

TOWN OF PROSPER, TEXAS

ORDINANCE NO. 11-55

AN ORDINANCE AMENDING PROSPER'S ZONING ORDINANCE NO. 05-20; REZONING A TRACT OF LAND CONSISTING OF 39.408 ACRES, MORE OR LESS, SITUATED IN THE J. MORTON SURVEY, ABSTRACT NO. 793, THE B.R. HODGES SURVEY, ABSTRACT 593, AND THE J. KENNEDY SURVEY, ABSTRACT NO. 1688, IN THE TOWN OF PROSPER, DENTON COUNTY, TEXAS, HERETOFORE ZONED PLANNED DEVELOPMENT-51-RETAIL (PD-51-R) AND AGRICULTURAL (A) IS HEREBY REZONED AND PLACED IN THE ZONING CLASSIFICATION OF PLANNED DEVELOPMENT-RETAIL (PD-R); 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 Blowfish Boogie, LTD. ("Applicant") to rezone 39.408 acres of land, more or less, situated in the J. Morton Survey, Abstract No. 793, the B.R. Hodges Survey, Abstract No. 593, and the J. Kennedy Survey, Abstract No. 1688 in the Town of Prosper, Denton 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 39.408 acres of land, more or less, situated in the J. Morton Survey, Abstract No. 793, the B.R. Hodges Survey, Abstract No. 593, and the J. Kennedy Survey, Abstract No. 1688, in the Town of Prosper, Denton County, Texas,

(the "Property") and all streets, roads and alleyways contiguous and/or adjacent thereto is hereby rezoned as Planned Development-Retail (PD-R). 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 concept plan, attached hereto as Exhibit "D"; 4) and 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 Official 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.

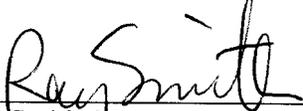
SECTION 6: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Prosper 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 9TH DAY OF AUGUST, 2011.

APPROVED AS TO FORM:



Ray Smith, Mayor

ATTESTED TO AND
CORRECTLY RECORDED BY:



Amy Piukana, Town Secretary

DATE OF PUBLICATION: August 17, 2011, Prosper Press

EXHIBIT "B"

WEST PROSPER VILLAGE PLANNED DEVELOPMENT DISTRICT

STATEMENT OF INTENT AND PURPOSE

The Planned Development District provides the ability to encourage and accommodate the development of Retail and Office uses within the Town of Prosper.

Retail District uses will generally provide opportunities for retail and office development, all in close association with intersections of future thoroughfares. Facilities will include uses that relate to the geographic location and transportation facilities that are proposed for this area.

The Town recently rezoned a portion of this property to PD 51. In the Statement of Purpose and Intent the previous owner stated site characteristics of the development, such as topography, thoroughfare locations, proposed uses and development opportunities will formulate a distinctive approach for the Town's future. Thoroughfare locations have already begun that formulation. When the property was purchased it was learned that North Texas Central Council of Governments, Texas Department of Transportation and the Town's Staff were desirous to link FM 1385 to FM 423. In so doing the resulting sweeping radius and revised connection to FM 1385 decreased the efficiency of the site design and significantly increased the right of way required. The contiguous area went from just under a rectangular shaped 23 acres to just over an irregular shaped 14 acres.

The proposed rezoning incorporates about 12 contiguous acres to the previous PD providing for a property that can more reasonably support retail and offices uses commensurate with the location and transportation facilities available.

The revised realignment of FM 1385 to connect to FM 423 will serve as a major access and circulation for areas to the north and along the growth corridor of FM 1385. The location of this retail will allow the Town to capture the sales tax dollars from a semi-regional circulation corridor.

EXHIBIT "C"

WEST PROSPER VILLAGE PLANNED DEVELOPMENT DISTRICT

PLANNED DEVELOPMENT STANDARDS

Conformance with the Town's Zoning Ordinance and Subdivision Ordinance: Except as otherwise set forth in these Development Standards, the regulations of the Town's Zoning Ordinance (Ordinance No. 05-20 as it currently exists or may be amended) and Subdivision Ordinance (Ordinance No. 03-05 as it exist or may be amended) shall apply to the property.

1. Retail District: Except as specified below, the property shall develop in accordance with the retail district regulations of the Zoning Ordinance as it exists or may be amended.
 - 1.1. General Description: The Retail District area is intended to provide development opportunities for uses similar to the Town of Prosper's Retail District. This area will also include uses that relate to the site location and transportation modes that exist within this area. Retail District uses shall be permitted throughout the property as set forth herein.
 - 1.2. Permitted Uses: Land uses allowed within the Retail District are as follows: Uses followed by an S are permitted by Specific Use Permit. Uses followed by a C are permitted subject to conditional development standards. Conditional development standards are set forth in Chapter 3, Section 1 of the Town's Zoning Ordinance.
 - Accessory Building
 - Administrative, Medical, or Professional Office
 - Antenna and/or Antenna Support Structure, Commercial C
 - Antenna and/or Antenna Support Structure, Non-Commercial C
 - Antique Shop and Used Furniture
 - Artisan's Workshop
 - Assisted Care or Living Facility S
 - Auto Parts Sales, Inside
 - Automobile Parking Lot/Garage —Three (3) Story Max. — 36 Feet (36')
 - Automobile Repair, Minor
 - Bank, Savings and Loan, or Credit Union
 - Beauty Salon/Barber Shop.

- Beer & Wine Package Sales C
- Business Service
- Car Wash - Full Service only
- Caretaker's/Guard's Residence
- Commercial Amusement, Indoor
- Community Center
- Convenience Store with Gas Pumps C
- Convenience Store without Gas Pumps
- Day Care Center, Child S
- Dry Cleaning, Minor
- Farm, Ranch, Stable, Garden, or Orchard
- Furniture, Home Furn. & Appliance Store - Max. 32,000 SF (32,000 SF)
- Gas Pumps C
- Golf Course, Driving Range and/or Country Club S
- Governmental Office
- Gunsmith/Gun Store
- Gymnastics/Dance Studio
- Health/Fitness Center
- Hospital/Emergency Clinic
- Hotel/Interior Corridor S
- Household Appliance Service and Repair
- House of Worship
- Insurance Office
- Massage Therapy, Licensed
- Mortuary/Funeral Parlor S
- Motorcycle Sales/Service Indoor S
- Municipal Uses Operated by the Town of Prosper
- Museum/Art Gallery
- Nursery, Minor (Indoor)
- Office/Showroom
- Park or Playground
- Pet Day Care (No outdoor Pens)
- Print Shop, Minor
- Private Club S
- Private Recreation Center
- Private Utility, Other Than Listed
- Rehabilitation Care Institution S
- Residence Hotels S
- Restaurant or Cafeteria
- Restaurant, Drive In
- Restaurant, Drive Through
- Retail
- Stores and Shops

- Retail/Service Incidental Use
- School, Private or Parochial
- School, Public
- Small Engine Repair Shop (Indoor)
- Stealth Antenna, Commercial C
- Taxidermist (Indoor)
- Temporary Building C
- Theater, Neighborhood
- Veterinarian Clinic and/or Kennel, Indoor
- Winery S

1.3. Size of Yards:

1.3.1. Minimum Front Yard: Thirty (30) feet for one (1) or two (2) story buildings, fifty (50) feet for buildings taller than two (2) stories. Twenty five (25) feet where no parking is located between a building and R.O.W.

1.3.2. Minimum Side Yard:

1.3.2.1. Twenty (20) feet adjacent to a nonresidential district. The minimum side yard setback may be eliminated for attached buildings on separate lots as shown on an approved site plan.

1.3.2.2. Forty (40) feet for a one (1) story building adjacent to a residential district and sixty (60) feet for a two (2) story building adjacent to a residential district.

1.3.2.3. Thirty (30) feet adjacent to a street.

1.3.3. Minimum Rear Yard:

1.3.3.1. Fifteen (15) feet adjacent to a nonresidential district. The minimum rear yard setback may be eliminated for attached buildings on separate lots as shown on an approved site plan.

1.3.3.2. Thirty (30) feet for one (1) story building adjacent to a residential district and sixty (60) feet for a two (2) story building or higher adjacent to a residential district.

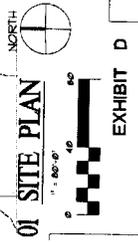
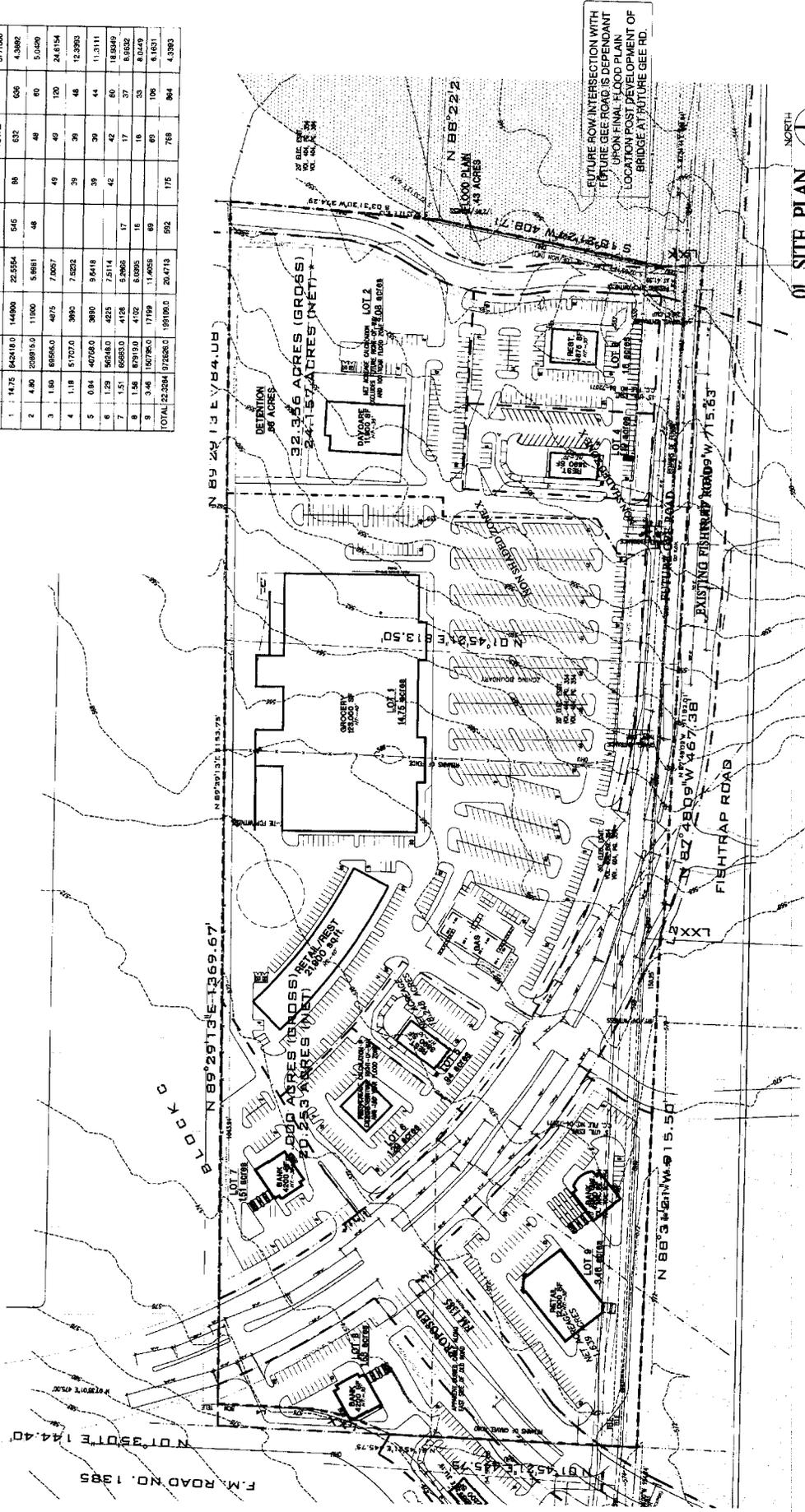
1.3.3.3. Automotive uses shall have a two hundred (200) foot building set back from any residential zoning district.

- 1.4. Size of Lots:
- 1.4.1. Minimum Size of Lot Area: Twenty thousand (20,000) square feet.
- 1.4.2. Minimum Lot Width: One hundred (100) feet at Building Line
- 1.4.3. Minimum Lot Depth: One Hundred (100) feet.
- 1.5. Maximum Height: Two (2) stories, no greater than forty (40) feet, except for hotel and office buildings, which shall have maximum building height of four (4) stories, no greater sixty (60) feet. Where buildings or structures exceed forty (40) feet in height, such buildings or structures shall not be located closer than two hundred (200) feet to any single family residential district unless separated by a thoroughfare.
- 1.6. Maximum Lot Coverage: Fifty (50) percent.
- 1.7. Maximum Floor Area Ratio: 1.00:1.
- 1.8. Screening: A solid living screen along the northern and eastern boundary where adjacent to residential uses or zoning districts can be utilized in lieu of a six-foot (6') masonry wall. This solid living screen shall consist of evergreen trees, a minimum of six feet (6') in height at time of planting, on eight-foot (8') centers along the property line and include a wrought iron fence for the full length of the Single Family adjacency. The landscape buffer shall be increased to 20 feet where living screen is used. The northern or eastern boundary can be different screening materials but must be consistent for the full length of each boundary. For Example: The northern boundary can be six-foot (6') masonry wall, while the eastern boundary can utilize living screen. A mixture of wall and solid living screen on a single boundary is prohibited without specific approval by the Planning and Zoning Commission.

General

- Traffic Impact Analysis will be submitted and approved prior to Preliminary Site Plan submission.

LOT	AREA ACRES	BUDO AREA COVERAGE SF	PARKING REQUIRED			TOTAL	PARKING PROVIDED	PARKING DEFICIT/SURPLUS
			F.A.R.	RETAIL	REST.			
1	14.75	642418.0	14800	22,556	56	632	636	4,3862
2	4.80	203815.0	11900	5,981	48	60	60	0,0409
3	1.80	89586.0	4675	7,867	49	49	130	24,8154
4	1.18	51707.0	3680	7,522	39	39	48	12,3993
5	0.84	40158.0	3680	5,918	39	39	44	11,3111
6	1.29	56248.0	4225	7,514	42	42	60	18,8349
7	1.51	66663.0	4128	5,266	17	17	37	8,6532
8	1.56	87919.0	4128	8,095	16	16	33	8,0449
9	3.46	150786.0	17189	11,405	89	89	106	6,1631
TOTAL	22.824	972826.0	19008.0	20,471	592	175	768	4,3383



01 SITE PLAN EXHIBIT D

THE THOROUGHFARE ALIGNMENT SHOWN ON THE EXHIBIT ARE FOR ILLUSTRATION PURPOSES AND DO NOT SET THE FINAL ALIGNMENT. TOWN STAFF WILL WORK WITH TxDOT TO CONSIDER A RADIUS OF 650' THAT MEETS TxDOT'S DESIGN CRITERIA TO REDUCE THE IMPACT ON SURROUNDING PROPERTIES WHILE DESIGNING THE ALIGNMENT IN A SAFE MANNER. THE ALIGNMENT IS DETERMINED AT TIME OF FINAL PLAN.

APPLICANT'S REPRESENTATIVE
 JOHN ROSE, PE
 DCMS, INC.
 4215 WALNUT HILL LANE
 DALLAS, TX 75229

SURVEYOR
 JOHN E. THOMPSON, II
 ALL AMERICAN SURVEYING
 114-B W. MAIN ST.
 GAINESVILLE, TX 78640
 (940) 665-9105

OWNER - TRACT A / APPLICANT
 WEST PROSPER VILLAGE
 PARKERS BLDG
 BUY BLOWFISH LTD
 3906 LEMMON AVE., STE. 100
 DALLAS, TX 75218-2760

3310 Harvest Hill Rd, Suite 146
 Dallas, Texas 75230
 972-385-9451
 fax 972-385-3462



West Prosper Village
 PROSPER, TEXAS
Berlin Interests

Z11-0007
 JOB # 11-08
 ISSUE DATE 08-28-11
 APPROVED BY:
 DATE:

EXHIBIT "E"

WEST PROSPER VILLAGE
PLANNED DEVELOPMENT DISTRICT

DEVELOPMENT SCHEDULE

It is anticipated that the development of WEST PROSPER VILLAGE will begin within two (2) to ten (10) years after approval and signing of the zoning ordinance. During this time period, prior to the initial stages of development, it is foreseen that plans and studies will be prepared for development and marketing of the property.

Progress of development improvements will primarily depend on time frames established for construction of thoroughfares, utilities, and market trends/demands for the area.

It is anticipated that the development of WEST PROSPER VILLAGE, excluding total construction of all structures, will be completed within twenty-five (25) years of zoning approval.