



*Prosper is a place where everyone matters.*

## MINUTES

### Regular Meeting of the Prosper Town Council

Prosper Municipal Chambers  
108 W. Broadway Street, Prosper, Texas  
Tuesday, December 8, 2015

#### 1. Call to Order/Roll Call.

The meeting was called to order at 6:01 p.m.

##### **Council Members Present:**

Mayor Ray Smith  
Mayor Pro-Tem Meigs Miller  
Deputy Mayor Pro-Tem Curry Vogelsang, Jr.  
Councilmember Kenneth Dugger  
Councilmember Michael Korbuly  
Councilmember Mike Davis  
Councilmember Jason Dixon

##### **Staff Members Present:**

Harlan Jefferson, Town Manager  
Robyn Battle, Town Secretary  
Terrence Welch, Town Attorney  
Hulon Webb, Executive Director of Development and Community Services  
John Webb, Development Services Director  
Alex Glushko, Senior Planner  
Matt Richardson, Senior Engineer  
Leslie Scott, Library Director  
Cheryl Davenport, Finance Director  
January Cook, Purchasing Agent  
Doug Kowalski, Police Chief  
Ronnie Tucker, Fire Chief

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

Jason McConnell of Prosper United Methodist Church led the invocation. The Pledge of Allegiance and the Pledge to the Texas Flag were recited.

#### 3. Announcements of recent and upcoming events.

Councilmember Dixon read the following announcements:

Thanks to everyone who participated in the Rotary Club and Lions Club Christmas Parade, and for everyone who attended the Christmas Festival on Saturday. Both events were bigger and better than ever, and a great way to celebrate the holiday season and show Prosper's hometown spirit.

Congratulations to Barbara Cottone, Chairman of the Prosper Parks and Recreation Board, for receiving the 2015 Advocate of the Year award from the North Region of the

Texas Recreation and Park Society. Barbara has served on the Board since 2012, and was instrumental in the development of the Town of Prosper's Parks, Recreation, and Open Space Master Plan. We appreciate Barbara's service to the Town.

The Public Works Department would like to remind residents that from now until March 31, Prosper water customers may use their automatic sprinklers no more than once a week, on their designated day. Maps and designated days may be found on the Town's website on the Water Conservation page.

The Town Council would like to remind everyone that the December 22 Town Council meeting has been cancelled. We would all like to wish everyone a very Merry Christmas and a Happy New Year.

Councilmember Korbuly congratulated the Prosper Firecrackers for winning Prosper soccer's first U-10 state championship.

#### **4. Presentations**

- **Presentation of a Proclamation to Chris Buescher, winner of the NASCAR Xfinity Championship, proclaiming December 8, 2015, as *Chris Buescher Day*.**

Mayor Smith announced that Chris Buescher sent his regrets for not being able to attend the meeting to receive the Proclamation in person. The Proclamation will be mailed to him.

- **Presentation to Town Secretary Robyn Battle for achieving her certification through the Texas Municipal Clerk Certification Program.**

Mayor Smith congratulated Town Secretary Robyn Battle for achieving her certification through the Texas Municipal Clerk Certification Program. Ms. Battle will receive her certificate at a graduation ceremony in Frisco in January 2016.

#### **5. 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.)**

- 5a. **Consider and act upon minutes from the following Town Council meetings. (RB)**
  - **Regular Meeting – November 10, 2015**
- 5b. **Receive the Preliminary September 2015 Financial Report. (CD)**
- 5c. **Receive the October 2015 Financial Report. (CD)**
- 5d. **Consider and act upon Resolution No. 15-70 appointing members to the Prosper Tax Increment Financing Reinvestment Zone No. 1 Board of Directors. (RB)**

- 5e. Consider and act upon Resolution No. 15-71 appointing members to the Prosper Tax Increment Financing Reinvestment Zone No. 2 Board of Directors. (RB)
- 5f. Consider and act upon authorizing the Town Manager to execute a Professional Services Agreement with Bureau Veritas North America, Inc., through FY 2015-2016, related to the continued use of third-party building permit plan review and inspection services and adding new services related to fire alarm and fire sprinkler system plan review and inspections and annual fire safety inspections. (JW)
- 5g. Consider and act upon Ordinance No. 15-72 annexing a 0.5± acre tract of land, located on the north side of First Street, 1.2± miles east of Coit Road. (A15-0002). (JW)
- 5h. Consider and act upon Ordinance No. 15-73 for a Special Purpose Sign District for Lowe's on 12.3± acres, located on the northwest corner of US 380 and Custer Road. (MD15-0004). (JW)
- 5i. Consider and act upon Ordinance No. 15-74 amending the Town's Zoning Ordinance, Ordinance No. 05-20, as amended, by amending Subsection 3.3, of Section 3, of Chapter 2; Subsection 4.3, of Section 4, of Chapter 2; Subsection 5.3, of Section 5, of Chapter 2; Subsection 6.3, of Section 6, of Chapter 2; Subsection 7.3, of Section 7, of Chapter 2; Subsection 8.3, of Section 8, of Chapter 2; Subsection 9.3, of Section 9, of Chapter 2; Subsection 10.3, of Section 10, of Chapter 2; Subsection 11.3, of Section 11 of Chapter 2; Subsection 12.3, of Section 12, of Chapter 2; Subsection 13.3, of Section 13, of Chapter 2; Subsection 14.3, of Section 14, of Chapter 2; Subsection 15.3, of Section 15, of Chapter 2; Subsection 16.3, of Section 16, of Chapter 2; Subsection 17.3, of Section 17, of Chapter 2; Subsection 18.3, of Section 18, of Chapter 2; Subsection 19.3, of Section 19, of Chapter 2; Subsection 20.3, of Section 20, of Chapter 2; Subsection 21.3, of Section 21, of Chapter 2; Subsection 22.3, of Section 22, of Chapter 2; Subsection 23.3, of Section 23, of Chapter 2; Subsection 1.3, of Section 1, of Chapter 3; Subsection 1.4, of Section 1, of Chapter 3; and Section 2, of Chapter 3. (Z15-0007). (JW)
- 5k. Consider and act upon authorizing the Town Manager to execute an Encroachment Agreement between Oncor Electric Delivery Company and the Town of Prosper, Texas, within the limits of Whitley Place, Phase 9. (PN)
- 5l. Consider and act upon authorizing the Town Manager to execute an Encroachment Agreement between Oncor Electric Delivery Company and the Town of Prosper, Texas, within the limits of Lakes of La Cima, Phase 7B. (DH)
- 5m. Consider and act upon whether to direct staff to submit a written notice of appeal 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 or Preliminary Site Plan. (AG)

Mayor Smith removed Item 5j from the Consent Agenda.

Councilmember Dugger made a motion and Mayor Pro-Tem Miller seconded the motion to approve all remaining items on the Consent Agenda. The motion was approved by a vote of 7-0.

- 5j. Consider and act upon a resolution concerning the construction of a grade separated crossing on Frontier Parkway over the BNSF Railroad, the reconstruction of FM 1461 from Preston Road to Custer Road, and the two southbound Dallas North Tollway service lanes along with the Dallas North Tollway overpass at US Highway 380. (HW)**

Town Manager Harlan Jefferson informed the Town Council that the Celina Town Council tabled a similar resolution at their December 7 regular meeting. Town staff is requesting that the item be tabled in order to resolve any questions or comments.

Councilmember Dugger made a motion and Councilmember Korbuly seconded the motion to table Item 5j to the January 12, 2016, Town Council meeting. The motion was approved by a vote of 7-0.

**6. 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 Meeting Appearance Card" and present it to the Town Secretary prior to the meeting.)**

**REGULAR AGENDA:**

**(If you wish to address the Council during the regular agenda portion of the meeting, please fill out a "Public Meeting Appearance Card" and present it to the Town Secretary prior to the meeting. Citizens wishing to address the Council for items listed as public hearings will be recognized by the Mayor. Those wishing to speak on a non-public hearing related item will be recognized on a case-by-case basis, at the discretion of the Mayor and Town Council.)**

**PUBLIC HEARINGS:**

- 7. Conduct a Public Hearing, and consider and act upon a request to rezone 15.7± acres, from Commercial (C) and Planned Development-25 (PD-25) to Planned Development-Retail (PD-R), located on north side of US 380, 580± feet west of Custer Road. (Z15-0011). (JW)**

Development Services Director John Webb presented this item before the Town Council. The applicant is requesting this item be tabled to the January 26, 2016, Town Council meeting.

Councilmember Dugger made a motion and Councilmember Korbuly seconded the motion to table Item 7 to the January 26, 2016, Town Council meeting. The motion was approved by a vote of 7-0.

8. **Conduct a Public Hearing, and consider and act upon a request for a Special Purpose Sign District for Kroger, on 23.4± acres, located on the northwest corner of US 380 and Custer Road. (MD15-0004). (JW)**

Development Services Director John Webb presented this item before the Town Council. The applicant is requesting this item be tabled to the January 26, 2016, Town Council meeting.

Mayor Pro-Tem Miller made a motion and Councilmember Dixon seconded the motion to table Item 8 to the January 26, 2016, Town Council meeting. The motion was approved by a vote of 7-0.

9. **Presentation of service plan and first Public Hearing to consider the voluntary annexation of 100.0± acres generally located on the south side of Prosper Road, 2,500± feet west of Legacy Drive. (A15-0003). (JW)**

Development Services Director John Webb presented this item before the Town Council. The property owner has submitted a petition to be annexed by the Town. Upon annexation by the Town, the property would be zoned Agricultural, unless otherwise rezoned. The Future Land Use Plan designates the property as Medium Density Residential. Staff has received a conceptual land plan demonstrating how the property may be proposed for development in the future. The conceptual land plan is not in accordance with the Town's Future Land Use Plan.

Mayor Smith opened the Public Hearing.

With no one speaking, Mayor Smith closed the Public Hearing.

No further action was taken.

10. **Conduct a Public Hearing, and consider and act upon an ordinance amending Specific Use Permit-8 (SUP-8) for a Child Day Care Center, on 2.0± acres, located on the north side of Richland Boulevard, 300± feet west of Coit Road. The property is zoned Office (O) and Specific Use Permit-8 (SUP-8). (S15-0006). (JW)**

Development Services Director John Webb presented this item before the Town Council. The applicant has requested to install an 8-foot tall wrought iron fence and landscaping in lieu of the previously approved 8-foot tall masonry wall along the northern half of the western property line and along the northeast property line.

Mayor Smith opened the Public Hearing.

With no one speaking, Mayor Smith closed the Public Hearing.

Mr. Webb responded to questions from the Town Council related to safety issues that might arise from an open fence versus a masonry wall. Mr. Webb responded that the children are constantly monitored, so no safety issues exist. Staff is also working with the applicant to choose landscaping that is less likely to cause allergies for children and staff at the day care center.

Councilmember Dixon made a motion and Councilmember Dugger seconded the motion to approve Ordinance No. 15-76 amending Specific Use Permit-8 (SUP-8) for a Child

Day Care Center, on 2.0± acres, located on the north side of Richland Boulevard, 300± feet west of Coit Road. The motion was approved by a vote of 7-0.

**DEPARTMENT ITEMS:**

**11. Consider and act upon an ordinance amending the FY 2014-2015 budget. (CD)**

Finance Director Cheryl Davenport presented this item before the Town Council. Ms. Davenport provided an overview of the details of the budget amendment and responded to questions from the Town Council. The Town Council provided direction to transfer the budgeted funds for the backordered Building Inspections vehicle, and the funds reserved to update the Subdivision Ordinance from the FY 2014-2015 budget to the FY 2015-2016 budget.

Councilmember Davis made a motion and Councilmember Dugger seconded the motion to approve Ordinance No. 15-77 amending the FY 2014-2015 budget, with the exception of the Building Inspections vehicle and the Subdivision Ordinance. The motion was approved by a vote of 7-0.

**12. Consider and act upon an ordinance amending the FY 2015-2016 budget. (CD)**

Finance Director Cheryl Davenport presented this item before the Town Council. Ms. Davenport provided an overview of the details of the budget amendment and responded to questions from the Town Council. The Town Council provided direction to transfer the budgeted funds for the backordered Building Inspections vehicle, and the funds reserved to update the Subdivision Ordinance from the FY 2014-2015 budget to the FY 2015-2016 budget.

Councilmember Davis made a motion and Councilmember Korbuly seconded the motion to approve Ordinance No. 15-78 amending the FY 2015-2016 budget, with the addition of the Building Inspections vehicle and the Subdivision Ordinance. The motion was approved by a vote of 7-0.

**13. Consider and act upon an ordinance amending Section 12.08.003, "Unlawful Act/Exemptions," of Article 12.08, "Truck Routes," of Chapter 12, "Traffic," of the Code of Ordinances, clarifying provisions related to commercial truck traffic origination and destination. (DK)**

Police Chief Doug Kowalski presented this item before the Town Council. The Town has recognized concerns about the safety of its residents and the traveling public due to commercial truck traffic on certain street segments within the Town. One of the concerns expressed was that commercial trucks have utilized routes not designated for such traffic in the Town's "no thru truck" route ordinance, with truck operators generally contending that utilizing such "no thru truck" routes is permitted because it is the shortest possible route to a destination. In an effort to address this matter, Section 12.08.003 of the Code of Ordinances is being amended to provide for commercial truck traffic originating outside the Town and commercial truck traffic originating inside the Town. Additionally, the Street Segment of Coleman Street (Business 289) is updated to reflect its future extension to Preston Road (SH 289). Chief Kowalski reviewed the affected street segments. The Police Department will engage in an education effort among companies, drivers, and police officers on the implementation of the new ordinance. Chief Kowalski responded to a question from the audience related to truck traffic on First Street.

Councilmember Dugger made a motion and Councilmember Korbuly seconded the motion to approve Ordinance No. 15-79 amending Section 12.08.003, "Unlawful Acts/Exemptions," of Article 12.08, "Truck Routes," of Chapter 12, "Traffic," of the Code of Ordinances for the Town of Prosper, Texas. The motion was approved by a vote of 7-0.

14. **Consider and act upon awarding Bid No. 2016-05-B to Landmark Structures I, L.P., related to construction services for the Prosper Trail Elevated Storage Tank project; and authorizing the Town Manager to execute a construction agreement for same. (MR)**

Senior Engineer Matt Richardson presented this item before the Town Council. Phoenix Fabricators and Erectors, Inc., was the apparent low bidder for the project; however, specifications for this project required a minimum level of construction experience for this type of construction, comprised of five tanks of equal or greater volume that have been in service for five years or more. Phoenix provided documentation for two tanks of equal or greater volume that have been in service for five years or more, and one additional tank of equal or greater volume that has been in service for less than five years. Therefore, Phoenix does not meet the specified minimum experience. Landmark Structures I, L.P., was the second apparent low bidder, and provided documentation for eight tanks of equal or greater volume that have been in service for five years or more, thus meeting the specified minimum experience. Additionally, staff recommended that Alternate Item A for additional storage be removed from the proposed bid.

Mayor Smith recognized the following individual who requested to speak:

Joey Thomas of Phoenix Fabricators spoke in opposition to the item. He believes his company is fully capable of completing the project, even though the company did not quite meet the bid specifications.

Elton Youart, Director of Landmark Structures, spoke in favor of the item, providing some information on similar projects that Landmark Structures has recently completed in the area. He feels the company will complete the project with the highest level of quality.

Mr. Richardson reviewed the bid specifications and the bid selection process, and responded to questions from the Town Council. Brian Casswell, a representative from Brown and Gay, the design firm for the project, explained the standard practices for determining bid specifications. Town Attorney Terry Welch stated that if the Town Council varied from the bid selection process, all submissions would have to be rejected and the project would have to go through the bid process again.

After discussion, Councilmember Dugger made a motion and Councilmember Korbuly seconded the motion to award Bid No. 2016-05-B to Landmark Structures I, L.P., related to construction services for the Prosper Trail Elevated Storage Tank project, with the exclusion of Alternate Item A; and authorize the Town Manager to execute a construction agreement for same. The motion was approved by a vote of 7-0.

15. **Consider and act upon authorizing the Town Manager to execute a Professional Engineering Services Agreement between the Town of Prosper, Texas, and Huitt-Zollars, Inc., related to the Public Works Wastewater Interceptor Project. (MR)**

Senior Engineer Matt Richardson presented this item before the Town Council. The 2011 Wastewater System Capital Improvement Plan identifies a wastewater interceptor extending from the Middle Doe Branch Sanitary Sewer Interceptor to the Public Works facility. This interceptor will allow the Town to reduce usage of, and ultimately eliminate, an aging wastewater lift station located at the Public Works facility and allow the wastewater to flow by gravity into the Doe Branch system. With the recent completion of the wastewater evaluation to analyze wastewater service options between the North Texas Municipal Water District Wilson Creek system and the Upper Trinity Regional Water District Doe Branch system, the Town is now in a position to proceed with construction of this interceptor. The primary benefit of this scenario is the ultimate elimination of the wastewater lift station at the Public Works facility which is prone to overflows during heavy rain events. Mr. Richardson responded to questions from the Town Council related to capacity, and remedies for potential damages caused by the vendor.

After discussion, Councilmember Korbuly made a motion and Councilmember Dugger seconded the motion to authorize the Town Manager to execute a Professional Engineering Services Agreement between the Town of Prosper, Texas, and Huitt-Zollars, Inc., related to the Public Works Interceptor project. The motion was approved by a vote of 7-0.

**16. Discussion on Town Hall / Multi-Purpose Facility. (HW)**

Hulon Webb, Executive Director of Development and Community Services presented this item before the Town Council. Since staff received direction to proceed with a three-story, 50,000-square-foot facility at the Main Street Park location, facing first street, the Design Team has review multiple layouts of the building that include office space, corridors, and space allocated for future expansion. Mr. Webb introduced Randall Scott from Randall Scott Architects.

Mr. Scott continued the presentation, reviewing an update on the site plan and floor plans. He responded to questions and comments from the Town Council. Discussion was held on the amount of space needed for Municipal Court. Direction was given to designate more display space for the Prosper Historical Society, whether in the form of a designated room, or display cases along the walls. The Council requested to see a floor plan that had the lobby that opened to the second floor only, and also requested balconies on the east, west, and north sides of the building in addition to the south side. No further action was taken.

**17. Consider and act upon authorizing the Town Manager to execute the First Amendment to the Water Improvement Development Agreement between Prosper Partners, LP, and the Town of Prosper, Texas, related to the extension of water lines to serve the Parks at Legacy development. (HW)**

Hulon Webb, Executive Director of Development and Community Services, presented this item before the Town Council. The original Water Improvement Development Agreement obligated Prosper Partners, LP, to construct a twenty-inch water line along the south side of Fishtrap Road from Teel Road to the eastern limits of the Parks at Legacy subdivision, and a sixteen-inch water line along the east side of Legacy Drive from US 380 to Prairie Drive. The proposed First Amendment to the Water Improvement Development Agreement amends the original agreement to include a twenty-inch water line along the east side of Legacy Drive from Prairie Drive to the north limits of the Parks

at Legacy subdivision. Since the proposed water lines are depicted on the Town of Prosper Water System Capital Improvement Plan, the actual costs for the design and construction of the improvements are eligible for reimbursement of water impact fees collected from the development. The purpose of the agreement is to outline the obligations of the Town of Prosper and Prosper Partners, LP, related to the design, construction, and reimbursement of collected water impact fees to fund the projects.

Councilmember Dixon made a motion and Deputy Mayor Pro-Tem Vogelsang seconded the motion to authorize the Town Manager to execute the First Amendment to the Water Improvement Development Agreement between Prosper Partners, LP, and the Town of Prosper, Texas, related to the extension of water lines to serve the Parks at Legacy development. The motion was approved by a vote of 7-0.

- 18. Consider and act upon authorizing the Town Manager to execute the First Amendment to the Thoroughfare Improvement Development Agreement between Prosper Partners, LP, and the Town of Prosper, Texas, related to the extension of thoroughfares to serve the Parks at Legacy development. (HW)**

Hulon Webb, Executive Director of Development and Community Services, presented this item before the Town Council. Prosper Partners, LP, is developing the Parks at Legacy, and in order to facilitate the development, they are proposing to construct Legacy Drive from US 380 to the northern limits of the Parks at Legacy subdivision north of Prairie Drive, Prairie Drive from the western limits of the Parks at Legacy subdivision to the eastern limits of the Parks at Legacy subdivision, and the western lanes of Mahard Parkway from the southern limits of the Parks at Legacy subdivision to the northern limits of the Parks at Legacy subdivision. Prosper Partners, LP, and the Town agree that the southern lanes of Prairie Drive and the western lanes of Mahard Parkway shall not be required to be constructed by Prosper Partners, LP, if the construction costs do not balance with anticipated reimbursement totals and/or due to existing agreements in place for those improvements. Since the proposed roadways are depicted on the Town of Prosper Thoroughfare Plan, the actual costs for the design and construction of the improvements are eligible for thoroughfare impact fee credits and/or reimbursement. The purpose of the agreement is to outline the obligations of the Town of Prosper and Prosper Partners, LP, related to the design, construction, credit and reimbursement of collected thoroughfare impact fees to fund the project.

Councilmember Dixon made a motion and Deputy Mayor Pro-Tem Vogelsang seconded the motion to authorize the Town Manager to execute the First Amendment to the Thoroughfare Improvement Development Agreement between Prosper Partners, LP, and the Town of Prosper, Texas, related to the extension of thoroughfares to serve the Parks at Legacy development. The motion was approved by a vote of 7-0.

- 19. 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:**

- 19a. *Section 551.087 – To discuss and consider economic development incentives.***

**19b. 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.**

**19c. Section 551.071 – Consultation with the Town Attorney regarding legal issues associated with annexation agreements in Town ETJ areas, development issues associated with areas subject to annexation agreements, and all matters incident and related thereto.**

The Town Council recessed into Executive Session at 8:57 p.m.

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

The Town Council reconvened the Regular Session at 10:37 p.m.

Mayor Pro Tem Miller made a motion and Councilmember Dugger seconded the motion to authorize the Town Manager to convey a small strip of property along Main Street and execute appropriate documentation related thereto. The motion was approved by a vote of 7-0.

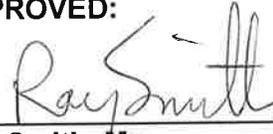
- 21. Possibly direct Town staff to schedule topic(s) for discussion at a future meeting.**

- 22. Adjourn.**

The meeting was adjourned at 10:39 p.m. on Tuesday, December 8, 2015.

These minutes approved on the 12th day of January, 2016.

**APPROVED:**



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Ray Smith, Mayor

**ATTEST:**

  
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Robyn Battle, Town Secretary