

TOWN OF PROSPER, TEXAS

ORDINANCE NO. 04-66

AN ORDINANCE AMENDING PROSPER'S ZONING ORDINANCE NO. 84-16; REZONING A TRACT OF LAND CONSISTING OF 149.997 ACRES, MORE OR LESS, SITUATED IN THE COLLIN COUNTY SCHOOL LAND SURVEY, ABSTRACT NO. 172, IN THE TOWN OF PROSPER, COLLIN COUNTY, TEXAS HERETOFORE ZONED SINGLE-FAMILY-1 (SF-1) IS HEREBY REZONED AND PLACED IN THE ZONING CLASSIFICATION OF PLANNED DEVELOPMENT-RETAIL/SINGLE FAMILY-1 (PD-R/SF-1); DESCRIBING THE TRACT TO BE REZONED; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVING AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the Town Council of the Town of Prosper, Texas (the "Town Council") has investigated and determined that Zoning Ordinance No. 84-16 should be amended; and

WHEREAS, the Town of Prosper, Texas ("Prosper") has received a request from the Blue Star Land, Inc. ("Applicant") to rezone 149.997 acres of land, more or less, situated in the Collin County School Land Survey, Abstract No. 172, in the Town of Prosper, Collin County, Texas; and

WHEREAS, the Town Council has investigated into and determined that the facts contained in the request are true and correct; and

WHEREAS, all legal notices required for rezoning have been given in the manner and form set forth by law, and public hearings have been held on the proposed rezoning and all other requirements of notice and completion of such zoning procedures have been fulfilled; and

WHEREAS, the Town Council has further investigated into and determined that it will be advantageous and beneficial to Prosper and its inhabitants to rezone this property as set forth below.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS:

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

1.4

SECTION 2: Amendments to Zoning Ordinance No. 84-16. Zoning Ordinance No. 84-16 is amended as follows: The zoning designation of the below-described property containing 149.997 acres of land, more or less, situated in the Collin County School Land Survey, Abstract No. 172, in the Town of Prosper, Collin County, Texas, (the "Property") and all streets, roads and alleyways contiguous and/or adjacent thereto is hereby rezoned as Planned Development-Retail/Single Family-1 (PD-R/SF-1). The property as a whole and the boundaries for each zoning classification are more particularly described in Exhibit "A" attached hereto and incorporated herein for all purposes as if set forth verbatim.

The development plans, standards, and uses for the Property in this Planned Development District shall conform to, and comply with 1) the statement of intent and purpose, attached hereto as Exhibit "B"; 2) the planned development standards, attached hereto as Exhibit "C"; 3) the zoning site plan, attached hereto as Exhibit "D"; and 4) the development schedule, attached hereto as Exhibit "E"; each of which is incorporated herein for all purposes as if set forth verbatim. Except as amended by this Ordinance, the development of the Property within this Planned Development District must comply with the requirements of all ordinances, rules, and regulations of Prosper, as they currently exist or may be amended.

Three original, official and identical copies of the zoning exhibit map are hereby adopted and shall be filed and maintained as follows:

- a. Two (2) copies shall be filed with the Town Secretary and retained as original records and shall not be changed in any matter.
- b. One (1) copy shall be filed with the building inspector and shall be maintained up-to-date by posting thereon all changes and subsequent amendments for observation, issuing building permits, certificates of compliance and occupancy and enforcing the zoning ordinance. Reproduction for information purposes may from time-to-time be made of the official zoning district map.

Written notice of any amendment to this Planned Development District shall be sent to all property owners within two hundred feet (200') of the specific area to be amended.

SECTION 3: No Vested Interest/Repeal. No developer or property owner shall acquire any vested interest in this Ordinance or in any other specific regulations contained herein. Any portion of this Ordinance may be repealed by the Town Council in the manner provided for by law.

SECTION 4: Unlawful Use of Premises. It shall be unlawful for any person, firm or corporation to make use of said premises in some manner other than as authorized by this Ordinance, and shall be unlawful for any person, firm or corporation to construct on said premises any building that is not in conformity with the permissible uses under this Zoning Ordinance.

SECTION 5: Penalty. Any person, firm, corporation or business entity violating this Ordinance or any provision of Prosper's Zoning Ordinance No. 84-16, or as amended, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined any sum not exceeding Two Thousand Dollars (\$2000.00). Each continuing day's violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude Prosper from filing suit to enjoin the violation. Prosper retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 6: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Prosper hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

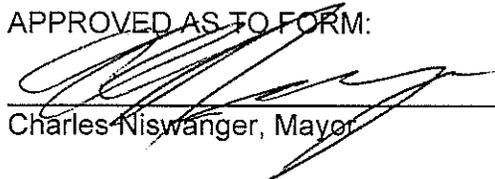
SECTION 7: Savings/Repealing Clause. Prosper's Zoning Ordinance No. 84-16 shall remain in full force and effect, save and except as amended by this or any other Ordinance. All

provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the appeal prevent a prosecution from being commenced for any violation if occurring prior to the repealing of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

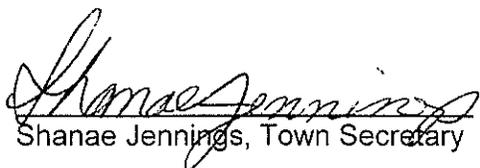
SECTION 8: Effective Date. This Ordinance shall become effective from and after its adoption and publications as required by law.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS ON THIS 13th DAY OF JULY, 2004.

APPROVED AS TO FORM:


Charles Niswanger, Mayor

ATTESTED TO AND
CORRECTLY RECORDED BY:


Shanae Jennings, Town Secretary

DATE OF PUBLICATION: 7/19/04 & 7/20/04, Dallas Morning News – Collin County Addition

Exhibit "A"
LEGAL DESCRIPTION

STATE OF TEXAS
COUNTY OF COLLIN

Being a tract of land out of the Collin County School Land Survey, Abstract No. 172, Collin County, Texas and being part of a 202.75 acre tract of land described in a deed from Bankers Life Company to J.M. Shelton, recorded in Volume 324, Page 308, Deed Records of Collin County and being more particularly described as follows:

Beginning at the intersection of the East R.O.W. of State Highway 289 and the South R.O.W. of F.M. Highway 1461, a wooden right-of-way marker for corner;

Thence North 84° 36' 18" East following the South right-of-way line of F.M. Highway 1461, 183.27 feet to a wooden right-of-way marker;

Thence North 87° 37' 09" East following the South right-of-way line of F.M. Highway 1461 a distance of 123.31 feet to a wooden right-of-way marker;

Thence North 88° 44' 37" East following the North line of said tract and the South right-of-way line of F.M. Highway 1461 a distance of 2112.58 feet to an iron stake found for corner;

Thence South 01° 20' 24" East following the East line of the said tract and an established fence line and hedgerow a distance of 2604.71 feet to an iron rod found for corner;

Thence South 88° 46' 57" West following the South line of the said tract and an established fence line and hedgerow a distance of 2557.95 feet to an iron stake found in the East right-of-way of the State Highway 289;

Thence in a Northerly direction following the East right-of-way line of State Highway 289 as follows:

North 00° 48' 13" East, 43.40 feet, to a wooden right-of-way marker;

North 00° 52' 57" East, 199.84 feet to a wooden right-of-way marker;

North 00° 34' 32" West, 400.79 feet to a wooden right-of-way marker;

North 00° 50' 00" East, 399.32 feet to a wooden right-of-way marker;

North 06° 31' 26" East, 301.57 feet to a wooden right-of-way marker;

North 04° 46' 41" West, 202.22 feet to a wooden right-of-way marker;

North 00° 52' 57" East, 498.21 feet to a wooden right-of-way marker;

North 02° 01' 27" West, 200.08 feet to a wooden right-of-way marker;

North 00° 53' 32" East, 292.17 feet to a wooden right-of-way marker;

North 42° 38' 44" East, 74.78 feet to the Place of Beginning and containing 149.997 acres of land.

Exhibit "B"
STATEMENT OF INTENT AND PURPOSE

The purpose of this submittal is to request Planned Development zoning in a manner that meets the current market demands for residential and retail development. Proposed land uses and their acreages are as follows:

<u>Land Use</u>	<u>Approx. Area</u>	<u>Dwelling Units</u>
1. Retail	25.0	0
2. Residential	<u>125.0</u>	<u>270</u>
Totals	150.0	270

The proposed zoning includes specific development standards for the single-family residential and retail land uses and are described herein. The proposed retail areas will generally follow the Retail (R) zoning classification described in the Town of Prosper Zoning Ordinance No. 84-16, as amended.

Exhibit "C"
PLANNED DEVELOPMENT STANDARDS

RESIDENTIAL COMPONENT

1.0 **Single-Family Residential Uses**

The development standards for the aforementioned housing types are outlined within this text. Those standards not specifically addressed herein shall follow those standards set forth under the SF-1 Zoning Classification of the Town of Prosper Zoning Ordinance 84-16 and Subdivision Ordinance 03-05 as they exist or may be amended.

1.01 **General Description**

The residential portion of this planned development consists of approximately 125 acres of land (see attached Exhibit "A"). This PD Ordinance allows a maximum of 270 single-family residential units consisting of:

- A. 10,000 sq. ft. single-family residential lots (65 max.),
- B. 12,500 sq. ft. single-family residential lots (205 max.)
- C. 25,000 sq. ft. single-family residential lots (15 min.).

The planning of the residential portion shall be such that the 10,000 sq. ft. lots are generally adjacent to the retail uses and the 25,000 sq. ft. lots are generally adjacent to the residential uses to the east of this planned development. The remainder of the residential portion shall consist of residential lots of no less than 12,500 sq. ft. in area.

1.02 **Permissible Uses:**

Land uses allowed within the residential portion of this PD are the uses permitted in the SF-1 District, and including the following:

- A. Temporary real estate sales offices for each builder during the development and marketing of the Planned Development which shall be removed no later than thirty days following the final issuance of the last Certificate of Occupancy (CO) on the last lot owned by that builder.
- B. Temporary buildings of the builders and uses incidental to construction work on the premises, which shall be removed upon completion of such work.

1.03 **Required Parking**

A minimum of four (4) off-street, concrete parking spaces shall be provided for each residential unit. As part of the parking requirement, at least two of the off-street parking spaces shall be in an enclosed garage. Garage doors, when closed, shall be located on or behind the applicable setback line for the residential unit. The parking of recreational vehicles, sports vehicles, boats and/or trailers on a lot facing a street is prohibited. For purposes of this Ordinance, "recreational vehicle" means any mobile unit (motorized or under tow) designed, converted, or modified for use as a sleeping, cooking, gathering, or any use other than human transport and material transport typically associated with a car, sport utility vehicle, or pick-up truck, and "sports vehicle" means a

vehicle designed for or modified for off-road or other recreational use, which is not a standard car, sport utility vehicle or pick-up.

1.04 **Exterior Façade Building Materials:**

1.04.1 **Surface Area Façade**

The surface area of the first floor exterior wall (exclusive of openings for windows and doors) and all second story walls in the same vertical plane as the first floor wall shall be veneered with a 100% coverage of a unit masonry material.

1.04.2 **Unit Masonry**

For the purposes of this PD Ordinance, "unit masonry" shall mean brick, natural stone, or concrete cast stone (or combination of these materials) laid up by unit and set in mortar. To facilitate enforcement of this standard, all plan submittals must indicate the wall areas of those walls subject to the above masonry requirements.

1.04.3 **Roofing Material**

Wood shingle roofs are not allowed in this PD district.

1.05 **Single-family Uses**

For the purposes of this PD Ordinance, "single-family" shall mean the use of a lot with one building designed for and containing not more than one unit with facilities for living, sleeping, cooking, and eating therein. The maximum number of single-family units allowed is 270. Building and area requirements for single-family units are as follows:

1.05.1 **Lot Area**

The minimum area of each lot within this PD district shall be no less than 10,000 square feet. The mix of lot sizes shall include a maximum of 65 lots with a minimum area of 10,000 square feet, a maximum of 205 lots with a minimum area of 12,500 square feet, and at least 15 lots with a minimum area of 25,000 square feet.

1.05.2 **Lot Coverage**

In no case shall more than forty-five (45) percent of the total lot area be covered by structure(s).

1.05.3 **Lot Width**

The minimum width of any lot less than 15,000 square feet in area shall not be less than eighty (80) feet at the front building line of the lot, except that lots situated along any curved street section may have a minimum width of eighty (80) feet measured along the arc at the front building line; provided all other requirements of this section are fulfilled.

The minimum width of any lot equal to or greater than 15,000 square feet in area shall not be less than one hundred (100) feet at the front building line of the lot, except that lots situated along any curved street section may have a minimum width of one hundred (100) feet measured along

the arc at the front building line; provided all other requirements of this section are fulfilled.

1.05.4 **Lot Depth**

The minimum depth of any lot shall be one hundred and twenty five (125) feet, except that lots surrounding the terminus of a cul-de-sac or along street elbows/eyebrows may have a minimum lot depth, measured at mid-point on front and rear lot lines, of one hundred and twenty (120) feet; provided all other requirements of this section are fulfilled.

1.05.5 **Front Yard**

The minimum depth of the front yard shall be thirty (30) feet for all lots.

1.05.6 **Side Yard**

The minimum side yard on each side of any residential lot less than 25,000 square feet in area shall be seven (7) feet, with a minimum building separation of fourteen (14) feet. The minimum side yard on each side of any residential lot equal to or greater than 25,000 square feet in area shall be ten (10) feet, with a minimum building separation of twenty (20) feet.

The side yard setback adjacent to a street shall be a minimum of fifteen (15) feet. The side yard setback for lots siding to Post Oak Court shall be a minimum of thirty (30) feet.

1.05.7 **Rear Yard**

The minimum rear yard setback for the row of lots adjacent to the east property line shall be twenty (20) feet with an average rear yard of thirty (30) feet. The minimum rear yard setback for all of the remaining lots shall be fifteen (15) feet.

1.05.8 **Building Height**

Buildings shall be a maximum of two and one-half (2½) stories, not to exceed thirty-six (36) feet in height.

1.05.9 **Minimum Dwelling Area**

The minimum enclosed heated and cooled living area shall be 2,400 square feet for each dwelling within this PD.

1.5.10 **Mechanical Equipment**

All mechanical equipment (pool, air conditioning, solar collectors, etc.) must be completely screened from public view. A combination of screens, hedges, or walls should be used to screen equipment or mechanical areas.

2.0 **General Conditions**

2.01 **Conformance to All Applicable Articles of the Town of Prosper Zoning Ordinance**

Except as amended herein, this Planned Development District shall conform to any and all applicable articles and sections of ordinances and regulations of the

Town of Prosper, including Zoning Ordinance 84-16 and Subdivision Ordinance, 03-05, as they exist or may be amended. All right-of-ways as specified in the Town's Transportation Plan will be deeded to the Town at the time of development with the Final Plat.

2.02 **Amenities:**

Amenity Center

The Developer for the Planned Development District shall provide for an amenity center which may include, but not be limited to: a swimming pool restrooms and dressing rooms; charcoal grilles; children's' play areas; a sports court surfaced with pavement, sand or sod for basketball, volleyball or other youth and adult sports; sidewalks; parking areas; and landscaping to be owned, operated, and maintained by a homeowners' association. All construction shall be ADA compliant for access, parking and use. The amenity center will be constructed in Phase One of the development. Graphic specifications for the amenity center and improvements shall be submitted to the Town with Phase One plans. This amenity center shall be for the exclusive use and enjoyment of the residents of this PD and their guests.

2.03 **Screening and Buffering**

The area of the development along SH 289 and FM 1461 shall be screened by a combination of earthen berms, vegetation and screening fences and shall comply with the Town's Transportation Plan requirements and shall meet the requirements of the Town of Prosper Subdivision Ordinance 03-05.

Screening along the east property line shall consist of decorative metal fencing of no less than six (6) feet in height together with evergreen shrubs located along the west side of the fence, such shrubs to form a solid screening hedge of no less than six (6) feet in height within two (2) growing seasons. In the rear yard of lots adjacent to the east property line, wood privacy fencing shall not be permitted parallel to the decorative metal fence along the rear property line of the lots.

2.04 **Zoning Site Plan**

A Zoning Site Plan is hereby attached (Exhibit "D") and made a part of the ordinance. It establishes the most general guidelines for the district by identifying the project boundaries, land use types, approximate thoroughfare locations, R.O.W. dedications, roads, trails, drainage, all easements and illustrates the integration of these elements into a master plan for the whole district.

2.05 **Streets**

Post Oak Court shall be extended into the property for a minimum of one lot depth. The paving section of Post Oak Court shall match the existing paving section contained to the east of the property.

All other residential streets shall consist of a sixty-foot wide right-of-way with a paving section width of thirty-one feet, from back-of-curb to back-of-curb. Drainage systems shall be incorporated into the street facility with concrete paving and mountable curbs. All collector class Thoroughfares shall meet the standards specified in the Town's Transportation Plan. All residential streets,

collector streets and thoroughfares with landscape and setback areas shall be shown on the Site Plan. Right-of-way areas shall be dedicated and provided on any and all adjacent street or road section to conform to the approved Transportation Plan of the Town.

2.06 **Maintenance of Facilities**

The Developer shall establish a Homeowners' Association (HOA), in which membership is mandatory for each lot, which will be responsible for operation and maintenance of all common areas and/or common facilities contained within the area of the planned development district or adjacent right-of-way (ROW). The homeowners' association will be created with Phase One and each subsequent phase shall be annexed into the association. Prior to transfer of the ownership to the HOA, all specified facilities shall be constructed by the Developer and approved by the Town. A two-year maintenance bond for all improvements contained within the HOA area or R.O.W. shall be provided at the time of transfer. The developer shall provide the Town a mandatory HOA agreement that will become part of the deed of record.

2.07 **Sidewalks**

A four-foot wide sidewalk located on each side of the street shall be located two feet from each street right-of-way line, or three feet from each street right of way line for streets with proposed street trees. Corner lots shall also provide the aforementioned requirement. All public street R.O.W. sidewalks and crossings shall be ADA compliant. In locations where open space, common, or HOA areas exist, sidewalks shall be extended to connect with adjacent walks or trails. The extension of Post Oak Court shall not include any sidewalks.

2.08 **Mailboxes**

The Developer will deed restrict the property to require a standard mailbox design maintained by the property owner or HOA for a consistent look throughout the development. Each mailbox will be iron, wrought-iron or cast alloy posts or stand and all mailboxes will match in color and style. Brick mailboxes are not allowed within this PD. The mailbox design shall be approved by the Town Council prior to installation.

2.09 **Landscaping**

The list of approved trees will be included in the deed restrictions filed on this project. The required trees will typically be planted by the builder at the time of house construction and must be installed prior to the issuance of the certificate of occupancy for that lot and house.

2.09.1 **Front Yard**

A minimum of two four-inch caliper canopy trees, measured at twelve inches from the root ball shall be planted in each front yard area between the building line and the street right-of-way line.

2.09.2 **Side Yard**

A minimum of two four-inch caliper canopy trees, measured at twelve inches from the root ball shall be planted in each side yard space that abuts a street.

2.10 **Fencing**

Consistent fencing will be required on all lots adjacent to the major thoroughfares and shall conform to the standards established by the Town for various types of fencing in Subdivision Ordinance 03-05 as it exists or may be amended.

2.11 **Open Space Requirements**

The overall development of the property will provide a minimum of two acres of common open space area including such items as amenity center, drainage easements and detention areas as shown on Exhibit "D".

2.12 **Street Intersection with Major Thoroughfares**

Street intersection locations along SH 289 or F.M. 1461 shall be subject to the TxDOT review process.

RETAIL COMPONENT

The tract may be developed under the regulations of the Retail (R) District as outlined in the Town of Prosper Zoning Ordinance 84-16 as it exists or may be amended, subject to the following amendments:

1.0 **Retail Uses**

1.1 **General Description**

This PD Ordinance allows a maximum of 25 acres of retail development generally located at the corner of Preston Road and FM 1461. Unless specifically addressed herein, the development standards for the aforementioned retail district are as set forth under the Retail (R) zoning classification of the Town of Prosper Ordinance 84-16 and Subdivision Ordinance 03-05 as they exist or may be amended.

1.2 **Required Parking**

The total parking required shall be the sum of the specific parking space requirement for each use included within the development.

1.3 **Screening of Mechanical Equipment:**

All mechanical equipment located on the ground and/or rooftops including fans, vents, air conditioning units and cooling towers shall be screened so as not to be visible from the property lines at ground level. Screening may be accomplished through the use of plant materials, berming or fencing.

The list of approved plant materials for such purpose shall be included in the deed restrictions filed on this project. Fencing shall be finished in a material and/or painted a similar color to the building façade, trim, or roof surface.

2.0 **General Conditions**

2.1 **Conformance to All Applicable Articles of the Town of Prosper Zoning Ordinance**

Except as amended herein, this Planned Development District shall conform to applicable articles and sections of ordinances and regulations of the Town of

Prosper, including Zoning Ordinance 84-16 and Subdivision Ordinance, 03-05, as they exist or may be amended. All right-of-ways as specified in the Town's Transportation Plan will be deeded to the Town at the time of development with the Final Plat.

2.2 **Outdoor Storage and Display Areas:**

Outdoor storage or/and display of any retail material will be allowed as accessory use only.

2.3 **Buffering Adjacent to Major Thoroughfares**

Irrigated landscape buffer zones will be provided along S.H. 289 and F.M. 1461 in conformance with the Town of Prosper requirements.

2.4 **Screening and Buffering Adjacent to Residential Lots**

A six-foot masonry screen wall shall be installed along the length of the common boundary line between the retail and residential components of this PD. Within such wall and for a minimum depth of fifteen (15) feet shall be an irrigated landscaped buffer zone including turf grass and three-inch caliper evergreen trees planted on thirty (30) foot centers. No more than 45% of such trees shall be of the same species.

2.5 **Zoning Site Plan**

A Zoning Site Plan is hereby attached (Exhibit "D") and made a part of the ordinance. It establishes the most general guidelines for the district by identifying the project boundaries, land use types, approximate thoroughfare locations, R.O.W. dedications, roads, trails, drainage, all easements and illustrates the integration of these elements into a master plan for the whole district. Dimensions shown on Exhibit "D" are approximations and may be modified at the time of final platting provided the acreage contained does not exceed twenty-five acres.

2.6 **Street Intersection with Major Thoroughfares**

Median openings, turn lanes, and driveway locations along S.H. 289 or F.M. 1461 shall be subject to the TxDOT review process.

Exhibit "E"
DEVELOPMENT SCHEDULE

Single Family Uses:

The development schedule for the approximately one hundred twenty-five acres of single-family residential land uses will be phased over the next three to four years as scheduled below:

Year	Number of Lots	Amenities
2006	75	Amenity Center and Entry Feature
2006	75	Second Entry Feature
2007	75	
2008	75	

(Note: Phasing lines, number of lots and dates are approximate and are subject to change with final design and due to external forces such as market conditions.)

Retail Uses:

The development of the approximately twenty-five acres of retail land is anticipated to occur within the next three to four years as the market dictates.