State law or COGCC regulations.

(2) A special use permit for oil and gas facilities shall become null and void three (3) years after approval of the special use permit if development of the site does not commence. (Ord. 636 §1, 2010)

Sec. 16-9-45. Special use permit approval and review criteria.

The Planning Commission shall approve an application for a special use permit for oil and gas facilities if the application submitted by the applicant conforms to the requirements set forth in this Article and the Colorado Oil and Gas Conservation Regulations (e.g., impact mitigation and setbacks). See Sections 16-9-65, 16-9-70, 16-9-75, 16-9-80 and 16-9-105 of this Code. (Ord. 636 §1, 2010)

Sec. 16-9-50. Security inspections and fee.

- (a) All wells, accessory equipment and structures may be inspected by Town inspectors at reasonable times to determine compliance with applicable safety and security provisions of this Article, the adopted Fire and Building Codes, and all other applicable Town security standards and regulations including any conditions of a special use permit. For the purpose of "implementing and enforcing the provisions of this Article," Town personnel have the right to enter upon private property after reasonable notification to the operator, and the operator shall have the opportunity to be present during such inspection.
- (b) Fee.
 - (1) The Town has established an annual security fee as set forth in the adopted fee schedule, payable to the Town on a facility basis, due to the Town for all oil and/or gas well sites which are not classified as shut-in by the COGCC and are presently located within the corporate limits of the Town.
 - (2) The security fee shall be paid for wells or oil and gas facilities on a facility basis for each year or part of a year during which such well has not been plugged or abandoned.
 - (3) This security fee shall be payable in advance on or before January 31 of the year in which the new well or oil and gas facility are completed and continuing on the 31st day of January each year thereafter.
 - (4) Failure of any owner of an oil or gas well or oil or gas facility to make payment of this safety and security fee by January 31 of each calendar year shall subject the owner to a ten percent (10%) administrative surcharge fee. Interest on the unpaid fee shall be one percent (1%) per month for each month that this fee remains unpaid.
 - (5) No security fee shall be due for the calendar year in which any special use permit was approved. (Ord. 636 §1, 2010)

Sec. 16-9-55. Notice to proceed.

- (a) Prior to commencement of operations for which a use permitted by conditional review has been approved, a notice to proceed shall be obtained from the Town Clerk. The Town Clerk shall issue the notice to proceed upon receipt of the following:
 - (1) A copy of the resolution approving a use permitted by conditional review for a well or wells or waiver approval of the requirements for a special use permit.
 - (2) A copy of the approved site plan.
 - (3) A copy of an approved extra legal vehicle or load permit issued by the Town Clerk pursuant to this Code, if applicable.
 - (4) Copies of any necessary State or Federal permits issued for the operation, if not previously submitted.
- (b) The Town will supply the notice to proceed within three (3) working days of receiving the information listed above.
- (c) A conditional notice to proceed may be issued contingent upon the Town's receipt of the documents described above. This documentation shall be supplied within ten (10) business days after receipt by the applicant. The conditional notice to proceed shall expire in one (1) month or such additional time as granted by the Town's staff where special circumstances are presented by the applicant. The termination of the conditional notice to proceed shall not terminate or invalidate an applicant's approved special use permit or approved waiver. (Ord. 636 §1, 2010)

Sec. 16-9-60. Contract information.

The intent of this Section is to ensure that the Town has the correct contact information in case of an emergency, code violation or security concern.

- (1) Service of notice. As required by the COGCC, every operator shall designate an agent who is a resident of the State upon whom all orders and notices provided in this Article may be served and shall specify in writing a mailing address for such agent. Every operator so designating such agent shall, within ten (10) calendar days, notify the Town, in writing, of any change in such agent or such mailing address unless operations in the Town are discontinued. The Town may serve any notice provided in this Article upon the operator by mailing the same, postage prepaid, to the operator's designated agent at his or her designated address. Service shall be complete upon such mailing. The operator shall give the Town written notice of any change in the designated agent or their contact information.

- (2) Transfer of operator or new operator. As required by COGCC, the operator shall notify the Town, in writing, of any sale, assignment, transfer, conveyance or exchange by said operator of a well's property and equipment within ten (10) calendar days after such sale, assignment, transfer, conveyance or exchange. The notice shall provide a map indicating the location of the properties and equipment involved in the transaction. (Ord. 636 §1, 2010)

Sec. 16-9-65. Flood plain restrictions.

- (a) Violation of any Federal, State or local laws or regulations applicable to flood plains shall be a violation of this Article.
- (b) The well and tank battery shall comply with all applicable Federal, State and local laws and regulations when located in a flood way or a one-hundred-year flood plain area.
 - (1) All equipment at production sites located within a one-hundred-year flood plain shall be anchored as necessary to prevent flotation, lateral movement or collapse or shall be surrounded by berm with a top elevation at least one (1) foot above the level of a one-hundred –year flood, if such anchoring is operationally and economically feasible.
 - (2) Any activity or equipment at any well site within a one-hundred-year flood plain shall comply with the Federal Emergency Management Act. (Ord. 636 §1, 2010)

Sec. 16-9-70. Access roads.

All private access roads used to provide or maintain access to the well site or oil and gas facilities shall be improved and maintained according to the following standards so long as such standards are consistent with a private landowner's requests or the terms of a private surface use agreement with a landowner:

- (1) Oil and gas facility access roads. Access roads to tank batteries shall be subject to review by the Town in accordance with the following minimum standards:
 - a. A graded gravel roadway having a prepared subgrade and an aggregate base course surface a minimum of six (6) inches thick compacted to a minimum density of ninety-five percent (95%) of the maximum density determined in accordance with generally accepted engineering sampling and testing procedures. The aggregate material, at a minimum, shall meet the requirements for Class 3, Aggregate Base Course, as specified for aggregate base course materials in the Colorado Department of

Transportation's *Standard Specifications for Road and Bridge Construction*, latest edition.

- b. Graded so as to provide drainage from the roadway surface and constructed to allow for cross-drainage of waterways (such as roadside swales, gulches, rivers, creeks and the like) by means of an adequate culvert pipe. Adequacy of the pipe is subject to approval of the Town.
 - c. Maintained so as to provide a passable roadway free of ruts at all times.
- (2) Wellhead access roads. Access roads to wellheads shall be subject to review by the Town in accordance with the following minimum standards:
- a. A graded, dirt roadway compacted to a minimum density of ninety-five percent (95%) of the maximum density determined in accordance with generally accepted engineering sampling and testing procedures and approved by the Town.
 - b. Graded so as to provide drainage from the roadway surface and constructed to allow for cross-drainage of waterways by means of an adequate culvert pipe. Adequacy of the pipe shall be subject to approval by the Town.
 - c. Maintained so as to provide a passable roadway generally free of ruts.
- (3) Oversize or overweight vehicle or load permit. An oversize or overweight vehicle or load permit shall be required for all oversize or overweight vehicles or loads as defined in Sections 42-4- 501 through 42-4-511, C.R.S., which use Town streets. Said permit, if required, shall be obtained from the Town prior to such use. The applicant shall comply with all Town and State regulations regarding weight limitations on streets within the Town, and the applicant shall minimize oversize or overweight vehicle traffic on streets within the Town. (Ord. 636 §1, 2010)

Sec. 16-9-75. Compliance with State environmental and noise requirements.

Violation of any Federal, State or local laws or regulations shall be a violation of this Article. The approval of a special use permit shall not relieve the operator from complying with all current applicable local, State and Federal regulations and standards concerning air quality, water quality and waste disposal. State law and regulations concerning noise abatement (Title 24, Article 12, C.R.S., and COGCC, Series 800 Rules) shall apply to all operations, together with applicable local government ordinances, rules or regulations. (Ord. 636 §1, 2010)

Sec. 16-9-80. Waste and storage requirements.

The operator shall comply with all Town, county, State and Federal laws regarding waste and storage requirements. Violation of any Federal, State or local laws or regulations shall be a violation of this Article. (Ord. 636 §1, 2010)

Sec. 16-9-85. Building permit.

Building permits must be obtained if applicable for any aboveground structures pursuant to which the adopted International Building Code applies. (Ord. 636 §1, 2010)

Sec. 16-9-90. Emergency response costs.

The applicant for a special use permit or existing use site plan order shall provide the telephone number of a contact person who may be reached twenty-four (24) hours a day for purposes of being notified of any proposed Town emergency inspection under this Section. Any site for which a special use permit or existing use site plan order has been granted may be inspected by the Town at any time, to ensure compliance with the requirements of the

approved special use permit or existing use site plan order, or to address any emergencies that may arise. By accepting an approved special use permit or existing use site plan order, the applicant grants its consent to such emergency inspections. The operator shall reimburse the Town or the applicable fire district for any emergency response costs incurred by the Town or the fire district in connection with activity at the well site or production site, except that the operator shall not be required to pay for emergency response costs where the response was precipitated by a mistake of the Town or fire district. (Ord. 636 §1, 2010)

Sec. 16-9-95. Injunctive relief and penalty clause.

- (a) Injunctive relief. The Town may seek injunctive relief from any act or acts which are in violation of this Chapter, and the penalties in this Code shall be in addition to such injunctive relief.
- (b) Penalty clause. Any person, firm, corporation or legal entity that constructs, installs or uses, or which causes to be constructed, installed or used, any oil, gas or injection well, well site or production site or commits any act or omission in violation of any provision of this Article or of the conditions and requirements of the special use permit may be punished by a fine not exceeding three hundred dollars (\$300.00) or by imprisonment not exceeding ninety (90) days, or by both such fine and imprisonment. If the Municipal Court becomes a qualified court of record, such maximum fine shall not exceed one thousand dollars (\$1,000.00) and such period of imprisonment shall not exceed one (1) year. Each day of such unlawful operation constitutes a separate violation. (Ord. 636 §1, 2010)

Sec. 16-9-100. Severability.

If any part or parts of this Article are invalidated by operation of the legislative or judicial branch of the State government, it is the intention of the Town that such parts be severed from this Article and the remaining parts of the Article continue in full force and effect. (Ord. 636 §1, 2010)

Sec. 16-9-105. Colorado Oil and Gas Conservation Commission.

The Town recognizes and acknowledges that the following matters are governed by the COGCC and the applicable COGCC regulations:

- (1) Well and Production Facility Setback Requirements (300 and 600 Series Rules);
- (2) Exploration and Production Waste Disposal (900 Series Rules);
- (3) Seismic Operations (300 Series Rules);
- (4) Signage (200 Series Rules);
- (5) Noise Impacts, Visual Impacts, and Environmental Impacts (600, 800, and 1200 Series Rules);
- (6) Flow Lines and Pipeline Operations (1100 Series Rules);
- (7) Reclamation (1000 Series Rules); and
- (8) Abandonment and Plugging of Wells (300 Series Rules). (Ord. 636 §1, 2010)

REVIEW CRITERIA

The Town shall use the following criteria to evaluate the applicant's final subdivision plat application listed in Sec. 16-9-45 "Special use permit approval and review criteria and the Colorado Oil and Gas Conservation Regulations (e.g., impact mitigation and setbacks) including the Town Land Use Code Sections:

16-9-65: Flood plain restrictions.

16-9-70: Access roads.

16-9-75: State environmental and noise requirements.

16-9-80: Waste and storage requirements.

16-9-105: Current Colorado Oil and Gas Conservation Commission regulations adopted in August, 2013.

COMPREHENSIVE PLAN GOALS IMPLEMENTED

The Comprehensive Plan Framework Map, Map 1.1-1 designates the site as Low Density Residential. This request for a special use permit for this well site is consistent with residential uses as evidenced by other oil and gas facilities in existence within residential areas within the Town of Milliken.

FINDINGS OF FACT

1. Great Western Oil and Gas Company is requesting a special use permit for drilling 13 wells, 21 oil tanks, 15 separators, 3 vapor recovery units, 8 water tanks, 2 modular large volume tanks, and 2 gas compressors on a site consisting of approximately 10.893 acres while under construction and approximately 3.757 acres after construction at a site located at Section 22, Township 4 North, Range 67 West, 6th P.M., generally east of County Road 19 and south of County Road 44.
2. The surface land owner is Milliken Investors, LLC. with Mark D. Campbell as the Managing Partner.
3. An agreement exists, dated November 2014, between the surface owner, Milliken Investors, LLC., to allow Great Western Oil and Gas Company access to, operation of, the drilling of wells and the construction of associated oil facilities including but not limited to pipelines and tank batteries at the location described as Section 22, Township 4 North, Range 67 West, 6th P.M.
4. Town of Milliken's Section 16-9-25, Article 9 allows one special use permit be issued for multiple drill pad sites containing one or more wells, if the drill pad sites are located within a half section area or area of equivalent size, or if the drill pad sites are in a single section or area of equivalent size and under one property ownership. The installation of tanks, heaters, separators and other accessory equipment at the same time are considered extensions to the oil and gas wells and shall accordingly be subject to the same applications, review, permit, regulations and standards.
5. The planned date to begin construction is December 1, 2015 and to begin interim reclamation is April 1, 2016.
6. In December 2006, the Town annexed the property as part of the Dutton annexation and zoned the land to R-1 "Single Family Residential" with the Board approval of Ordinance 549. No

development of the land has occurred, so the current use of the land at this time is for irrigated crops. The surrounding land uses are primarily agricultural with some residential housing.

7. The Dutton annexation contained approximately 79.80 acres, which consisted of two parcels. This portion of this annexation is the larger parcel consisting of approximately 76.010 acres.
8. The access for these wells is on a dirt road off of County Road 19 between County Road 42 and 44.
9. The granting of a special use permit shall does not relieve the operator from otherwise complying with all applicable Town, State and Federal regulatory requirements.

STAFF RECOMMENDATION

In accordance with Sections 16-9-35(b)(1) and 16-9-45, the Planning Commission may approve, conditionally approve or deny the use by special review application based on the use by special review criteria. The request for a special use permit includes 13 wells, 21 oil tanks, 15 separators, 3 vapor recovery units, 8 water tanks, 2 modular large volume tanks, and 2 gas compressors on a site consisting of approximately 10.893 acres while under construction and approximately 3.757 acres after construction located at Section 22, Township 4 North, Range 67 West, 6th P.M., generally east of County Road 19 and south of County Road 44. Great Western Oil and Gas Company has agreed to mitigate the negative impacts on the neighbors by adhering to all federal, state, and local regulations. In addition, company representatives met with Town staff on July 23, 2015 to discuss and address any potential, additional concerns.

On January 23, 2015, the company sent notices to property owners within 1000 feet as required by the Colorado Oil and Gas Commission for each well. The Town did receive these notices.

On May 20, 2015, Great Western Oil and Gas Company asked about the process for applying for a special use permit for 13 wells on corner of County Road 44 and County Road 19. Town staff requested Great Western read the Town Code Article 9 "Oil and Gas Drilling Production" to make sure they understood the Town's regulations too. Great Western Oil and Gas Company subsequently submitted their application for a special use application with a site plan for 13 wells and oil related facilities. On June 23, 2015, Town staff met with Mark D. Campbell, the managing partner, who represents the surface owner, Milliken Investors LLC.

On June 24, 2015, Town staff followed up by sending notices to property owners within 300 feet of the property boundaries. On June 25, 2015, a legal notice was published in the *Johnstown Breeze*. On June 24 and July 7, 2015, staff sent referrals and additional information out to other agencies and the surface property owner. On July 25, 2015, the property was posted with a sign for proposed development. Staff did receive one call after the sign was posted; that property owner did know about the oil well proposal.

Staff received quite a few referral comments. All of these comments were forwarded to the applicant. For example, Excel Energy has only single phase service available in the area. The closest three phase service is approximately 8,000 feet to the North. In response to the referral comments, the applicant requested a meeting with staff on July 23, 2015 to discuss these comments and other potential issues. The applicant will be using solar power on site.

Staff believes after reading Great Western's Operating Plan that most of the federal, state and local regulations have been or will be met. The site is not in a flood plain. The operating plan addresses environmental issues, noise, lighting, waste control, storage, storm water, signage, stages of production, and other potential negative impacts on the site. Great Western submitted a drainage report and an Emergency Response Plan too. Staff would like the company to obtain an address and provide the Town and Fire with their emergency contact information.

In accordance with Code Section 16-9-85, the Town staff asked Great Western Oil and Gas to fill out a special building permit, which they submitted today. Town staff has not had time to review the permit application.

The applicant will be providing a final site plan for recording at the County of Weld Clerks Office and staff would like as-builts of the project once the wells are operational. Company representatives volunteered to provide nice fencing around the site once the wells become operational too. After some discussion, staff decided special landscaping would not be required.

Finally, Town staff has some concerns with Great Western's impact on the roads. Staff asked Great Western if they would be willing to send a letter or sign some other agreement to maintain the roads, since there will be a lot of oil-related truck traffic and heavy equipment. The company will be trucking water from Windsor. The maps included in the application show them coming through Johnstown to State Road 60 and down County Road 19. Staff included for the Commission and Board a copy of a letter that PDC provided the Town, which was approved by the Town Clerk pursuant to Section 16-9-55 as the vehicle load permit. In addition, Code Section 16-9-70 "Access Roads" applies.

Thus, in summary, Staff recommends approval of a special use permit for drilling 13 wells and oil related facilities on a site consisting of approximately 10.893 acres while under construction and approximately 3.757 acres after construction for a location at Section 22, Township 4 North, Range 67 West, 6th P.M., generally east of County Road 19 and south of County Road 44. As part of this approval, the Great Western Oil and Gas Company shall meet all federal, state, and local regulations, including, but not limited to:

- In accordance with Code Section 16-9-35(b)(2), a special use permit for oil and gas facilities shall become null and void three (3) years after approval of the special use permit if development of the site does not commence.
- In accordance with Code Section 16-9-85, a building permit shall be obtained.
- In accordance with Code Section 16-9-75, the applicant shall maintain compliance with State environmental and noise requirements.
- In accordance with Code Section 16-9-80, the applicant shall maintain compliance with all Town, State and Federal laws regarding waste and storage requirements.
- The applicant shall allow for the provision of Code Section 16-9-90, Emergency Response costs.
- The applicant shall adhere to the current Colorado Oil and Gas Conservation Commission regulations. Copies of all permits and licenses issued by the Colorado Oil and Gas Conservation Commission shall be provided to the Town of Milliken.
- The applicant shall provide staff with as-builts for the building plans and site plan once the wells become operational.

- In accordance with Section 16-9-70, access roads shall be installed and maintained. A long-term road maintenance letter/agreement shall be entered into with the Town and the applicant for the maintenance and necessary improvements to Weld County Roads 44 and 19.
- A fence permit will be obtained, once the wells are operational, so that the location and type of fencing may be reviewed by Town staff prior to construction.

Staff recommends the Planning Commission find that the request consistent with the Use by Special Review criteria found in Article 9 of the Land Use Code.

PLANNING AND ZONING COMMISSION APPROVAL

_____The Planning & Zoning Commission after hearing testimony, examination of the documents presented and the findings of fact finds the application MEETS the provisions of Town's Municipal Code Chapter 16 Sections et. seq. of the Town of Milliken's Land Use Development Code (LUDC) and APPROVES the request for the approval of a special use permit for the drilling 13 wells and the construction of oil related facilities on a site consisting of approximately 10.893 acres while under construction and approximately 3.757 acres after construction on a site located at Section 22, Township 4 North, Range 67 West, 6th P.M., generally east of County Road 19 and south of County Road 44 provided:

1. Great Western Oil and Gas Company adheres to all of the Town Code's regulations including providing a final site plan/plat for recording, providing emergency contact information, obtaining a letter/agreement for the maintenance of the roads, obtaining a building permit, providing as-built plans once the site is operational, and obtaining a fence permit once the wells are operational.

or:

_____The Planning & Zoning Commission after hearing testimony, examination of the documents presented and the findings of fact finds the application DOES NOT MEET the provisions of Town's Municipal Code Chapter 16 Sections et. seq. of the Town of Milliken's Land Use Development Code (LUDC) and DENIES the request for the approval of a special use permit for the drilling 13 wells and the construction of oil related facilities on a site consisting of approximately 10.893 acres while under construction and approximately 3.757 acres after construction located at Section 22, Township 4 North, Range 67 West, 6th P.M., generally east of County Road 19 and south of County Road 44.