



Agenda
Prosper Town Council Meeting
Prosper Town Hall, Council Chambers
250 W. First Street, Prosper, Texas
Tuesday, April 25, 2023
6:15 PM

Welcome to the Prosper Town Council Meeting.

Citizens may watch the meeting live by using the following link:
<https://prospertx.new.swagit.com/views/378/>

Addressing the Town Council:

Those wishing to address the Town Council must complete the Public Comment Request Form located on the Town's website or in the Council Chambers.

If you are attending in person, please submit this form to the Town Secretary or the person recording the minutes for the Board/Commission prior to the meeting. When called upon, please come to the podium, and state your name and address for the record.

If you are watching online, please submit this form to the Town Secretary prior to 4:00 p.m. on the day of the meeting in order for your comments to be read into the record. The Town assumes no responsibility for technical issues beyond our control.

In compliance with the Texas Open Meetings Act, the Town Council/Board/Commission may not deliberate or vote on any matter that does not appear on the agenda. The Council/Board/Commission, however, may provide statements of fact regarding the topic, request the topic be included as part of a future meeting, and/or refer the topic to Town staff for further assistance.

Citizens and other visitors attending Town Council meetings shall observe the same rules of propriety, decorum, and good conduct applicable to members of the Town Council. Any person making personal, impertinent, profane or slanderous remarks or who becomes boisterous while addressing the Town Council or while attending the Town Council meeting shall be removed from the room, if so directed by the Mayor or presiding officer, and the person shall be barred from further audience before the Town Council during that session of the Town Council. Disruption of a public meeting could constitute a violation of Section 42.05 of the Texas Penal Code.

Call to Order/ Roll Call.

Invocation, Pledge of Allegiance and Pledge to the Texas Flag.

Announcements of recent and upcoming events.

Presentations.

1. Recognize individuals and the Fire Department for Life Saving efforts and awards.
(SB)

CONSENT AGENDA:

Items placed on the Consent Agenda are considered routine in nature and non-controversial. The Consent Agenda can be acted upon in one motion. Items may be removed from the Consent Agenda by the request of Council Members or staff.

2. Consider and act upon the minutes from the April 11, 2023, Town Council Work Session meeting. (MLS)
3. Consider and act upon the minutes from the April 11, 2023, Town Council Regular meeting. (MLS)
4. Consider and act upon approving the purchase and installation of additional SWAT lockers for the Police Department. (DK)
5. Consider and act upon approval of additional funding to the existing contract with PondMedics, Inc. to include the Proactive Plan for Broadway Pond. (DB)
6. Consider and act upon authorizing the Town Manager to execute a Wastewater Development Agreement between PROSPER TOLLROAD J.V., and the Town of Prosper, Texas, related to the extension of a sanitary sewer line from Armstrong Lane to the Lakes of Prosper lift station. (HW)
7. Consider and act upon whether to direct staff to submit a written notice of appeals on behalf of the Town Council to the Development Services Department, pursuant to Chapter 4, Section 1.5(C)(7) and 1.6(B)(7) of the Town's Zoning Ordinance, regarding action taken by the Planning & Zoning Commission on any Preliminary Site Plan, including Gates of Prosper, Phase 2, Lots 11 and 12. (DS)

CITIZEN COMMENTS

The public is invited to address the Council on any topic. However, the Council is unable to discuss or take action on any topic not listed on this agenda. Please complete a "Public Comment Request Form" and present it to the Town Secretary prior to the meeting. Please limit your comments to three minutes. If multiple individuals wish to speak on a topic, they may yield their three minutes to one individual appointed to speak on their behalf. All individuals yielding their time must be present at the meeting, and the appointed individual will be limited to a total of 15 minutes.

REGULAR AGENDA:

If you wish to address the Council, please fill out a "Public Comment Request Form" and present it to the Town Secretary, preferably before the meeting begins. Pursuant to Section 551.007 of the Texas Government Code, individuals wishing to address the Council for items listed as public hearings will be recognized when the public hearing is opened. For individuals wishing to speak on a non-public hearing item, they may either address the Council during the Citizen Comments portion of the meeting or when the item is considered by the Town Council.

Items for Individual Consideration:

8. Conduct a public hearing and act upon a request to amend the Future Land Use Plan from Residential Low Density to Retail and Neighborhood Services, generally located, located on the east side of Preston Road, north of St. Peter Lane. This is a companion case to Z21-0003. (CA21-0001). (DS)
9. Conduct a public hearing and consider and act upon a request to rezone 13.3± acres from Single Family- 15 (SF-15) to Planned Development-Retail (PD-R), generally to allow for an office/retail development, located on the east side of Preston Road, north of St. Peter Lane. (Z21-0003). (DS)
10. Consider and act to adopt the Priorities of the Prosper Town Council from the Council's Strategic Visioning Event(s) held on February 18 and March 20, 2023. (MC)

Possibly direct Town staff to schedule topic(s) for discussion at a future meeting.

EXECUTIVE SESSION:

Recess into Closed Session in compliance with Section 551.001 et seq. Texas Government Code, as authorized by the Texas Open Meetings Act, to deliberate regarding:

Section 551.087 – To discuss and consider economic development incentives and all matters incident and related thereto.

Section 551.072 – To discuss and consider purchase, exchange, lease or value of real property for municipal purposes and all matters incident and related thereto.

Section 551.074 – To discuss and consider personnel matters and all matters incident and related thereto.

Section 551.076 - To deliberate the deployment, or specific occasions for implementation of security personnel, devices, or procedures.

Section 551.071 - To consult with the Town Attorney regarding legal issues associated with Interlocal and Construction Agreements, and all matters incident and related thereto.

Section 551.074 - To discuss appointments to the Board of Adjustment/Construction Board of Appeals, Parks & Recreation Board, Library Board, Prosper Economic Development Corporation Board, Planning & Zoning Commission, Community Engagement Committee, the Comprehensive Plan Advisory Committee, and all matters incident and related thereto.

Reconvene in Regular Session and take any action necessary as a result of the Closed Session.

Adjourn.

CERTIFICATION

I, the undersigned authority, do hereby certify that this Notice of Meeting was posted at Prosper Town Hall, located at 250 W. First Street, Prosper, Texas 75078, a place convenient and readily accessible to the general public at all times, and said Notice was posted by 5:00 p.m., on Friday, April 21, 2023, and remained so posted at least 72 hours before said meeting was convened.

Michelle Lewis Sirianni, Town Secretary

Date Notice Removed

Pursuant to Section 551.071 of the Texas Government Code, the Town Council reserves the right to consult in closed session with its attorney and to receive legal advice regarding any item listed on this agenda.

NOTICE

Pursuant to Town of Prosper Ordinance No. 13-63, all speakers other than Town of Prosper staff are limited to three (3) minutes per person, per item, which may be extended for an additional two (2) minutes with approval of a majority vote of the Town Council.

NOTICE OF ASSISTANCE AT PUBLIC MEETINGS: The Prosper Town Council meetings are wheelchair accessible. For special services or assistance, please contact the Town Secretary's Office at (972) 569-1011 at least 48 hours prior to the meeting time.

Call to Order/ Roll Call.

The meeting was called to order at 5:00 p.m.

Council Members Present:

Mayor David F. Bristol
Mayor Pro-Tem Jeff Hodges
Councilmember Marcus E. Ray
Deputy Mayor Pro-Tem Craig Andres
Councilmember Amy Bartley
Councilmember Chris Kern
Councilmember Charles Cotten

Staff Members Present:

Mario Canizares, Town Manager
Michelle Lewis Sirianni, Town Secretary
Terry Welch, Town Attorney
Bob Scott, Executive Director of Administrative Services
Robyn Battle, Executive Director of Community Services
Chuck Ewings, Executive Director of Development and Infrastructure Services
Hulon Webb, Engineering Director
Dan Baker, Parks & Recreation Director
Doug Kowalski, Police Chief

Items for Individual Consideration

1. Discuss and review 2023 Town events. (DB)

Mr. Baker presented an overview of the 2023 events currently scheduled identifying what is new, how the calendar was established, and any changes made to the events based on last year's evaluations.

The Town Council discussed the events and provided feedback regarding certain events that included changing location of finals of P-Town Throwdown, ensuring downtown meetings are accessible, diversity in food trucks, and reaching out to new business owners prior to events,

2. Discuss and seek direction on Town Council requests. (MC)

Mr. Canizares stated that the staff is seeking direction on prioritizing items the Town Council has brought forward. It was noted these items would continue to be updated on a regular basis.

The Town Council discussed ranking them in order of importance based on timeframe of projects, if any items could be combined/condensed, as well as looking at items holistically. Based on the number of items, the Town Council requested this item to be brought back to a future work session.

The meeting was adjourned at 6:00 p.m.

These minutes were approved on the 25th day of April 2023.

APPROVED:

David F. Bristol, Mayor

ATTEST:

Michelle Lewis Sirianni, Town Secretary

DRAFT

MINUTES

Prosper Town Council Meeting
Prosper Town Hall, Council Chambers
250 W. First Street, Prosper, Texas
Tuesday, April 11, 2023

Call to Order/ Roll Call.

The meeting was called to order at 6:15 p.m.

Council Members Present:

Mayor David F. Bristol
Mayor Pro-Tem Jeff Hodges
Deputy Mayor Pro-Tem Craig Andres
Councilmember Marcus E. Ray
Councilmember Amy Bartley
Councilmember Chris Kern
Councilmember Charles Cotten

Staff Members Present:

Mario Canizares, Town Manager
Michelle Lewis Sirianni, Town Secretary
Terry Welch, Town Attorney
Robyn Battle, Executive Director of Community Services
Bob Scott, Executive Director of Administrative Services
Chuck Ewings, Executive Director of Development and Infrastructure Services
Hulon Webb, Engineering Director
Dan Baker, Parks and Recreation Director
Todd Rice, Communications Manager
David Soto, Planning Manager
Kellen Land, Help Desk Technician
Mary Ann Moon, Economic Development Executive Director
Doug Kowalski, Police Chief

Invocation, Pledge of Allegiance and Pledge to the Texas Flag.

Matt Boswell with The Trails Church led the invocation. The Pledge of Allegiance and the Pledge to the Texas Flag were recited.

Announcements of recent and upcoming events.

Councilmember Kern made the following announcements:

The Mayor's Fitness Challenge is underway. The challenge is running the full year to encourage wellness as a Prosper lifestyle. Challengers who submit a completed tracking sheet by June 9 will earn a T-shirt and entry into the drawing for the top seasonal prize. Don't forget to register today by visiting www.prospertx.gov/mayorsfitnesschallenge.

Join Mayor Bristol tomorrow at 9:00 a.m. for Mayor's Coffee located at Prosper Fire Station #2, 1140 S. Teel Pkwy to hear an update on what's happening in and around Prosper. If you haven't registered to attend, please contact the Parks and Recreation Department prior to the event.

Youth Summer Camp Registration is now open. Prosper summer camps will keep your child moving, thinking, and meeting friends. Camps begin May 30 and will run through August 4 at

various locations in town. Visit prosperparksandrec.org to register and for additional information such as camp descriptions, dates, times, locations, and rates.

On Saturday, April 22, residents may dispose of prescription drugs through the National Prescription Drug Take-Back Day at the Central Fire Station located at 1500 W. First Street from 10:00 a.m. until 2:00 p.m. This is a safe way to get rid of any prescription pills and controlled substance medications.

Early Voting for the May 6, 2023, Special Election begins on Monday, April 24 and runs through Tuesday, May 2. Residents residing in Collin County may vote at Prosper Town Hall and residents residing in Denton County may vote at Fire Station No. 2. Visit the Elections page through the Town's website for times, additional locations, and information.

Councilmember Bartley recognized the Prosper Ladies Association and Cornerstone for the success of their most recent events.

Councilmember Ray noted that April 9 to 15 is recognized as National Public Safety Telecommunications week and thanked the Town's employees who work in this area.

Mayor Bristol proudly announced the birth of his two new grandchildren.

Councilmember Ray added he also has recently celebrated the birth of his two new grandchildren.

Presentations.

1. Presentation of a Proclamation declaring April 2023, as Sexual Assault Awareness Month. (MLS)

Mayor Bristol read and presented a Proclamation to Brittany Jackson and Morgan Melson from Denton County Friends of the Family organization.

CONSENT AGENDA:

Items placed on the Consent Agenda are considered routine in nature and non-controversial. The Consent Agenda can be acted upon in one motion. Items may be removed from the Consent Agenda at the request of Council Members or staff.

- 2. Consider and act upon the minutes from the March 27, 2023, Town Council Joint Work Session Meeting. (MLS)**
- 3. Consider and act upon the minutes from the March 28, 2023, Town Council Work Session meeting. (MLS)**
- 4. Consider and act upon the minutes from the March 28, 2023, Town Council Regular meeting. (MLS)**
- 5. Consider and act upon Ordinance 2023-34 amending Section 12.09.003, "Speed Limits on Specific Streets," of Chapter 12 "Traffic and Vehicles," of the Town's Code of Ordinances by modifying the prima facie speed limit on FM 1461 (Frontier Parkway). (HW)**
- 6. Consider and act upon approving the purchase of Public Safety, Police Department supplies and equipment through the Texas Department of**

Information Services (DIR) Contract #DIR-TSO-4101 with Motorola Solutions, Inc. (DK)

7. Consider and act upon the appointment of Frank Jaromin, Public Works Director, to the Upper Trinity Regional Water District Board of Directors effective June 1, 2023. (CE)
8. Consider and act upon authorizing the Town Manager to execute an Interlocal Agreement between the City of Celina, Texas, and the Town of Prosper, Texas, related to cost participation in the construction of interim asphalt improvements on Parvin Road from east of FM 1385 to west of Legacy Drive, and funding participation for the design of Frontier Parkway from Legacy Drive to the Dallas Parkway. (HW)
9. Consider and act upon Ordinance 2023-26 amending Planned Development-94 (PD-94), for Westside Development, on 64.5± acres, northeast corner of US 380 and FM 1385, regarding a big box use and development standards. (Z22-0020). (DS)
10. Consider and act upon authorizing the Town Manager to execute a Development Agreement between 1385 Prosper LLC, Alphas 3 Prosper RI LLC, SSSS Holdings LLC, and Westside Prosper LLC and the Town of Prosper, related to the Westside Development, northeast corner of US 380 and FM 1385. (DS)
11. (Item will be Postponed to April 25, 2023) Conduct a public hearing and act upon a request to amend the Future Land Use Plan from Residential Low Density to Retail and Neighborhood Services, generally located, located on the east side of Preston Road, north of St. Peter Lane. This is a companion case to Z21-0003. (CA21-0001). (DS)
12. (Item will be Postponed to April 25, 2023) Conduct a public hearing and consider and act upon a request to rezone 13.3± acres from Single Family- 15 (SF-15) to Planned Development-Retail (PD-R), generally to allow for an office/retail development, located on the east side of Preston Road, north of St. Peter Lane. (Z21-0003). (DS)
13. Consider and act upon whether to direct staff to submit a written notice of appeals on behalf of the Town Council to the Development Services Department, pursuant to Chapter 4, Section 1.5(C)(7) and 1.6(B)(7) of the Town's Zoning Ordinance, regarding action taken by the Planning & Zoning Commission on any Site Plan, including Legacy Wireless Communication Tower. (DS)

Mayor Bristol requested to pull items 9 & 10.

Councilmember Cotten requested to pull items 5 & 8.

Mayor Pro-Tem Hodges made a motion to approve items 1 through 4, 6, 7, and 11 through 13. Councilmember Ray seconded that motion, and the motion was unanimously approved.

Councilmember Cotten requested a presentation for items 5 & 8.

Regarding item #5, Mr. Webb stated the City of Celina requested a study of the speed of vehicles on FM 1461 from Preston Road to Custer Road. The study found that speeds varied between 52 mph and 57 mph compared to the existing speed limit of 55 mph. Due to the high number of driveways along this stretch of roadway, TxDOT recommended that the speed limit be reduced to 50 mph. Mr. Webb noted that TxDOT will install the new signs.

Councilmember Cotten asked if there was any consideration of stop lights to be installed. Mr. Webb commented that they do not currently meet the requirements to be deemed necessary.

Councilmember Cotten made a motion to approve Ordinance 2023-34 amending Section 12.09.003, "Speed Limits on Specific Streets," of Chapter 12 "Traffic and Vehicles," of the Town's Code of Ordinances by modifying the prima facie speed limit on FM 1461 (Frontier Parkway). Mayor Pro-Tem Hodges seconded that motion, and the motion was unanimously approved.

Regarding item #8, Mr. Webb stated the City of Celina coordinated with Denton County and developments in the area to secure funding for interim asphalt improvements. The Town had allocated \$800,000 for the design of Parvin Road project. Since the City of Celina is moving forward into the next phase of design and environmental evaluation and has entered into an Interlocal Agreement with Denton County to utilize funding from the Denton County Transportation Bond, the Town of Prosper is requesting to reallocate these funds. As outlined in the Interlocal Agreement, \$500,000, is proposed to be reallocated towards the cost participation in the construction of interim asphalt improvements from east of FM 1385 to west of Legacy Drive, and \$300,000, towards the funding participation for the design of Frontier Parkway between Legacy Drive and the Dallas Parkway.

The Town Council discussed the general life span of asphalt, the concern of maintenance, and construction costs.

Councilmember Cotten made a motion to approve authorizing the Town Manager to execute an Interlocal Agreement between the City of Celina, Texas, and the Town of Prosper, Texas, related to cost participation in the construction of interim asphalt improvements on Parvin Road from east of FM 1385 to west of Legacy Drive, and funding participation for the design of Frontier Parkway from Legacy Drive to the Dallas Parkway. Deputy Mayor Pro-Tem Andres seconded that motion, and the motion was unanimously approved.

Regarding item #9, the Town Attorney noted that the wording of the motion within the staff report is incorrect, and the Town Council does not need to add the wording 'not subject to the License Agreement' to the motion.

Councilmember Ray made a motion to approve Ordinance 2023-26 amending Planned Development-94 (PD-94), for Westside Development, on 64.5± acres, northeast corner of US 380 and FM 1385, regarding a big box use and development standards. Deputy Mayor Pro-Tem Andres seconded that motion, and the motion was unanimously approved.

Regarding item #10, the Town Attorney noted the same comments as for item #9.

Deputy Mayor Pro-Tem Andres made a motion to authorizing the Town Manager to execute a Development Agreement between 1385 Prosper LLC, Alphas 3 Prosper RI

LLC, SSSS Holdings LLC, and Westside Prosper LLC and the Town of Prosper, related to the Westside Development, northeast corner of US 380 and FM 1385. Mayor Pro-Tem Hodges seconded that motion, and the motion was unanimously approved.

CITIZEN COMMENTS

Barbara Nugent, 961 Grassy Shore Lane, expressed her frustration of new developments along the Dallas North Tollway to Legacy Drive and how aesthetically displeasing they are visually with no flow of buildings.

Items for Individual Consideration:

14. **Consider and act upon Resolution 2023-35 of the Town Council of the Town of Prosper, Texas, declaring the public necessity to acquire certain water line easements and temporary construction easements for the construction of the Dallas North Tollway (Prosper Trail - Frontier) 12" Water Line project; determining the public use and necessity for such acquisition; authorizing the acquisition of property rights necessary for said Project; appointing an appraiser and negotiator as necessary; authorizing the Town Manager to establish just compensation for the property rights to be acquired; authorizing the Town Manager to take all steps necessary to acquire the needed property rights in compliance with all applicable laws and resolutions; and authorizing the Town Attorney to institute condemnation proceedings to acquire the property rights if purchase negotiations are not successful. (HW)**

Mr. Webb identified the parcels affected with this project. This item gives staff the ability and authority to move forward with condemnation if necessary. Mr. Webb noted that no permanent easements will be needed; however, a few temporary easements will be to be acquired for the project. This item requires a roll call vote.

Councilmember Cotten made a motion to approve Resolution 2023-35 of the Town Council of the Town of Prosper, Texas, declaring the public necessity to acquire certain water line easements and temporary construction easements for the construction of the Dallas North Tollway (Prosper Trail - Frontier) 12" Water Line project; determining the public use and necessity for such acquisition; authorizing the acquisition of property rights necessary for said Project; appointing an appraiser and negotiator as necessary; authorizing the Town Manager to establish just compensation for the property rights to be acquired; authorizing the Town Manager to take all steps necessary to acquire the needed property rights in compliance with all applicable laws and resolutions; and authorizing the Town Attorney to institute condemnation proceedings to acquire the property rights if purchase negotiations are not successful. Deputy Mayor Pro-Tem Andres seconded that motion.

Councilmember Cotten – For
 Councilmember Kern – For
 Deputy Mayor Pro-Tem Andres – For
 Mayor Bristol – For
 Mayor Pro-Tem Hodges – For
 Councilmember Bartley – For
 Councilmember Ray – For

The motion passes with a 7-0 roll call vote.

Possibly direct Town staff to schedule topic(s) for discussion at a future meeting.

No comments were made.

EXECUTIVE SESSION:

Recess into Closed Session in compliance with Section 551.001 et seq. Texas Government Code, as authorized by the Texas Open Meetings Act, to deliberate regarding:

Section 551.087 – To discuss and consider economic development incentives and all matters incident and related thereto.

Section 551.072 – To discuss and consider purchase, exchange, lease or value of real property for municipal purposes and all matters incident and related thereto.

Section 551.074 – To discuss and consider personnel matters and all matters incident and related thereto.

Section 551.074 - To discuss appointments to the Board of Adjustment/Construction Board of Appeals, Parks & Recreation Board, Library Board, Prosper Economic Development Corporation Board, Planning & Zoning Commission, and the Community Engagement Committee, and all matters incident and related thereto.

The Town Council recessed into Executive Session at 7:00 p.m.

Reconvene in Regular Session and take any action necessary as a result of the Closed Session.

The Town Council reconvened into Regular Session at 7:53 p.m.

Mayor Pro-Tem Hodges made a motion to authorize the Town Manager to execute a Chapter 380 Economic Development Agreement between the Town of Prosper, Texas and Costco Wholesale Corporation. Councilmember Ray seconded that motion, and the motion was unanimously approved.

Mayor Pro-Tem Hodges made a motion to authorize the Town Manager to execute a First Amendment to an Economic Development Incentive Agreement between the Town of Prosper, Texas and Rise Commercial Investment Group LLC relative to the Westside project. Councilmember Kern seconded that motion, and the motion was unanimously approved.

Mayor Pro-Tem Hodges made a motion to approve Britt Beene to a permanent spot on the CEC and to move Josh Carson from CEC to P&Z. Councilmember Ray seconded that motion, and the motion was unanimously approved.

Adjourn.

The meeting was adjourned at 7:56 p.m.

These minutes were approved on the 25th day of April 2023.

APPROVED:

David F. Bristol, Mayor

ATTEST:

Michelle Lewis Sirianni, Town Secretary

DRAFT

Police Department

To: Mayor and Town Council

From: Doug Kowalski, Chief of Police

Through: Mario Canizares, Town Manager

Re: Southwest Solutions Group, Inc Purchase

Town Council Meeting – April 25, 2023

Agenda Item:

Consider and act upon approving the purchase and installation of additional SWAT lockers for the Police Department.

Description of Agenda Item:

Purchase and installation of additional custom-made SWAT lockers by Southwest Solutions Group, Inc. for the Police Department to match existing lockers in the facility.

Budget Impact:

This purchase of \$14,462 was approved in the FY23 budget and will be funded by the Police Department Donations account #670-5205-10-00.

Legal Obligations and Review:

Terrence Welch of Brown & Hofmeister, L.L.P., has approved the attached documents as to form and legality.

Attached Documents:

1. Southwest Solutions Group, Inc Quote #138976

Town Staff Recommendation:

Town Staff recommends approving the purchase and installation of additional custom-made SWAT lockers from Southwest Solutions Group, Inc. per quote#138976.

Proposed Motion:

I move to approve the purchase and installation of additional custom-made SWAT lockers from Southwest Solutions Group, Inc.

Southwest Solutions Group, Inc.

2535 E STATE HIGHWAY 121

Lewisville, TX 75056

Phone: (972) 250-1970

Fax: (972) 250-2229

www.southwestsolutions.com**Quote # 13**Date: March **Item 4.**

Project # 112828

Page 1 of 3

Quote valid for 30 days.

BILL TO:

Lt. Barrett Morris

Town of Prosper

801 Safety Way

Prosper, TX 75078

INSTALL TO:

Town of Prosper

801 Safety Way

Prosper, TX 75078

SALESPERSON	QUOTE NAME	PAYMENT TERMS	LEAD TIME
Benjamin DeGeorge Jr bdegeorge@southwestsolutions.com (214)882-2103 (Cell)	Prosper SWAT Rev	Net 30 - Billable upon delivery, payment due in 30 days	12 to 14 weeks (after receipt of order)

112828-1: SWAT Lockers: Installed

#	DESCRIPTION	LINE TOTAL
1	112828-1 Quantity (5) SWAT lockers with no doors and adjustable bottom shelf, 24" wide x 30" deep x 88" high. Includes all design services, manufacturing, packaging, freight, inside delivery, installation by factory certified (non-union/non-prevailing wage) technicians during normal business hours, cleanup of area, removal of all debris, and warranty. Assumes clear access to all loading docks, elevators and installation sites. Seismic-rated equipment, calculations and permitting are not included unless otherwise specified. Because of market volatility impacting freight, fuel, steel and aluminum, this quote is valid for 30 days. Orders placed after that may be subject to a 5% price increase. Lead times are subject to change until time of purchase.	\$14,462.00

Subtotal: \$14,462.00

Plus Applicable Sales Tax:**Option Accepted (initial here)****Total: \$14,462.00**

Financing and leasing options are available. Call for details.

[We accept Credit Cards and eChecks.](#)

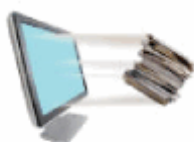
Credit Card payments over \$25,000 are subject to a 2.50% Convenience Fee. No Convenience Fee on eChecks. Southwest Solutions Federal Tax

ID #: 75-2703228

Authorized Signature: _____

Date: _____

P.O. #: _____

**High Density Storage****Document Scanning****Modular Casework****Movable Walls****Automated Storage****Smart Lockers**

Southwest Solutions Group, Inc.

2535 E STATE HIGHWAY 121
Lewisville, TX 75056
Phone: (972) 250-1970
Fax: (972) 250-2229



Quote # 13

Date: March

Item 4.

Project # 112828

Page 2 of 3

Quote valid for 30 days.

www.southwestsolutions.com

Scope of Work

The following are the responsibilities of Southwest Solutions Group (SSG) and Client to ensure the completion of the project in an efficient, timely manner. The items and services listed in this section, unless otherwise specified herein, have not been included in the equipment or services pricing and will be the responsibility and at the expense and liability of Client.

BY SSG	
TYPE	DESCRIPTION
General Installation	All charges associated and incurred for manufacturing, freight, local delivery, installation, cleanup, staff training, and warranty, unless specified otherwise. Complete turnkey installation services by factory certified technicians and training of staff. All installation to take place during normal business hours (8:00 a.m. to 5:00 p.m. Monday-Friday). If work is required outside of these hours, overtime charges will apply.
Warehouse Storage	Provide two (2) weeks cost-free storage at local warehouse. When additional storage time is needed due to a change in customer requirements, warehouse storage charges will be accrued at the rate of: \$3.00 per hundred weight per month up to 90 days. \$7.50 per hundred weight per month over 90 days.
Direct Ship Design	Coordinate manufacturing to meet required delivery schedules. Includes all charges associated and incurred for freight, dock to dock delivery and warranty. Provide accurate representations of equipment in the client's space, based on site verification or CAD/Revit created layouts. Includes recessed rail detail, power requirements, data requirements and/or floor loading information as available and applicable.
Project Management	Assign a designated Project Manager to communicate and coordinate logistics and delivery of material ship dates with manufacturer. Communicate, update and revise project timelines when applicable. Schedule installation crews based on material arrival dates.
Recessed Rail Requirements	Will provide rail centers and trough requirements to contractor as applicable.
Installation Technicians	Provide trained technicians to complete installation of equipment per the approved drawing. Technicians shall perform work in a professional, safe and courteous manner, and according to predetermined and agreed upon completion dates.
Service	Provide training, on-site and phone support as needed for repairs and preventative maintenance of equipment. (Outside of Warranty/Service Agreement normal hourly rates, travel and parts apply)
Extended Warranty/Service Agreements	Offer an optional extended warranty and service agreement. Maintain equipment through a purchased service program after the original Manufacturer's warranty expires.
BY CLIENT	
TYPE	DESCRIPTION
Receipt of Freight	Quote is based on standard truck delivery directed to a dock facility that is designed to receive freight. All other special services, such as, but not limited to: Pre-notification prior to delivery, limited access/non-commercial, residential, government, school deliveries, lift gate, inside deliveries, etc. are available for additional charges and will be billed accordingly.
Direct Ship Drawing Approval	Indicate any lift gate, limited access, special delivery requirements to SSG for coordination of freight services. Approve and sign SSG provided design drawing so that materials can be ordered to meet delivery and installation schedule. Design drawing will include "in space" representation of the equipment and its requirements. Lead times begin after receipt of drawing approval.
Access to Work Area	Provide unobstructed space within the site of installation to permit the incorporation of the systems as shown on any drawings that form a part of this Agreement. Prepare the work site to permit the unloading, installation, testing and acceptance of the equipment. If area is not precleared prior to installer's arrival, additional charges will be applied. Provide hoisting and elevator services for SSG equipment and personnel.
Building Obstructions	Remove and/or relocate any building obstructions, such as ducting, lighting fixtures and wiring, drains, piping, structural steel, electrical wiring, conduit, etc. which interfere with the equipment clearances. Provide sprinkler and fire safety devices including sprinkler design. Ensure that all equipment will pass through building access doors or other openings as necessary.
Foundation Preparation	Provide verification through facility management or other certified engineer of floor's weight carrying capacity to properly hold equipment (floor load). Provide location information of any conduit running through concrete floors (drilling may be required).
Modifications to Room Dimensions	If room dimensions differ from those provided in proposal, it is the responsibility of the client to inform SSG at least 4 weeks prior to shipping time to delay shipment from factory. Modifications after purchase orders (change orders) are processed by SSG are subject to delayed shipment and installation, and price increases.
Project Delays	It is the responsibility of the client to inform SSG at least 4 weeks prior to acknowledged ship date. If the installation site is not ready when scheduled work is to be performed and our technicians have been dispatched, a \$325.00 trip charge will be added. Please provide a minimum of 72 hours notice to reschedule installation. Modifications after purchase orders (change orders) are processed by SSG are subject to delayed shipment and installation, and price increases.
Loading of Contents	Transfer contents of existing system into new system unless option chosen to have movement of material handled by SSG's moving teams.
Product Training	Provide personnel for a scheduled product training session. Includes one training session for staff.
HIGH-CAPACITY STORAGE SYSTEM WITH RAIL INSTALLATION, IF APPLICABLE	
TYPE	DESCRIPTION
Floorless Requirements	Floorless High-Capacity System should be installed on solid concrete floor or VCT covered concrete floor. Any existing carpet must be removed prior to installation at the rail's locations. Floor levelness should meet standard General Contractor code of 1/8" over 10'. If your floor does not meet these minimum standards, it will result in a different rail/subfloor system being provided, or your existing concrete floor leveled to meet the standard at your expense.
Recessed Rail Requirements/Foundation Preparation	Provide backfill of cement into troughs. Provide verification through facility management or other certified engineer of floor's weight carrying capacity to properly hold equipment. It is recommended that the slab have a minimum thickness of 5" with a capacity rating of 4,000 PSI. Verify that the concrete slab possesses the minimum levelness specification of ¼" over a 20' span. Provide location information of any conduit or post-tension cables running through concrete floors (drilling may be required). Sonogramming or X-Ray of floor not included.
Electrical Preparation	If hardwired electrical system is selected, provide dedicated 120 VAC, 60 HZ, 20-amp circuit that must be hardwired by a certified electrician compliant with local Electrical Codes. If plug in electrical system is selected, provide dedicated/isolated 120 VAC, 60 HZ, 20-amp circuit with a 20-amp outlet that must be hardwired by a certified electrician compliant with local Electrical Codes. Multiple outlets may be required based on moving system design.
CAROUSEL AND LIFT INSTALLATION, IF APPLICABLE	
TYPE	DESCRIPTION
Electrical Preparation	Provide all electrical utility outlets and wiring as required and as noted on drawing supplied by SSG. Provide suitable electric current, lighting, compressed air, water, heat, precise power, and air drop locations as required for installation, testing, acceptance, and operation of the system. Client is to supply power drops from the plant power supply up to, and including, disconnects at each control panel. All power and hardware shall be in accordance with the applicable electrical codes.
Material Handling Responsibilities	Perform unloading and carting of materials and equipment by appropriate personnel from the common carrier to a safe storage area at the installation site. (Unless this service is accepted as proposed on the price page of this Agreement.) Machine crates to remain unopened until technicians' arrival. Collect and remove all packing materials from equipment shipping. SSG is responsible to maintain a clean work area and place trash in Client provided containers. SSG personnel will provide and operate lift truck equipment within Client's facility. Provide hoisting and elevator services for SSG equipment and personnel.
Vertical Storage Training	Ensure that Client's personnel attend and participate in scheduled training sessions. Includes one training session for staff.
Loading of Vertical Storage	Perform installation of any trays, totes, dividers, drawers, or other accessories in the storage unit after the installation is completed. Provide for the physical loading of inventory and any containers into the system, stock counting, building the inventory database and back-up systems and procedures for use in integrating the system into the existing operation.

Southwest Solutions Group, Inc.

2535 E STATE HIGHWAY 121

Lewisville, TX 75056

Phone: (972) 250-1970

Fax: (972) 250-2229

www.southwestsolutions.com



Quote # 13

Date: March Item 4.

Project # 112828

Page 3 of 3

Terms, Conditions & Warranty

The following terms and conditions form a part of the agreement between Southwest Solutions Group, Inc. ("SSG") and the party executing this proposal in Section V hereof ("Customer") relating to the installation of that certain equipment more fully described in Section IV hereof (collectively, the "Equipment").

1. WARRANTY.

(a) The Equipment is provided to Customer with a limited warranty on parts and materials, excluding usual wear and tear. Warranties are determined by specific product and manufacturer. Refer to statement of warranty for complete information.

(b) Except as provided for above, SSG hereby disclaims all warranties and representations with respect to the Equipment or SSG's installation services, whether express, implied, or otherwise, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, USE, OR QUIET ENJOYMENT. No rights or remedies referred to in Article 2A of the Uniform Commercial Code, including any variations thereon as may be in effect in the state in which Customer is located, will be conferred on Customer unless expressly granted herein. No oral or written information or advice given by SSG or its owners, agents, or employees shall create a warranty or in any way increase the scope of any warranty provided herein. SSG shall have no responsibility if the Equipment has been altered or misused by any party other than SSG in any way.

2. LIMITATION OF LIABILITY.

(a) SSG shall not be liable to Customer or any third party for any indirect, special, incidental, punitive, cover, or consequential damages (including, but not limited to, damages for the inability to use equipment or access data, loss of business, loss of profits, business interruption, or the like), arising out of the use of, or inability to use, the Equipment, and based on any theory of liability including breach of contract, breach of warranty, tort (including negligence), product liability, or otherwise, even if SSG had or should have had any knowledge, actual or constructive, of the possibility of such damages and even if a remedy set forth herein is found to have failed of its essential purpose.

(b) SSG's total liability to user for actual damages for any cause whatsoever will be limited to the amount actually paid by Customer to SSG for the Equipment. The foregoing limitations on liability are intended to apply to all aspects of this proposal.

3. BASIS OF BARGAIN. The foregoing warranty disclaimers and limitations on liability are fundamental elements of the basis of this proposal and agreement between SSG and Customer. SSG would not be able to provide the Equipment and associated installation services on an economic basis without such limitations. Such warranty disclaimers and limitations on liability inure to the benefit of the suppliers of the Equipment.

4. INDEMNIFICATION. To the extent authorized by Texas Law, Customer hereby agrees to indemnify, defend, and hold harmless SSG from and against any and all claims, suits, causes, actions, liabilities, damages, expenses, legal fees, and obligations of any kind arising out of or from, either directly or indirectly, Customer's breach of any provision, term, or condition of this proposal.

5. NOTICE. All notices or other communication required or permitted by this proposal to be served on or given to either party to this proposal by the other party must be in writing to primary address of party as indicated in this proposal and shall be deemed duly served and given when personally delivered, by receipted delivery, to the party to whom it is directed or, in lieu of such personal service, when sent by confirmed facsimile transmission, by registered or certified U.S. mail, or overnight delivery.

6. SECURITY INTEREST. Until such time as SSG has been paid in full for the Equipment and all related installation services, regardless of whether or not any invoice may be disputed by Customer, Customer hereby grants to SSG a security interest in the Equipment and authorizes SSG to perfect such security interest through the filing of Uniform Commercial Code financing statements. Customer agrees to cooperate with all reasonable requests of SSG relating to the granted security interest and, should SSG opt to exercise its rights of recovery of the Equipment for failure of Customer to pay for the same, Customer shall permit SSG entrance to the facilities where the Equipment is located upon reasonable notice of the same and during reasonable hours.

7. MISCELLANEOUS.

(a) Governing Law; Venue. This proposal shall be construed and enforced under and in accordance with the laws of the State of Texas, without regard to conflicts of laws principles. The language in this proposal shall be interpreted as to its fair meaning and not strictly for or against any party. The parties exclusively in Dallas County, Texas.

(b) Late Fees; Disputes. All overdue payments to SSG shall incur interest in the amount of 1.5% per month, or such lesser rate as may otherwise be required by law. Customer agrees SSG shall be entitled to recover reasonable attorneys' fees and court costs expended in connection with any litigation or legal action initiated to enforce the provisions of this proposal.

(c) Entire Agreement. Sections III, IV, V, and VIII of this proposal constitute the entire agreement of the parties and supersede any prior understandings or written or oral agreements between the parties respecting this subject matter, including, but not limited to, any representations made in any presentation or proposal submitted or provided prior to the execution date of this proposal. Except as otherwise expressly referenced herein, there are no other understandings or agreements between the parties regarding this subject matter.

(d) Amendment. This proposal may not be amended or modified except by a written instrument executed by each party's respective authorized representatives.

(e) Successors and Assigns; Assignment. This proposal shall bind and inure to the benefit of and be enforceable by the parties hereto and their respective successors, heirs and personal and legal representatives, but no assignment shall relieve any party of its obligations hereunder. Customer may not assign this Agreement or any portion thereof without the prior written consent of SSG. SSG may assign this proposal or any portion thereof without providing written notice to Customer. Any attempted assignment in violation of this Section will be null and void. SSG shall be permitted to subcontract or delegate to third parties the performance of any or all of the services contemplated herein.

(f) Waiver. No provision hereof shall be deemed waived unless such waiver shall be in writing and signed by an officer of the waiving party. Any failure by a party to require strict performance by the other party or any waiver by a party of any breach of any provision of this proposal shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or a different provision of this proposal.

(g) Severability. In case any one or more of the provisions contained in this proposal shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this proposal, and this proposal must be construed as if the invalid, illegal, or unenforceable provision had never been contained in this proposal.

(h) Survival. Except as otherwise expressly provided in this proposal, each of the representations and warranties of the parties contained in this proposal, or in any certificate, document, or other instrument furnished or to be furnished under this proposal, and any action arising out of any thereof, including without limitation any cause of action for failure of any such representation to be true when made or as of the execution date of this proposal, and the parties' covenants, agreements, and obligations set forth in this proposal, shall survive in perpetuity beyond the execution date and termination of this proposal.

8. CANCELLATIONS. Southwest Solutions Group, Inc. will accept cancellation of firm orders prior to completion of delivery and installation, subject to the following conditions:

(a) The notice of cancellation must be in writing by the customer to SSG.

(b) SSG will use reasonable commercial efforts to cancel any firm order(s) for materials which have been submitted by SSG to the manufacturer or supplier related to the cancelled customer order:

(i) To the extent that any firm order(s) for materials to the manufacturer or supplier are cancelled without cost to SSG, the same will be cancelled and removed from the customer order. Otherwise, any cost of such cancellation will be borne by the customer.

(ii) Please note that automated solutions are custom designed to meet the customer's exact specifications. As such factories often impose cancellation fees after an order has been placed with the manufacturer. Any such cancellation fees will be borne by the customer.

(iii) For products that have shipped from the source for which a return is allowed by the manufacturer or supplier, the cost of return shipping shall also be borne by the customer.

(c) If the cancelled order included delivery and installation, the cost of all delivery and installation services provided up to the date of cancellation will be borne by the customer.

(d) A minimum charge of 50% of the original purchase order price will be imposed for changes or cancellation.

(e) Southwest Solutions Group, Inc. will not accept returns for materials delivered to the customer and installed (whether by SSG or others).

PARKS AND RECREATION

To: Mayor and Town Council

From: Dan Baker, Director of Parks and Recreation

Through: Mario Canizares, Town Manager

Re: PondMedics, Inc.

Town Council Meeting – April 25, 2023

Agenda Item:

Consider and act upon approval of additional funding to the existing contract with PondMedics, Inc. to include the Proactive Plan for Broadway Pond.

Description of Agenda Item:

The Park Operations Division is requesting to enter into an agreement with PondMedics, Inc., for proactive pond management. With the addition of the Proactive Plan for Broadway Pond, the annual contract exceeds the amount currently authorized for Town Manager approval. The services to be provided for Broadway Pond are as follows:

- quarterly fountain maintenance and yearly fountain motor service;
- submergent aquatic vegetation control for nuisance, exotic or invasive species;
- floating aquatic vegetation control for nuisance, exotic or invasive species; and
- TCEQ compliance documents and monthly reports.

The Town requested separate proposals from other service providers to provide fountain maintenance and aquatic vegetation control, respectively. However, staff has determined that the combined proposal submitted by PondMedics, Inc., is the best value for the Town. Additionally, PondMedics, Inc., is located in Prosper, and is a factory trained and authorized/preferred sales and service distributor for AquaMaster products, which are utilized in Prosper fountains/ponds.

Servicing fountains on a regular basis will allow the Town to be pro-active, reducing the chance for costly repairs to our equipment. Furthermore, combining fountain maintenance service with aquatic vegetation control will provide the Town with a lower monthly rate, when compared to contracting separately for these services.

The initial term of the agreement will be one year, with automatic one-year renewal periods, unless either party provides 30 days written notice prior to the end of the current term.

Budget Impact:

The annual amount for services is \$26,840.44. Including the proposed addition of \$5,254.44. This agreement will be funded from 10-5480-60-02 (contracted services).

Legal Obligations and Review:

Terrence Welch of Brown & Hofmeister, L.L.P., has approved the attached documents as to form and legality.

Attached Documents:

1. Pondmedics Town of Prosper Broadway Pond Proposal

Town Staff Recommendation:

Town Staff recommends approval of additional funding to the existing contract with PondMedics, Inc. to include the Proactive Plan for Broadway Pond.

Proposed Motion:

I move to approve the additional funding to the existing contract with PondMedics, Inc. to include the Proactive Plan for Broadway Pond.



Pond + Medics inc.
ENGINEERED SURFACE WATER SOLUTIONS

dredgeSMART.
the dredging equation, solved.

PROPOSAL PREPARED FOR

Mario Canizares

Town Manager

409 W First St/ Prosper, Texas /
75078

PREPARED BY

Weston Jordan

/ PondMedics Family of Brands

PO Box 97

Gunter, Texas / 75058

weston@pondmedics.com

<http://www.pondmedics.com>

Town Of Prosper Broadway Pond



Town of Prosper
409 W First St
Prosper, Texas, 75078

Subject: Annual, proactive pond maintenance services

Dear Mario,

Thank you for the opportunity to help you keep your water healthy!

PondMedics Family of Brands is the only licensed, design build engineering firm specializing strictly in surface water resources such as yours. We are confident that we have the manpower and financial strength to execute our work in the highest professional manner.

PondMedics Family of Brands has been providing annual pond management services for 17 years and more than 2 million surface acres! **AND we're the only company in DFW who includes all the products we use in a fixed-cost plan - no surprises when you receive the invoice!**



The enclosed proposal is based on our current understanding of your project needs. We would love to collaborate with your team to further refine this proposal, if needed. We look forward to working with you!

Respectfully submitted,

Weston Jordan

PondMedics Family of Brands

Explained. Simply.

Retention ponds come in all sizes, types and configurations. This short video will help explain why these facilities are important and why they need to be maintained.



Click to play video in browser



INITIAL
Mario Canizares

Experience.

Item 5.

YOUR PROJECT LEADERSHIP TEAM



Emily Lewis, P.E.

Civil Engineer and Hydrologist (TBPE License Number 93789)

Since 1998, Emily Lewis has been practicing civil engineering with a specialty in surface water hydraulics and hydrology. Graduating with a Masters Degree in Civil Engineering from Texas Tech University, she moved into the suburban land development industry with a specialty in designing and engineering surface storm water systems to enhance surface water quality through the cities and their neighborhoods as well as designing storm water systems that would safely move water downstream and prevent flooding.

Prior to founding PondMedics, Inc. in 2004, Emily worked for a national and regional civil engineering firm - Kimley Horn Associates and Dowdy Anderson Associates. During her time at those firms, Emily was responsible for modeling, designing and engineering natural and urban surface water systems.

Her accumulated experience in civil engineering, hydrographic survey and limnology is a key component to the success we have in our unique engineered surface water solutions we provide our clients each day.

Emily's favorite saying is "Quality in a service is not what you put into it. It's what the client gets out of it."



Jason E Lewis Ph.D., PMP
Senior Project Manager/Sales Consultant

Jason serves as the operations manager for the PMI in the Prosper office for Pond Medics. He has more than 20 years of experience in construction and design build projects. Project roles include collaborating with architects, civil engineers, critical thinking, planning, ensure assurance, safety and value engineering

Selected Project Experience

City Park Golf Course renovation to slow flood waters. Construction of a detention area as an essential part of the Platte to Park Hill storm water system/ 18-hole renovation, new club house and maintenance faculties. +45m, 2019 Project Manager Denver, CO

Glacier Club Design Build new construction of an additional nine holes of Golf /36-hole renovation, stream mediation +\$9m, 2016 Project Manager | Durango, CO

Hillcrest Golf Club renovation 18 holes of golf, pond dredging +\$.6m, 2016 Project Manager | Durango CO

La Quinta Golf Club renovation and flood mediation +\$6m. 2016 Project Manager | La Quinta CA

Turning Stone Resort renovation rerouting of 18 holes of golf for wetland mediation +\$2m Operations Manager | Verona NY

La Colinas Country Club renovation +\$.5m, 2016 Operations Manager | Irving TX

Prestonwood Country Club renovation flood plain encroachment +\$1m, 2015 Operation Manager | Dallas TX

Lantana Development new construction of lots and 18 holes of Golf +\$13m, 2001 General Manager | Lantana TX

Gentle Creek Development new construction of lots and 18 holes of Golf +\$14m, 2001 General Manager | Prosper TX

Wilderness City Golf Course new construction detention and retention and 18 holes of golf +\$8m, 2002 General Manager | Lake Jackson TX

Pine Dunes Resort new construction 18 holes of golf and detention and retention +\$8m Project Manager | Frankston TX

EDUCATION

Ph.D., Business Management,
North Central University, 2014

MBA, Administration,
Colorado Technical University,
2007

MSM, Project Management,
Colorado Technical University,
2010

BSBA, Aviation Management,
University of Central Missouri,
1993

REGISTRATIONS

PMI – PMP Certification

AFFILIATIONS

GCBAA, Golf Builders Assn
GCSAA, North & South Texas
GCSAA, Hi-Lo Desert Chapter
GCSAA, Carolinas Assn

AREAS OF EXPERTISE

Project Management
Site Planning
Civil Construction
Design Build Projects
Implementing Construction
Processes and Logics
Cost Control/ Material Purchasing
Planning / Scheduling
Reporting / Documentation



MIKE GORE

*Aquatic Plant Management
Aquatic Biology Technician*

Mike has been working in the plant management field for 10 years. Previous employment for turf management gave him a hefty background in the biological processes of plants that he now applies to aquatic macrophyte and algae management. Mike seeks out the current knowledge of surface water applications and science to best serve our clients and the environment.

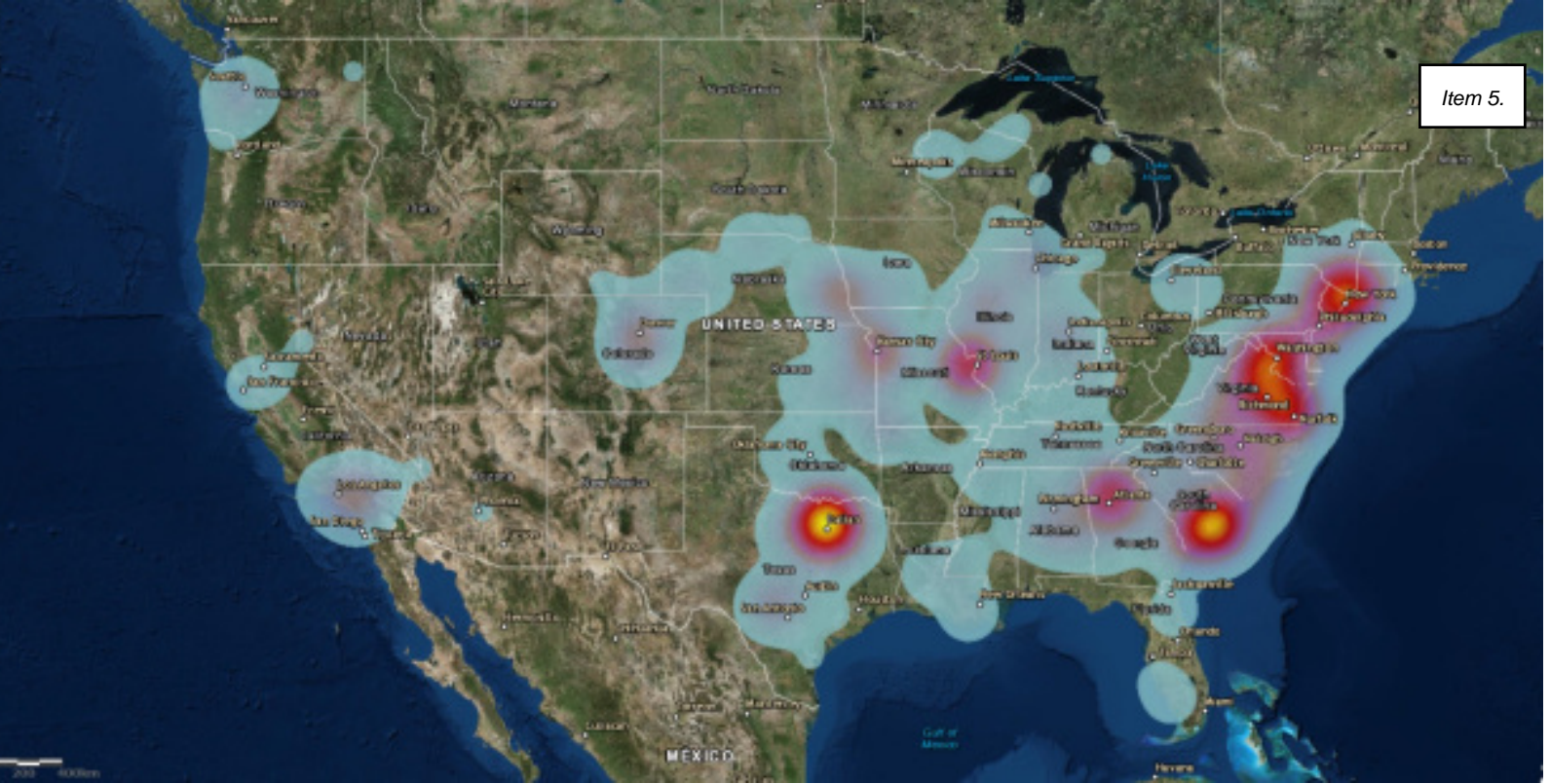


WESTON JORDAN

*Aquatic Plant Management
Fisheries Technician, FP-A
Oklahoma State University, B.S. Fisheries &
Aquatic Ecology*

Weston has always had a passion for fish and aquatic sciences; so much that he pursued a bachelor's degree in this field. He applies best management practices that he has learned during his degree program everyday at PondMedics for the last few years. Weston belongs to the American Fisheries Society; he holds an associate fisheries professional certification while working towards the full professional certification.





17 years and 3,000+ projects

OUR CLIENTS INCLUDE:

- Engineering firms
- Environmental consultants
- Government agencies
- Homeowners/property associations
- Property management companies
- Commercial and retail property owners and managers
- Private land owners
- Dredging and construction contractors
- Municipalities
- Water treatment plants
- Golf courses
- Marinas
- Power plants
- Manufacturing and chemical plants

What is covered in my service?

Scope of Work

Based on the needs described by the client, PondMedics is going to perform detention pond maintenance activities for the facilities outlined in this proposal. This work will result in well-maintained and functional detention basins.

Service	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Monthly Site Visits	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Monthly Trash Pick Up	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
*Herbaceous Fish Stocking	N	N	N	N	N	N	N	N	N	N	N	N
Aquatic Weed Detection	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Algaecide Application	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Macrophyte Application	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N

Phoslock	N	N	N	N	N	N	N	N	N	N	N	N
Fountain Performance Review*	N	N	N	N	N	N	N	N	N	N	N	N
Reports	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N

*Stocking timeline is determined by weather and fish availability. The projected month is displayed but is subject to change as weather and fish availability shift.

*Fountain performance reviews performed when fountains are present.

<u>Service</u>	Description
Monthly Site Visits	Once-per-month site visits will be made during defined months to assess current pond conditions, apply scheduled treatments, and/or perform submergent vegetation detection.
Monthly Trash Pick up	Pick up of trash from pond bank for offsite disposal. Trash includes plastics, styrofoams, etc.
Herbaceous Fish Stocking	Stocking of tilapia for algae control. These fish actively feed on algae through the Spring, Summer and Fall.
Submergent Vegetation Detection	Uses techniques/equipment such as grapple hook, rake, sonar sampling and/or visual observation, PondMedics biologists and/or technicians will determine the current growth rate of vegetation, if any, along the pond bottom.
Algaecide Application	In the defined months, a proactive, scheduled algaecide application will be performed to control algae such as planktonic, filamentous, bluegreens and chara.
Macrophyte Application	In the defined months, a proactive, scheduled aquatic herbicide application will be performed to control submergent macrophytes (all plants not including algae) such as bushy pondweed, coontail, hydrilla and American floating pondweed.

Reports	In the defined months, a monthly report will sent regarding the current condition and activities performed throughout that month. This reporting will be sufficient for the record keeping requirements of the Texas Department of Agriculture (TDA) as well as TCEQ.
Aquatic Weed Detection	Using techniques such as a grapple hook, rake, sonar sampling and/or visual observation, PondMedics biologists and/or technicians will determine the current growth rate, if any, of vegetation, if any, is occurring on the bottom of the pond. This will be performed once per month during the regularly scheduled visit for that month.
Aquatic Weed Detection	Using techniques such as a grapple hook, rake, sonar sampling and/or visual observation, PondMedics biologists and/or technicians will determine the current growth rate, if any, of vegetation, if any, is occurring on the bottom of the pond. This will be performed once per month during the regularly scheduled visit for that month.
Phoslock	Phoslock sequesters phosphorous in the water column and substrate. The goal is to apply Phoslock early to "starve" aquatic weeds of vital nutrients, therefore inhibiting their growth. This is not a cure-all product though.
Fountain Performance Review	Testing of fountain amperages and voltages to ensure they are operating within manufacturers/expected specifications. This provides the community the opportunity to repair the fountain prior to a requiring a fountain replacement.

Compensation

DESCRIPTION	PRICE	QTY	SUBTOTAL
Proactive Plan for Broadway Pond Price to include site visits and treatments March- November, along with trash pick up.	\$437.87	12	\$5,254.44
TOTAL			\$5,254.44

DETENTION BASIN/POND SERVICES AGREEMENT

This Detention Basin/Pond Services Agreement (the "Agreement") is effective Not yet accepted,

BETWEEN: **PONDMEDICS INCORPORATED** ("PondMedics" or "Provider"), a company organized and existing under the laws of Texas, with its head office located at:

*1251 Legacy Drive
Prosper
Texas 75078*

AND: **Town of Prosper** (the "Client"), an Individual residing at/a company organized and existing under the laws of the Texas, with its head office located at:

Town of Prosper
Mario Canizares
Town Manager
smays@prospertx.gov
409 W First St
Prosper, Texas 75078

PREAMBLE

WHEREAS PondMedics is a design build civil engineering company specialized in the engineering, management and providing consulting services to private and public surface water owners and managers;

WHEREAS Client wishes to hire the services of PondMedics as per the terms in this Agreement; NOW THEREFORE in consideration of the premises, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. SERVICES TO BE PROVIDED

Provider agrees to provide to the Client the services set out in Schedule "A" hereto or any Services Statement (the "Services"). Each Services Statement shall automatically incorporate the provisions of this Agreement. The service statement shall describe the Services to be provided, the price to be paid by Customer, and such additional provisions as the parties may agree upon.

2. COMPENSATION



The Client shall pay Provider for the Services in accordance with the terms set out in Schedule "B" hereto.

PondMedics reserves the right to change the prices as new pricing is released by product manufacturers at the beginning of each year.

Invoices shall be sent on a monthly basis, via e-mail no later than the last day of each month for the pre-negotiated prorated amount, due, in full, by the 15th day of the following month.

Checks, Credit and debit card are all acceptable methods of Payment. Clients paying via Credit and debit card shall be charged a 3% convenience fee. In the event payment is not received within 30 days of the invoice date, Services shall be suspended until the account is paid in full and is up to date. If payment is not received within 60 days of the invoice date, pursuant to section 3(b) of the Agreement, Client shall still be liable to pay all the fees and charges. Treatment, augmentation and field reports shall be included on each monthly invoice.

3. TERM AND TERMINATION

- a) The initial term of this Agreement ("Term") shall be for a period of 1 year beginning on the approval date, unless terminated earlier in accordance with the provisions hereof. The Term shall be automatically renewed for successive 1 year unless a party sends a written notice of non-renewal to the other party no later than 30 days prior to the expiry of the Term, or of any renewal term, as the case may be.
- b) This Agreement may be terminated by the Client or provider, with proper written notice, upon the occurrence of an event of default. Each of the following constitutes an event of default for the purposes of this Agreement:
 - i) if the Client fails to pay an invoice for more than 60 days;
 - ii) if Provider persistently fails to perform the Services as required hereunder; or
 - iii) if Client or Provider otherwise fails to perform or comply with any material term, condition or covenant of this Agreement;

4. STATUS

It is understood and agreed that this is an agreement for the performance of services and that the relationship of the parties to each other is that of independent contractors. No agency or partnership is created by this agreement. Provider shall not hold itself out as or represent itself to be an agent of the Client. Provider shall not be entitled to any remuneration, rights or benefits other than as set forth in this Agreement and in Schedule "B" hereto, unless otherwise agreed in writing by both parties in the Services Statement.

5. CONFIDENTIALITY AND EXCLUSIVITY

a) Each party shall take all reasonable action and shall take at least the same precautions as it takes to prevent the disclosure of its own confidential information, to prevent the disclosure to third parties of the Confidential Information. Each party shall only have the right to disclose the Confidential Information to its officers, directors, employees, agents and consultants for the purposes authorized herein. Each party shall, prior to disclosing the Confidential Information or portion thereof to any such person, issue appropriate instructions to them to ensure that such persons are aware of their obligation to comply with the confidentiality and use obligations and restrictions contained in this Agreement. If each party has taken all such reasonable steps it shall not be responsible if such Confidential Information or any part thereof should be divulged to any third party by reason of honest mistake or dishonest appropriation by any of each party's agents or employees.

b) For the purposes of this Section 5, "Confidential Information" means all confidential information provided by a Party hereunder provided or any private affairs of a Party that becomes known to the other party. Confidential Information shall not include any information which:

- i) is or becomes publicly available through no fault of the disclosing party;
- ii) is already in the rightful possession of the disclosing party prior to its disclosure to that party;
- iii) is independently developed by the disclosing party;
- iv) is rightfully obtained by the disclosing party from a third party;
- v) is disclosed with the written consent of the other party; or
- vi) is disclosed pursuant to court order or other legal compulsion.

c) Provider and the Client hereby acknowledge and agree that:

- i) the confidentiality covenant set forth in this Section 5 are reasonable in the circumstances and are necessary to protect the interests of the Client and Provider;
- ii) and in addition to the right of the Client or Provider to claim damages, the breach by Provider and the Client of any of the confidentiality covenant set forth in this Section 5,
- iii) as the case may be, may cause serious and irreparable harm to the Client or Provider, as the case may be, and in the event of a breach by either party (a "Party in Breach") of any of these provisions,
- iv) notwithstanding any other provision of this Agreement, the other party (the "Aggrieved Party") shall be entitled, as a matter of right, to seek an injunction against the Party in Breach.

- v) The provisions of this paragraph shall not be construed so as to be in derogation or limitation of any other remedy, which the Aggrieved Party may have in the event of such a breach.
- d) The provisions of paragraphs 5(a), 5(b) and 5(c) above shall survive the termination of this Agreement.
- e) The existence of any claim or cause of action of either party against the other, whether pursuant to this Agreement or otherwise, shall not constitute a defense to the enforcement of the provisions of this Agreement by either party against the other.

6. FORCE MAJEURE

If the performance of this agreement or any of the obligations hereunder is interfered with in whole or in part by reason of any circumstances beyond the reasonable control of PondMedics, including but not limited to heavy storms, hail, wind, snow, sleet or excessive sunlight, any United States Law, order, regulation, ordinance or requirement of any government or legal body or labor unrest, including without limitation, strikes, slow downs, picketing or boycotts, PondMedics shall be excused from such performance on a day by day basis to extent of such interference.

7. SUBCONTRACTS

Provider shall have exclusive responsibility for the selection of service suppliers for the operation of the Services. Provider undertakes and agrees however, that all Services to be performed hereunder shall be performed by Provider. Any modifications to the Services, whether to be provided directly by Provider or a subcontractor, shall not take place without the prior written consent of both parties (as to any such modification, addition and the subcontractor), which consent shall not be unreasonably withheld.

8. INSURANCE

Provider shall carry the following insurance coverages including, but not limited to:

1. General Liability - \$2M aggregate – general liability coverage includes bodily injury and property damage due to waterborne and herbicide application activities
2. Inland Marine policy on all Provider-owned equipment
3. Commercial automobile – covering owned, leased, rented and non-owned vehicles
4. Worker's Compensation – including special USL&H endorsement to be in compliance with the Federal U.S. Longshore and Harbor Workers Act. We also carry a Maritime Sublimit Endorsement for employees who are considered Aquaculture Workers under the Federal Jones Act.

9. INDEMNIFICATION

 **INITIAL**
Mario Canizares

a) Provider hereby covenants and agrees to indemnify and save harmless the Client, its directors, officers, employees, agents and representatives (the "Client Indemnified Parties") from and against any claims, demands, actions, causes of action, damages, losses, costs, liabilities, expenses, penalties or fines (including reasonable legal fees) which any of the Client Indemnified parties may sustain, incur or suffer and/or which any person including, without limitation, a Subscriber may make or bring against a Client Indemnified Party arising directly or indirectly in any way by reason of, out of, in respect of or in connection with:

- i) any non-fulfillment of any covenant or agreement on the part of Provider under this Agreement;
 - ii) any incorrectness in or breach of any representation of Provider contained in this Agreement;
 - iii) any act or omission, including, without limitation, any negligence or other tortuous act, committed by Provider and its directors, officers, employees, agents and representatives in the performance of its obligations under this Agreement;
 - iv) any untruth, inaccuracy or incorrectness of any of the marketing materials prepared and distributed by Provider pertaining to the Services;
 - v) the Services including, without limitation, the operation, administration or provision thereof.
- b) To the extent authorized by Texas law, The Client hereby covenants and agrees to indemnify and save harmless Provider its directors, officers, employees, agents and representatives ("Provider Indemnified Parties") from and against any claims, demands, actions, causes of action, damages, losses, costs, liabilities, expenses, penalties or fines (including reasonable legal fees) which any of the Provider Indemnified Parties may sustain, incur or suffer and/or which any person may make or bring against an Provider Indemnified Party arising directly or indirectly in any way by reason of, out of, in respect of or in connection with any covenant or agreement on the part of the Client under this Agreement or any incorrectness in or breach of any representation of the Client contained herein.
- c) Under no circumstances shall Provider's total aggregate liability to Client or any third party arising out of or related to this agreement exceed the amounts paid by Client to Provider under this agreement during the first twelve month period after the effective date of this agreement.

10. NO GUARANTEE OF RESULT

a) PondMedics is licensed to perform work to public and private waters and ensures its customers that PondMedics will perform the work to the industry's best management practices. However, due to the nature of surface water, storm water, rain events and the like, results cannot be guaranteed. Such factors are out of the control of PondMedics.

11. GENERAL TERMS

- a) This Agreement, including Schedules "A" and "B" hereto, constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written of the parties and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth herein.
- b) PondMedics shall not be liable for the work performed by either another contractor or any other person.
- c) No supplement, modification or waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.
- d) Neither this Agreement nor any rights or obligations hereunder shall be assignable by any party without the prior written consent of the other party. This Agreement shall enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors and permitted assigns.
- e) Any disputes in excess of the maximum limit for small claims court arising out of this Agreement shall be submitted to binding arbitration before a mutually agreed-upon Arbitrator. The Arbitrator's award shall be final, and judgment may be entered in any court having jurisdiction thereof. The Parties shall pay all arbitration and court costs, and reasonable Attorney fees on any award.
- f) Each party hereby agrees that upon the written request of the other party, it will do all such acts and execute all such further documents, conveyances, deeds, assignments, transfers and the like, and will cause the doing of all such acts and will cause the execution of all such further documents as are within its power to cause the doing or execution of, as the other party may from time to time reasonably request be done and/or executed as may be required to effect to the purposes of this Agreement and to carry out the provisions hereof.
- g) Any notice required or permitted to be given hereunder shall be in writing and shall be sufficiently given if delivered in person during normal business hours of the recipient on a business day or sent by first class mail, postage prepaid, or by email, as follows:
- i) in the case of a notice to the Client to:

Town of Prosper
 Mario Canizares
 Town Manager
 smays@prospertx.gov
 409 W First St
 Prosper, Texas 75078
 9725691028

 INITIAL
 Mario Canizares

ii) in the case of a notice to Provider to:

PondMedics, Inc.
PO Box 1147
Prosper, TX 75078

Email: beth@pondmedics.com
Attention: Beth Proctor
Title: Contracts Manager

and shall be conclusively deemed to have been given and to have been received on the following business day, if so delivered or sent by Email, and on the third business day following the mailing thereof, if so mailed (excluding each day during which there exists any interruption of postal services due to strike, lockout or other cause). Addresses for notice may be changed by giving notice in accordance with the foregoing.

h) This Agreement shall be governed by and construed in accordance with the law of the State of Texas and shall be treated, in all respects, as a Texas contract. Each party thereto irrevocably agrees to and submits to the non-exclusive jurisdiction of the Courts of Texas with respect to any matter arising hereunder or related hereto.

IN WITNESS WHEREOF, each party to this agreement has caused it to be executed on the date indicated above.

Client has read and agreed to the prices, services, notes and precautions prior to PondMedics performing any work relating to the Agreement. Client accepts in good faith that PondMedics is qualified and capable of performing the work in a safe and effective manner. In no way, whether expressed or implied, do I hold PondMedics liable for adverse circumstances arising from pond/ lake maintenance activities. Any issues arising separate outside this scope of services shall be dealt with and contracted on a separate basis.

CLIENT

PROVIDER



SIGNATURE
Mario Canizares



SIGNATURE
Weston Jordan



Town of Prosper Pro-Active Management

Town of Prosper

To:
Matt Furr
Town of Prosper
MFurr@prospertx.gov

From:
PondMedics, Inc.
Blake Worden
PO Box 1147
Prosper, TX 75078
972.334.0104 ext 402
blake@pondmedics.com

Introduction



Your Premier Aquatic Ecosystem Specialists

You've probably noticed something different about us versus the other lake management companies - We're in a class of our own! We combine an unmatched level of PASSION and PROFESSIONALISM in all we do! When you hire us, you're hiring the best, most personal attention your pond or lake deserves. You will not find better lake management solutions or client service anywhere else.

CLIENT SERVICE PROMISE

Performing at our BEST - all the time, every time, the first time!

www.pondmedics.com

PondMedics is DFW's #1 AquaMaster Dealer and #2 in all of the south central US!



Why PondMedics?



We're in a class of our own. Here's a few reasons why...

- Over 30 years of combined experience in lake management, consulting and engineering
- On-staff Specialists include:
 - AFS Certified Fisheries Professional
 - TDA Licensed Commercial Aquatic Applicators
 - Factory-certified fountain technicians
 - TBPE Licensed Professional Engineer specializing in Water Resources Engineering
- Real-time client portal: allows clients to access their accounts via the internet
- Specialized pond management equipment: including a crane boat and airboat
- Comprehensive Field Reports submitted to the client each month
- All data needed to keep you in compliance with [TCEQ Permit 8700000](#)
- Services are tailored to your needs, budget and goals
- Personalized, one-on-one service by our family-owned, professional staff
- No contracts – ongoing, year-round service until you notify us otherwise

Need more reasons to love PondMedics?

[PondMedics Qualifications](#)

[PondMedics Core Values](#)

[PondMedics Company Owned Equipment](#)

Fountains & Aerators



PondMedics is DFW's Premier AquaMaster Dealer!

PondMedics is DFW's #1 AquaMaster Dealer and #2 in all of the south central US!

Fountains and aerators are common in privately managed ponds and lakes. They are also some of the most expensive equipment in a pond or lake, so they need to be cared for accordingly.

Rest assured, PondMedics has the best management practices for taking care of your waterborne equipment!

- Custom-fabricated crane boat for taking the best care of your equipment
 - On-board power washer for maintaining your equipment without removing it from the water
 - Less manpower, more horsepower = reduced maintenance costs for your equipment
- Dedicated fountain service truck, stocked with the most common replacement parts

Risk Management



P.O. Box 41238, Houston, Texas 77241-1328 * 10011 West Gulf Bank, Houston, Texas 77040
Phone: (713) 690-6000 * Fax: (713) 690-6020 * Toll Free: (800) 537-7497

PondMedics Client,

This letter is to attest to the quality of the insurance program of PondMedics Inc. PondMedics Inc. has been through a Comprehensive Risk Management Assessment and continues to participate in an annual Risk Management Service Plan. I can personally attest to Trent Lewis taking a proactive approach to Insurance and Risk Management to most importantly protect the assets of his clients along with those who work for his company.

As a participant in the Texas Aquatic Plant Management Society and after having had discussions with many in the industry, I have noticed that many businesses in this field do not have their General liability Insurance properly written and do not have their clients appropriately covered in the event of a loss. This is especially true in the area of waterborne activities. A standard General liability policy excludes any bodily injury and property damage done by a watercraft. To my knowledge of all the companies in the industry I have spoken with there are only 2 companies, one being PondMedics Inc., that have properly covered their Waterborne activities through a Boats Endorsement to their policy.

Further, the standard Workers Compensation policy does not provide coverage to injured employees while on U.S. Navigable Waterways. PondMedics Inc. does have a USL&H Endorsement to their policy to be in compliance with the Federal U. S. Longshore and Harbor Workers Act. They also have a Maritime Sublimit Endorsement for employees who are considered Aquaculture workers, per the Federal Jones Act.

In summary, businesses that work on or over on the water, including a private pond or public lake, fall into a completely different category when it comes to insurance, and state and federal mandates. PondMedics Inc. has not only taken it upon themselves to be in compliance with those mandates but they have made protecting their client's property a priority.

Sincerely,
T.J. Griffith
Risk Manager

Cravens Warren

42

Scope & Pricing

Proactive, All-Inclusive Lake Management Plan

Proactive pond/lake management is the practice by which pond/lake management activities, treatments or augmentations to the water, soils, fisheries, pond/lake bottom and/or watershed are performed before problems arise and in an effort to curb problems early or before they occur at all. With regards to mechanical assets in and around a pond, proactive management includes the routine maintenance required to extend service periods of equipment.

"SCHEDULE A - Services to be Provided"

Lake management services are seasonal in nature and the schedule of services varies from season to season. Your plan includes the following yearly services:

- Quarterly fountain maintenance and yearly fountain motor service
- submergent aquatic vegetation control for nuisance, exotic or Invasive species
- floating aquatic vegetation control for nuisance, exotic or Invasive species
- TCEQ compliance documents and monthly reports

"SCHEDULE B - Pricing"

Description	Amount
Monthly Pro-rated Fee per month for 12 months	\$1,700.53
Total	\$1,700.53

Our Handshake Agreement

Business is a two way street - if we're asking it from you, you're getting it from us. At PondMedics, we take your business seriously. Below you'll find the details of our "handshake agreement" to ensure you receive the highest quality services from us.

PROACTIVE LAKE MANAGEMENT SERVICES AGREEMENT

This Lake Management Services Agreement (the "Agreement") is effective [DATE].

BETWEEN: **PONDMERICS INCORPORATED** ("PondMedics" or "Provider"), a company organized and existing under the laws of Texas, with its head office located at:

1251 Legacy Drive
Prosper
Texas 75078

AND: **Town of Prosper** (the "Client"), an Individual residing a/a company organized and existing under the laws of the Texas, with its head office located at:

P.O. Box 305
Prosper
Texas 75078

PREAMBLE

WHEREAS PondMedics is a Lake Management company specialized in the engineering, management and providing consulting services to private and public lake owners and managers;

WHEREAS Client wishes to hire the services of PondMedics as per the terms in this Agreement;

NOW THEREFORE in consideration of the premises, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

DEFINITIONS:

Algaecides: products labeled and registered with the EPA for the chemical control of various species of algae – filamentous, planktonic, pithophera, lyngbya, etc.

Aquatic herbicides: products labeled and registered with the EPA for the chemical control of various aquatic macrophytes – submerged, floating or emergent.

Aquatic polymers: products applied to reduce muddy water (colloidal clay), reduce excess nutrients in the water column or stabilize shoreline soils. All polymers used are anionic and safe for fish, humans and aquatic wildlife.

Aquatic Vegetation: Exotic, invasive and nuisance aquatic vegetation growth will be controlled according to the Scope of Services Schedule in this contract. PMI may choose to promote beneficial/non- nuisance aquatic plant growth for the optimal aquatic ecosystem balance and reduction of management costs to the Client. This pond/lake management decision will be at the discretion of PMI and communicated to the Client through our monthly reports (invoice).

Beneficial Pond Microbes: products used to supplement natural pond microbes in order to reduce excess nutrients, reduce organic bottom muck, reduce anaerobic odors and aid in digesting previously-treated aquatic vegetation.

Bottom diffused aerators: a specialized piece of equipment that does not require electricity to be in the water. A compressor(s) sends air to diffusers at the bottom of the pond through weighted air tubing. This column of bubbles causes the water to mix from the bottom to the top, eliminating stratification, oxygenating bottom layers of water, enhancing water quality and fish carrying capacities. These aerators can also be in the form of solar-powered and windmill powered systems. These systems are barely visible on the surface (only a boil of bubbles is noticed) and are 100% efficient at aeration and increasing aesthetics through improved water quality by means of oxygenation.

Client: owner and/or manager responsible for the oversight and management decisions of the said property containing the pond/lakes/fountains/other aquatic assets

Electrofishing survey: a method for assessing the balance, health and progress of a pond or lake's fishery. This method employs a specialized boat that uses pulsed electricity in the water to safely capture fish for assessment and safe return to the pond/lake, unharmed. Data is collected and assessed in order to make fisheries management recommendations/actions.

Floating fountain: a specialized piece of equipment that floats in the pond and produces aesthetically-pleasing aerial water displays. Most fountains have control panels on the shore that power a fountain motor and [sometimes] lights located on the fountain float itself. Fountains are 90% aesthetics and 10% aeration. There is also a version of the floating fountain that is called a surface aerator. Surface aerators are less ornate in their water pattern and usually incorporate a deep water intake to pull water near the bottom of the pond/lake to increase the aeration ability.

Fountain maintenance: includes the maintenance activities specified in the scope of work only. Repairs outside the maintenance activities will be contracted on a separate basis. Excluded are items such as, but are not limited to, things like burnt out light bulbs, failed motors, failed light sets, failed control panel components, etc.

Integrated Pest Management (IPM): the careful consideration of all available pest control techniques and subsequent integration of appropriate measures that discourage the development of pest populations and keep pesticides and other interventions to levels that are economically justified and reduce or minimize risks to human health and the environment. Basic components of IPM include:

- considering available management options
- understanding the biology and life cycles of target and non-target species
- evaluating ecosystem sensitivity to invasion by introduced organisms
- considering the impacts of management on ecosystems

- reducing invasive species impacts below an economic / ecological threshold
- allowing flexibility to adapt management techniques to changing conditions
- developing additional management options.

Mozambique Tilapia: a herbaceous fish that may be stocked in your pond and lake (refer to your scope of services) for the purpose of aquatic vegetation control and forage in your pond or lake. These fish are excellent at controlling certain types of submerged or floating aquatic vegetation when stocked at a high enough rate (generally more than 20 lbs per acre). PMI stocks these fish in the spring when water temps have stabilized at or above 65 F. These fish do not overwinter and die off when water temperatures dip into the low 50's F. Most times these fish will have to be cleaned up once or twice in the fall when die-off occurs (refer to your scope of services to see if this is included in your plan).

NPDES: "National Pollution Discharge Elimination System" administered by TCEQ (Texas Commission on Environmental Quality) requires pond and lake owners to keep recordkeeping information about their pond/lake treatments. PMI's compliance assistance includes providing the Client all necessary treatment reporting needed for each month. These reports are included on your monthly invoices.

Proactive pond/lake management: the practice by which management activities, treatments or augmentations to the water, soils, fisheries, pond/lake bottom and/or watershed are performed before problems arise and in an effort to curb problems early or before they occur at all. With regards to mechanical assets in and around a pond, proactive management includes the routine maintenance required to extend service periods of equipment.

Reactive pond/lake management: the practice by which management activities, treatments or augmentations to the water, soils, fisheries, pond/lake bottom and/or watershed are performed after problems have already occurred. With regards to mechanical assets in and around a pond, reactive management addresses problems/failures to equipment only after the failure has occurred, with no regard for routine maintenance of the equipment to extend service periods.

Trash/debris pickup and haul off: floating debris such as nuisance grocery sacks, plastic bottles and Styrofoam cups will be netted from the shoreline and hauled offsite. Extremely small debris such as Styrofoam packing peanuts and tree leaves or oversize debris such as shopping carts or tree limbs or excessive amounts of debris such as construction sites are not included in this scope and will be contracted separately from this contract.

1. SERVICES TO BE PROVIDED

Provider agrees to provide to the Client the services set out in Schedule "A" hereto or any Services Statement (the "Services"). Each Services Statement shall automatically incorporate the provisions of this Agreement. The service statement shall describe the Services to be provided, the price to be paid by Customer, and such additional provisions as the parties may agree upon.

2. COMPENSATION

The Client shall pay Provider for the Services in accordance with the terms set out in Schedule "B" hereto.

All Services and products shall be calculated for the year, aggregated annually and prorated monthly. PondMedics reserves the right to change the prices as new pricing is released by product manufacturers at the beginning of each year. The new pricing shall come into effect as beginning 1st March each year regardless of when the contract started.

Invoices shall be sent on a monthly basis, via e-mail no later than the last day of each month for the pre-negotiated prorated amount, due, in full, by the 15th day of the following month. Checks, Credit and debit card are all acceptable methods of Payment. Clients paying via Credit and debit card shall be charged a 3% convenience fee. In the event payment is not received within 30 days of the invoice date, Services shall be suspended until the account is paid in full and is up to date. If payment is not received within 60 days of the invoice date, pursuant to section 3(b) of the Agreement, Client shall still be liable to pay all the fees and charges. Treatment, augmentation and field reports shall be included on each monthly invoice.

3. TERM AND TERMINATION

- The initial term of this Agreement ("Term") shall be for a period of 1 year beginning on the approval date, unless terminated earlier in accordance with the provisions hereof. The Term shall be automatically renewed for successive 1 year unless a party sends a written notice of non-renewal to the other party no later than 30 days prior to the expiry of the Term, or of any renewal term, as the case may be.
- This Agreement may be terminated by the Client or provider, with proper written notice, upon the occurrence of an event of default. Each of the following constitutes an event of default for the purposes of this Agreement:
 - if the Client fails to pay an invoice for more than 60 days;
 - if Provider persistently fails to perform the Services as required hereunder; or
 - if Client or Provider otherwise fails to perform or comply with any material term, condition or covenant of this Agreement;

4. STATUS

It is understood and agreed that this is an agreement for the performance of services and that the relationship of the parties to each other is that of independent contractors. No agency or partnership is created by this agreement. Provider shall not hold itself out as or represent itself to be an agent of the Client. Provider shall not be entitled to any remuneration, rights or benefits other than as set forth in this Agreement and in Schedule "B" hereto, unless otherwise agreed in writing by both parties in the Services Statement.

5. CONFIDENTIALITY AND EXCLUSIVITY

- Each party shall take all reasonable action and shall take at least the same precautions as it takes to prevent the disclosure of its own confidential information, to prevent the disclosure to third parties of the Confidential Information. Each party shall only have the right to disclose the Confidential Information to its officers, directors, employees, agents and consultants for the purposes authorized herein. Each party shall, prior to disclosing the Confidential Information or portion thereof to any such person, issue appropriate instructions to them to ensure that such persons are aware of their obligation to comply with the confidentiality and use obligations and restrictions contained in this Agreement. If each party has taken all such reasonable steps it shall not be responsible if such Confidential Information or any part thereof should be divulged to any third party by reason of honest mistake or dishonest appropriation by any of each party's agents or employees.
- For the purposes of this Section 5, "Confidential Information" means all confidential information provided by a Party hereunder provided or any private affairs of a Party that becomes known to the other party. Confidential Information shall not include any information which:
 - is or becomes publicly available through no fault of the disclosing party;
 - is already in the rightful possession of the disclosing party prior to its disclosure to that party;
 - is independently developed by the disclosing party;
 - is rightfully obtained by the disclosing party from a third party;
 - is disclosed with the written consent of the other party; or

v) is disclosed pursuant to court order or other legal compulsion,

c) Provider and the Client hereby acknowledge and agree that:

- i) the confidentiality covenant set forth in this Section 5 are reasonable in the circumstances and are necessary to protect the interests of the Client and Provider;
- ii) and in addition to the right of the Client or Provider to claim damages, the breach by Provider and the Client of any of the confidentiality covenant set forth in this Section 5,
- iii) as the case may be, may cause serious and irreparable harm to the Client or Provider, as the case may be, and in the event of a breach by either party (a "Party in Breach") of any of these provisions,
- iv) notwithstanding any other provision of this Agreement, the other party (the "Aggrieved Party") shall be entitled, as a matter of right, to seek an injunction against the Party in Breach.
- v) The provisions of this paragraph shall not be construed so as to be in derogation or limitation of any other remedy, which the Aggrieved Party may have in the event of such a breach.

d) The provisions of paragraphs 5(a), 5(b) and 5(c) above shall survive the termination of this Agreement.

e) The existence of any claim or cause of action of either party against the other, whether pursuant to this Agreement or otherwise, shall not constitute a defense to the enforcement of the provisions of this Agreement by either party against the other.

6. FORCE MAJEURE

If the performance of this agreement or any of the obligations hereunder is interfered with in whole or in part by reason of any circumstances beyond the reasonable control of PondMedics, including but not limited to heavy storms, hail, wind, snow, sleet or excessive sunlight, any United States Law, order, regulation, ordinance or requirement of any government or legal body or labor unrest, including without limitation, strikes, slow downs, picketing or boycotts, PondMedics shall be excused from such performance on a day by day basis to extent of such interference.

7. SUBCONTRACTS

Provider shall have exclusive responsibility for the selection of service suppliers for the operation of the Services. Provider undertakes and agrees however, that all Services to be performed hereunder shall be performed by Provider. Any modifications to the Services, whether to be provided directly by Provider or a subcontractor, shall not take place without the prior written consent of both parties (as to any such modification, addition and the subcontractor), which consent shall not be unreasonably withheld.

8. INSURANCE

Provider shall carry the following insurance coverages including, but not limited to:

1. General Liability - \$2M aggregate – general liability coverage includes bodily injury and property damage due to waterborne and herbicide application activities
2. Inland Marine policy on all Provider-owned equipment
3. Commercial automobile – covering owned, leased, rented and non-owned vehicles
4. Worker's Compensation – including special USL&H endorsement to be in compliance with the Federal U.S. Longshore and Harbor Workers Act. We also carry a Maritime Sublimit Endorsement for employees who are considered Aquaculture Workers under the Federal Jones Act.

9. INDEMNIFICATION

a) Provider hereby covenants and agrees to indemnify and save harmless the Client, its directors, officers, employees, agents and representatives (the "Client Indemnified Parties") from and against any claims, demands, actions, causes of action, damages, losses, costs, liabilities, expenses, penalties or fines (including reasonable legal fees) which any of the Client Indemnified parties may sustain, incur or suffer and/or which any person including, without limitation, a Subscriber may make or bring against a Client Indemnified Party arising directly or indirectly in any way by reason of, out of, in respect of or in connection with:

- i) any non-fulfillment of any covenant or agreement on the part of Provider under this Agreement;
- ii) any incorrectness in or breach of any representation of Provider contained in this Agreement;
- iii) any act or omission, including, without limitation, any negligence or other tortious act, committed by Provider and its directors, officers, employees, agents and representatives in the performance of its obligations under this Agreement;
- iv) any untruth, inaccuracy or incorrectness of any of the marketing materials prepared and distributed by Provider pertaining to the Services;
- v) the Services including, without limitation, the operation, administration or provision thereof.

b) To the extent allowed by Texas law, the Client hereby covenants and agrees to indemnify and save harmless Provider its directors, officers, employees, agents and representatives ("Provider Indemnified Parties") from and against any claims, demands, actions, causes of action, damages, losses, costs, liabilities, expenses, penalties or fines (including reasonable legal fees) which any of the Provider Indemnified Parties may sustain, incur or suffer and/or which any person may make or bring against an Provider Indemnified Party arising directly or indirectly in any way by reason of, out of, in respect of or in connection with any covenant or agreement on the part of the Client under this Agreement or any incorrectness in or breach of any representation of the Client contained herein.

c) Under no circumstances shall Provider's total aggregate liability to Client or any third party arising out of or related to this agreement exceed the amounts paid by Client to Provider under this agreement during the first twelve month period after the effective date of this agreement.

10. NO GUARANTEE OF RESULT

a) PondMedics is licensed to apply aquatic chemicals to public and private waters and ensures its customers that PondMedics will apply the chemicals according to the manufacturer's label and instructions. However, due to the nature of aquatic chemical applications to control unwanted plants and pests, results cannot be guaranteed. There are many factors including without limitation rain, wind, sun and runoff which affect the way a pesticide reacts with the targeted species. Such factors are out of the control of PondMedics.

b) As organic material dies and begins to decay within the water, the bacteria that decompose aquatic plant material consume oxygen. In situations where heavy vegetation growth is treated, dissolved oxygen levels within the body of water will fall. If the levels fall below the point that sustains fish, Client may experience a light to heavy fish kill. PondMedics cannot ensure the health and survival of aquatic life before, during or after a chemical application, even if we use our best efforts, products and devices to reduce such risks. A fountain or other mechanical aerator will help to reduce the risk of a fish kill by supplementing DO levels while vegetation is decaying.

c) Some effects, including the settling of Detritus to the pond bottom, should be expected and is part of the treatment. Detritus is the decaying or decayed aquatic vegetation that is a result of a chemical application or the natural growth/decay cycles of aquatic plants over many years. If heavy aquatic vegetative growth is treated during an aquatic chemical application, detritus will settle to the pond bottom creating sediment or silt. The more vegetation that is treated, the greater the amount of detritus. PondMedics shall not be held liable for the increased amount of detritus or sediment or any other such effects during or after a chemical application as this is a natural result of a chemical application. The use of beneficial pond microbes shall be employed to help keep detritus at a minimum. Dredging may be necessary as a means of quickly removing years of accumulated detritus. As aquatic vegetation dies and decays, it may separate from the bottom of the pond or lake and rise to the top before it eventually sinks again to the bottom. This is to be expected. PondMedics shall not be liable for any plant material entering into aeration systems such as fountains or membrane air diffusers due to the separation of the plant material from the bottom of the pond or lake during the decay process. In the event that an aerator needs a special servicing due to this phenomenon, it will be billed separate from the yearly maintenance contract.

11. GENERAL TERMS

a) This Agreement, including Schedules "A" and "B" hereto, constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written of the parties and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth herein.

b) PondMedics shall not be liable for the work performed by either another contractor or any other person.

c) No supplement, modification or waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

d) Neither this Agreement nor any rights or obligations hereunder shall be assignable by any party without the prior written consent of the other party. This Agreement shall enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors and permitted assigns.

e) Any disputes in excess of the maximum limit for small claims court arising out of this Agreement shall be submitted to binding arbitration before a mutually agreed-upon Arbitrator. The Arbitrator's award shall be final, and judgment may be entered in any court having jurisdiction thereof. The Parties shall pay all arbitration and court costs, and reasonable Attorney fees on any award.

f) Each party hereby agrees that upon the written request of the other party, it will do all such acts and execute all such further documents, conveyances, deeds, assignments, transfers and the like, and will cause the doing of all such acts and will cause the execution of all such further documents as are within its power to cause the doing or execution of, as the other party may from time to time reasonably request be done and/or executed as may be required to effect to the purposes of this Agreement and to carry out the provisions hereof.

g) Any notice required or permitted to be given hereunder shall be in writing and shall be sufficiently given if delivered in person during normal business hours of the recipient on a business day or sent by first class mail, postage prepaid, or by email, as follows:

i) in the case of a notice to the Client to:

Town of Prosper

Matt Furr

January Cook

P.O. Box 305

Prosper, TX 75078

Fax: (972) 569-1005

Email: january-cook@prospertx.gov

Attention: Matt Furr

Title: Town of Prosper Superintendent

ii) in the case of a notice to Provider to:

PondMedics, Inc.,

Trent Lewis, FPC

PO Box 1147

Prosper, TX 75078

Email: trent@pondmedics.com

Attention: Trent Lewis, FPC

Title: Vice-President

and shall be conclusively deemed to have been given and to have been received on the following business day, if so delivered or sent by Email, and on the third business day following the mailing thereof, if so mailed (excluding each day during which there exists any interruption of postal services due to strike, lockout or other cause). Addresses for notice may be changed by giving notice in accordance with the foregoing.

h) This Agreement shall be governed by and construed in accordance with the law of the State of Texas and shall be treated, in all respects, as a Texas contract. Each party thereto irrevocably agrees to and submits to the non-exclusive jurisdiction of the Courts of Texas with respect to any matter arising hereunder or related hereto.

IN WITNESS WHEREOF, each party to this agreement has caused it to be executed on the date indicated above.

Client has read and agreed to the prices, services, notes and precautions prior to PondMedics performing any work relating to the Agreement. Client accepts in good faith that PondMedics is qualified and capable of performing the work in a safe and

effective manner. In no way, whether expressed or implied, do I hold PondMedics liable for adverse circumstances arising from pond/lake maintenance activities. Any issues arising separate outside this scope of services shall be dealt with and contracted on a separate basis.

CLIENT


PROVIDER


Town of Prosper

PondMedics, Inc.

Authorized Signature

Authorized Signature


Print Name and Title
Harlan Jefferson
Town Manager


Print Name and Title
JARROD CONNOR
COO

Let's get started!



So, if we've swept you off your feet - just wait! It only gets better from here!

Ready to get us started? All we need is your approval to begin! CLICK* THE "APPROVE PROPOSAL" button at the top right corner of any page

We appreciate the opportunity to help you with your pond and lake management needs. We're confident we'll exceed your expectations!

Welcome to the PondMedics family!

NEXT STEPS!

- We will execute the Proactive Lake Management Services Agreement with you
- We will submit final executed copies of The Agreement to you
- We will begin your proactive lake management services right away!

*By clicking on the "Approve Proposal", you are agreeing to the Proactive Lake Management Services Agreement found under the "Our Handshake Agreement" link.

Other Services

Other Services Offered Outside of this Lake Management Proposal

There are a number of other services and products that can enhance your pond and compliment your pond or lake management plan. We like to say that there are "several tools in the pond management toolbox," the key is knowing what combination of "tools" to use so we are most effective at managing your pond or lake. Other services and products offered are:

- sediment surveys and bathymetric mapping
- electrofishing surveys
- fish stocking
- duck and geese services
- nuisance animal trapping/removal
- clearing muddy water
- fountain and aerator installation/repair
- pond dredging and renovation
- fishing piers and floating docks
- automatic fish feeder sales/service/installation
- engineering/design for ponds, lakes, dams and spillways
- permitting and regulatory compliance
- pond and lake mapping and surveys
- educational seminars and presentations

Who else loves us?

PondMedics is for the discerning pond/lake owner and manager. We do not cater to the masses. We hand pick our clients and give them the best services possible. Success is measured in relationships, not quantity. Here are a few lake management clients around the area that have tried other companies and now swear by our services.

- Elvis Andrus - Dallas - Texas Rangers Baseball Player
- Mike Shelby - Dallas - son of famous Carol Shelby of Shelby Mustangs
- Brenda Simmons - Allen - CMA Community Manager
- Rhonda VanTassell - Frisco - Lone Star Ranch Community Manager
- Carolyn Rollwitz - Cedar Hill - Lake Ridge Community Manager
- Bruce Crawford - Lantana, Phillips Creek Ranch and Light Farms Community Manager
- Sonja Boles - Little Elm - Sunset Pointe Community Manager
- The Salvation Army - Midlothian - Hoblitzelle and Hi View Retreats
- Mike Hemrick - Colleyville - Montclair Parc Board President
- Jamie Crowson - McKinney - Village Creek of Eldorado Board President
- Kym Hughes - City of Plano - Forestry and Environmental Manager for the City
- Bobby Brady - City of Carrollton - Parks and Rec Director
- Andy Hesser - City of Rockwall - Parks and Rec Director
- Larry Hairston - Plano - Lakeside on Preston Board Member
- Jeff Hampshire - DFW - Director of Operations for First Service Residential
- Brandi Polly - DFW - Lone Star Association Management
- Kama Roux - Rockwall - Chandlers Landing Community Manager

AND MANY, MANY MORE!

We hope to earn your business and show you why we have so many great clients we work for! And someday, we hope you'll be on our list of references!



ENGINEERING SERVICES

To: Mayor and Town Council

From: Hulon T. Webb, Jr., P.E., Director of Engineering Services

**Through: Mario Canizares, Town Manager
Chuck Ewings, Executive Director of Development and Infrastructure Services**

Re: Wastewater Development Agreement: PROSPER TOLLROAD J.V.

Town Council Meeting – April 25, 2023

Agenda Item:

Consider and act upon authorizing the Town Manager to execute a Wastewater Development Agreement between PROSPER TOLLROAD J.V., and the Town of Prosper, Texas, related to the extension of a sanitary sewer line from Armstrong Lane to the Lakes of Prosper lift station.

Description of Agenda Item:

PROSPER TOLLROAD J.V., owns approximately 66.05 acres of land on the northeast corner of Prosper Trail and the Dallas North Tollway. In order for development to occur, they will be required to extend a sanitary sewer line as depicted on the Town of Prosper Wastewater System Capital Improvement Plan.

Since the proposed sanitary sewer line is depicted on the Town of Prosper Wastewater System Capital Improvement Plan, the actual costs for the design and construction of the improvements are eligible for reimbursement of wastewater impact fees collected from the properties that will be served by the sanitary sewer line. It is anticipated that the construction of the sanitary sewer line will commence before December 31, 2025, and be complete before December 31, 2028.

Budget Impact:

The total estimated cost for the design and construction of the sanitary sewer line is \$636,351.50. The terms of the Wastewater Development Agreement include two forms of reimbursement. First, PROSPER TOLLROAD J.V. will receive reimbursement from wastewater impact fees collected from eligible property in the Reimbursement Area defined in the agreement up to the actual costs. PROSPER TOLLROAD J.V. will also receive reimbursement from the Town for the extension of a sanitary sewer line to connect to the Lakes of Prosper Lift Station, estimated to cost \$12,000, within 30 days of the sanitary sewer line extension being complete and accepted by the Town.

Legal Obligations and Review:

Terrence Welch of Brown & Hofmeister, L.L.P., has reviewed the agreement as to form and legality. PROSPER TOLLROAD J.V., will contribute up to \$5,000 towards the legal preparation fees.

Attached Documents:

1. Town of Prosper Wastewater System Capital Improvement Plan
2. Wastewater Development Agreement

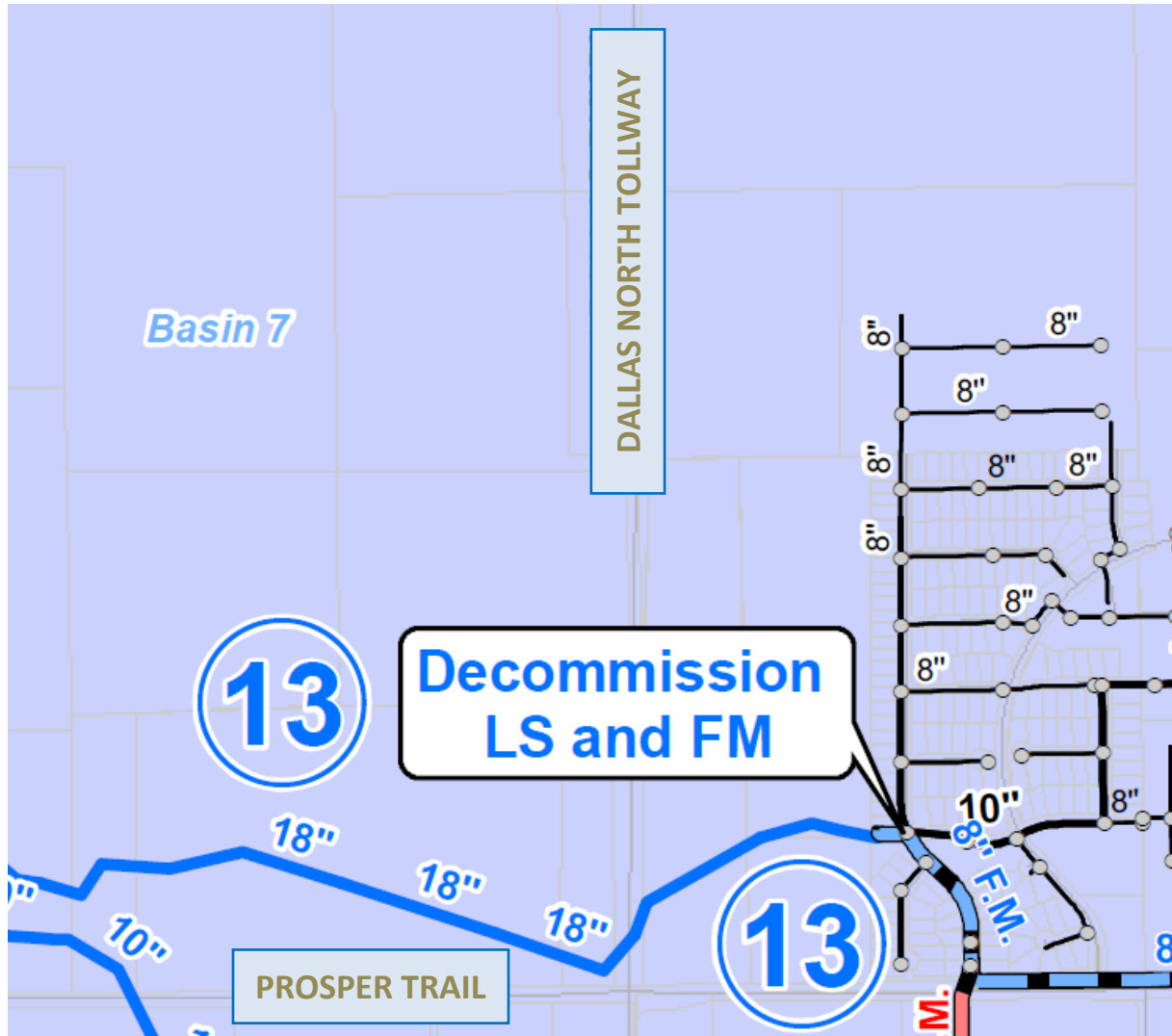
Town Staff Recommendation:

Town staff recommends that the Town Council authorize the Town Manager to execute a Wastewater Development Agreement between PROSPER TOLLROAD J.V., and the Town of Prosper, Texas, related to the extension of a sanitary sewer line from Armstrong Lane to the Lakes of Prosper lift station.

Proposed Motion:

I move to authorize the Town Manager to execute a Wastewater Development Agreement between PROSPER TOLLROAD J.V., and the Town of Prosper, Texas, related to the extension of a sanitary sewer line from Armstrong Lane to the Lakes of Prosper lift station.

Town of Prosper Wastewater System Capital Improvement Plan
(PROSPER TOLLROAD J.V.)



After Recording Return to:
Town Manager
Town of Prosper
P. O. Box 307
Prosper, Texas 75078

WASTEWATER DEVELOPMENT AGREEMENT
(PROSPER TOLLROAD J.V.)

THIS WASTEWATER DEVELOPMENT AGREEMENT (the “**Agreement**”) is made and entered into as of this _____ day of _____, 2023, by and between **PROSPER TOLLROAD J.V.**, a Texas limited liability company (“**Developer**”), and the **TOWN OF PROSPER, TEXAS**, a Texas home-rule municipality (the “**Town**”), collectively referred to as the “Parties,” on the terms and conditions hereinafter set forth.

W I T N E S S E T H:

WHEREAS, Developer and/or Developer’s affiliates have acquired and/or are under contract to acquire approximately 66.05 acres of land, more or less, situated in the Collin County School Survey, Abstract No. 147, Town of Prosper, Collin County, Texas, as more particularly described and depicted on **Exhibit A**, attached hereto and incorporated herein by reference (the “**Property**”);

WHEREAS, pursuant to the Town’s Water and Wastewater Improvement Plan (the “**Master Sewer Plan**”), Developer desires to, subject to the terms and conditions set forth herein, construct certain Sewer Improvements, as defined herein, to serve the Property;

WHEREAS, for purposes of this Agreement and as more fully described herein, the Property is included in a wastewater impact fee reimbursement area, hereinafter referenced as the Reimbursement Area, as depicted in attached **Exhibit B**, incorporated by reference; and

WHEREAS, Developer desires to fulfill its obligation to pay Wastewater Impact Fees (as defined in Paragraph 4 below) as prescribed in Article 10.02 of Chapter 10 of the Town’s Code of Ordinances, as amended (the “**Impact Fee Ordinance**”); and

WHEREAS, subject to the terms and provisions hereof, the Parties agree that Developer may fulfill its obligation to pay Wastewater Impact Fees in the manner set forth below.

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, the Town and Developer agree as follows:

1. **Land Subject to Agreement.** The land that is subject to this Agreement is the Property. Developer represents that it is the sole owner of the Property.

2. **Developer’s Construction of Sewer Improvements.** Developer shall, at its sole cost and expense, except as provided in Paragraph 4 below, construct and install

the sewer improvements that are depicted on **Exhibit B**, attached hereto and incorporated herein for all purposes, in accordance with the Master Sewer Plan and in accordance with the Town's design and construction standards, applicable engineering plans, specifications and designs approved in writing by the Town's engineer, which approval shall not be unreasonably withheld or delayed (the "**Project**"). Within ninety (90) days of the Town's acceptance of the Project, Developer shall be eligible for reimbursement of actual costs incurred by Developer in construction of the Project, and such other reimbursable and related costs, if any, mutually agreed upon by the Town and Developer. Further, upon the Town's acceptance of the Project, all improvements constructed by Developer shall become the property of the Town, and Developer agrees that it will execute all appropriate documentation relative thereto, including the dedication at no cost of necessary right-of-way or utility easements for the benefit of the Town.

3. **Reimbursements from Wastewater Impact Fees.** Any reimbursement to Developer contemplated by this Agreement shall come only from wastewater impact fees collected by the Town from wastewater impact fee-eligible development. Specifically, any wastewater impact fees by the Town as contemplated by this Agreement collected from eligible property in the Reimbursement Area, as depicted in **Exhibit D**, shall be paid to Developer until the entire amount due to Developer is paid in full. The reimbursement of wastewater impact fees for any Wastewater CIP Project in the Reimbursement Area shall cease when the amount tendered, through the reimbursement of collected wastewater impact fees and/or the waiver of impact fees equals the actual Construction Costs. The phrase "Construction Costs" as used herein shall mean the actual construction costs, including design costs, construction costs, engineering costs, surveying costs and geotechnical materials testing associated with the Project. Estimated construction costs are depicted in attached **Exhibit C**. The Town will use its reasonable efforts to forward any reimbursement amount to Developer, quarterly and as applicable, on January 15, April 15, July 15, and October 15 of each year beginning the year of completion of and acceptance of construction.

4. **Additional Sewer Improvements.** The Town acknowledges that Developer may construct certain sewer improvements that extend from the Project and tie-in to the Town's lift station in the Lakes of Prosper development (the "**Additional Sewer Improvements**"), which sewer improvements are solely for the benefit and use of the Town, and do not benefit or serve the Property. The total construction costs incurred by Developer in constructing the Additional Sewer Improvements is estimated at **\$12,000.00** (the "**Additional Sewer Improvement Construction Costs**"). The Additional Sewer Improvement Construction Costs shall not be included within or subject to the reimbursement provisions set forth in Paragraph 3, above. Rather, the Town agrees that it will reimburse Developer, within thirty (30) days after the Town finally accepts the construction of the Additional Sewer Improvements, an amount equal to the actual Additional Sewer Improvement Construction Costs.

5. **Obligation to Reimburse.** In the event that full reimbursement has not been made to Developer by the Town after the expiration of ten (10) years from the date of the Town's acceptance of the Project as set forth in Paragraph 2 above, as reflected in the Master Sewer Plan and as contemplated by this Agreement, the Town shall endeavor to reimburse Developer from applicable wastewater impact fee funds.

6. **Third Party Project Easements or Right-of-Way.**

(a) The Parties shall cooperate with each other in obtaining from third parties any and all easements or right-of-way (collectively, "Third Party Project Easements") for the Project depicted in **Exhibit B**.

(b) Developer shall be responsible for any and all costs and expenses associated with acquiring, by purchase or condemnation, all Third Party Project Easements, including, but not limited to, title work, appraisals, expert fees, attorneys' fees and expenses, engineering fees and expenses, surveying fees and expenses, court costs, commissioner's fees and costs of appeal, if any ("Easement Acquisition Fees"). If requested by the Town, Developer shall, at its sole cost and expense, lead all easement acquisition efforts for the Third Party Project Easements, including, but not limited to, providing all necessary engineering and surveying support required to obtain the Third Party Project Easements as required. Developer shall pay any and all Easement Acquisition Fees within twenty-one (21) calendar days of receiving a written request from the Town for the same.

(c) The Town will, at Developer's sole cost and expense, provide, among any other assistance deemed reasonably necessary by the Town, technical, engineering, legal and administrative assistance, as selected by the Town, to acquire, by purchase or condemnation, the Third Party Project Easements. The Town shall review and approve any and all documents associated with the Third Party Project Easements required herein. If the Town determines, in its reasonable discretion, that condemnation proceedings are necessary to secure the Third Party Project Easements, the Town shall have the right to, at Developer's sole cost and expense, take any and all steps the Town deems necessary to initiate said proceedings.

(d) The Third Party Project Easements shall be filed and recorded prior to the commencement of construction of the Project or any portion thereof, unless a Right of Entry is secured, a condemnation award is tendered with the registry of the court and/or a right of possession by any other means is obtained on an earlier date.

(e) If the Third Party Project Easements are not obtained, or the Town has not secured the right to possess, in a form reasonably acceptable to the Town, the land made the subject of the Third Party Project Easements, within ninety (90) days after the execution hereof on terms acceptable to the Town, then the Town shall commence, and thereafter diligently pursue to completion, condemnation proceedings to obtain such Third Party Project Easements as soon as reasonably possible. Notwithstanding anything to the contrary herein, the Town and Developer agree that the Town may initiate condemnation proceedings prior to the expiration of the ninety (90) days referred to in this Paragraph.

7. **Assignment.** Developer shall have the right to assign this Agreement, in whole or in part, which party (or parties) shall have the option to construct the Project. As to the sale of land by Developer to any party to whom this Agreement has not been assigned, in whole or in part, the purchaser thereof shall have no rights or obligations under this Agreement and this Agreement shall not apply with respect to such land.

8. **Default.** If Developer fails to comply with any provision of this Agreement after receiving fifteen (15) days written notice to comply from the Town or such longer period as may be reasonably necessary provided that Developer commences to cure the default or breach within the 15-day period and proceeds with reasonable diligence thereafter to complete such cure, then so long as such default continues and is not cured, the Town shall have the following remedies, in addition to the Town's other rights and remedies:

- (a) to refuse to accept any public improvements on the Property; and/or
- (b) to construct and/or complete the Project and to recover any and all costs and expenses associated with the construction and/or completion of same, including, but not limited to, any and all reasonable attorney's fees and costs associated therewith; and/or
- (c) to seek specific enforcement of this Agreement.

In the event Developer fails to commence construction of the Project by December 31, 2025, such failure will be deemed a default to the agreement, with no requirement of notice, as referenced in Paragraph.

Furthermore, in the event Developer does commence construction of the Project by December 31, 2025, but fails to complete construction of the Project by December 31, 2028, such failure may be declared a default, in the Town's sole discretion, with no requirement of notice, as referenced in Paragraph. In such event, Developer shall not be eligible for Reimbursements from Wastewater Impact Fees for the construction costs incurred by Developer for the Project until such time as the Project has been accepted by the Town and full payment has been made to any person or business entity that has completed the Project after Developer's default.

In the event the Town fails to comply with the terms and conditions of this Agreement, Developer may seek specific enforcement of this Agreement and/or bring suit to recover any amounts due and owing hereunder (but not consequential or punitive damages) as its sole and exclusive remedies.

9. **Other Applicable Development Ordinances.** Unless otherwise expressly stipulated in this Agreement, nothing herein shall relieve any developer from responsibilities for the construction of other public improvements under applicable development ordinances of the Town.

10. **Acknowledgements/Release/Waiver.** Developer agrees and acknowledges that: (i) the Town is entering into this Agreement based on Developer's representation and warranty that wastewater service is needed to serve Developer's development of the Property; (ii) the Town makes no representations whatsoever with regard to the completion of the Sewer Improvements, other than that the Town agrees to process Developer's request for acceptance of the Sewer Improvements in a similar manner as the Town normally processes such requests; (iii) as of the date hereof, all necessary Sewer Improvements have not been completed and/or secured so as to serve

the Property; and (iv) until acceptance of the Sewer Improvements as provided in this Agreement, the Town is not required to and will not release any building permits and/or any Certificates of Occupancy for the Property. This paragraph shall survive the termination of this Agreement.

11. **Limitation of Liability.** Notwithstanding anything to the contrary herein, the Parties agree and acknowledge that the Town shall not, under any circumstance, be required to tender, and/or be liable to Developer for, any reimbursement of and/or payment of any monies with regard to the matters set forth herein, save and except as provided herein.

12. **Covenant Running with Land.** This Agreement shall be a covenant running with the land and the Property and shall be binding upon and inure to the benefit of Developer, and its successors and assigns. In addition, the Parties shall cause this Agreement to be filed in the Real Property Records of Collin County, Texas. Notwithstanding the foregoing, the obligations herein that burden the Property shall be released automatically upon acceptance by the Town of the Sewer Improvements as set forth in this Agreement. Any third party, including any title company, grantee or lien holder, shall be entitled to rely on the immediately preceding sentence to establish whether such termination has occurred with respect to any lot. The Town agrees to execute and deliver, in recordable form, a form of release or other evidence of termination as Developer may reasonably request and that is reasonably satisfactory to the Town.

13. **Limitations of Agreement.** The Parties hereto acknowledge that this Agreement is limited to the Wastewater Impact Fees as described in the Impact Fee Ordinance. Except as expressly otherwise provided herein, the Town ordinances covering property taxes, utility rates, permit fees, inspection fees, development fees, thoroughfare fees, park fees, tap fees, pro-rata fees and the like are not affected by this Agreement. Further, this Agreement does not waive or limit any of the obligations of Developer to the Town under any other ordinance, whether now existing or in the future arising.

14. **Notices.** Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via facsimile or a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the Parties shall be as follows:

If to the Town, addressed to it at:

Town of Prosper
Att'n: Town Manager
P. O. Box 307
121 West Broadway Street
Prosper, Texas 75078

With a copy to:

Brown & Hofmeister, L.L.P.
Att'n: Terrence S. Welch
740 East Campbell Road, Suite 800
Richardson, Texas 75081

If to Developer, addressed to it at:

Scott Norris
Prosper Tollroad J.V.
4265 Kellway Circle
Addison, Texas 75001



15. **INDEMNIFICATION.** (A) DEVELOPER DOES HEREBY AGREE TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN AND ITS TOWN COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEYS' FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), TO THE EXTENT CAUSED BY THE NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF DEVELOPER, ITS OFFICERS, DIRECTORS, PARTNERS CONTRACTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEES, TRUSTEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM SUCH DEVELOPER IS LEGALLY RESPONSIBLE, IN ITS/THEIR PERFORMANCE OF THE OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, THE CONSTRUCTION OF THE SEWER IMPROVEMENTS, IN WHOLE OR IN PART, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE TOWN (HEREINAFTER "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST THE TOWN BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN DEVELOPER, AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE DEVELOPER, INCLUDING BUT NOT LIMITED TO, ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY

CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE.

(B) IN ITS SOLE DISCRETION, THE TOWN SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY DEVELOPER IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY THE TOWN, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY THE TOWN IN WRITING. THE TOWN RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, THE TOWN IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY THE TOWN IS NOT TO BE CONSTRUED AS A WAIVER OF DEVELOPER'S OBLIGATION TO DEFEND THE TOWN OR AS A WAIVER OF DEVELOPER'S OBLIGATION TO INDEMNIFY THE TOWN PURSUANT TO THIS AGREEMENT. DEVELOPER SHALL RETAIN TOWN-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF THE TOWN'S WRITTEN NOTICE THAT THE TOWN IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF DEVELOPER FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, THE TOWN SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND DEVELOPER SHALL BE LIABLE FOR ALL REASONABLE COSTS INCURRED BY THE TOWN.

(C) THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

16. THE PARTIES' ACKNOWLEDGEMENT OF THE TOWN'S COMPLIANCE WITH FEDERAL AND STATE CONSTITUTIONS, STATUTES AND CASE LAW AND FEDERAL, STATE AND LOCAL ORDINANCES, RULES AND REGULATIONS/DEVELOPER'S WAIVER AND RELEASE OF CLAIMS FOR OBLIGATIONS IMPOSED BY THIS AGREEMENT.

(A) DEVELOPER ACKNOWLEDGES AND AGREES THAT:

- (I) THE SEWER IMPROVEMENTS TO BE CONSTRUCTED BY DEVELOPER PURSUANT TO THIS AGREEMENT AND/OR THE SEWER IMPACT FEES TO BE IMPOSED BY THE TOWN REGARDING THE PROPERTY, IN WHOLE OR IN PART, DO NOT CONSTITUTE A:
 - (A) TAKING UNDER THE TEXAS OR UNITED STATES CONSTITUTION;
 - (B) VIOLATION OF THE TEXAS WATER CODE, AS IT EXISTS OR MAY BE AMENDED;
 - (C) NUISANCE; AND/OR
 - (D) CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST THE TOWN FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION.
- (II) THE AMOUNT OF DEVELOPER'S FINANCIAL OR INFRASTRUCTURE CONTRIBUTION (AFTER RECEIVING ALL CONTRACTUAL OFFSETS, CREDITS AND REIMBURSEMENTS, IF ANY) AGREED TO IN THIS AGREEMENT IS ROUGHLY PROPORTIONAL TO THE DEMAND THAT SUCH DEVELOPER'S DEVELOPMENT PLACES ON THE TOWN'S INFRASTRUCTURE.

- (iii) **DEVELOPER HEREBY AGREES THAT ANY PROPERTY WHICH IT CONVEYS TO THE TOWN PURSUANT TO THIS AGREEMENT IS ROUGHLY PROPORTIONAL TO THE BENEFIT RECEIVED BY DEVELOPER FOR SUCH LAND, AND DEVELOPER HEREBY WAIVES ANY CLAIM THEREFOR THAT IT MAY HAVE. DEVELOPER FURTHER ACKNOWLEDGES AND AGREES THAT ALL PREREQUISITES TO SUCH A DETERMINATION OF ROUGH PROPORTIONALITY HAVE BEEN MET, AND THAT ANY VALUE RECEIVED BY THE TOWN RELATIVE TO SAID CONVEYANCE ARE RELATED BOTH IN NATURE AND EXTENT TO THE IMPACT OF THE DEVELOPMENT OF DEVELOPER'S ADJACENT PROPERTY ON THE TOWN'S INFRASTRUCTURE. DEVELOPER AND THE TOWN FURTHER AGREE TO WAIVE AND RELEASE ALL CLAIMS ONE MAY HAVE AGAINST THE OTHER RELATED TO ANY AND ALL ROUGH PROPORTIONALITY AND INDIVIDUAL DETERMINATION REQUIREMENTS MANDATED BY THE UNITED STATES SUPREME COURT IN *DOLAN V. CITY OF TIGARD*, 512 U.S. 374 (1994), AND ITS PROGENY, AS WELL AS ANY OTHER REQUIREMENTS OF A NEXUS BETWEEN DEVELOPMENT CONDITIONS AND THE PROJECTED IMPACT OF THE PUBLIC INFRASTRUCTURE.**
- (iv) **DEVELOPER SHALL INDEMNIFY AND HOLD HARMLESS THE TOWN FROM ANY CLAIMS AND SUITS OF THIRD PARTIES, INCLUDING BUT NOT LIMITED TO DEVELOPERS' RESPECTIVE PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEES, AND/OR TRUSTEES, BROUGHT PURSUANT TO THIS PARAGRAPH.**
- (b) **DEVELOPER RELEASES THE TOWN FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED ON EXCESSIVE OR ILLEGAL EXACTIONS IN CONNECTION WITH THIS AGREEMENT.**
- (c) **DEVELOPER WAIVES ANY CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST THE TOWN FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION.**
- (d) **THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

17. **Vested Rights/Chapter 245 Waiver.** The signatories hereto shall be subject to all ordinances of the Town, whether now existing or in the future arising. This Agreement shall confer no vested rights on the Property, or any portion thereof, unless specifically enumerated herein. In addition, nothing contained in this Agreement shall constitute a "permit" as defined in Chapter 245, Texas Local Government Code, and nothing in this Agreement provides the Town with fair notice of any Developer's project. **DEVELOPER WAIVES ANY STATUTORY CLAIM UNDER CHAPTER 245 OF THE TEXAS LOCAL GOVERNMENT CODE UNDER THIS AGREEMENT. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

18. **Attorney's Fees.** In any legal proceeding brought to enforce the terms of this Agreement, the prevailing party may recover its reasonable and necessary attorney's fees from the non-prevailing party as permitted by Section 271.159 of the Texas Local Government Code, as it exists or may be amended.

19. **Incorporation of Recitals.** The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of the Town and the authorized representative of Developer.

20. **Developer's Warranties and Representations.** All warranties, representations and covenants made by Developer in this Agreement or in any certificate or other instrument delivered by Developer to the Town under this Agreement shall be considered to have been relied upon by the Town and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made by the Town or on the Town's behalf.

21. **Entire Agreement.** This Agreement contains the entire agreement of the Parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the Parties hereto.

22. **Venue.** This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.

23. **Consideration.** This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

24. **Counterparts.** This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile or email signature will also be deemed to constitute an original if properly executed.

25. **Authority to Execute.** The individuals executing this Agreement on behalf of the respective Parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

26. **Savings/Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

27. **Representations.** Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

28. **Sovereign Immunity.** The Parties agree that the Town has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

29. **No Third Party Beneficiaries.** Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the Parties do not intend to create any third party beneficiaries by entering into this Agreement.

30. **Assignment/Binding Effect.** This Agreement is assignable upon the following conditions:

(a) the assignment of the Agreement must be evidenced by a recordable document. The recordable document referred to in this paragraph is subject to the reasonable approval of the Town;

(b) at the time of any assignment, Developer must give the assignee written notice that any and all obligations, covenants and/or conditions contained in the Agreement will be assumed solely and completely by the assignee. The notice provided pursuant to this paragraph is subject to the reasonable approval of the Town;

(c) Developer will file any approved, executed assignment in the Land Records of Collin County, Texas; and

(d) Developer shall provide the Town with the name, address, phone number, fax number and the name of a contact person for the assignee.

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns, as authorized herein.

31. **Indemnification.** The Parties agree that the Indemnity provisions set forth in Paragraphs 15 and 16 herein are conspicuous, and the Parties have read and understood the same.

32. **Construction.** All construction described herein shall be subject to and in compliance with all ordinances of the Town, whether now existing, hereafter amended or in the future arising. Evidence of any bonds required by Section 212.073 of the Texas Local Government Code, or other applicable law, shall be provided by Developer to the Town.

33. **Conveyances.** All conveyances required herein shall be made in a form acceptable to the Town and free and clear of any and all encumbrances.

34. **Waiver.** Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.

35. **Reference to Developer.** When referring to "Developer" herein, this Agreement shall refer to and be binding upon and inure to the benefit of, Developer, and its successors and assignees.

36. **Miscellaneous Drafting Provisions.** This Agreement shall be deemed drafted equally by all Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the Parties and are not intended to be used in construing this document.

37. **Force Majeure.** Notwithstanding anything herein to the contrary, no party shall be liable for the failure to perform its duties described herein if such failure is caused by a catastrophe, riot, war, governmental order or regulation, fire, accident, Act of God, or other similar or different contingency beyond the reasonable control of the subject party.

38. **Attorney's Fees.** Developer agrees to pay, or cause to be paid, to Prosper any attorney's fees charged to Prosper by Prosper's legal counsel for, among other things, legal review and revision of this Agreement and all further agreements, ordinances or resolutions contemplated by this Agreement, negotiations and discussions with Developer's attorney and the provision of advice to applicable Prosper Town Staff and the Prosper Town Council, in an amount not to exceed \$5,000.00 within ten (10) days upon receipt of an invoice of same from the Town.

39. **IN WITNESS WHEREOF,** the parties have executed this Agreement and caused this Agreement to be effective on the latest day as reflected by the signatures on the following pages.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

TOWN:**TOWN OF PROSPER, TEXAS**By: _____
Mario Canizares, Town Manager

Date: _____

STATE OF TEXAS	§
	§
COUNTY OF COLLIN	§

BEFORE ME, the undersigned authority, on this day personally appeared Mario Canizares, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me he is the duly authorized representative for the **TOWN OF PROSPER, TEXAS**, and he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of _____, 2023.

Notary Public in and for the State of Texas

My Commission Expires: _____

DEVELOPER:

PROSPER TOLLROAD J.V.,
a Texas limited liability company



Dan Tomlin III, President

Date: April 12, 2023

STATE OF TEXAS

§
§
§

COUNTY OF DALLAS

BEFORE ME, the undersigned authority, a Notary Public, on this day personally appeared Dan Tomlin III, the President of **PROSPER TOLLROAD J.V.**, and who acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated on behalf of said company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 12th day of April, 2023.



Notary Public in and for the State of Texas

My Commission Expires: 3-21-2025

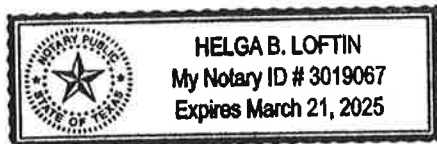


EXHIBIT A

(Legal Description and Depiction of the Property)

Next 2 Pages

EXHIBIT A

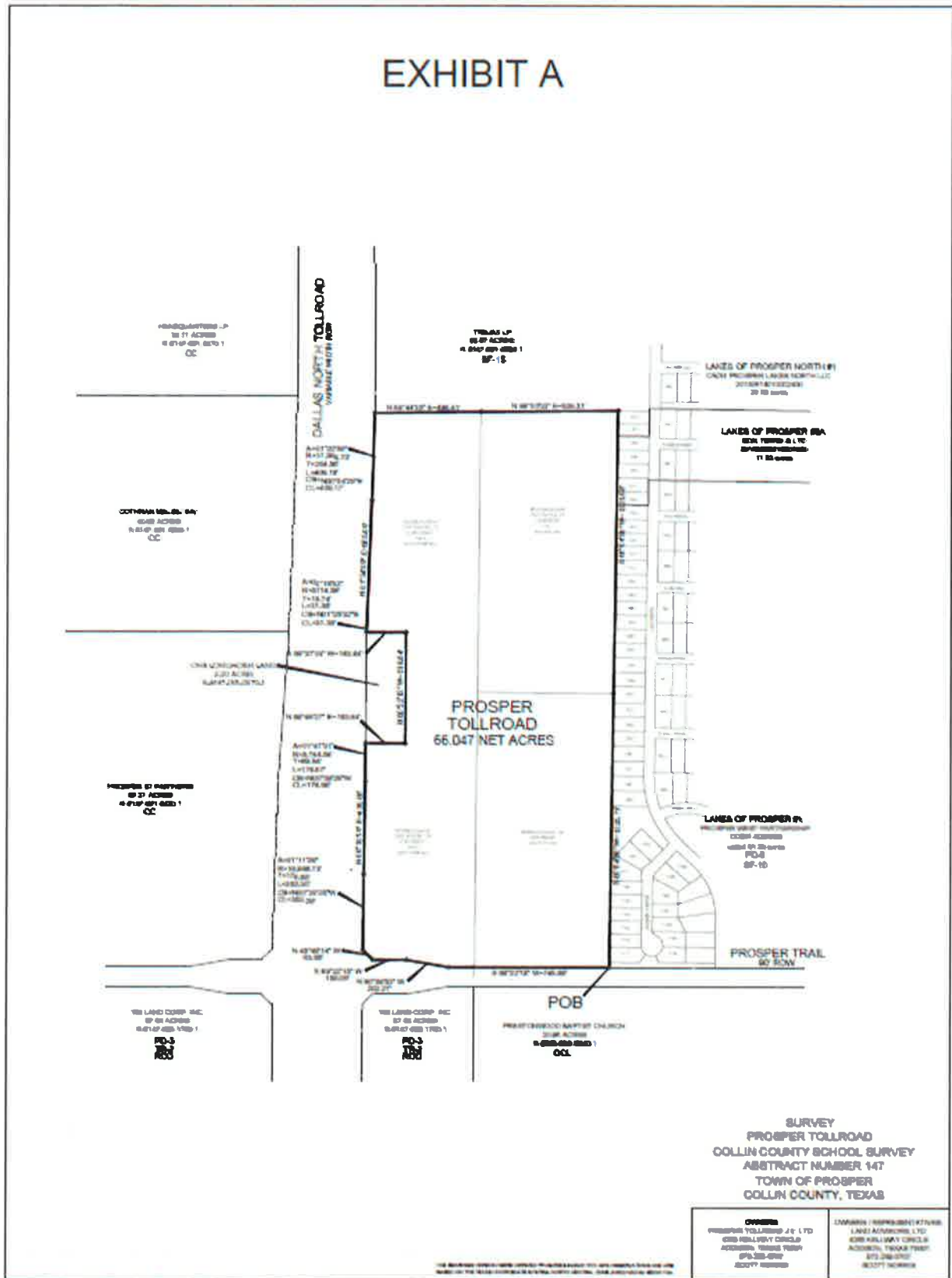


EXHIBIT A SHT.2



PROSPER TOLLROAD BOUNDARY DESCRIPTION

A tract or parcel of land situated in the Collin County School Land Survey, Abstract No. 147, in Collin County, Texas, being a combination of three tracts (a) the called 19.27 acres tract and (b) the called 33.3868 acres tract described in the deed to Prosper-Tollroad Joint Venture, Ltd, recorded in file number 96-0090247 in the Collin County Deed Records, and (c) the called 19.257 acres tract described in the deed to Prosper Tollroad, Ltd, recorded in file number 19-0088560 in the CCOR, and being more particularly described as follows:

COMMENCING at a found 1/2 inch iron rod with DAA cap at the southwest corner of LOT 13 BLOCK B of the Replat of LAKES OF PROSPER PHASE ONE, an addition to the Town of Prosper recorded in Cabinet 2007 Page 32 in the Collin County Plat Records;

THENCE South 00°04'56" West 25.00 feet to the POINT OF BEGINNING on the north right-of-way line of Prosper Trail (45 feet north of the center);

THENCE Westerly along the north line of Prosper Trail the following:

South 89°22'15" West 748.68 feet;

North 80°39'53" West 202.27 feet;

South 89°22'15" West 155.06 feet;

North 45°49'14" West 63.85 feet;

THENCE Northerly along the east right-of-way line of Dallas North Tollroad the following:

Northerly an arc distance of 353.30 feet along a non-tangent curve to the right having a radius of 16988.73 feet, a central angle of 01°11'29", and the chord bears North 00°20'25" West 353.29 feet;

North 00°15'19" East 435.05 feet;

Northerly an arc distance of 179.67 feet along a tangent curve to the left having a radius of 5744.58 feet, a central angle of 01°47'31", and the chord bears North 00°38'26" West 179.66 feet to a found 1/2 inch iron rod with a H&M Assoc Inc cap;

THENCE Northerly around the called 3.350 acres tract described in the deed to One Longhorn Land I, L.P. recorded in Volume 5964 Page 285 in the CCOR the following:

North 89°48'27" East 183.84 feet to a found 1/2 inch iron rod;

North 00°22'12" West 518.84 feet to a found 1/2 inch iron rod;

South 89°37'24" West 183.64 feet;

THENCE Northerly along the east line of Dallas North Tollroad the following:

Northerly an arc distance of 31.38 feet along a non-tangent curve to the right having a radius of 5714.58 feet, a central angle of 00°18'53", and the chord bears North 01°25'32" East 31.38 feet;

North 01°34'59" East 585.09 feet to a found 1/2 inch iron rod;

Northerly an arc distance of 409.18 feet along a tangent curve to the left having a radius of 17368.73 feet, a central angle of 01°20'59", and the chord bears North 00°54'29" East 409.17 feet;

THENCE North 88°44'35" East 496.41 feet to a found 1/2 inch iron rod with yellow cap;

THENCE North 88°53'03" East 638.51 feet

THENCE South 00°04'55" West 1321.58 feet along the west side of LAKES OF PROSPER NORTH PHASE 1, an addition to the Town of Prosper recorded in Cabinet 2013 Page 366, and the west side of LAKES OF PROSPER PHASE 2, an addition to the Town of Prosper recorded in Cabinet 2010 Page 146, and along the west side of said LAKES OF PROSPER PHASE ONE;

THENCE South 00°04'56" West 1280.71 feet continuing along the west side of said LAKES OF PROSPER PHASE ONE to the Point of Beginning and Containing 66.047 acres of land more or less.

This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

SURVEY
PROSPER TOLLROAD
COLLIN COUNTY SCHOOL SURVEY
ABSTRACT NUMBER 147
TOWN OF PROSPER
COLLIN COUNTY, TEXAS

OWNER:
PROSPER TOLLROAD J.V. LTD
600 HOLLWAY CIRCLE
ADDICKS, TEXAS 75001
972-380-0800
SCOTT HENNING

OWNER: - SUPERSEDED BY THE
LAND ADVERSELY AFFECTED
600 HOLLWAY CIRCLE
ADDICKS, TEXAS 75001
972-380-0800
SCOTT HENNING

THE SURVEYOR HAS REVIEWED THE RECORDS OF THE COLLIN COUNTY DEED RECORDS AND THE COLLIN COUNTY PLAT RECORDS AND HAS DETERMINED THAT THE SURVEY IS CORRECT AND ACCURATE.

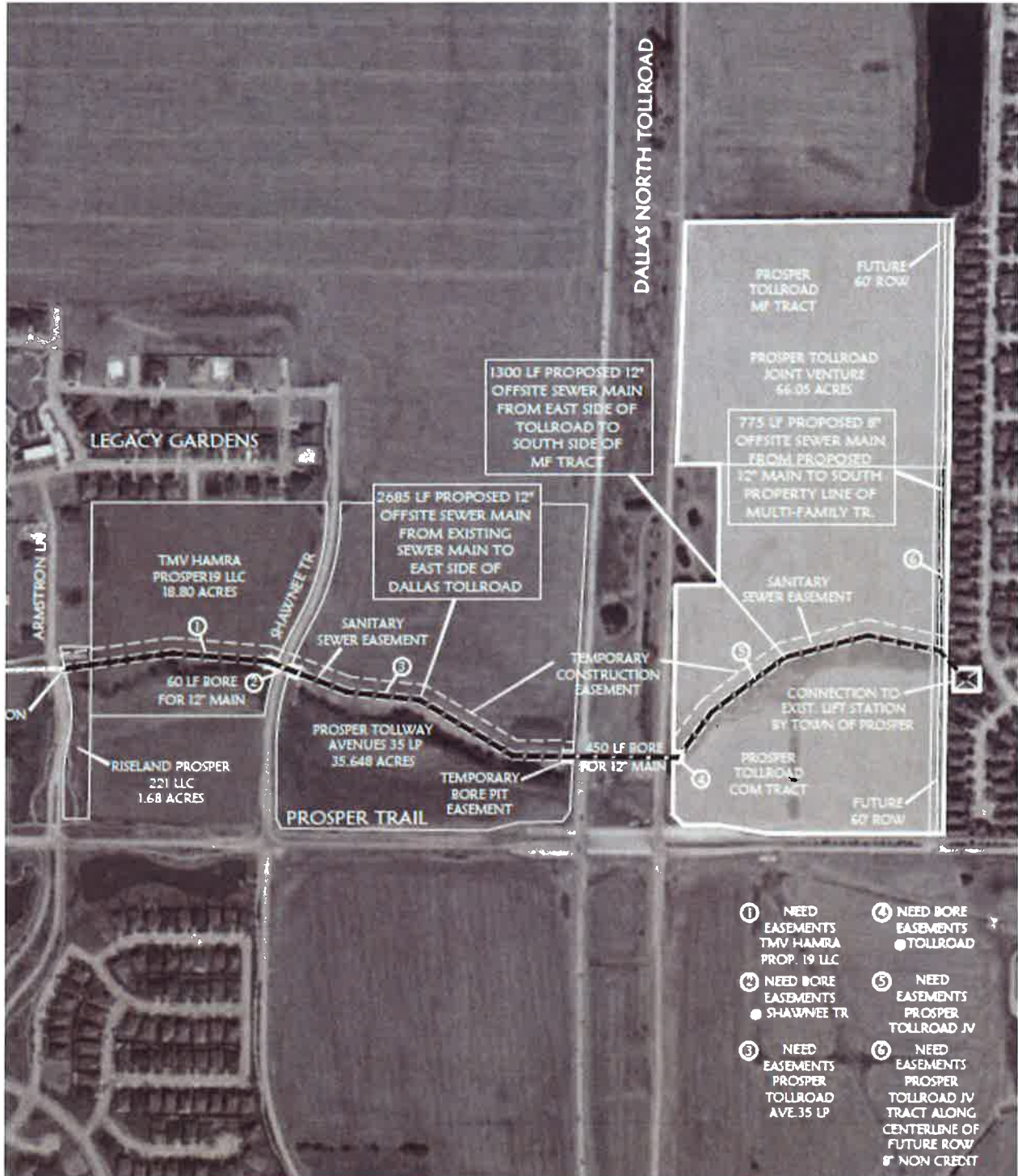
EXHIBIT B**(Description and Location of Sewer Improvements)**

EXHIBIT C**(Estimated Construction Costs)**

PRELIMINARY COST ESTIMATE
PROSPER TOLLROAD JV OFFSITE WASTEWATER

2/21/2023

DESCRIPTION	QTY	UNIT	PRICE	AMOUNT
SEWER MAIN CREDITS				
12" Dia. Pvc Sewer Main - Offsite	2685	LF	\$ 50.00	\$ 134,250.00
12" Dia. Pvc Sewer Main - Onsite	1300	LF	\$ 50.00	\$ 65,000.00
Bore w/Enc. for 12" Main under DNT	450	LF	\$ 300.00	\$ 135,000.00
Bore w/Enc. for 12" Main under Shawnee	60	LF	\$ 300.00	\$ 18,000.00
5' Dia. Manholes	6	EA	\$ 8,000.00	\$ 48,000.00
4' Dia. Manholes	6	EA	\$ 6,000.00	\$ 36,000.00
Connect to Existing Main	1	EA	\$ 10,000.00	\$ 10,000.00
Trench Safety	5370	LF	\$ 1.00	\$ 5,370.00
TV Testing	5370	LF	\$ 1.50	\$ 8,055.00
Cont. and Misc.	1	LS	\$ 68,951.25	\$ 68,951.25
Subtotal				\$ 528,626.25
Engineering / Construction Staking	1	LS	\$ 105,725.25	\$ 105,725.25
TOTAL				\$ 634,351.50
Connection to Exist. Lift Station	1	LS	\$ 10,000.00	\$ 10,000.00
Engineering / Construction Staking	1	LS	\$ 2,000.00	\$ 2,000.00
Subtotal				\$ 12,000.00
TOTAL				\$ 646,351.50

EXHIBIT D
(Area of Reimbursement)





PLANNING

To: Mayor and Town Council

From: David Soto, Planning Manager

Through: Mario Canizares, Town Manager
Chuck Ewings, Executive Director of Development and Infrastructure Services

Re: Notice of Appeal

Town Council Meeting – April 25, 2023

Agenda Item:

Consider and act upon whether to direct staff to submit a written notice of appeals on behalf of the Town Council to the Development Services Department, pursuant to Chapter 4, Section 1.5(C)(7) and 1.6(B)(7) of the Town's Zoning Ordinance, regarding action taken by the Planning & Zoning Commission on any Preliminary Site Plan, including Gates of Prosper, Phase 2, Lots 11 and 12.

Description of Agenda Item:

Attached is the Preliminary Site Plan that was acted on by the Planning & Zoning Commission at their April 4, 2023, meeting. Per the Zoning Ordinance, the Town Council has the ability to direct staff to submit a written notice of appeal on behalf of the Town Council to the Development Services Department for any Site Plans and Preliminary Site Plans acted on by the Planning & Zoning Commission.

Attachments:

1. Gates of Prosper, Phase 2, Lots 11 and 12 Preliminary Site Plan

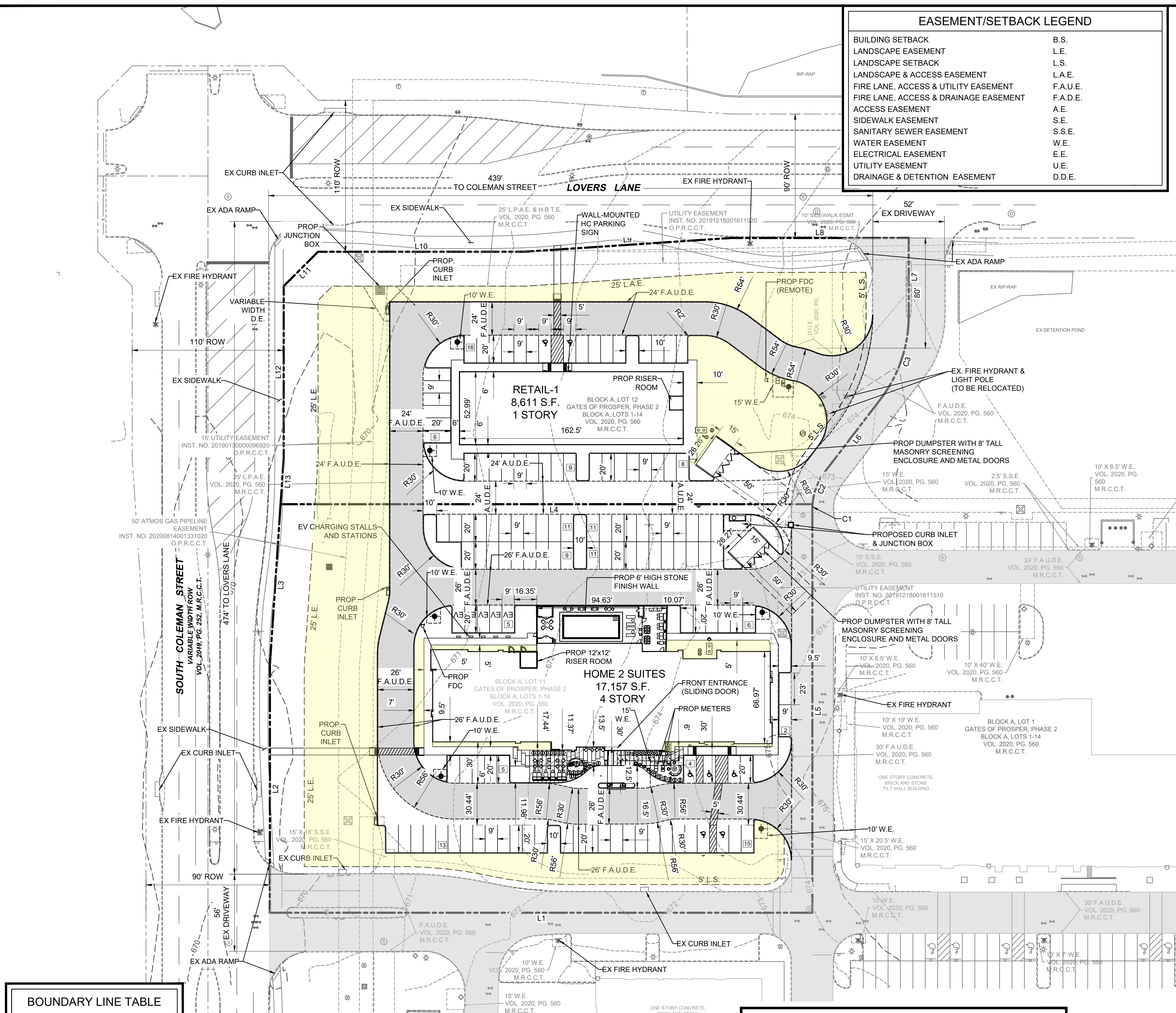
Planning & Zoning Recommendations:

At their April 4, 2023, meeting, the Planning & Zoning Commission approved the following items:

1. Gates of Prosper, Phase 2, Lots 11 and 12 Preliminary Site Plan (Approved)

Town Staff Recommendation:

Town staff recommends the Town Council take no action on this item.



BOUNDARY LINE TABLE

LINE #	DISTANCE	BEARING
L1	394.00'	S90°00'00"W
L2	180.00'	S00°00'00"E
L3	116.95'	S03°48'11"W
L4	386.37'	N90°00'00"W
L5	293.06'	S00°00'00"E
L6	65.94'	S37°27'22"W
L7	56.41'	S00°00'00"W
L8	129.00'	N90°00'00"E
L9	150.33'	N86°11'09"E
L10	150.00'	N90°00'00"E
L11	35.36'	S45°00'00"W
L12	125.00'	N00°00'00"E
L13	33.39'	S03°48'51"W

BOUNDARY CURVE TABLE

CURVE #	LENGTH	RADIUS	DELTA	CHORD LENGTH	CHORD BEARING
C1	3.61'	45.00'	004°35'49"	3.61'	S02°17'54"W
C2	25.81'	45.00'	032°51'33"	25.46'	S21°01'35"W
C3	65.37'	100.00'	037°27'22"	64.22'	N18°43'41"E

ADDITIONAL CITY NOTE:

- 7% of net lot area is required to be provided as open space. The following shall not be included: vehicular paving, required parking lot landscape islands, building footprint, utility yards, required landscape setbacks, sidewalks, and detention ponds.

PROJECT CONTACT LIST

ENGINEER TRIANGLE ENGINEERING LLC 1782 McDERMOTT DRIVE ALLEN, TEXAS 75013 CONTACT: KARTAVYA PATEL, PE PHONE: 469-331-8566	DEVELOPER SUPERHOST HOSPITALITY, LLC 1823 ABRITER COURT NAPERVILLE, ILLINOIS 60563 CONTACT: SAMIR LAKHANY PHONE: 260-418-2249
SURVEYOR KIMLEY-HORN 6160 WARREN PARKWAY, SUITE 210 FRISCO, TEXAS 75034 CONTACT: MICHAEL MARX, RPLS PHONE: 972-335-3580	ARCHITECT STUDIO RED DOT 10000 NCX, SUITE 1045 DALLAS, TEXAS 75231 CONTACT: SABRINA BALA, AIA 469-941-4145
OWNER GOP #2, LLC 1 COWBOYS WAY FRISCO, TEXAS 75034	

FLOOD PLAIN NOTE

ACCORDING TO MAP NO. 48085C0235J DATED JUNE 2, 2009, OF THE NATIONAL INSURANCE PROGRAM MAP, FLOOD INSURANCE RATE MAP OF COLLIN COUNTY, TEXAS, FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION, THIS PROPERTY IS LOCATED IN ZONE X (UNSHADED) AND IS NOT WITHIN A SPECIAL FLOOD HAZARD AREA.

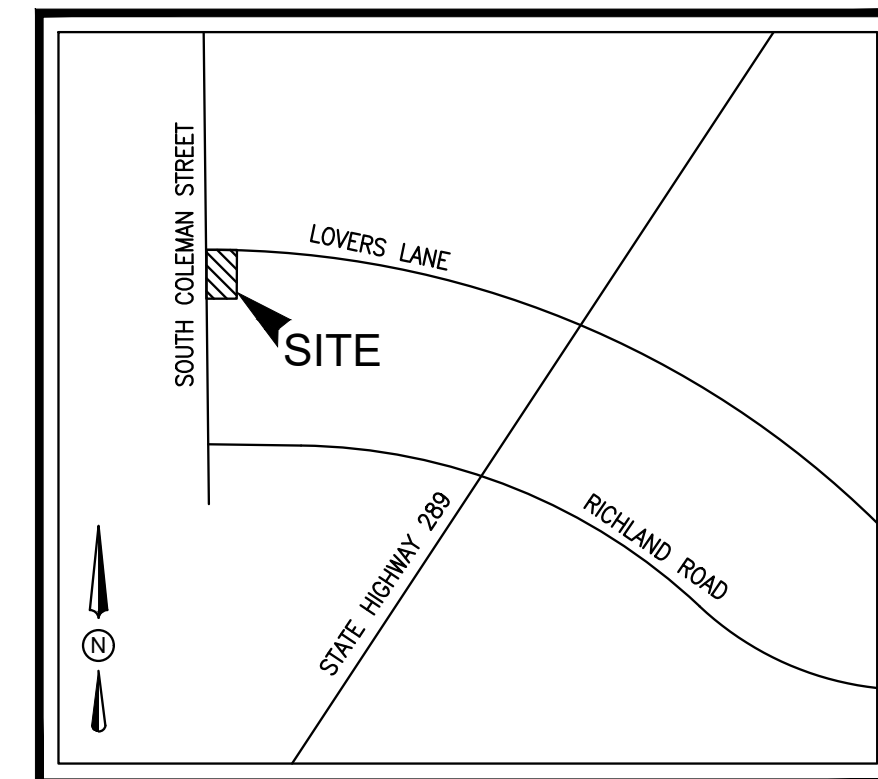
NO.	DATE	DESCRIPTION	BY
1	12-05-22	1st PRELIMINARY SITE PLAN	EB
2	03-20-23	2nd PRELIMINARY SITE PLAN	KP
.	.	.	.
.	.	.	.
.	.	.	.
.	.	.	.
.	.	.	.



Know what's below.
Call before you dig.



Scale: 1" = 40' Feet

VICINITY MAP
N.T.S.

SITE GENERAL NOTES

- ALL CONSTRUCTION SHALL BE IN STRICT ACCORDANCE WITH THE CITY OR LOCAL JURISDICTION STANDARDS.
- THE LOCATION OF UNDERGROUND UTILITIES INDICATED ON THE PLANS IS TAKEN FROM AS-BUILTS, UTILITY PLANS OR SURVEY. IT IS THE CONTRACTOR'S RESPONSIBILITY TO MAKE ARRANGEMENTS WITH THE OWNERS OF SUCH UNDERGROUND UTILITIES PRIOR TO WORKING IN THE AREA TO CONFIRM THEIR EXACT LOCATION AND TO DETERMINE WHETHER ANY ADDITIONAL UTILITIES OTHER THAN THOSE SHOWN ON THE PLANS MAY BE PRESENT. THE CONTRACTOR SHALL PRESERVE AND PROTECT ALL UNDERGROUND UTILITIES. IF EXISTING UNDERGROUND UTILITIES ARE DAMAGED, THE CONTRACTOR WILL BE RESPONSIBLE FOR THE COST OF REPAIRING THE UTILITY.
- WHERE EXISTING UTILITIES OR SERVICE LINES ARE CUT, BROKEN OR DAMAGED, THE CONTRACTOR SHALL REPLACE OR REPAIR THE UTILITIES OR SERVICE LINES WITH THE SAME TYPE OF ORIGINAL MATERIAL AND CONSTRUCTION, OR BETTER, UNLESS OTHERWISE SHOWN OR NOTED ON THE PLANS, AT HIS OWN COST AND EXPENSE. THE CONTRACTOR SHALL IMMEDIATELY NOTIFY THE ENGINEER AT ONCE OF ANY CONFLICTS WITH UTILITIES.
- ALL EXCAVATIONS, TRENCHING AND SHORING OPERATIONS SHALL COMPLY WITH THE REQUIREMENTS OF THE U. S. DEPARTMENT OF LABOR, OSHA, CONSTRUCTION SAFETY AND HEALTH REGULATIONS AND ANY AMENDMENTS THERETO.
- THE CONTRACTOR SHALL RESTORE ALL AREAS DISTURBED BY CONSTRUCTION TO ORIGINAL CONDITION OR BETTER. RESTORED AREAS INCLUDE, BUT ARE NOT LIMITED TO TRENCH BACKFILL, SIDE SLOPES, FENCES, DRAINAGE DITCHES, DRIVEWAYS, PRIVATE YARDS AND ROADWAYS.
- ANY CHANGES MADE AFTER CONSTRUCTION PLANS HAVE BEEN RELEASED, SHALL BE APPROVED BY THE CITY ENGINEER. THESE CHANGES MUST BE RECEIVED IN WRITING.
- THE CONTRACTOR SHALL PROVIDE "RED LINED" MARKED PRINTS TO THE ENGINEER PRIOR TO FINAL INSPECTION INDICATING ALL CONSTRUCTION WHICH DEVIATED FROM THE PLANS OR WAS CONSTRUCTED IN ADDITION TO THAT INDICATED ON THE PLANS.
- ALL CURB RADIUS TO BE 10' OR 2' UNLESS OTHERWISE NOTED ON THE SITE PLAN.
- ANY REVISION TO THIS PLAN WILL REQUIRE TOWN APPROVAL AND WILL REQUIRE REVISIONS TO ANY CORRESPONDING PLANS TO AVOID CONFLICTS BETWEEN PLANS.

LOT 11 SITE DATA SUMMARY TABLE

ZONING:	PD-67 (MIXED USE)
PROPOSED USE:	HOTEL
LOT AREA (EXCLUDING ROW):	2.67 ACRES (116,454 S.F.)
BUILDING AREA:	17,157 S.F.
BUILDING HEIGHT:	45'-0"
LOT COVERAGE:	14.7%
FLOOR AREA RATIO:	0.15
NUMBER OF GUEST ROOMS:	119
REGULAR PARKING REQUIRED:	119 SPACES
1 SP PER BEDROOM	
REGULAR PARKING PROVIDED:	87 SPACES
HANDICAP PARKING REQUIRED:	5 SPACES (1 VAN ACCESSIBLE)
HANDICAP PARKING PROVIDED:	5 SPACES (1 VAN ACCESSIBLE)
TOTAL PARKING PROVIDED:	92 SPACES
OPEN SPACE REQUIRED:	8,151.78 S.F. (7%)
OPEN SPACE PROVIDED:	22,561.05 S.F. (19.38%)
INTERIOR LANDSCAPING REQUIRED:	11,645 S.F. (10%)
INTERIOR LANDSCAPING PROVIDED:	34,519 S.F. (29.60%)
IMPERVIOUS AREA:	81,935 S.F. (70.4%)

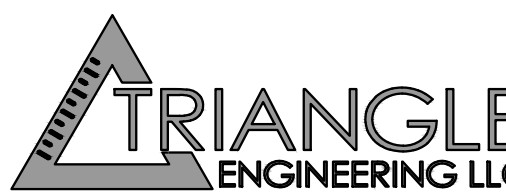
LOT 12 SITE DATA SUMMARY TABLE

ZONING:	PD-67 (MIXED USE)
PROPOSED USE:	RETAIL
LOT AREA (EXCLUDING ROW):	1.86 ACRES (80,888 S.F.)
BUILDING AREA:	8,611 S.F.
BUILDING HEIGHT:	30'
LOT COVERAGE:	10.65%
FLOOR AREA RATIO:	0.107
REGULAR PARKING REQUIRED:	35 SPACES
1 SP PER 250 S.F.	
REGULAR PARKING PROVIDED:	37 SPACES
HANDICAP PARKING REQUIRED:	2 SPACES (1 VAN ACCESSIBLE)
HANDICAP PARKING PROVIDED:	2 SPACES (1 VAN ACCESSIBLE)
TOTAL PARKING PROVIDED:	39 SPACES
OPEN SPACE REQUIRED:	5,662.16 S.F. (7%)
OPEN SPACE PROVIDED:	22,650.87 S.F. (28.00%)
INTERIOR LANDSCAPING REQUIRED:	8,089 S.F. (10%)
INTERIOR LANDSCAPING PROVIDED:	39,039 S.F. (48.30%)
IMPERVIOUS AREA:	41,849 S.F. (51.7%)

CASE NUMBER: D22-0103

PRELIMINARY SITE PLAN-1

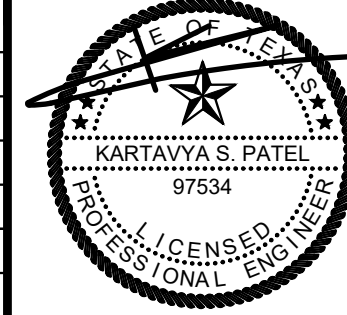
HOME 2 SUITE INN
SEC LOVERS LANE AND SOUTH COLEMAN STREET
CITY OF PROSPER
COLLIN COUNTY, TEXAS 75078
GATES OF PROSPER, BLOCK A, LOT 11 & LOT 12



T: 469.331.8566 F: 469.213.7145 | E: info@triangle-engr.com
 W: triangle-engr.com | O: 1782 McDermott Drive, Allen, TX 75013

Planning | Civil Engineering | Construction Management

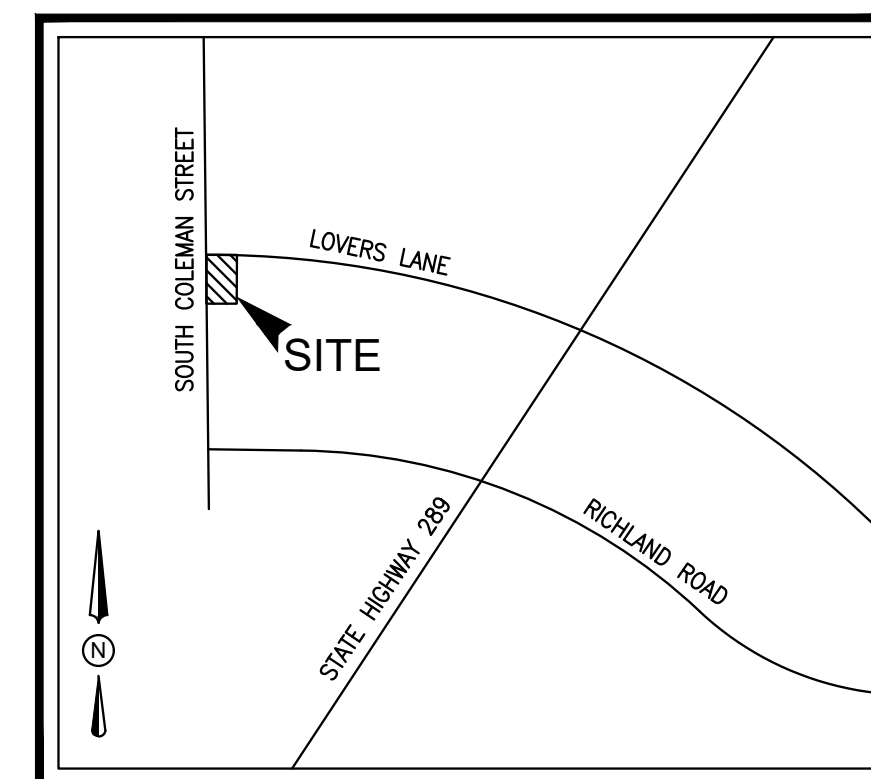
P.E.	DES.	DATE	SCALE	PROJECT NO.	SHEET NO.
KP	EB	03/20/23	SCALE BAR	103--22	C-3.0
TX. P.E. FIRM #11525					



03/20/23



0 80
Scale: 1" = 40' Feet



VICINITY MAP
N.T.S.

PROJECT CONTACT LIST

ENGINEER TRIANGLE ENGINEERING LLC 1782 McDERMOTT DRIVE ALLEN, TEXAS 75013 CONTACT: KARTAVYA PATEL, PE PHONE: 469-331-8566	DEVELOPER SUPERHOST HOSPITALITY, LLC 1823 ABRITTER COURT NAPERVILLE, ILLINOIS 60563 CONTACT: SAMIR LAKHANY PHONE: 260-418-2249
SURVEYOR KIMLEY-HORN 6160 WARREN PARKWAY, SUITE 210 FRISCO, TEXAS 75034 CONTACT: MICHAEL MARX, RPLS PHONE: 972-335-3580	ARCHITECT STUDIO RED DOT 10000 NCX, SUITE 1045 DALLAS, TEXAS 75231 CONTACT: SABRINA BALA, AIA 469-941-4145
OWNER GOP #2, LLC 1 COWBOYS WAY FRISCO, TEXAS 75034	

ADDITIONAL CITY NOTE:

- 7% of net lot area is required to be provided as open space. The following shall not be included: vehicular paving, required parking lot landscape islands, building footprint, utility yards, required landscape setbacks, sidewalks, and detention ponds.

NO EXISTING TREES ON SITE

CASE NUMBER: D22-0103

PRELIMINARY SITE PLAN-2

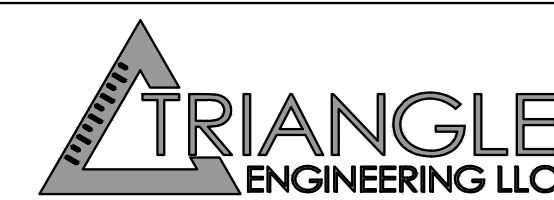
HOME 2 SUITE INN

SEC LOVERS LANE AND SOUTH COLEMAN STREET

CITY OF PROSPER

COLLIN COUNTY, TEXAS 75078

GATES OF PROSPER, BLOCK A, LOT 11 & LOT 12



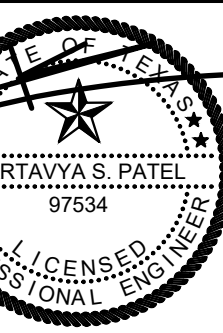
Planning | Civil Engineering | Construction Management

P.E. DES. DATE SCALE PROJECT NO. SHEET NO.

KP EB 03/20/23 SCALE BAR 103--22

TX. P.E. FIRM #11525

C-3.0



03/20/23

CITY GENERAL NOTES:

- Dumpsters and trash compactors shall be screened in accordance with the Zoning Ordinance.
- Open storage, where permitted, shall be screened in accordance with the Zoning Ordinance.
- Outdoor lighting shall comply with the lighting and glare standards contained within the Zoning Ordinance and Subdivision Ordinance.
- Landscaping shall conform to landscape plans approved by the Town.
- All elevations shall comply with the standards contained within the Zoning Ordinance.
- Buildings of 5,000 square feet or greater shall be 100% fire sprinkled. Alternative fire protection measures may be approved by the Fire Department.
- Occupant notification per this section and 907.5 shall be required for all new construction, or existing construction complying with the International Building Code, for renovations to existing buildings, tenant spaces, changes in occupancy, replacement, or modification of the existing fire alarm system, or as required by the Fire Code Official, for all buildings or spaces provided with an approved automatic sprinkler system.
- Fire lanes shall be designed and constructed per Town Standards or as directed by the Fire Department.
- Two points of access shall be always maintained for the property.
- Speed bumps/humps are not permitted within a fire lane.
- Fire lanes shall be provided within 150 feet of all exterior walls of any building for hose lay requirements.
- Amendment 503.1.1
- The fire lane shall be a minimum of 24 feet wide. Amendment 503.2.1
- Buildings more than 30 feet in height are required to have a minimum of a 26-foot-wide fire lane in the immediate vicinity for firefighting operations of the building. One of the 26-foot-wide fire lanes shall be located a minimum of 15 feet from the building and no more than 30 feet. Appendix D105
- The inside turning radius of the 24-foot fire lane shall be a minimum of 30 feet. Amendment 503.2.4
- The inside turning radius of the 26-foot fire lane shall be a minimum of 30 feet. Amendment 503.2.4
- Dead-end fire lanes are only permitted with approved hammerheads.
- Fire hydrants shall be provided at the entrances and intersections. Landscape around the Fire Hydrant shall be no higher than 12 inches at the mature height. Amendment 507.5.1
- As properties develop, fire hydrants shall be located at all intersecting streets and the maximum spacing shall be every 300 feet (300') for all developments, and facilities other than R3. R-3 developments shall be every 500 feet (500'). Distances between hydrants shall be measured along the route that fire hose is laid by a fire apparatus from hydrant-to-hydrant, not as the "crow flies." Amendment 507.5.1
- Fire department connection (FDC) for the fire sprinkler system shall be located within 50 feet of a fire hydrant and 50 feet of a fire lane. 5' Storz, 30-degree downward turn with locking cap. Amendment 507.5.1
- Fire hydrants shall be located 2 foot (2') to 6 foot (6') back from the curb or fire lane and shall not be located in the bulb of a cul-de-sac. Amendment 507.5.1
- There shall be a minimum of two (2) fire hydrants serving each property within the proscribed distances listed above.
- A minimum of one fire hydrant shall be located on each lot. Amendment 507.5.1
- A minimum 10-foot unobstructed width shall be provided around a building for adequate Fire Department access. A continuous row of Parking and landscaping shall be considered a barrier. Amendment 503.1.1
- The maximum dead-end cul-de-sac length shall not exceed six hundred feet (600') as measured from the centerline of the intersection street to the center point of the radius. Amendment 503.1.5
- One- and two-family dwellings automatic fire systems. Automatic fire protection systems per NFPA 13D or NFPA 13R shall be provided in all one- and two-family dwellings with a conditioned floor area of 5,500 square feet (511 m²) or greater, dwellings three (3) stories or greater, or dwellings with roof heights exceeding thirty five feet (35') from grade. IRC-2015 Amendment R313.2
- Handicapped parking areas and building accessibility shall conform to the Americans with Disabilities Act (ADA) and with the requirements of the current, adopted Building Code.
- All signage is subject to Building Official approval.
- All fences and retaining walls shall be shown on the Preliminary Site Plan and are subject to Building Official approval.
- All exterior building materials are subject to Building Official approval and shall conform to the approved facade plan.
- Sidewalks of not less than six (6) feet in width along thoroughfares and collectors and five (5) feet in width along residential streets and barrier-free ramps at all curb crossings shall be provided per Town Standards.
- All new electrical lines shall be installed and/or relocated underground.
- All mechanical equipment shall be screened from public view in accordance with the Zoning Ordinance.
- Landscape easements must be exclusive of any other type of easement, as applicable.
- Impact fees will be assessed in accordance with the land use classification(s) identified on the Site Data Summary Table; however, changes to the proposed land use at the time of CO and/or finish-out permit may result in additional impact fees and/or parking requirements.
- The approval of a Preliminary Site Plan shall be effective for a period of two (2) years from the date that the Preliminary Site Plan is approved by the Planning & Zoning Commission, at the end of which time the applicant must have submitted and received the approval of a Site Plan by the Planning & Zoning Commission. If a site plan is not approved within such two (2) year period, the Preliminary Site Plan approval is null and void. If Site Plan approval is only for a portion of the property, the approval of the Preliminary Site Plan for the remaining property shall be null and void.
- The Town currently contracts with CWD for waste disposal services. They may be contacted at 972-392-9300.

EASEMENT/SETBACK LEGEND

BUILDING SETBACK	B.S.
LANDSCAPE EASEMENT	L.E.
LANDSCAPE SETBACK	L.S.
LANDSCAPE & ACCESS EASEMENT	L.A.E.
FIRE LANE, ACCESS & UTILITY EASEMENT	F.A.U.E.
FIRE LANE, ACCESS & DRAINAGE EASEMENT	F.A.D.E.
ACCESS EASEMENT	A.E.
SIDEWALK EASEMENT	S.E.
SANITARY SEWER EASEMENT	S.S.E.
WATER EASEMENT	W.E.
ELECTRICAL EASEMENT	E.E.
UTILITY EASEMENT	U.E.
DRAINAGE & DETENTION EASEMENT	D.D.E.



Know what's below.
Call before you dig.

BOUNDARY LINE TABLE

LINE #	DISTANCE	BEARING
L1	394.00'	S90°00'00"W
L2	180.00'	S00°00'00"E
L3	116.95'	S03°48'11"W
L4	386.37'	N90°00'00"W
L5	293.06'	S00°00'00"E
L6	65.94'	S37°27'22"W
L7	56.41'	S00°00'00"W
L8	129.00'	N90°00'00"E
L9	150.33'	N86°11'09"E
L10	150.00'	N90°00'00"E
L11	35.36'	S45°00'00"W
L12	125.00'	N00°00'00"E
L13	33.39'	S03°48'51"W

BOUNDARY CURVE TABLE

CURVE #	LENGTH	RADIUS	DELTA	CHORD LENGTH	CHORD BEARING
C1	3.61'	45.00'	004°35'49"	3.61'	S02°17'54"W
C2	25.81'	45.00'	032°51'33"	25.46'	S21°01'35"W
C3	65.37'	100.00'	037°27'22"	64.22'	N18°43'41"E



PLANNING

To: Mayor and Town Council

From: David Soto, Planning Manager

Through: Mario Canizares, Town Manager
Chuck Ewings, Executive Director of Development and Infrastructure Services

Re: Zoning MQ Prosper North Comprehensive Land Use Amendment

Town Council Meeting – April 25, 2023

Agenda Item:

Conduct a public hearing and act upon a request to amend the Future Land Use Plan from Residential Low Density to Retail and Neighborhood Services, generally located, located on the east side of Preston Road, north of St. Peter Lane. This is a companion case to Z21-0003. (CA21-0001).

Description of Agenda Item:

Town staff has received a request to rezone 13.3± acres from Single Family-15 (SF-15) to Planned Development-Retail (PD-R), generally to allow for an office/retail development. The applicant is proposing to introduce a new Planned Development that includes but not limited to permitted uses, development regulations, and design guidelines, located on the east side of Preston Road, north of St. Peter Lane. Zoning Case Z21-0003. The applicant is also providing 2 residential lots with a based zoning of SF-22 toward the rear of the property.

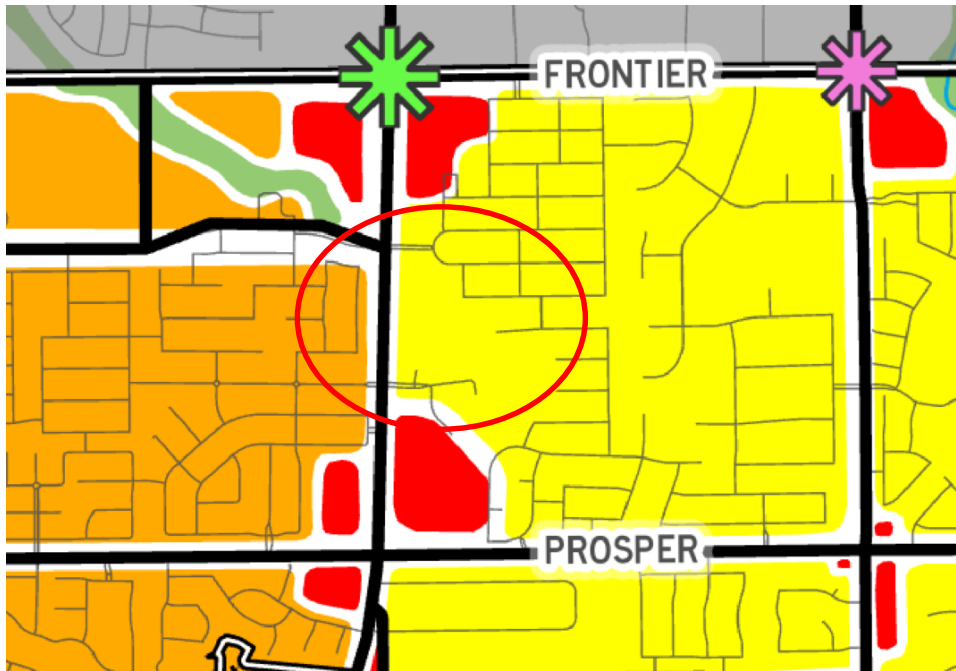
Rezoning requests, which do not conform to the Future Land Use Plan shall be accompanied by a request to amend the Future Land Use Plan. The Comprehensive Plan document anticipates the Town will encounter “development proposals that do not directly reflect the purpose and intent of the land use pattern as shown on the Future Land Use Plan map.”

Land use districts designated on the Future Land Use Plan are intended to depict general areas where land uses are considered appropriate for an area, and such districts are not intended to be parcel specific. If the Planning & Zoning Commission and Town Council believe the property located on the east side of Preston Road, north of St. Peter Lane is more appropriately classified as Retail and Neighborhood Services on the Future Land Use Plan, then it would be appropriate to reclassify the property.

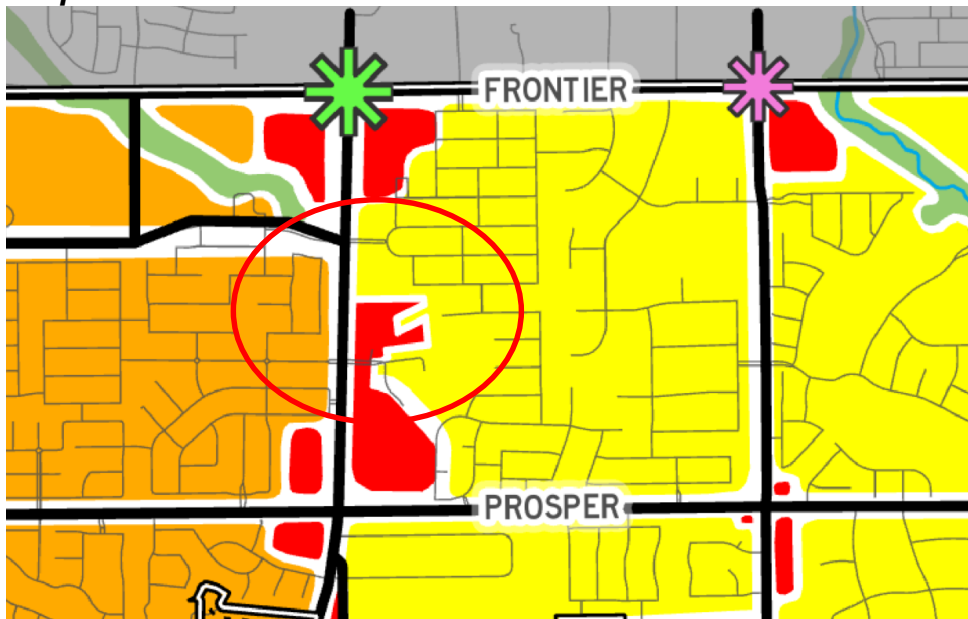
See below for proposed plan amendment. Images of the existing and proposed amendment are shown below.

Existing














Item 8.



Proposed



Legend

 Low Density Residential	 Old Town District	 Major Gateway
 Medium Density Residential	 Town Center	 Minor Gateway
 High Density Residential	 Tollway District	 Town of Prosper
 Retail & Neighborhood Services	 US 380 District	 ETJ
 Business Park	 100 Year Floodplain	

At the time of the 2012, the expected build out capacity population was approximately 60,485 population excluding Artesia. As mentioned below with that capacity, 757.9 acres would be the maximum supported. The latest 2022 expected buildout capacity population is approximately 71,000. Approximately 300 acres was added since the 2012 comprehensive plan, however, 11,000 residences were also added to the expected build out capacity.

2012 Retail

Retail Assumptions	Comp. Plan Total Acres	Retail Acres per Category
Neighborhood Services*	331	231.7
Town Center**	575	258.8
Tollway District***	1,426	142.6
US 380****	1,248	124.8
Total	3,580	757.9
* Assumed 70% retail component		
** Assumed 45% retail component		
*** Assumed 10% retail component		
**** Assumed 10 % retail component		

2023 Retail

Retail Assumptions	Comp. Plan Total Acres	Retail Acres per Category
Neighborhood Services *	938	656.6
Town Center **	340	153
Tollway District ***	1236	123.6
US 380 ****	949	94.9
Total	3463	1028.1
* Assumed 70% retail component		
** Assumed 45% retail component		
*** Assumed 10% retail component		
**** Assumed 10% retail component		

Comprehensive Factors

Per the comprehensive plan, additional neighborhood services retail zoning should be avoided. Nodal retail activity should be concentrated at primary intersections, and the “four corner” principle

should be avoided to reduce the possibility of an oversupply of retail acreage. Strip center development along major roadways should also be avoided, as the plan recommends.

The consequences of an oversupply of retail may include:

- Vacant, underutilized land;
- Lower rental rates leading to undesirable uses;
- Pressures for additional multifamily to fill vacant parcels; and
- Blighted corridors.

The Plan states, “it should be incumbent upon the applicant making such a proposal to provide evidence that the proposal meets the aforementioned considerations, supports community goals and objectives as set forth within this Plan, and represents long term economic and/or social benefits for the community as a whole, not just a short-term financial gain for whoever is developing the project.”

The applicant provided the attached letter (attachment 3), in response.

The document recommends that “development proposals that are inconsistent with the Future Land Use Plan map (or that do not meet its general intent)” should be reviewed based on the following questions and should be reviewed on their own merit. Please see the response to each criteria listed below.

- **Will the proposed change enhance the site and the surrounding area?**
 - The proposed use will enhance the surrounding area by providing additional neighborhood services for established residential neighborhoods. The developer has interested restaurants in demand of this location and unique natural features of the property.
- **Is the proposed change a better use than that originally envisioned and depicted on the Future Land Use Plan map?**
 - The proposed change in use is optimal to single family residential given the aforementioned physical and financial challenges. Neighborhood services will support existing and prospective residential neighborhoods while avoiding a sub-optimal single family development on the subject property that could negatively impact prevailing residential property values.
- **Will the proposed use impact adjacent residential areas in a negative manner?**
 - The limited single family development of Lots A and B with large lots will allow for high priced residences that preserve or enhance the prevailing housing stock of Prosper. The proposal will not impact residential areas in a negative way. Negative impacts will be avoided by the implementation of careful site planning, use restrictions, and development parameters.
- **Will the proposed use be compatible with and/or enhance adjacent residential uses?**
 - The proposal for a Planned Development will set forth appropriate safeguards to ensure compatibility with adjacent residential uses. Measures and parameters such as use limitation, building height and setbacks, and landscaping and buffering will allow a harmonious juxtaposition of uses while providing conveniently located neighborhood services. Moreover, the planned north-to-south solid vegetative hedge and the natural tree line along the eastern perimeter will remain and act as a buffer for the residences to the east.
- **Are uses adjacent to the proposed use similar in nature in terms of appearance, hours of operation, and other general aspects of compatibility?**
 - Adjacent uses are residential and a planned city park to the north. The proposed

architectural building scale of one-story, and residential design aligns with the general look and feel of the adjacent residential housing stock. Prospective businesses will have reasonable operating hours. Any restaurants would be located on lots closer to Preston Road, more than 400 feet from residential properties outside of the PD. Operations will be managed so as to not cause any detrimental impacts to residential properties. Measures will be taken to avoid noise nuisance and light pollution spilling into adjacent residential neighborhoods.

- **Does the proposed use present a significant benefit to the public health, safety, welfare and/or social well-being of the community?**
 - The proposed use presents significant benefit to the public health safety, welfare and/or social well-being of the community by encouraging destination sit down restaurants fronting a beautiful amenity pond near a city park. Additional neighborhood services will provide convenient goods and services for the community.
- **Would it contribute to the Town's long-term economic stability?**
 - See attachment #3

The Plan also recommends that “it is important to recognize that proposals not directly consistent with the Plan could reflect higher and better long-term uses than those originally envisioned and shown on the Future Land Use Plan map for a particular area. This may be due to changing markets, demographics and/or economic trends that occur at some point in the future after the Plan is adopted. If such changes occur, and especially if there are demonstrated significant social and/or economic benefits to the Town of Prosper, then these proposals should be approved and the Future Land Use Plan map should be amended accordingly.”

Legal Obligations and Review:

The Town Council is required to hold a Public Hearing prior to acting on an amendment to the Future Land Use Plan.

Attachments:

1. Existing Future Land Use Plan
2. Proposed Future Land Use Plan
3. Request Letter

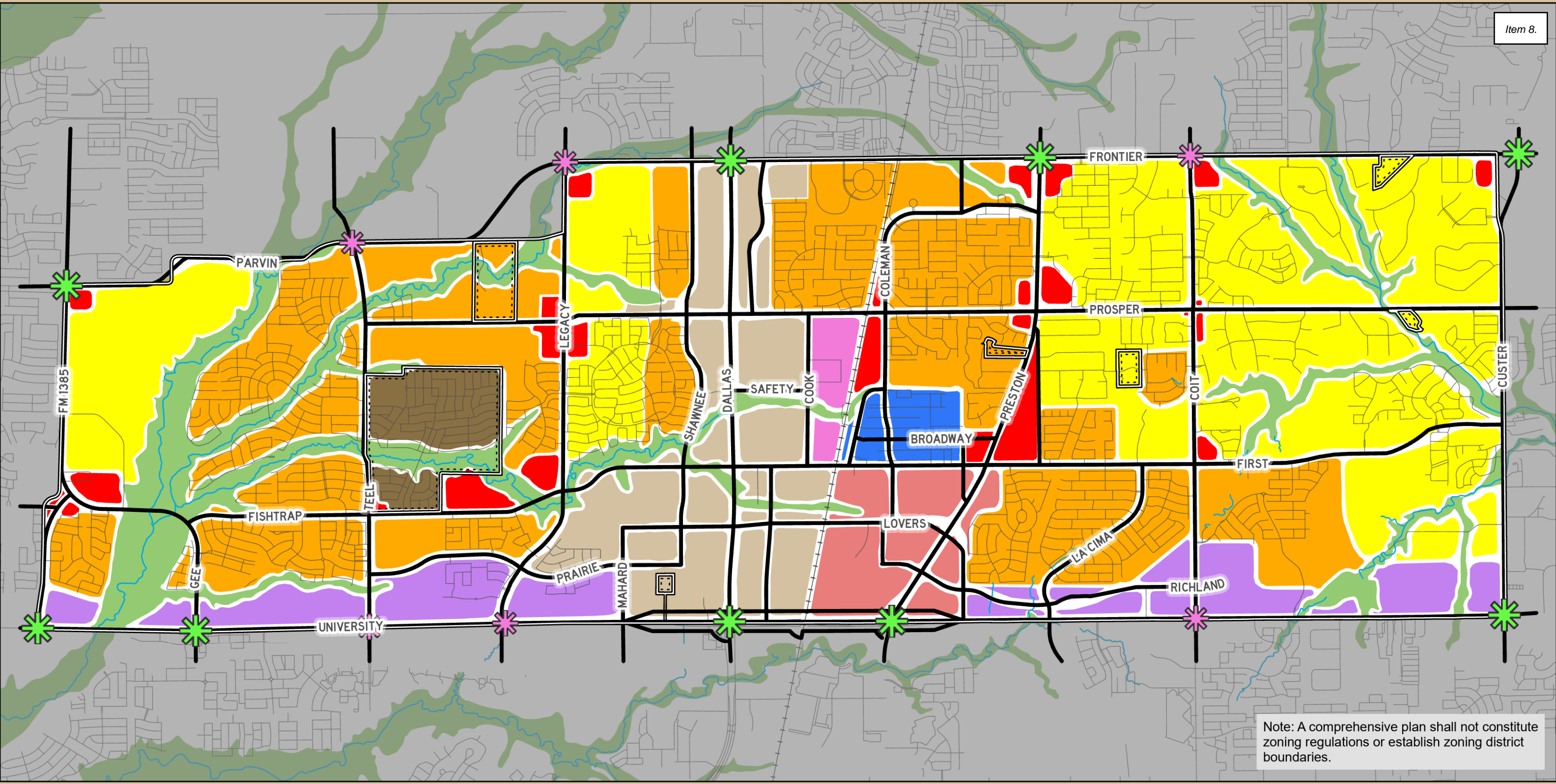
Planning & Zoning Recommendation:

At their September 20, 2022, meeting, the Planning & Zoning Commission recommended the Town Council deny the request, by a vote of 3-2.



Town Staff Recommendation:

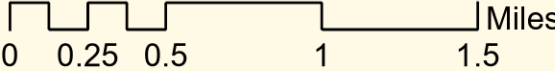
There are two options for a recommendation, subject to the action taken on the companion case for the amendment to the Future Land Use Plan (CA21-0001).

1. If the Town Council recommends approval of the amendment to the Future Land Use Plan, the Town Council should recommend approval of the rezoning request.
2. If the Town Council recommends denial of the amendment to the Future Land Use Plan, the Town Council should recommend denial of the rezoning request.



July 2012





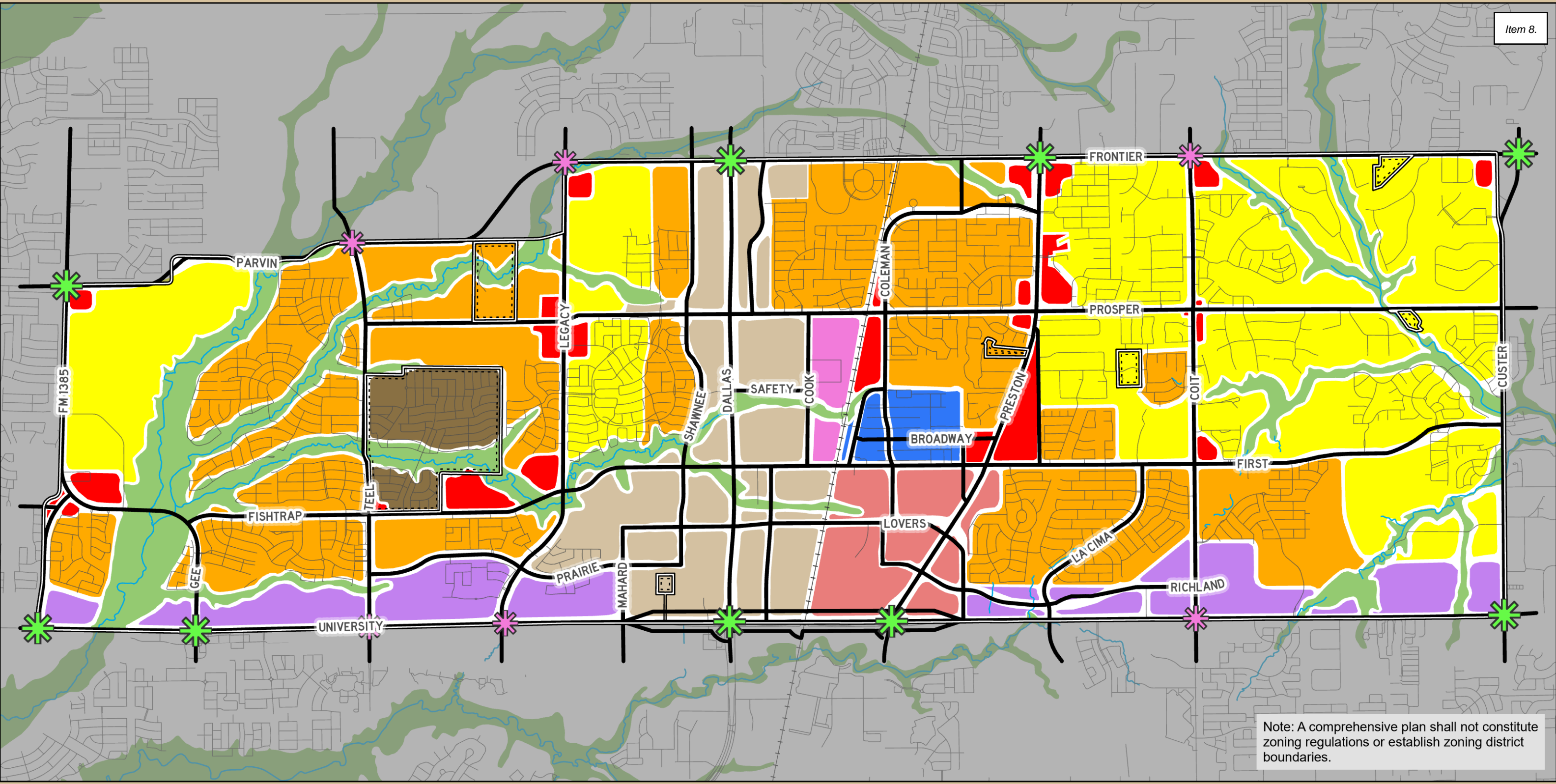
Legend

Low Density Residential	Old Town District	Major Gateway
Medium Density Residential	Town Center	Minor Gateway
High Density Residential	Tollway District	Town of Prosper
Retail & Neighborhood Services	US 380 District	ETJ
Business Park	100 Year Floodplain	

Future Land Use Plan



Pla Page 82



CA21-0001 Proposed

FREESE AND NICHOLS

Miles
0 0.25 0.5 1 1.5

Legend

Low Density Residential	Old Town District	Major Gateway
Medium Density Residential	Town Center	Minor Gateway
High Density Residential	Tollway District	Town of Prosper
Retail & Neighborhood Services	US 380 District	ETJ
Business Park	100 Year Floodplain	

Future Land Use Plan

TOWN OF PROSPER

Pla Page 83

FUTURE LAND USE MAP AMENDMENT

MQ Prosper North

MQ Development Company requests amendment to the Future Land Use Map (FLUM) of the Town of Prosper Comprehensive Plan. The FLUM calls for single family. Through extensive due diligence and site planning exercises, it was determined that physical characteristics of the site make conventional single-family development for most of the site impractical from standpoints of both prospective homeowner desirability and economic viability.

The irregular shape, topography and flood plain play a role in optimal use type for the property. There is a creek and low areas that traverse the western perimeter, the north central, and eastern sections of the property. To generate the necessary lot yield, residential lots would be planned along the northern perimeter, requiring additional grading and tree removal. The creek makes residential pad site layout a challenge and compromises necessary yields to build out necessary public infrastructure including a public street.

The costs associated with the significant grading required would far outweigh economic benefits of a limited residential lot yield. Financial feasibility notwithstanding, the lot layout necessary to make the project work, would be a compact and efficient cookie cutter rectangular pattern, creating and uninspiring and underwhelming development that could fall short of the high standard of aesthetics and quality expected in Prosper. Moreover, it would place residential back yards up against the existing residential homes along the southern perimeter, unnecessarily crowding existing neighbors.

In contrast, the property with its adjacency to Preston Road and topography, is better suited for non- residential uses that serve residential development. The proposal would preserve a certain degree of trees and grade along the northern perimeter. Lot 8 is planned as open space, preserving the natural treed areas. Commercial development also allows greater building setbacks and larger perimeter buffers from the adjacent properties, instead of smaller residential yards with back to back lots.

The PD would ensure that the appropriate type of uses are allowed and at the right scale given these residential adjacencies. A carefully planned, limited scaled neighborhood service development can be site planned to take advantage of the natural topography, maintain vistas that take advantage of a planned amenity pond, and integrates with the physical features of the property. Moreover, creating Lot 8 and Lots A and B for residential provide an excellent transition buffer to established single family subdivisions to the northeast, east and southeast.

Please consider the following considerations from the Comprehensive Plan in evaluating amendment to the FLUM to accommodate the proposal:

- The proposed use will enhance the surrounding area by providing additional neighborhood services for established residential neighborhoods. The developer has interested restaurants in demand of this location and unique natural features of the property.
- The proposed change in use is optimal to single family residential given the aforementioned physical and financial challenges. Neighborhood services will support

existing and prospective residential neighborhoods while avoiding a sub-optimal single family development on the subject property that could negatively impact prevailing residential property values.

- The limited single family development of Lots A and B with large lots will allow for high priced residences that preserve or enhance the prevailing housing stock of Prosper.
- The proposal for a Planned Development will set forth appropriate safeguards to ensure compatibility with adjacent residential uses. Measures and parameters such as use limitation, building height and setbacks, and landscaping and buffering will allow a harmonious juxtaposition of uses while providing conveniently located neighborhood services. Moreover, the planned north-to-south solid vegetative hedge and the natural tree line along the eastern perimeter will remain and act as a buffer for the residences to the east.
- The proposal will not impact residential areas in a negative way. Negative impacts will be avoided by the implementation of careful site planning, use restrictions, and development parameters.
- Adjacent uses are residential and a planned city park to the north. The proposed architectural building scale of one-story, and residential design aligns with the general look and feel of the adjacent residential housing stock. Prospective businesses will have reasonable operating hours. Any restaurants would be located on lots closer to Preston Road, more than 400 feet from residential properties outside of the PD. Operations will be managed so as to not cause any detrimental impacts to residential properties. Measures will be taken to avoid noise nuisance and light pollution spilling into adjacent residential neighborhoods.
- The proposed use presents significant benefit to the public health safety, welfare and/or social well-being of the community by encouraging destination sit down restaurants fronting a beautiful amenity pond near a city park. Additional neighborhood services will provide convenient goods and services for the community.

PLANNING

To: Mayor and Town Council

From: David Soto, Planning Manager

Through: Mario Canizares, Town Manager
Chuck Ewings, Executive Director of Development and Infrastructure Services

Re: Zoning MQ Prosper North
Town Council Meeting – April 25, 2023

Agenda Item:

Conduct a public hearing and act upon a request to rezone 13.3± acres from Single Family-15 (SF-15) to Planned Development-Retail (PD-R), generally to allow for an office/retail development, located on the east side of Preston Road, north of St. Peter Lane. (Z21-0003). This is a companion case to CA21-0001.

History:

The zoning request has been tabled since its October 11th meeting. Since then, the applicant has met with the adjacent neighbors and has submitted a revised conceptual plan and development standards.

Description of Agenda Item:

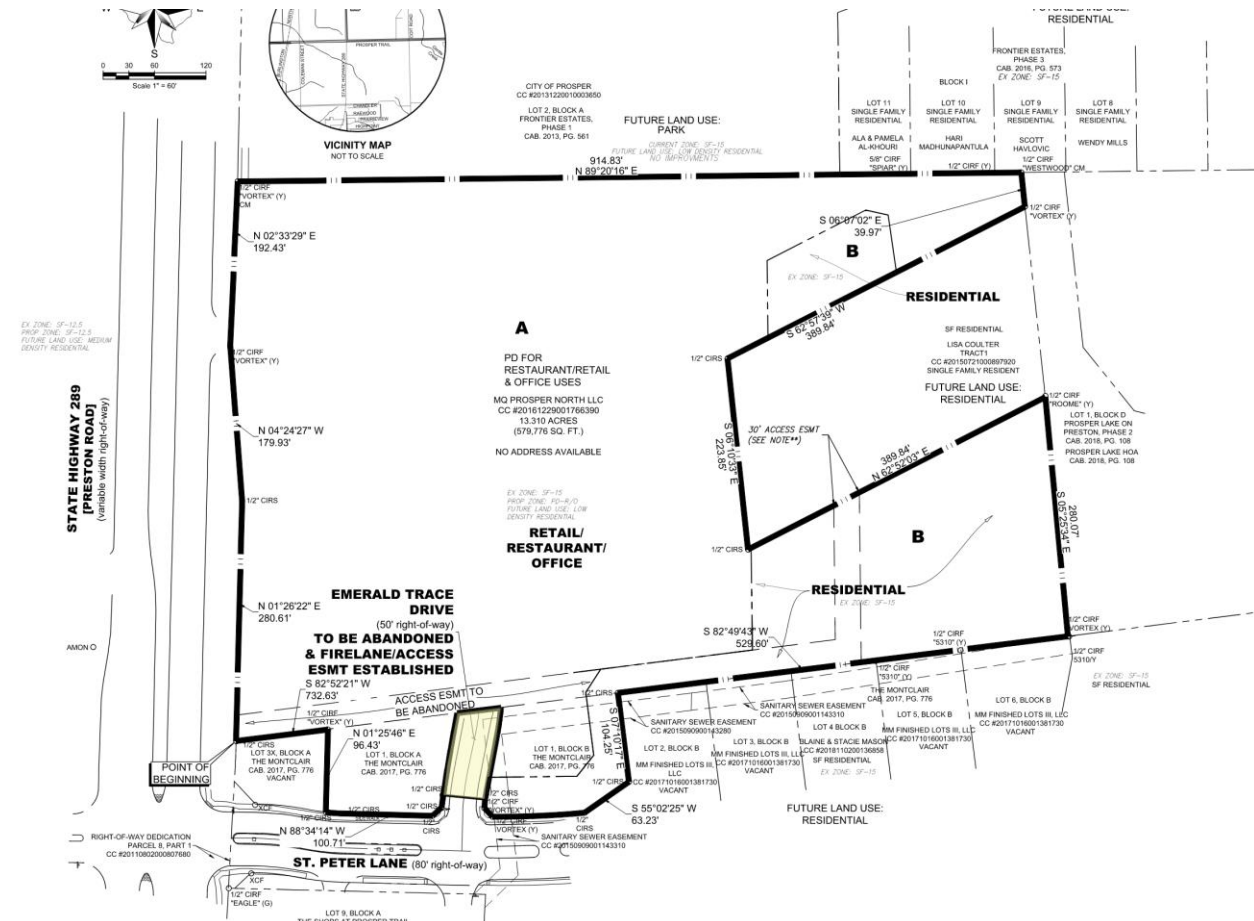
The zoning and land use of the surrounding properties are as follows:

	Zoning	Current Land Use	Future Land Use Plan
Subject Property	Single Family-15	Undeveloped	Low Density Residential
North	Planned Development-15-Single Family	Town of Prosper Park	Low Density Residential
East	Single Family-15	Single Family Residence & Prosper Lake Subdivision	Low Density Residential
South	Single Family-15	Montclair Subdivision	Low Density Residential
West	Single Family-12.5	Cambridge Park Estates, Phase 1	Medium Density Residential

Requested Zoning – The purpose of this request is to rezone 13.3± acres from Single Family-15 (SF-15) to Planned Development-Retail (PD-R), generally to allow for an office/retail development. The applicant is proposing to introduce a new Planned Development that includes but not limited to permitted uses, development regulations, and design guidelines. Outline below is a few of the development standards, please refer to the Exhibit D for all the regulations.

Item 9.

Due to its unique configuration, the applicant has created two tracts of land. Tract A (Retail/Restaurant/office) and Tract B (Residential).



For Tract B: Uses allowed in the SF-15 District, Section 5.3 of the Zoning Ordinance, Town of Prosper. However, these lots will be incorporated into the existing residential tract. No new lots will be created.

It's important to note that the applicant has created its own allowable uses and the list of uses are shown below.

List of Permitted Uses:

1. Administrative, Medical or Professional Office
2. Alcoholic Beverage Sales, Lots 1 and 5 only
3. Antique Shop
4. Artisan's Workshop
5. Bank, Savings and Loan, or Credit Union, Lots 1-7 only
6. Beauty Salon, Barber Shop, Lots 1-5 only
7. Business Service, Lots 1 – 5 only

PROPOSED DEVELOPMENT

LOT 1 (1.01 AC, 74,082 S.F.)

LOT 2 (1.17 AC, 48,847 S.F.)

LOT 3 (1.43 AC, 62,325 S.F.)

LOT 4 (1.43 AC, 62,325 S.F.)

LOT 5 (0.64 AC, 28,232 S.F.)

LOT 6 (1.16 AC, 50,574 S.F.)

LOT 7 (1.03 AC, 44,972 S.F.)

LOT 8 (1.03 AC, 44,972 S.F.)

LOT 9 (1.03 AC, 44,972 S.F.)

LOT 10 (2.14 AC, 93,604 S.F.)

LOT 11 (2.23 AC, 12,800 S.F.)

LOT 12 (2.23 AC, 12,800 S.F.)

LOT 13 (2.23 AC, 12,800 S.F.)

LOT 14 (2.23 AC, 12,800 S.F.)

LOT 15 (2.23 AC, 12,800 S.F.)

LOT 16 (2.23 AC, 12,800 S.F.)

LOT 17 (2.23 AC, 12,800 S.F.)

LOT 18 (2.23 AC, 12,800 S.F.)

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LOT 61 (2.23 AC, 12,800 S.F.)

LOT 62 (2.23 AC, 12,800 S.F.)

LOT 63 (2

Access Easement

Page 88

way unless authorization to do so has been provided by the court or by the owner and provided to the Town for verification.

Item 9.

Parking

Parking Requirements. For parking purposes in satisfying off-street parking requirements in Subdistrict A, Lots 1-7 are considered one lot.

The applicant has requested to utilize lots 1-7 to act as one lot to meet the minimum standards. The applicant is required 343 parking spaces based on the uses on lots 1-7 and is providing 380 parking spaces. Although lots 3 and 6 does not meet the minimum standards, the overall parking does meet the minimum parking requirements.

Landscaping

The applicant has proposed its own standards to mitigate the proposed development.

Architecture

Exhibit F-1, F-2 and F-3 shows a conceptual rendering of the architectural look and style of the building. The applicant will enter a development agreement regarding the building materials.

Below is a comparison table of the request by the applicant regarding masonry.

	Retail District	New Planned Development
Building Materials	<ul style="list-style-type: none">• 90%-100 % masonry (which includes clay fired brick, natural and manufactured stone, granite, marble, and stucco)• The use of stucco and EIFS are only permitted as secondary or accent materials (0%-10% maximum allowance).	<ul style="list-style-type: none">• 90%-100% (Which includes Architectural Structural Block, under the trade name "Quik Brick" (a 4" manufactured concrete masonry unit) and cultured stone (manufactured) individually stacked.• Split-faced block, architectural concrete block, and painted/textured concrete tilt wall shall be limited to a maximum of ten percent (0%-10%) of any single elevation on any pad site.

The applicant has agreed to enter into a development agreement regarding the building materials. Below are exhibits of renderings of the building.



Future Land Use Plan – The Future Land Use Plan recommends Low Density Residential for the subject property. The proposed zoning request does not conform to the Comprehensive Plan.

The companion item is a Future Land Use Plan Amendment to revise the FLUP to reflect Retail and Neighborhood Services uses.

Thoroughfare Plan – The property has direct access to Preston Road and Emerald Tract Drive.

Parks Master Plan – The Parks Master Plan does not indicate a park is needed on the subject property due to an existing park (Cedar Grove) toward the north. The applicant is proposing a 8' hike and bike trail on the northeast corner (Lot 8). This trail has been planned since 2007 on the Parks Trail Master Plan.

Legal Obligations and Review:

Notification was provided to neighboring property owners as required by the Zoning Ordinance and state law. To date, staff has received 9 Public Hearing Notice Reply Forms/ Letter in response to this request.

Per the zoning ordinance, if a written protest against a proposed amendment, supplement or change to a zoning regulation or boundary has been filed with the Planning Department, duly signed and acknowledged by the owners of 20 percent or more within 200 feet, requires affirmative vote of three quarters of all members of the Town Council. At the time of this report, staff have received 10.9% in opposition.

Attachments:

1. Aerial and Zoning Maps
2. Proposed Exhibits
3. Public Hearing Notice Reply Forms and Letters
4. Protest Map

Planning & Zoning Recommendation:

At their September 20, 2022, meeting, the Planning & Zoning Commission recommended the Town Council denied the request, by a vote of 3-2.

Town Staff Recommendation:

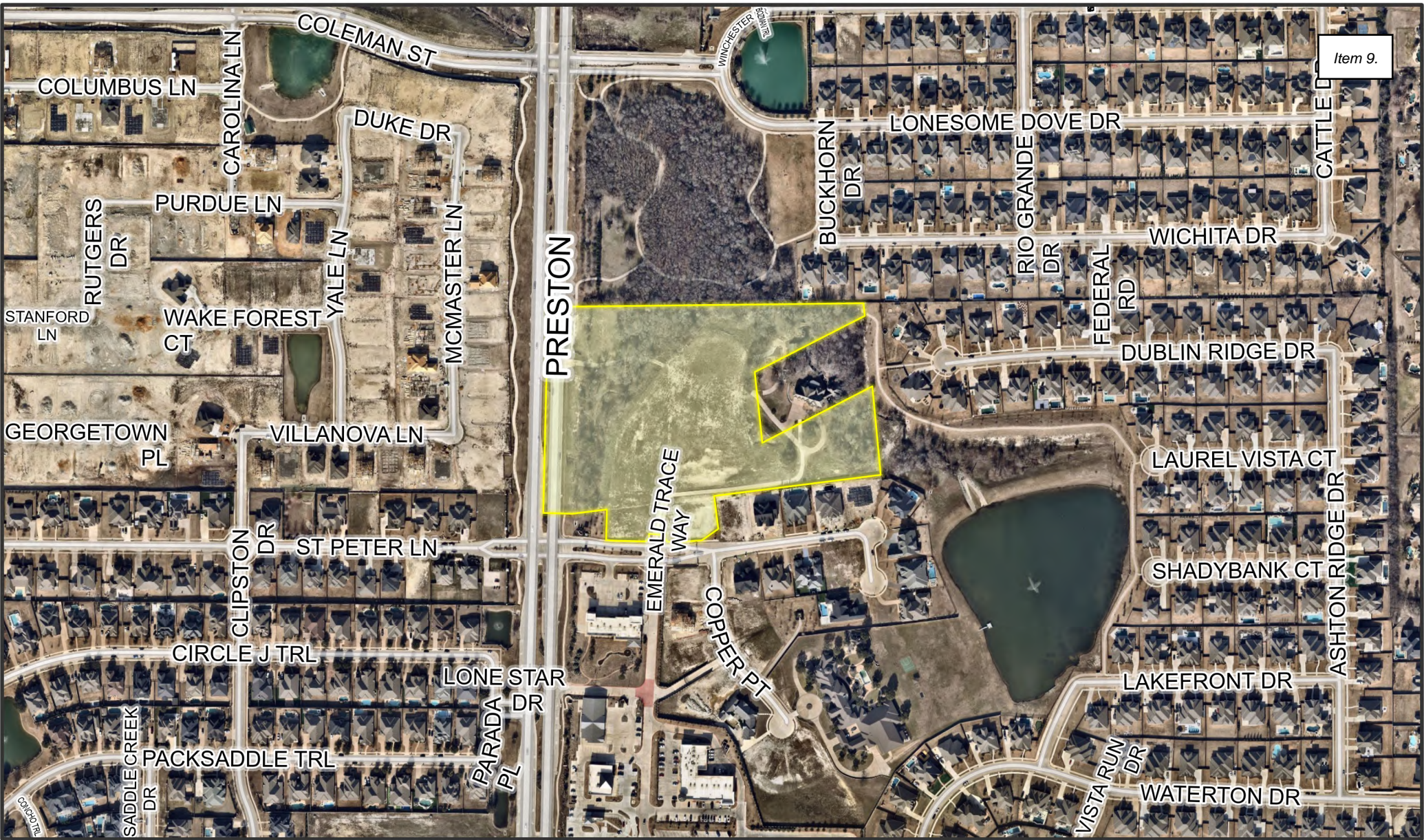
Town staff understands that the zoning request currently does not align with the Comprehensive Plan request, however the Comprehensive Plan allows flexibility due to market demands and criteria for amendments. Staff recommends approval of the zoning request.

There are two options for a recommendation, subject to the action taken on the companion case for the amendment to the Future Land Use Plan (CA21-0001).

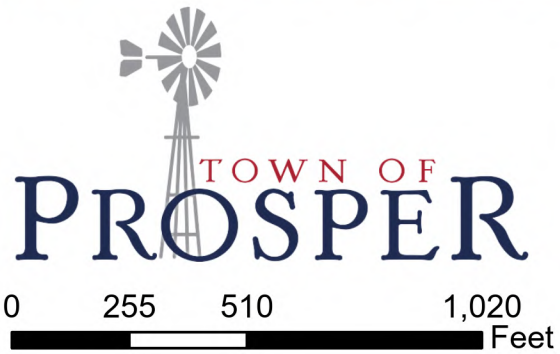
1. If the Town Council recommends approval of the amendment to the Future Land Use Plan, the Town Council would then consider approval of the rezoning request.
2. If the Town Council recommends denial of the amendment to the Future Land Use Plan, the Town Council would then consider denial of the rezoning request.

Proposed Motion:

I move to approve/deny a request to rezone 13.3± acres from Single Family-15 (SF-15) to Planned Development-Retail (PD-R), generally to allow for an office/retail development, located on the east side of Preston Road, north of St. Peter Lane. (Z21-0003).



Item 9.



This map for illustration purposes only

Z21-0003

Shops at Prosper Trail
North

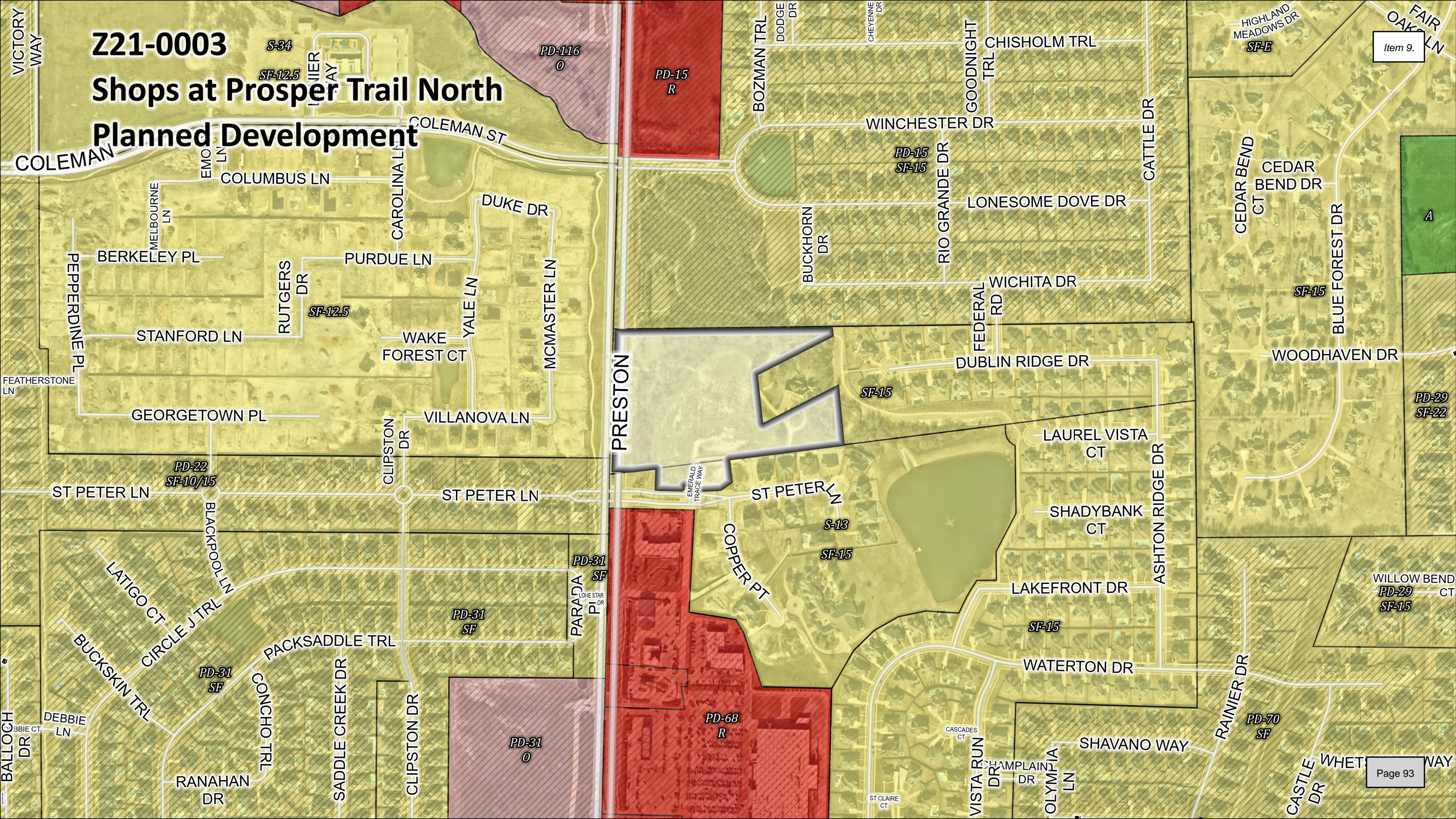
Page 92

Planned Development

Z21-0003

Shops at Prosper Trail North

Planned Development





Z21-0003
EXHIBIT C
PLANNED DEVELOPMENT CONDITIONS
MQ PROSPER NORTH

- A1. Statement of Effect: Lots 1-9, Subdistrict A, shall develop under the regulations of the Retail (R) District of the Town's Zoning Ordinance as it exists or may be amended except as otherwise set forth herein. Lots 10 and 11, Subdistrict B, shall develop under the regulations of the Single Family-15 (SF-15) District of the Town's Zoning Ordinance as it exists or may be amended except as otherwise set forth herein.
- A2. Development Plans (Retail and SF-15 Districts); Exhibit – D Concept Plan, Exhibit – E Landscape Plan; Exhibits F-1-F3 Building Elevations; Exhibit - G Screening Plan

Permitted Uses. Subdistrict A, for Lots 1-7, conditional development standards **(C)** must be met per the Zoning Ordinance, No. 05-20, as it exists, or may be amended. Uses shall be permitted as a Specific Use with the approval of a specific use permit **(SUP)**. Building and parking lot development is prohibited on Lots 8 and 9.

List of Permitted Uses:

1. Administrative, Medical or Professional Office
2. Alcoholic Beverage Sales, Lots 1 and 5 only
3. Antique Shop
4. Artisan's Workshop
5. Bank, Savings and Loan, or Credit Union, Lots 1-7 only
6. Beauty Salon, Barber Shop, Lots 1-5 only
7. Business Service, Lots 1 – 5 only
8. Child Care Center, Licensed, only one permitted in PD, Lots 2, 3 and 4 by SUP only
9. Dry Cleaning, Minor
10. Furniture, Home Furnishings and Appliance Store, Lot 3
11. Health/Fitness Center, Lots 1-4
12. Insurance Office, Lots 1-5
13. Message Therapy, Licensed, Lots 1-5
14. Print Shop, Minor, Lots 1-5
15. Restaurant, Lots 1- 7 only (May include outdoor entertainment in Lots 1, 6, and 7 provided speakers face west away from the single family residential to the east.)
16. Retail Stores and Shops, Lots 1-7
17. Retail Service, Indoor, Lots 1-7 only
18. Retail/Service Incidental Use, Lots 1-7
19. School, Private
20. Theatre, Neighborhood, Lot 3 by SUP only

Permitted Uses, Subdistrict B: For Lots 10 and 11, permitted uses are those uses allowed in the SF-15 District, Section 5.3 of the Zoning Ordinance, Town of Prosper.

- A3. Regulations. For Lots 1-9, development is subject to the Retail District except for the following regulations:

1. Maximum Height
 - a. Buildings on Lots 1-7 are limited to one story and a maximum of 30 feet in height.
2. Building Setbacks
 - a. For Lots 1-7, the minimum building setback from an interior property line is 5 feet, except that patios may encroach into interior lot line setbacks on Lots 1, 6 and 7. Patios may not encroach into required landscape setbacks.
3. Maximum Floor Area: Amendment to the Concept Plan is not required for modifications to the building floor area shown at permit application provided the following criteria is met:
 - a. Compliance with off-street parking regulations is maintained for the PD District as a whole.
 - b. The proposed building floor area does not cause a substandard condition or violate any other applicable development standard.
 - c. The proposed building floor area does not exceed the following parameters for each lot: Lot 1: 8,500 square feet; Lot 2: 9,000 square feet; Lot 3: 15,000 square feet; Lot 4: 5,500 square feet; Lot 5: 6,000 square feet; Lot 6: 6,600 square feet; and, Lot 7: 7,500 square feet.

A4. Design Guidelines. For Lots 1-7, the development shall adhere to the following design guidelines:

1. Elevation Review and Approval
 - a. Building Elevations shall substantially conform to the Concept Elevations provided in Exhibits F-1, F-2 and F-3.
 - b. Building Materials in addition to the building materials permitted in Chapter 4, Section 8 of the Zoning Ordinance, as exists or may be amended, such materials shall also include Architectural Structural Block, under the trade name "Quik Brick" (a 4" manufactured concrete masonry unit) and cultured stone (manufactured) individually stacked, as provided in the building elevations Exhibits F-1 – F-3 which is a part herein. The clay-fired brick colors used in Exhibits F-1 – F-3 shall be consistent throughout the Planned Development District. Split-faced block, architectural concrete block, and painted/textured concrete tilt wall shall be limited to a maximum of ten percent (10%) of any single elevation on any pad site.

A 5. Additional Standards

1. Open Space
 - a. Lots 8 and 9, as depicted on the Exhibit D, shall be maintained as open spaces. Lot 9 shall contain an amenity pond
 - b. The amenity pond in Lot 8 shall contain an operable fountain.
 - c. Lots 8 and 9 improvements shall be developed at the time of construction of phase 1.
 - d. Lots 8 and 9 improvements shall be constructed at the developer's cost.
 - e. Lots 8 and 9 shall be maintained by the property owner, or property management association.
2. Hike and Bike Trail
 - a. An 8-foot wide hike and bike trail is required as noted in Lots 2 and 8.
 - b. The hike and bike trail shall be constructed at the time of construction of phase 1.

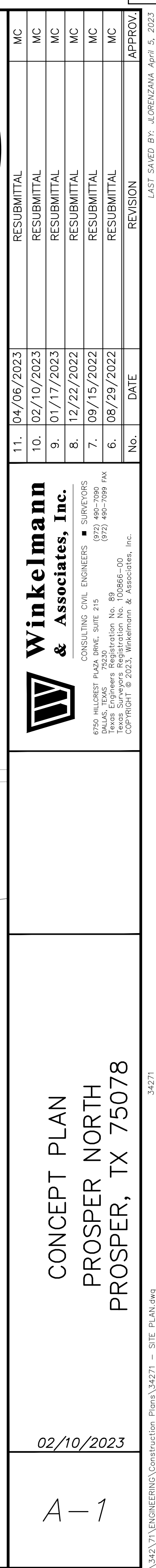
- c. The section of hike and bike trail located on Lots 2 and 8 shall be constructed at the developer's cost.
- 3. Landscaping shall adhere to the Landscape Plan, Exhibit E-1 and E-2.
 - a. A minimum 30-foot landscape easement is required along Preston Road in Lots 1, 6 and 9. The perimeter trees and shrub requirement may be satisfied through a combination of existing and proposed trees per Landscape Plan, Exhibit E-1.
 - b. A berm is required in the landscape easement along Preston Road in Lot 1. Alternative berming is required in the two areas generally identified on the west side of Lots 6 and 9 per the Concept Plan and Landscape Plan.
 - c. A minimum 15-foot landscape easement is required along Saint Peter Lane in Lot 5.
 - d. Perimeter landscaping shall generally comply with the Landscape Plan, Exhibit E-1 and E-2.
- 4. Landscape, parking lots. Parking lot landscaping shall comply with Section 2 of Prosper Development Requirements.
- 5. Landscape Requirements for Certificate of Occupancy. All perimeter landscaping along Preston Road and Saint Peter Lane and all parking lot landscaping within an individual lot shall be installed prior to issuance of a certificate of occupancy (CO).
- 6. Lot Frontage
 - a. Lots are not required to front on a public right-of-way provided each lot has access to a dedicated public access, fire lane and utility easement.
- 7. Perimeter Screening/Fencing. Perimeter screening and fencing shall be provided as shown on the Perimeter Screening Plan, Exhibit H.
 - a. Perimeter screening or fencing is not required along the following perimeters adjacent to residentially zoned property:
 - i. northern perimeter of Lot 1
 - ii. eastern, northern, and portions of the southern perimeters of Lot 8
 - iii. the northern, eastern and southern perimeters of Lot 10, contiguous to residentially zoned property
 - b. Perimeter screening is required as follows:
 - a minimum 6-foot tall ornamental metal fence is required along a portion of the southern perimeter of Lot 8, along a portion of the eastern perimeter of Lot 2, and all of the eastern perimeter of Lot 3. Refer to Vegetative Screening Buffer requirements below for vegetative perimeter requirements.
 - ii. a minimum 6-foot tall masonry wall is required along the shared perimeter of Lots 4 and 10. Refer to Vegetative Screening Buffer requirements below for additional perimeter requirements.
- 8. Vegetative screening buffer requirements
 - a. A continuous vegetative hedge is required along a portion of the eastern perimeter of Lot 2 and extending along the entire perimeter of Lot 3 as shown on the Landscape Plan. The vegetative hedge shall be made of a row of shrubs that grow to a minimum height of 8 feet at maturity. A row of trees is also required in the 15' Landscape Setback as noted in Lots 2 and 3 on the Concept Plan and Landscape Plan. A row of evergreen trees is required along the shared perimeter of Lots 4 and 10.
- 9. Parking Requirements. For parking purposes in satisfying off-street parking requirements in Subdistrict A, Lots 1-7 are considered one lot.

A6. Additional Provisions:

Restaurants located on Lots 1, 6 and 7 may have outdoor dining patios oriented toward the open space (Lot 9).

Detention facilities are permitted to be dry ponds, subject to compliance with Town of Prosper Stormwater Regulations, and review and approval by Town Engineering.

The residential tracts shall be incorporated into Lot 10 by replat through the Town's subdivision platting process. No additional residential tracts or lots will be created.



LOT 6		
PERIMETER BUFFER	30' PERIMETER BUFFER ON ST PETER LANE	
	REQUIRED	PROVIDED
	25'	25'
	15' PERIMETER BUFFER FOR RESIDENTIAL ADJACENCY	
	REQUIRED	PROVIDED
	15'	15'
	5' PERIMETER BUFFER ON ALL OTHER PERIMETERS	
PERIMETER BUFFER	REQUIRED	PROVIDED
	5'	5'
	1 LARGE TREE PER 30 LF AND 15 SHRUBS PER 30 LF	
	REQUIRED (ADJ PRESTON RD/289)	PROVIDED
	$132 / 30 = 4$ TREES $(132 / 30) \times 15 = 64$ SHRUBS	4 TREES 64 SHRUBS
	1 SMALL TREE AND 1 SHRUB PER 15 LF	
	REQUIRED (ADJ NON-RESIDENTIAL)	PROVIDED
REQUIRED PARKING LOT LANDSCAPING	$1020 / 15 = 68$ SMALL TREES $1020 / 15 = 68$ SHRUBS	17 SMALL TREES 27 SHRUBS
	1 LARGE TREE PER 30 LF	
	REQUIRED (ADJ RESIDENTIAL)	PROVIDED
	0 / 30 = 0 LARGE TREES	NA
	15 SF LANDSCAPE AREA REQUIRED PER EVERY SPACE	
	REQUIRED	PROVIDED
	67 SPACES \times 15 = 1,005 SF	2,152 SF
REQUIRED PARKING LOT TREES	1 TREE AT TERMINUS OF EACH ROW	
	1 TREE LOCATED WITHIN 150 LF OF EVERY PARKING SPACE	
FOUNDATION LANDSCAPING	1 TREE PER AT 10,000 SF	PROVIDED
	4,550 / 10,000 = 0 TREE	NA
	7,277 SF OPEN SPACE	

LOT 7		
PERIMETER BUFFER	30' PERIMETER BUFFER ON ST PETER LANE	
	REQUIRED	PROVIDED
	25'	25'
	15' PERIMETER BUFFER FOR RESIDENTIAL ADJACENCY	
	REQUIRED	PROVIDED
	15'	15'
	5' PERIMETER BUFFER ON ALL OTHER PERIMETERS	
PERIMETER BUFFER	REQUIRED	PROVIDED
	5'	5'
	1 LARGE TREE PER 30 LF AND 15 SHRUBS PER 30 LF	
	REQUIRED (ADJ PRESTON RD/289)	PROVIDED
	0 / 30 = 0 TREES (0 / 30) X 15 = 0 SHRUBS	NA NA
	1 SMALL TREE AND 1 SHRUB PER 15 LF	
	REQUIRED (ADJ NON-RESIDENTIAL)	PROVIDED
REQUIRED PARKING LOT LANDSCAPING	866 / 15 = 58 SMALL TREES 866 / 15 = 58 SHRUBS	11 SMALL TREES 30 SHRUBS
	1 LARGE TREE PER 30 LF	
	REQUIRED (ADJ RESIDENTIAL)	PROVIDED
	0 / 30 = 0 LARGE TREES	NA
	15 SF LANDSCAPE AREA REQUIRED PER EVERY SPACE	
	REQUIRED	PROVIDED
	67 SPACES X 15 = 1,005 SF	2,592 SF
REQUIRED PARKING LOT TREES	1 TREE AT TERMINUS OF EACH ROW	
	1 TREE LOCATED WITHIN 150 LF OF EVERY PARKING SPACE	
FOUNDATION LANDSCAPING	1 TREE PER AT 10,000 SF	PROVIDED
	5,400 / 10,000 = 0 TREE	NA
46,238 SF OPEN SPACE		

LOT 8		
PERIMETER BUFFER	30' PERIMETER BUFFER ON PRESTON ROAD	
	REQUIRED	PROVIDED
	NA	NA
	15' PERIMETER BUFFER FOR RESIDENTIAL ADJACENCY	
	REQUIRED	PROVIDED
	15'	15'
PERIMETER BUFFER	5' PERIMETER BUFFER ON ALL OTHER PERIMETERS	
	REQUIRED	PROVIDED
	5'	5'
	1 LARGE TREE PER 30' LF AND 15 SHRUBS PER 30' LF	
PERIMETER BUFFER	REQUIRED (ADJ PRESTON RD/289)	PROVIDED
	0 / 30 = 0 TREES (0 / 30) X 15 = 0 SHRUBS	NA NA
	1 SMALL TREE AND 1 SHRUB PER 15' LF	
	REQUIRED (ADJ NON-RESIDENTIAL)	PROVIDED
	650 / 15 = 43 SMALL TREES 650 / 15 = 43 SHRUBS	5 SMALL TREES 35 SHRUBS
	1 LARGE TREE PER 30' LF	
	REQUIRED (ADJ RESIDENTIAL)	PROVIDED
	1138 / 30 = 38 LARGE TREES	7 TREES, 31 EXISTING
REQUIRED PARKING LOT LANDSCAPING	15 SF LANDSCAPE AREA REQUIRED PER EVERY SPACE	
	REQUIRED	PROVIDED
	0 SPACES X 15 = 0 SF	960 SF
REQUIRED PARKING LOT TREES	1 TREE AT TERMINUS OF EACH ROW	
	1 TREE LOCATED WITHIN 150 LF OF EVERY PARKING SPACE	
FOUNDATION LANDSCAPING	1 TREE PER AT 10,000 SF	PROVIDED
	0 / 10,000 = 0 TREE	NA
60,520SF OPEN SPACE		

LOT 9		
PERIMETER BUFFER	30' PERIMETER BUFFER ON ST PETER LANE	
	REQUIRED	PROVIDED
	25'	25'
	15' PERIMETER BUFFER FOR RESIDENTIAL ADJACENCY	
	REQUIRED	PROVIDED
	15'	15'
	5' PERIMETER BUFFER ON ALL OTHER PERIMETERS	
PERIMETER BUFFER	REQUIRED	PROVIDED
	5'	5'
	1 LARGE TREE PER 30 LF AND 15 SHRUBS PER 30 LF	
	REQUIRED (ADJ PRESTON RD/289)	PROVIDED
	210 / 30 = 7 TREES (210 / 30) X 15 = 105 SHRUBS	7 TREES 105 SHRUBS
	1 SMALL TREE AND 1 SHRUB PER 15 LF	
	REQUIRED (ADJ NON-RESIDENTIAL)	PROVIDED
REQUIRED PARKING LOT LANDSCAPING	503 / 15 = 34 SMALL TREES 503 / 15 = 34 SHRUBS	8 SMALL TREES 31 SHRUBS
	1 LARGE TREE PER 30 LF	
	REQUIRED (ADJ RESIDENTIAL)	PROVIDED
	0 / 30 = 0 LARGE TREES	NA
	15 SF LANDSCAPE AREA REQUIRED PER EVERY SPACE	
	REQUIRED	PROVIDED
	0 SPACES X 15 = 0 SF	NA
REQUIRED PARKING LOT TREES	1 TREE AT TERMINUS OF EACH ROW	
	1 TREE LOCATED WITHIN 150 LF OF EVERY PARKING SPACE	
FOUNDATION LANDSCAPING	1 TREE PER AT 10,000 SF	PROVIDED
	0 / 10,000 = 0 TREE	NA

46,238 SF OPEN SPACE

NET LOT AREA = 417,132 SF
TOTAL OPEN SPACE = 200,695 SF
PERCENT OPEN SPACE = 48%

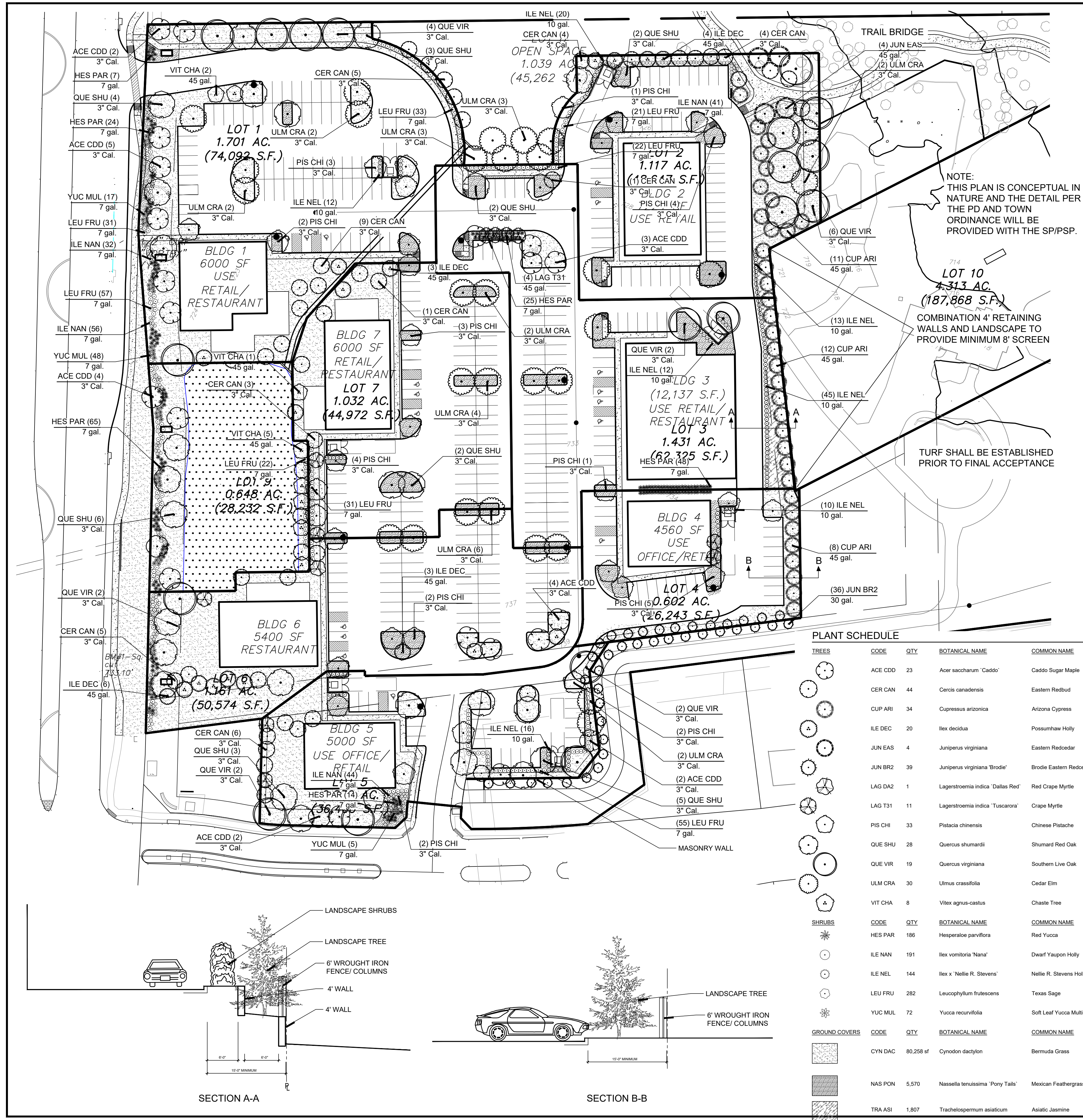
 **FAIN • CUPPETT**
LANDSCAPE ARCHITECTS, L.L.C.
1921 MAPLEWOOD DR
WEATHERFORD, TX 76087
682-215-9151

PARKS AND OPEN SPACE PLANNING • LANDSCAPE ARCHITECTURE • IRRIGATION DESIGN

ZC21-0003
EXHIBIT E-2

The seal is circular with a rope-like border. Inside the border, the text "REGISTERED LANDSCAPE ARCHITECT" is written in a circle. In the center is a five-pointed star. Below the star is the number "2672". Above the star, the name "GREGORY A. CLAPPERT" is written. Below the star, the words "STATE OF TEXAS" are written. The date "04/18/23" is written at the bottom. A handwritten signature "G. A. Clappert" is written across the top of the seal.

L-2



THIS LANDSCAPE PLAN IS PROVIDED TO SHOW REQUIRED LANDSCAPING TO MEET TOWN OF PROSPER CODES. THERE ARE EXISTING TREES ON SITE THAT MAY BE PRESERVED AND/OR MITIGATED BASED ON FINAL GRADING. PERMIT DRAWINGS WILL REFLECT EXISTING TREES AND PRESERVATION/MITIGATION. TREES PRESERVED WITH FINAL GRADING MAY OR MAY NOT COUNT TOWARDS REQUIRED LANDSCAPING AS DEFINED IN TOWN LANDSCAPE ORDINANCE.

No.	DATE	REVISION	APPROVAL
6.			
5.			
4.			
3.			
2.			
1.			

Winkelmann & Associates, Inc.

CONSULTING CIVIL ENGINEERS

SURVEYORS

6750 HILDEBERT PLAZA DRIVE, SUITE 215
DALLAS, TEXAS 75231
(972) 440-7899
FAX (972) 440-7899

TEXAS ENGINEERS REGISTRATION NO. 100865-00

TEXAS SURVEYORS REGISTRATION NO. 100865-00

LANDSCAPE PLAN
PROSPER NORTH
PROSPER, TX 75078

L-1



CONCEPTUAL RENDERING OF OFFICE BUILDING
Z21-0003
EXHIBIT F-1

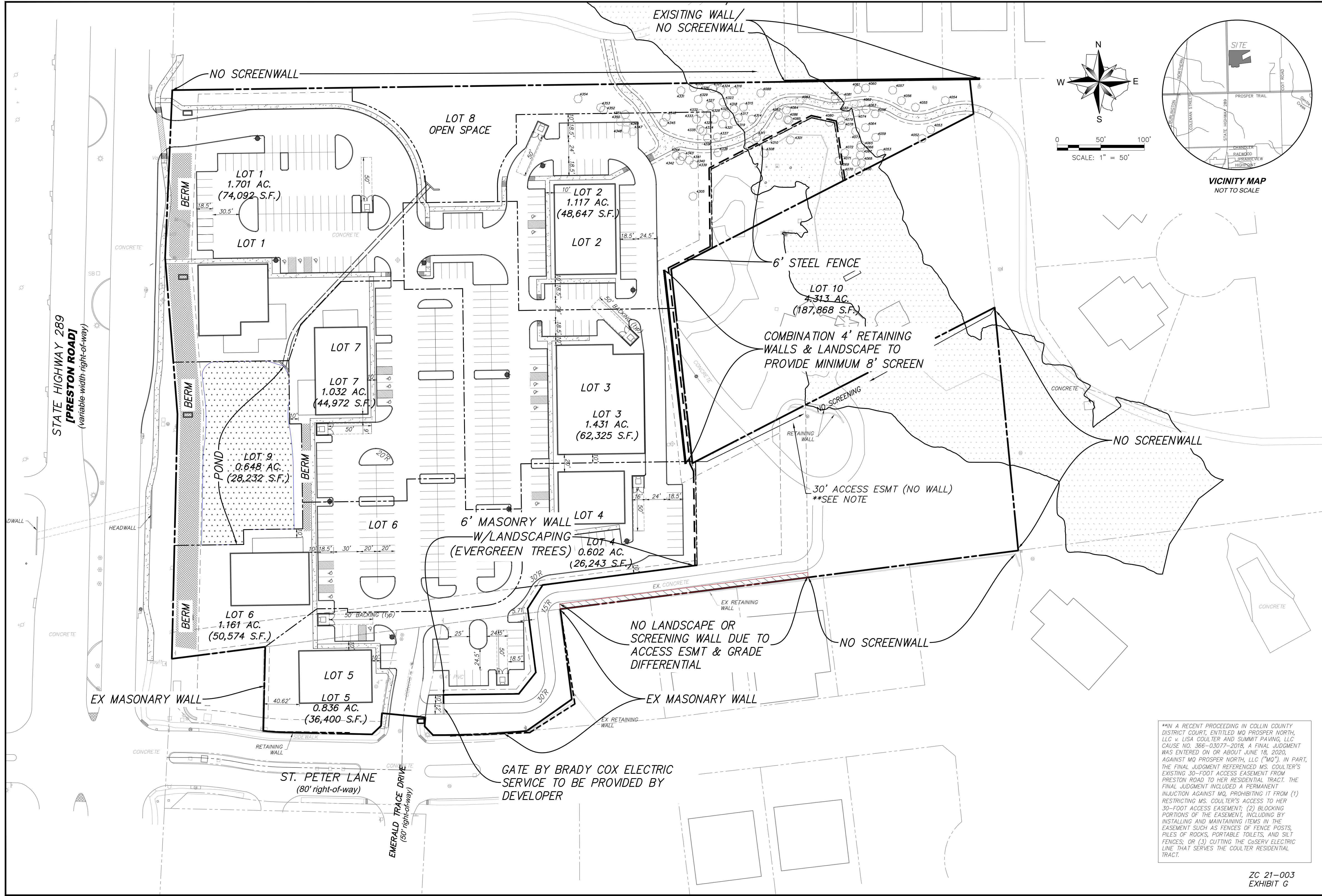


PICTURE OF REAR OF 9 & 10 KROGER SITE


CONCEPTUAL RENDERING OF RETAIL BUILDING
Z21-003
EXHIBIT F-2



CONCEPTUAL RENDERING OF RETAIL BUILDING
Z21-003
EXHIBIT F-3



**IN A RECENT PROCEEDING IN COLLIN COUNTY DISTRICT COURT, ENTITLED MQ PROSPER NORTH, LLC v. LISA COULTER AND SUMMIT PAVING, LLC CAUSE NO. 366-03077-2018, A FINAL JUDGMENT WAS ENTERED ON OR ABOUT JUNE 18, 2020, AGAINST MQ PROSPER NORTH, LLC ("MQ"). IN PART, THE FINAL JUDGMENT REFERENCED MS. COULTER'S EXISTING 30-FOOT ACCESS EASEMENT FROM PRESTON ROAD TO HER RESIDENTIAL TRACT. THE FINAL JUDGMENT INCLUDED A PERMANENT INJUNCTION AGAINST MQ, PROHIBITING IT FROM (1) RESTRICTING MS. COULTER'S ACCESS TO HER 30-FOOT ACCESS EASEMENT; (2) BLOCKING PORTIONS OF THE EASEMENT, INCLUDING BY INSTALLING AND MAINTAINING ITEMS IN THE EASEMENT SUCH AS FENCES OF FENCE POSTS, PILES OF ROCKS, PORTABLE TOILETS, AND SILT FENCES; OR (3) CUTTING THE CoSERV ELECTRIC LINE THAT SERVES THE COULTER RESIDENTIAL TRACT.

A-2		SCREENING PLAN PROSPER NORTH PROSPER, TX 75078		<div><div>Winkelmann & Associates, Inc.</div><div>CONSULTING CIVIL ENGINEERS ■ SURVEYORS 6750 HILLCREST PLAZA DRIVE, SUITE 215 Frisco, Texas 75034 REGISTRATION NO. 89 Page 400 TEL: (972) 440-7090 FAX: (972) 440-7099 WWW.WINKELMANN-AND-ASSOCIATES.COM COPYRIGHT © 2023, Winkelmann & Associates, Inc.</div></div>																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																															
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April 12, 2023

Item 9.

Dear David Bristol and Town of Prosper Councilmembers,

My name is Brady Cox and I live at 1570 N. Preston Road. This letter pertains to re-zoning request ZC 21-003 made by Don Silverman of MQ Development Company on the land located immediately west of my property. Initially I was opposed to the proposed Planned Development District for neighborhood commercial businesses when the request went before the Prosper Planning and Zoning Commission in 2022.

Since that time, Mr. Silverman and his agents have worked with me and my neighbors to address concerns and make concessions that have resulted in a "win-win" solution. The latest proposal is much improved and acceptable to me and my family. Mr. Silverman has demonstrated a commitment to provide a compatible development that respects residential adjacency, while seeking to expand the excellent array of restaurant and services for the Prosper community.

I urge the Council to approve this request.

Sincerely,



Brady K. Cox
1570 N. Preston Road.
Prosper, TX 75078

David Soto

From: Ala Al-khouri
Sent: Friday, September 16, 2022 6:00 PM
To: David Soto
Subject: [*EXTERNAL*] - Re: Z21-0003 MQ/Prosper North

***** This is an email from an EXTERNAL source. DO NOT click links or open attachments without positive sender verification of purpose. Never enter USERNAME, PASSWORD or sensitive information on linked pages from this email. *****

Re: File Z 21-0003 MQ Development – MQ Prosper North

Dear Town Officials – I was originally opposed to MQ Development’s commercial proposal planned at the northeast corner of Preston Road and Saint Peter Lane. Since the original proposal, the developer has met and spoken with me several times on a few of my concerns. The developer has made changes to the plan that include addressing the following items: 1) re-located parking spaces and dumpsters, 2) added robust planting of trees and shrubs between our properties, 3) re-located the planned trail farther west away from my property; and 4) ensured the preservation of trees on planned Lot 8.

The developer has appeased my concerns and I am in full support of the proposal

Thanks
Ala Alkhouri

Douglas Braches

From: Colleen Berlinger ·
Sent: Wednesday, September 14, 2022 9:43 PM
To: Brandon Daniel; Sarah Peterson; Damon Jackson; sekou_harris@prospertx.gov; Michael Pettis; Doug Charles; Tommy Van Wolfe; David Soto; Paul Rodriguez; Pamela Clark; Douglas Braches
Subject: [*EXTERNAL*] - Don Silverman-MQ Development/Re-Zoning Preston Rd.

Follow Up Flag: Follow up
Flag Status: Flagged

***** This is an email from an EXTERNAL source. DO NOT click links or open attachments without positive sender verification of purpose. Never enter USERNAME, PASSWORD or sensitive information on linked pages from this email. *****

Good Morning,

I wanted to share my opposition and concern about the proposed rezoning of the land north of the Prosper Kroger on Preston Rd, which is set to be discussed at the September 10, 2022 meeting. Unfortunately I am unable to attend in person.

This property is adjacent to a street in our neighborhood, where homeowners spent significant sums of money for their 'premium lots' due to the location, privacy and the greenspace area behind them. They are now facing having their home values plummet by having a commercial complex built behind their homes. This is completely unacceptable and in my opinion would be irresponsible for the town to approve. What is next, The Montclair, the old Deion Sanders property? You should not be approving communities and then changing the aesthetic of them once something else comes along.

I am also concerned about what effects the building and regrading are going to have on the area where the current retention pond in Prosper Lake on Preston overflows to. If the area is disturbed and not handled appropriately it could very well cause the retention pond to overflow and flood homes in the adjacent area.

Our home is at the opposite end of the overflow/outlet but this is a very real concern for us. Previously we lived in a home that flooded for a similar issue. Our former town redirected water into a retention pond next to our home, we had a heavy rain and our entire neighborhood flooded causing massive damage, service interruptions, and health issues. I do not want to experience that again.

Finally, all I can ask is that each of you come walk the area and think about what your reaction would be to the proposed changes if you owned a home on Dublin Ridge or any property in Prosper Lake on Preston?

Thank you for your thoughtful consideration.

Respectfully,
Colleen Berlinger
1711 Lakefront Dr.

Pamela Clark

From: David Soto
Sent: Friday, September 16, 2022 4:09 PM
To: Douglas Braches
Subject: FW: [*EXTERNAL*] - Objection to Zoning change

David I. Soto
Planning Manager
972.569.1095
250 W. First Street
Town of Prosper
www.prospertx.gov

-----Original Message-----

From: Don Larrenaga
Sent: Friday, September 16, 2022 4:04 PM
To: David Soto <dsoto@prospertx.gov>
Subject: [*EXTERNAL*] - Objection to Zoning change

***** This is an email from an EXTERNAL source. DO NOT click links or open attachments without positive sender verification of purpose. Never enter USERNAME, PASSWORD or sensitive information on linked pages from this email.

Dear Mr Soto,

I live at 1521 Saint Peter Ln, Prosper, Tx.

I want to formally object to a zoning change to the property directly behind my house. I bought my home know the property behind my house was not zoned commercial. A zoning change will drastically reduce the value of my property as well as my neighbors. I am out of town for business until 9-26-22. I will file a file a written objection to any zoning changes upon my return. Once again I want to express my adamant objections to any zoning changes to the property behind my home.

Thank you,
Don Larrenaga

Sent from my iPhone



**DEVELOPMENT SERVICES
DEPARTMENT**
250 W. First Street
Prosper, TX 75078
Phone: 972-346-3502

REPLY FORM

SUBJECT:

Zoning Case Z21-0003: The Town of Prosper has received a request to rezone 13.3± acres from Single Family-15 (SF-15) to Planned Development-Retail (PD-R), generally to allow for an office/retail development.

LOCATION OF SUBJECT PROPERTY:

The property is located on the east side of Preston Road, north of St. Peter Lane.

- ☒ I **OPPOSE** the request as described in the notice of Public Hearing. If in opposition, please provide a reason for opposition.
- ☐ I **DO NOT OPPOSE** the request as described in the notice of Public Hearing.

COMMENTS (ATTACH ADDITIONAL SHEETS IF NECESSARY):

Noise and lighting

Scott Havlovic
Name (please print)

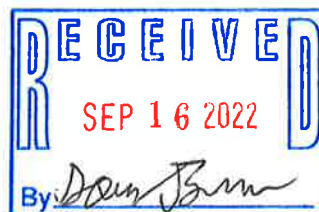
Wichita Dr
1540 ~~Wichita Dr~~
Address

Prosper TX 75078
City, State, and Zip Code

Scott Havlovic
Signature

9-16-22
Date

skh3328@gmail.com
E-mail Address



Pamela Clark

From: Jayson Maslowski
Sent: Tuesday, September 13, 2022 4:03 PM
To: Douglas Braches
Subject: [*EXTERNAL*] - RE: Public Hearing Notice Z21-0003 MQ Prosper North

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Doug,

Thank for sending the forms over. For the record, my wife and I strongly oppose zoning case: Z21-0003. We oppose to the residential property because it is too close to our walking path, it would cause the destruction of mature trees, we oppose the extension of the walking path that would look into our backyard, retail spaces too close to our property and would have a view into our back yard and finally we don't want to hear the additional traffic that this would generate.

Please save our response in the case file.

I will be sending in my written response and plan on attending the formal meeting.

Thank you,

Jayson Maslowski
1601 Dublin Ridge Dr
Prosper TX 75078

Ph: 603-501-9158

----- Original message -----

From: Douglas Braches <DBraches@prospectx.gov>
Date: 9/13/22 3:50 PM (GMT-06:00)
To:
Subject: Public Hearing Notice Z21-0003 MQ Prosper North

Hello,

See attached for the public hearing notice for zoning case Z21-0003.

Feel free to email me back any comments or reply that you have and I will save it to our case file.

Thank you and if you have any questions please let me know,

Item 9.

Doug Braches

Planning Technician

Town of Prosper

250 W. First Street

Prosper, TX 75078

972-569-1097

DBraches@prospertx.gov

www.prospertx.gov

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**DEVELOPMENT SERVICES
DEPARTMENT**
250 W. First Street
Prosper, TX 75078
Phone: 972-346-3502

REPLY FORM

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LOCATION OF SUBJECT PROPERTY:

The property is located on the east side of Preston Road, north of St. Peter Lane.

- ☒ I **OPPOSE** the request as described in the notice of Public Hearing. If in opposition, please provide a reason for opposition.
- ☐ I **DO NOT OPPOSE** the request as described in the notice of Public Hearing.

COMMENTS (ATTACH ADDITIONAL SHEETS IF NECESSARY):

I bought the lot at a premium because of the "green belt" and privacy that it offered. Building a commercial complex with a trail running through it negates that. While I don't mind progress, I strongly oppose spoiling nature.

HARI MADHUNAPANTULA

Name (please print)

Venkatesh M

Signature

1530 WICHITA DR, PROSPER, TX - 75078

Address

09/14/22

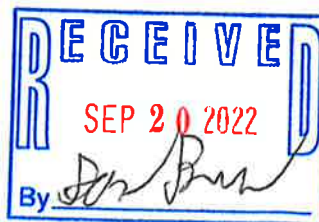
Date

PROSPER, TX - 75078

City, State, and Zip Code

MHARIVEN@YAHOO.COM

E-mail Address





**DEVELOPMENT SERVICES
DEPARTMENT**
250 W. First Street
Prosper, TX 75078
Phone: 972-346-3502

REPLY FORM

SUBJECT:

Zoning Case Z21-0003: The Town of Prosper has received a request to rezone 13.3± acres from Single Family-15 (SF-15) to Planned Development-Retail (PD-R), generally to allow for an office/retail development.

LOCATION OF SUBJECT PROPERTY:

The property is located on the east side of Preston Road, north of St. Peter Lane.

- ☒ I **OPPOSE** the request as described in the notice of Public Hearing. If in opposition, please provide a reason for opposition. ** Strongly oppose*
- ☐ I **DO NOT OPPOSE** the request as described in the notice of Public Hearing.

COMMENTS (ATTACH ADDITIONAL SHEETS IF NECESSARY):

Residential property is too close to walking path. Parking in the parking lot, people would look into our back yard (Red iron fence). Mature trees would be removed to complete the walking path. Noise generated is not welcome to our peaceful community.

JAYSON MASLOWSKI
Name (please print)

Signature *[Signature]*

1601 Dublin Ridge Dr
Address

Date Sept 13 2022

Prosper TX 75078
City, State, and Zip Code

JAYSON.MASLOWSKI@GMAIL.COM
E-mail Address

PH: (603) 501-9150



**DEVELOPMENT SERVICES****DEPARTMENT**

250 W. First Street
Prosper, TX 75078
Phone: 972-346-3502

REPLY FORM**SUBJECT:**

Zoning Case Z21-0003: The Town of Prosper has received a request to rezone 13.3± acres from Single Family-15 (SF-15) to Planned Development-Retail (PD-R), generally to allow for an office/retail development.

LOCATION OF SUBJECT PROPERTY:

The property is located on the east side of Preston Road, north of St. Peter Lane.

- ☒ I **OPPOSE** the request as described in the notice of Public Hearing. If in opposition, please provide a reason for opposition.
- ☐ I **DO NOT OPPOSE** the request as described in the notice of Public Hearing.

COMMENTS (ATTACH ADDITIONAL SHEETS IF NECESSARY):

Norman Payson

I recently purchased a lot at 1541 St. Peter Ln Prosper in the Montclair community Prosper, and I'm building a home that will cost me \$1,250,000. I'm opposed to this as it will destroy my view from my back yard which I was told this was a gated community & it was a zoned single family. Please Do Not let this happen. Norman & Fawn Payson

NORMAN PAYSON
Name (please print)

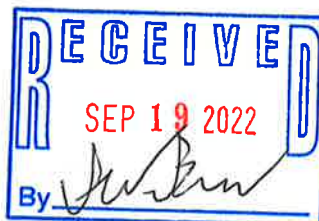
Norman Payson
Signature

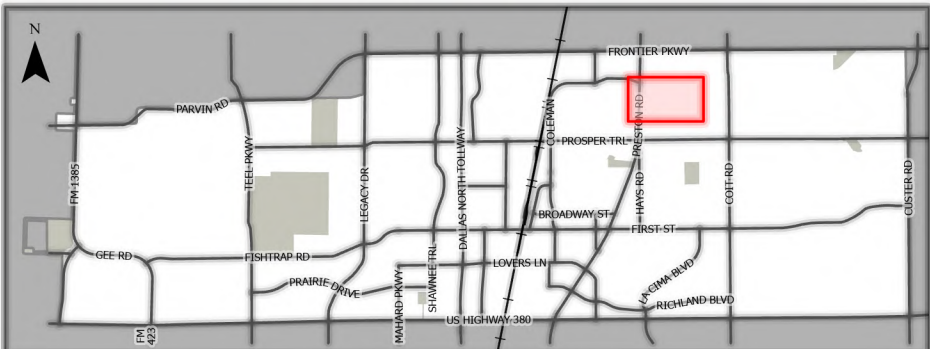
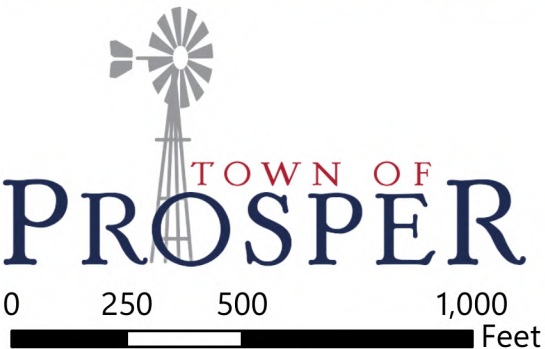
1541 ST. PETER LANE
Address

SEPT 16, 2022
Date

PROSPER TX 75078
City, State, and Zip Code

NORMAN@AGHEALTH123.COM
E-mail Address





Z21-0003

Shops at Prosper Trail North

Protesting properties comprise 2.25 acres (10.9%) of the acres surrounding the area.

This map for illustration purposes only



Town Manager's Office

To: Mayor and Town Council

From: Mario Canizares, Town Manager's Office

Re: Adopting the Town Council's Visioning Priorities

Town Council Meeting – April 25, 2023

Agenda Item:

Consider and act to adopt the Priorities of the Prosper Town Council from the Council's Strategic Visioning Event(s) held on February 18 and March 20, 2023.

Description of Agenda Item:

The Town utilized the firm of Government Professional Services (GPS) to facilitate a workshop with the Town Council to create a short-term and long-term vision for the community. The workshops were held over the course of two dates, February 18 and March 20. The visioning exercise consisted of the entire Town Council, the former Interim Town Manager, and Town Manager.

Based on the in-depth discussion by the group, the following areas were identified as priorities for Town Staff and Council to be emphasized for the next one to three years:

- 1. The acceleration of infrastructure.**
- 2. The development of Downtown Prosper as a destination.**
- 3. Ensuring that the Town's commercial corridors are ready for development.**
- 4. Continue to provide excellence in municipal services.**
- 5. Work towards a growing and diversified tax base.**

The long-term vision (5-10 years) is to continue emphasizing the items identified above and to incorporate the addition of new municipal facilities to address the continued population and commercial growth within the Town. At the conclusion of the workshop, the Council requested that the visioning priorities be summarized and brought forward for the Council's formal adoption.

Bret Bauer with GPS will be virtually attending the April 25th Council meeting to recap the process the Council utilized and summarize the priorities that the group coalesced on.

Once these priorities are formally adopted by the Town Council, the staff will utilize these directives in building the budget for the next few years, including the fiscal year 2023-2024 budget.

Budget Impact:

There is no budgetary impact affiliated with this item.

Attached Documents:

1. Town Council's Visioning Priorities

Town Staff Recommendation:

Town Staff recommends approving the adoption of the Visioning Priorities of the Prosper Town Council from the Council's Strategic Visioning Event(s).

Proposed Motion:

I move to approve the adoption of the Visioning Priorities as agreed upon from the Council Strategic Visioning Event(s).

Prosper Town Council

Summary of the Strategic Visioning Event

1-2 Year Objectives:

1. Acceleration of infrastructure.

Written Summary:

Work with the Capital Improvement Subcommittee to best determine the acceleration of the Town's Bond and Capital Program to ensure that public infrastructure is planned and constructed in an accelerated manner to meet the demands of a growing community. Projects include streets/roadways, drainage, parks, facilities, water, sewer, downtown, and broadband improvements. The subcommittee along with staff should use all financial methods such as town bonds and C.O. obligation, the capital dedicated levy, budget savings, impact fees, grants, and regional funding.

2. Development of downtown as a destination.

Written Summary:

In collaboration with the Downtown Business Alliance, Citizen Engagement Committee, and Prosper Economic Development Corporation (EDC), implement the recommendations from the Downtown Master Plan. The efforts are to encourage a mix of public and private developments and improvements that are catalysts for office, retail, restaurants, entertainment, housing, public art, community gathering spaces, outdoor events, and activities.

3. Commercial corridors are ready for development.

Written Summary:

Ensure that US Highway 380 and the Dallas North Tollway are primed for high quality, high value developments. Develop and enact long-term strategies and policies that address land use, landscaping, lighting, and traffic. Work with TXDOT, NTTA, and private development that ensures roadway infrastructure adequately addresses the demands for future development. Work with the Capital Improvement Subcommittee and Prosper EDC to determine the prioritization of infrastructure and incentives, when appropriate, for business development.

4. Excellence of municipal services

Written Summary:

Strive towards being a high-performing organization where the Town government is continuously improving, looking at best practices, and benchmarking itself with other communities. Develop an aligned organizational culture of excellence in all things we do and provide financial resources and support necessary to support these goals. This includes providing a welcoming and respectful environment for our residents, visitors, and Town employees.

5. A growing and diversified tax base

Written Summary:

Continue to explore strategies and solutions that will increase and diversify Prosper's property values so that Prosper residents can enjoy quality municipal services. For the Town and Prosper EDC to collaborate on economic development opportunities to ensure the projects are of long-term value and high quality. Be adaptable to changing market conditions and work with private developers with an emphasis to locate corporate, medical, life sciences sectors and call Prosper home. Continue to utilize metrics that evaluate

Prosper's tax base and develop strategies to create resiliencies against recessions or downturns in market conditions.

5-10 Year Objectives:

Written Summary:

Continue addressing and working towards advancing the short-term priorities. From a longer-term perspective, incorporate ultimate facility, program, and staffing needs that cannot be accomplished in the short-term. Working with the Capital Improvement Subcommittee to begin planning for a future bond program and/or a Pay As You program.