

TOWN OF PROSPER, TEXAS

ORDINANCE NO. 06-33

AN ORDINANCE AMENDING PROSPER'S ZONING ORDINANCE NO. 05-20; REZONING A TRACT OF LAND CONSISTING OF 39.076 ACRES, MORE OR LESS, SITUATED IN THE JOHN R. TUNNEY SURVEY, ABSTRACT NO. 916, IN THE TOWN OF PROSPER, COLLIN COUNTY, TEXAS, HERETOFORE ZONED SINGLE FAMILY-15 (SF-15) IS HEREBY REZONED AND PLACED IN THE ZONING CLASSIFICATION OF PLANNED DEVELOPMENT-SINGLE FAMILY-12.5 (PD-SF-12.5); 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. 05-20 should be amended; and

WHEREAS, the Town of Prosper, Texas ("Prosper") has received a request from Parthenon Custom Homes ("Applicant") to rezone 39.076-acres of land, more or less, situated in the John R. Tunney Survey, Abstract No. 916, 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.

SECTION 2: Amendments to Zoning Ordinance No. 05-20. Zoning Ordinance No. 05-20 is amended as follows: The zoning designation of the below-described property containing 39.076 acres of land, more or less, situated in the John R. Tunney Survey, Abstract No. 916, 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-Single Family-12.5 (PD-SF-12.5). 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 conceptual development plan, attached hereto as Exhibit "D"; and 4) the development schedule, attached hereto as Exhibit "E"; which are 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. 05-20, or as amended, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined any sum not exceeding Two Thousand Dollars (\$2,000.00). 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

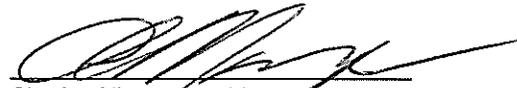
remaining portions of this Ordinance shall remain in full force and effect. Prosper hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 7: Savings/Repealing Clause. Prosper's Zoning Ordinance No. 05-20 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.

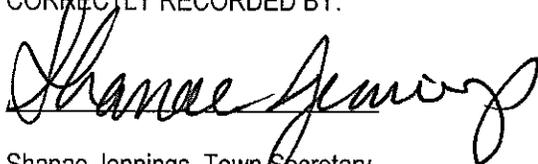
SECTION 8: Effective Date. This Ordinance shall become effective from and after its adoption and publications as required by law.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS ON THIS 11<sup>th</sup> DAY OF APRIL, 2006.

APPROVED AS TO FORM:

  
Charles Niswanger, Mayor

ATTESTED TO AND  
CORRECTLY RECORDED BY:

  
Shanae Jennings, Town Secretary

DATE OF PUBLICATION: 4/17/06 + 4/18/06, Dallas Morning News – Collin County Addition

EXHIBIT "A"  
Legal Description

BEING a tract of land situated in the John R. Tunney Survey, Abstract No. 916, Collin County, Texas, and also be part of a 40.44 acre tract conveyed to Michael C. and Leann B. Perry as recorded in County Clerks No. 93-0104760 of Collin County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch iron rod for corner at the southwest corner of a tract conveyed to Collin County as recorded in Volume 5061, Page 1576, D.R.C.C.T., said iron rod being South 2 degrees 05 minutes 50 seconds West a distance of 50.01 feet from the northwest corner of said 40.44 acre tract, said iron rod also being at the the northeast corner of Lot 9, Block J, The Trails of Prosper, an addition to the City of Prosper according to the plat there of recorded in Cabinet N, Page 827, plat Records of Collin County, Texas, said iron rod being in the South Right Of Way\_line of County Road No. 48;

THENCE South 89 degrees 21 minutes 40 seconds East following south ROW line of County Road No. 48 a distance of 0.63 feet to a 1/2 inch iron rod set for corner;

THENCE South 88 degrees 50 minutes 23 seconds East following the south ROW line of said County Road No. 48 a distance of 1059.79 feet to a 1/2 inch iron rod set for corner;

THENCE South 00 degrees 29 minutes 22 seconds West passing at 352.42 feet a 1/2 inch iron rod found at the northwest corner of Lot 1, Block A, Preston Lakes, an addition to the City of Prosper, according to the plat thereof recorded in Cabinet O, Page 135, P.R.C.C.T., continuing then along the west line of said Block A, continuing in all a distance of 968.67 feet to a 1/2 inch iron rod found for corner at the southwest corner of Lot 7 of said Block A;

THENCE South 00 degrees 23 minutes 57 seconds West a distance of 605.50 feet to a 1/2 inch iron rod set for corner;

THENCE North 89 degrees 37 minutes 24 seconds West a distance of 1083.04 feet to a 1/2 inch iron rod found for corner at the southeast corner of The Trails of Prosper, Section II as recorded in Cabinet P, Page 644, P.R.C.C.T.;

THENCE North 00 degrees 39 minutes 41 seconds East following the east line of said The Trails of Prosper Section II and the east line of The Trails of Prosper a distance of 911.61 feet to a 1/2 inch iron rod found for corner;

THENCE North 2 degrees 05 minutes 50 seconds East following the east line of The Trails of Prosper a distance of 677.37 feet to the POINT OF BEGINNING and containing 1,702,142 square feet or 39.076 acres of land.



**PROSPER CREEK ESTATES  
PD SF-10 39.06 ACRES  
77 LOTS (10,000 S.F. MINIMUM)  
TOWN OF PROSPER, TEXAS**

**LETTER OF INTENT**

**This property will be developed under the progressive and innovative plan for Residential allowing for a Gated Community. The property will be developed under the Town of Prosper Guideline for Planned Development Single Family 77 residential lots. The plan will provide for passive open space. The Open Space will preserve the majority of the natural vegetation and water features. Ultimate buildout will generate approximately \$36,000,000± additional tax base to the Town of Prosper, Collin County and P.I.S.D. This tax base substantially exceeds the cost of services provided. The development will provide for upscale residential development along with sensitivity to Open Space.**

**Town of Prosper**  
**Exhibit C: Planned Development Standards**  
**Prosper Creek Estates**  
**PD-SF12.5**

**A. General**

This Planned Development District contains approximately 40.443 acres of land, as described in Exhibit "A". This Planned Development Ordinance permits a maximum density of 1.91 single family residential units per gross acres of land (see attached Exhibit "D"), or a maximum of 77 single family residential lots. The development standards for the aforementioned housing types are outlined within this text or as set forth in the SF-12.5 Zoning District of Zoning Ordinance 05-20 and the Subdivision Ordinance 03-05 as they exist or may be amended, if not specifically addressed herein. The use and development of the subject property shall generally conform to Exhibit "D" allowing for modifications and variations that follow sound and reasonable engineering practices or design refinements.

**B. Permitted Uses**

The uses permitted within this Planned Development District are those permitted in the SF-12.5 District of Zoning Ordinance 05-20 as it exists or may be amended.

**C. Lot Distribution**

The lot sizes developed on this property shall generally conform to the lot size distribution shown on Exhibit "D". The lot size distribution shall be as follows:

1. 10,000 square feet – a maximum of 5 lots.
2. 12,500 square feet – 37 Lots
3. 15,000 square feet – a minimum of 35 lots

**D. Lot Dimensions and Regulations**

The 10,000, 12,500, and 15,000 square foot shall be subject to the following regulations:

1. Minimum lot width = 80 feet
2. Minimum lot depth = 125 feet
3. Minimum dwelling unit floor area = 3,000 square feet
4. Minimum front yard setback = 25 feet
5. Minimum side yard setback = 8 feet, 15 feet adjacent to a side street
6. Minimum rear yard setback = 25 feet
7. Maximum lot coverage = 55%
8. Maximum building height = 2 ½ stories or 40 feet

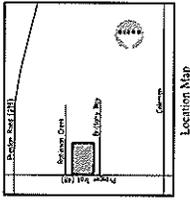
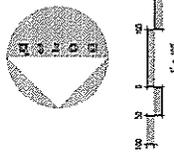
**E. Miscellaneous Development Standards**

1. All Garage doors shall side entry. Front entry garage doors will only be permitted if the Garage is set back an additional 10 feet from the front of the main structure on the same lot.
2. The maximum block length shall be 1,600 linear feet.
3. The maximum cul-de-sac length shall be 1,000 linear feet for lots of 15,000 square feet or larger. For lots smaller than 15,000 square feet, the maximum cul-de-sac length shall be 600 linear feet.

4. Landscape medians, Easements and Common Area Open Space Lots, as depicted on Exhibit "C", shall be common areas to be maintained for landscaping, screening, and pedestrian access purposes by the Mandatory Homeowners' Association.
5. A minimum 10 foot wide landscape buffer, will be provided along Prosper Trail for screening purposes. This landscape buffer will be owned and maintained by the Mandatory Homeowners Association.
6. Gated communities with private streets, (developed to Town Standards) will be permitted within this planned development district. A gated community with private streets is subject to the following requirements:
  - a. Private Street Developments shall have a homeowners' association. The homeowners' association shall own and be responsible for the maintenance of private streets and appurtenances (such as alleys, storm sewer, etc...). The homeowners' association shall provide for the payment of dues and assessments required to maintain the private streets and appurtenances. The homeowners' association documents must be submitted to the Town for review and must be approved by the Town Administrator prior to final acceptance of the subdivision. The approved document must be filed for record concurrently with the filing of the final plat.
  - b. The homeowners' association documents must establish a reserve fund for the maintenance of private streets and other improvements such as common greenbelts, security station structures and equipment, and other significant homeowners' association infrastructure. This reserve fund shall not be commingled with any other homeowners' association fund. The developer shall submit an independent reserve study to the Town for review. The reserve study shall be prepared by a professional third party. Final acceptance of the subdivision will occur only after approval of the reserve fund study by the Town Administrator or designee. Upon approval of the reserve fund study, the developer and/or homeowners' association shall maintain the reserve fund in accordance with the reserve fund study. Annual reviews of the status of the reserve fund shall be performed by a certified public accountant firm to verify compliance with the approved reserve study. A copy of this review shall be submitted to the Town for review. If the private streets are ever converted to public streets, the reserve fund shall become the property of the Town.
  - c. Every owner of a lot within the gated community with private streets shall be a member of the homeowners' association.
  - d. The declaration of covenants, conditions and restrictions, or comparable homeowner association document(s) ("Declaration") shall provide, but shall not be limited to, the following:
    - i. The homeowners' association documents must indicate that the streets within the development are private, owned and maintained by the homeowners' association and that the Town has no obligation to maintain or reconstruct the private streets.
    - ii. The homeowners' association documents shall include a statement indicating that the Town may, but is not obligated to, inspect private streets and require repairs necessary to insure that the same are maintained to Town standards.
    - iii. The homeowners' association may not be dissolved without the prior written consent of the Town Council, which consent shall not be withheld by the Town if it determines that an adequate reserve fund exists.
    - iv. The Declaration shall provide that the Town shall have all lien, assessment and/or enforcement rights granted therein to the homeowners' association and that the Town shall have the ability to enforce the liens and assessments, and avail itself of any other enforcement actions available to the Town pursuant to State and/or Town law or regulations. The Declaration shall also provide that under no circumstances shall the Town be liable to the homeowners' association or any property owner or their respective heirs, executors, administrators, devisees, personal representatives, successors or

assigns for any maintenance, construction or acts, negligent or otherwise, relating in any manner to maintenance of the private streets or for failure to perform such maintenance, construction or act.

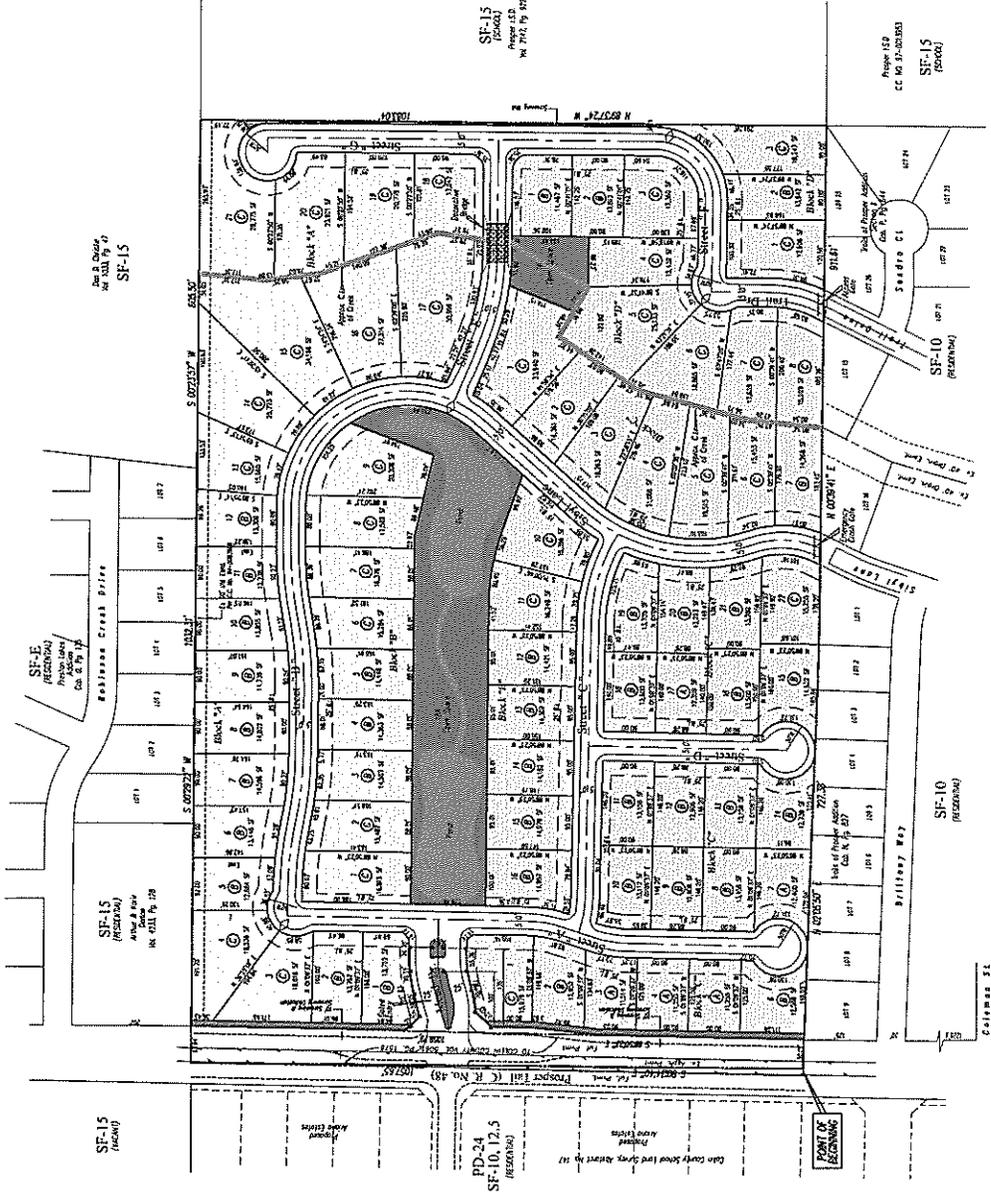
- v. No portion of the Declaration pertaining to the maintenance of the private streets or the reserve fund may be amended without the written consent of the Town.
- e. Should the homeowners' association fail to carry out its duties as specified in this Ordinance, the Town or its lawful agents shall have the right and ability, after due notice to the homeowners' association, to perform the duties required by this or any other Ordinance, regulation or agreement with the Town in order to bring the homeowners' association into compliance therewith. The Town or its lawful agents shall have the right and ability, after due notice to the homeowner's association to assess the homeowners' association for the full amount owed and/or assess the property owners on a pro rata basis for all costs incurred by the Town in performing said duties if the homeowners' association fails to do so, and said assessment shall constitute a lien, in favor of the Town, upon the property which the assessment is made. The Declaration shall specifically give the Town the authority to take the actions set forth in this paragraph.
- f. The homeowners' association documents shall note that certain Town services may not be provided in Private Street Developments. The services that may not be provided include, but are not limited to: police enforcement of traffic and parking ordinances and preparation of accident reports. Depending on the characteristics of the proposed development other services may not be provided.
- g. The homeowners' association documents shall contain a provision that requires the homeowners' association to provide unrestricted access to emergency vehicles, utility personnel, the U.S. Postal Service, and governmental employees, agents, or representatives in pursuit of their official duties. Gate access codes shall be provided to emergency personnel.
- h. The homeowners' association and its members shall be responsible for providing unrestricted access to emergency vehicles, utility personnel, the U.S. Postal Service and governmental employees, agents, or representatives in pursuit of their official duties at all times when the gates are closed and no on-site guard is available at the gates.
- i. The Town may, but is not obligated to, accept private streets for public access and maintenance. Requests to convert Private Street Developments to Public Streets shall be subject to the following provisions:
  - i. The homeowners' association must submit a petition signed by at least 51 percent of its members (or greater number of signatures if required by the HOA document).
  - ii. All of the infrastructure must be in a condition that is acceptable to the Director of Public Works.
  - iii. All security stations and other structures not consistent with a public street development must be removed by the homeowners' association, at its cost, prior to acceptance of the streets and appurtenances by the Town.
  - iv. All monies in the reserve fund for private street maintenance must be delivered to the Public Works Department. Money in the reserve fund in excess of what is needed to bring the streets and appurtenances up to Town standards will be refunded to the homeowners' association.
  - v. The homeowners' association shall prepare and submit a replat to the Planning Department for review. Upon approval, the homeowners' association shall file the replat to dedicate the streets and appurtenances to the Town.
  - vi. The homeowners' association shall modify and re-file, at its cost, the homeowners' association documents to remove requirements specific to gated communities with private streets. The Town shall review the modified homeowners' association documents prior to their filing.



**LEGAL DESCRIPTION**

BEING a tract of land located in the John B. Lower Survey, Abstract No. 315, Collin County, Texas, and also be all a 40.44 acre tract surveyed by Mahesh C. 02-010780 of Collin County, Texas, and being more particularly described as follows: A portion of the center of said 40.44 acre tract, said and being north 25 degrees 15' 00" east 100.00 feet to the center of the corner of Lot 2, Block 1, The Town of Prosper, as recorded in Exhibit A, Page 627, 2nd Record of Collin County, Texas, 89 surveys 34 measures 40 feet; East following County Road No. 48 a distance of 1027.65 feet; then S 89 degrees 00' 00" west 27 feet; then West a distance of 40.44 feet to a 1/2" iron rod found at the corner of the southeast corner of the tract of record in Exhibit A, Page 627, 2nd Record of Collin County, Texas, 89 surveys 34 measures 40 feet; East along the southeast corner of Lot 2 of said Block 1 a distance of 1027.71 feet to a 1/2" iron rod found at the corner of the southeast corner of Lot 2 of said Block 1 a distance of 40.44 feet to a 1/2" iron rod found at the corner of the southeast corner of the tract of record in Exhibit A, Page 627, 2nd Record of Collin County, Texas, 89 surveys 34 measures 40 feet; East along the southeast corner of Lot 2 of said Block 1 a distance of 1027.71 feet to a 1/2" iron rod found at the corner of the southeast corner of the tract of record in Exhibit A, Page 627, 2nd Record of Collin County, Texas, 89 surveys 34 measures 40 feet; East along the southeast corner of Lot 2 of said Block 1 a distance of 1027.71 feet to a 1/2" iron rod found at the corner of the southeast corner of the tract of record in Exhibit A, Page 627, 2nd Record of Collin County, Texas, 89 surveys 34 measures 40 feet.

- ① 1/4" x 1/4" = 10,000 SF = 5 Acres
- ② 1/4" x 3/8" = 12,000 SF = 5.7 Acres
- ③ 1/4" x 1/2" = 15,000 SF = 7.1 Acres



71 Lots  
Zoning Case No. 286-3  
Exhibit "D"

**Prosper Creek Estates**  
BEING A 40.44 ACRE TRACT IN THE JOHN B. LOWER SURVEY, ABSTRACT NO. 315, COLLIN COUNTY, TEXAS

Applicant: KPA CONSULTING, INC.  
Contractor: Prosper Park, LLC  
1801 Richardson, Texas 75060  
(972) 644-2600

Developer: Equator Surveying  
KPA ENGINEERING, LTD  
Contractor: Prosper Park, LLC  
1801 Richardson, Texas 75060  
(972) 644-2600

Owner: Michael E. LeAnn Perry  
Contractor: Prosper Park, LLC  
1801 Richardson, Texas 75060  
(972) 644-2600

Professional Engineer: C&P ENGINEERING, LTD  
Contractor: Prosper Park, LLC  
1801 Richardson, Texas 75060  
(972) 644-2600

Scale: 1"=100'  
Job No. 06007  
Sheet 1 of 1

GRAVE AREA = 40,443 AC.  
Net Acreage = 10,076 AC.  
Density = 1,900 U/L AC.  
Exclusion Zoning = SF-15  
Requested Zoning = PD, SF-12.5

Note: The boundary agreement shown in the field at the site is not to be relied upon as the boundary is not shown in this plan.

PROVIDE THE FOLLOWING INFORMATION TO THE CITY OF PROSPER:  
1. A COPY OF THE FINAL PLAT.  
2. A COPY OF THE FINAL PLAT WITH THE CITY'S COMMENTS.  
3. A COPY OF THE FINAL PLAT WITH THE CITY'S COMMENTS AND THE CITY'S SIGNATURE.



AFFIDAVIT OF PUBLICATION

STATE OF TEXAS

COUNTY OF DALLAS

Before me, a Notary Public in and for Dallas County, this day personally appeared Lynda Black, Legal Advertising Representative for the DALLAS MORNING NEWS being duly sworn by oath, states the attached advertisement of:

Town of Prosper

as published in The Dallas Morning News – Metro Collin County Edition on:

TOWN OF PROSPER, TEXAS  
ORDINANCE NO. 06-33  
AN ORDINANCE AMENDING PROSPER'S ZONING ORDINANCE NO. 05-20; REZONING A TRACT OF LAND CONSISTING OF 39.076 ACRES, MORE OR LESS, SITUATED IN THE JOHN R. TUNNEY SURVEY, ABSTRACT NO. 916, IN THE TOWN OF PROSPER, COLLIN COUNTY, TEXAS, HERETOFORE ZONED SINGLE FAMILY-15 (SF-15) IS HEREBY REZONED AND PLACED IN THE ZONING CLASSIFICATION OF PLANNED DEVELOPMENT-SINGLE FAMILY-12.5 (PD-SF-12.5); 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.

April 17, 2006  
April 18, 2006

*Lynda Black*  
(Lynda Black)

Sworn

before me this

April 18, 2006, A.D

*Lisa Battenfield*  
(Lisa Battenfield)

