

## TOWN OF PROSPER, TEXAS

## ORDINANCE NO. 14-09

AN ORDINANCE AMENDING PROSPER'S ZONING ORDINANCE NO. 05-20; REZONING A TRACT OF LAND CONSISTING OF 6.48 ACRES, MORE OR LESS, SITUATED IN THE GEORGE HORN SURVEY, ABSTRACT NO. 412, IN THE TOWN OF PROSPER, COLLIN COUNTY, TEXAS, HERETOFORE ZONED AGRICULTURAL (A) IS HEREBY AMENDED AND PLACED IN THE ZONING CLASSIFICATION OF PLANNED DEVELOPMENT-OFFICE (PD-O); 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 James M. Zoller and Gail Lebovic ("Applicant") to rezone 6.48 acres of land, more or less, situated in the George Horn Survey, Abstract No. 412, 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 property containing 6.48 acres of land, more or less, situated in the George Horn Survey, Abstract No. 412, 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-Office (PD-O). The Property as a whole and for this zoning classification is 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 District shall be sent to all owners of properties within the District as well as all properties within two hundred feet (200') of the District 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.

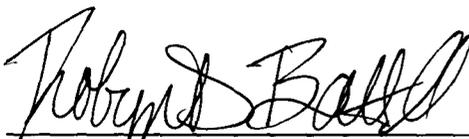
**SECTION 8**

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

**DULY PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 25<sup>TH</sup> DAY OF FEBRUARY, 2014.**

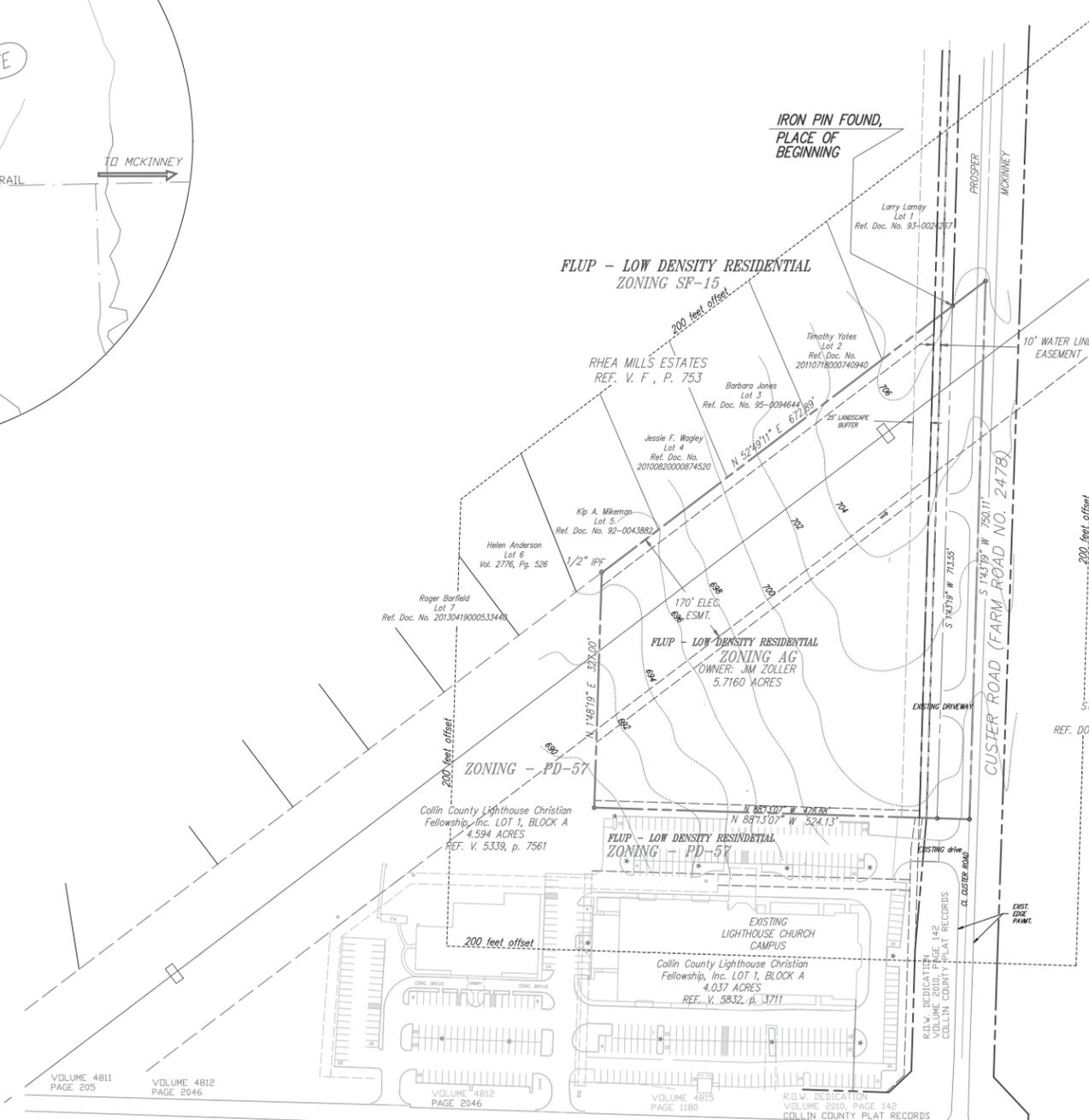
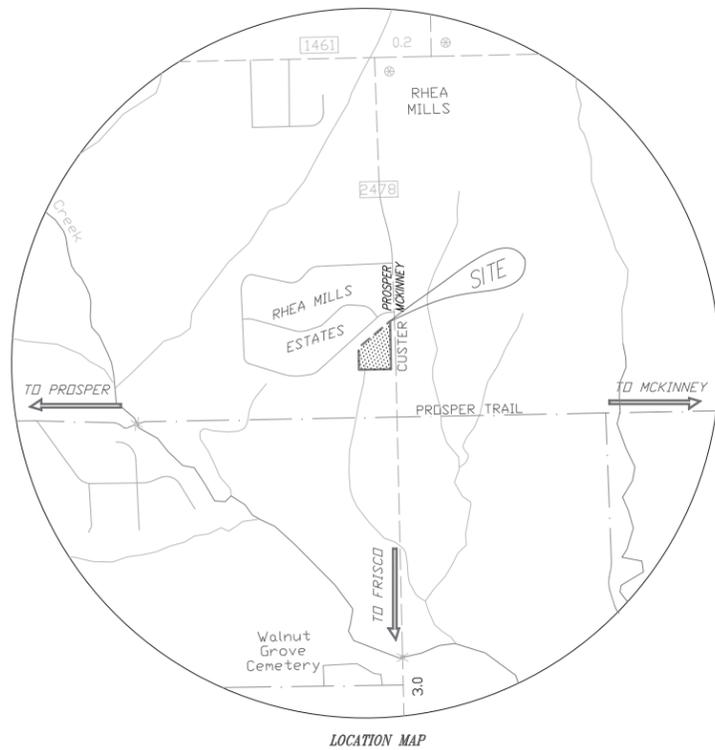
  
\_\_\_\_\_  
Ray Smith, Mayor

ATTEST:

  
\_\_\_\_\_  
Robyn Battle, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_  
Terrence S. Welch, Town Attorney



ZONING TRACT  
EXHIBIT A  
DESCRIPTION 6.476 ACRES

Situated in the George Horn Survey, Abstract No. 412 in Collin County, Texas and being part of a 10.463 Acre tract of land that was conveyed to Alex M. Orr Jr. et ux in Deed recorded in Volume 1918, Page 319 of the Land Records of Collin County, Texas, being more particularly described by metes and bounds to-wit:

BEGINNING at an Iron Pin being the Southeast corner of the Rhea Mills Estates same being in the West right of way line of FM Hwy. No. 2478;  
THENCE North 52 deg. 49 min. 11 sec. East, 58.15 feet to a point in the center of said FM Hwy. No. 2478 for a corner;  
THENCE South 1 deg. 43 min. 19 sec. West with the center of said farm road 750.11 feet to a point in the center of said farm road for a corner;  
THENCE South 88 deg. 13 min. 07 sec. West, 524.13 feet to an Iron Pin Found.  
THENCE North 1 deg. 48 min. 19 sec. East with the West line of said tract 327 feet to an Iron Pin Found in the south line of said Rhea Mills Estates;  
THENCE North 52 deg. 49 min. 11 sec. East with the South line of the Rhea Mills Estates, 614.3 feet to the place of beginning, containing 6.476 Acres of Land.

I, Billy M. Lair, Registered Public Surveyor, do hereby certify that the plat shown herein accurately represents the property as determined by on the ground survey made under my direction and supervision and that all corners are as shown.  
November 17, 1987  
Billy M. Lair R.P.S. No. 1685

NOTE: DESCRIPTION OF 5.716 ACRES ON 11-17-1987 BY BILLY M. LAIR, RPLS 1685-UPDATED TO REFLECT INCLUSION TO CENTER OF N. CUSTER ROAD FOR ZONING PURPOSES

ST. ANDREWS INTEREST  
27.752 ACRES  
REF. DOC. NO. 20070907001252710

FLUP - McKinney - office use  
ZONING - PD 06-06-073  
PLANNED CENTER - MCKINNEY, TX.

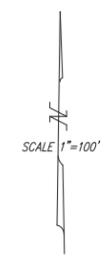
4855 N. CUSTER, MCKINNEY, TEXAS 75071	
CURRENT ZONING:	AGRICULTURAL
REQUESTED ZONING:	PD - OFFICE
CURRENT LAND USE:	Landscaping Business
FLUP:	Low Density Residential

THOROUGHFARE PLAN SHOWS CUSTER TO BE SIX LANE DIVIDED.

GROSS 6.4760 ACRES  
NET 5.7160 ACRES  
ONE TRACT  
4855 N. CUSTER ROAD, MCKINNEY, TEXAS 75071

The thoroughfare alignment shown on this exhibit are for illustration purposes and does not set the alignment. The alignment is determined at time of final plat.

- LEGEND**
- IPS 1/2" IRON PIN SET
  - IPF IRON PIN FOUND
  - FLUP - LOW DENSITY RESIDENTIAL ZONING SF-15 Future Land Use Plan
  - Existing Zoning
  - EASEMENT
  - 200 feet offset line
  - BOUNDARY LINE
  - RIGHT OF WAY LINE
  - FIRE LANE EASEMENT
  - CANOPY TREE
  - EXISTING CONTOURS
  - CANOPY TREE RESIDENTIAL SCREENING
  - ELEC. PWR. LINE TWR.



**Case # Z13-0009 ZONING EXHIBIT A**  
**4855 N. CUSTER ROAD,**  
**MCKINNEY, TEXAS 75071**  
 6.4760 (5.7160) Acres in the George Horn Survey, Abstract No. 412, City of McKinney, Collin County, Texas

**SURVEYOR**  
 G. M. GEEP

**OWNER**  
 JAMES ZOLLER AND GAIL LEROVIC  
 4855 N. Custer Road  
 McKinney, Texas 75071  
 Phone: 214-544-8801

1514 North McDonald Street  
 MCKINNEY, TEXAS 75071  
 872-562-3958  
 www.geep.surveyingandengineering.com

**EXHIBIT "B"**  
**Statement of Intent & Purpose**

**4855 North Custer Road  
James Zoller and Gail Lebovic  
4-8-2013  
Prosper, Texas**

The tract shall develop and operate under the regulations of the Office (O) District as outlined in the Town's Zoning Ordinance No. 05-20, as it exists or may be amended, with the following conditions listed in Exhibit "C".

We propose to change the Zoning from Agriculture to PD – O to make our property more useable and sellable.

Sincerely,

James Zoller and Gail Lebovic

**EXHIBIT "C"**  
**PLANNED DEVELOPMENT STANDARD**

**4855 North Custer Road**  
**James Zoller and Gail Lebovic**  
**4-8-2013**  
**Prosper, Texas**

The tract shall develop and operate under the regulations of the Office (O) District as outlined in the Town's Zoning Ordinance No. 05-20, as it exists or may amended, with the following conditions:

**1.0 Permitted Uses**

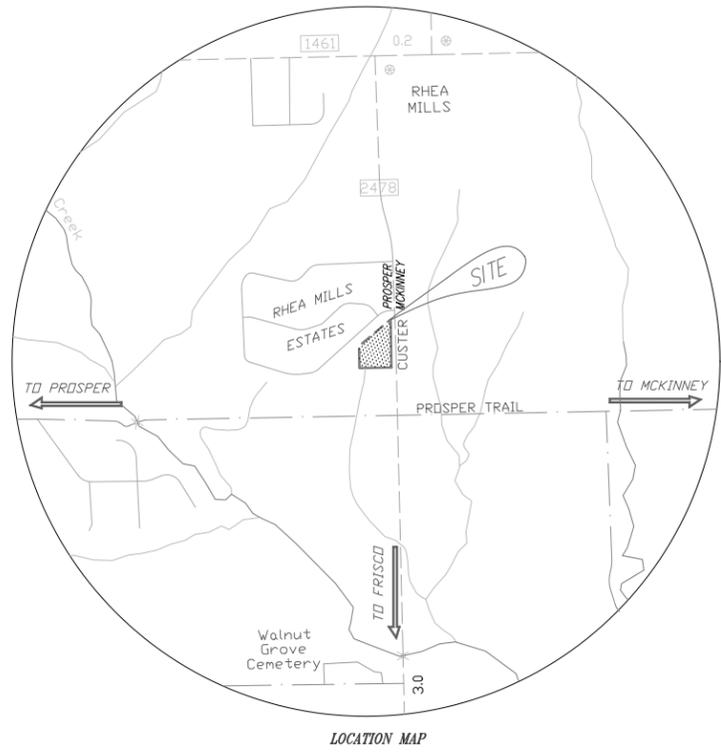
The land uses following with an "S" are only permitted with a Specific Use Permit and uses followed by a "C" are only permitted subject to the conditional development standards set forth in the Town's Zoning Ordinance. The permitted land uses within this Planned Development-Office District are:

- Accessory Building
- Administrative, Medical, or Professional Office
- Assisted care or Living Facility **S**
- Bank, Savings and Loan, or Credit Union
- Bed and Breakfast Inn **S**
- Business Service
- Caretaker's/Guard's Residence
- Civic/Convention Center
- College, University, trade, or Private Boarding School **S**
- Community Center
- Day Care Center, Adult **S**
- Day Care Center, Child **C**
- Day Care Center, Incidental **S**
- Dry Cleaning, Minor
- Farm, Ranch, Stable, Garden, or Orchard
- Fraternal Organization, Lodge, Civic Club, Fraternity, or Sorority
- Governmental Office
- Health/Fitness Center
- Homebuilder Marketing Center
- House of Worship
- Insurance Office
- Municipal Uses Operated by the Town of Prosper
- Museum/Art Gallery
- Park or Playground
- Print Shop, Minor
- Private Recreation Center
- Private Utility, Other Than Listed
- Rehabilitation Center Institution **S**
- Restaurant or Cafeteria **C**

- Retail/Service Incidental Use
- School, Private or Parochial
- School, Public
- Stealth Antenna, Commercial **C**
- Telephone Exchange

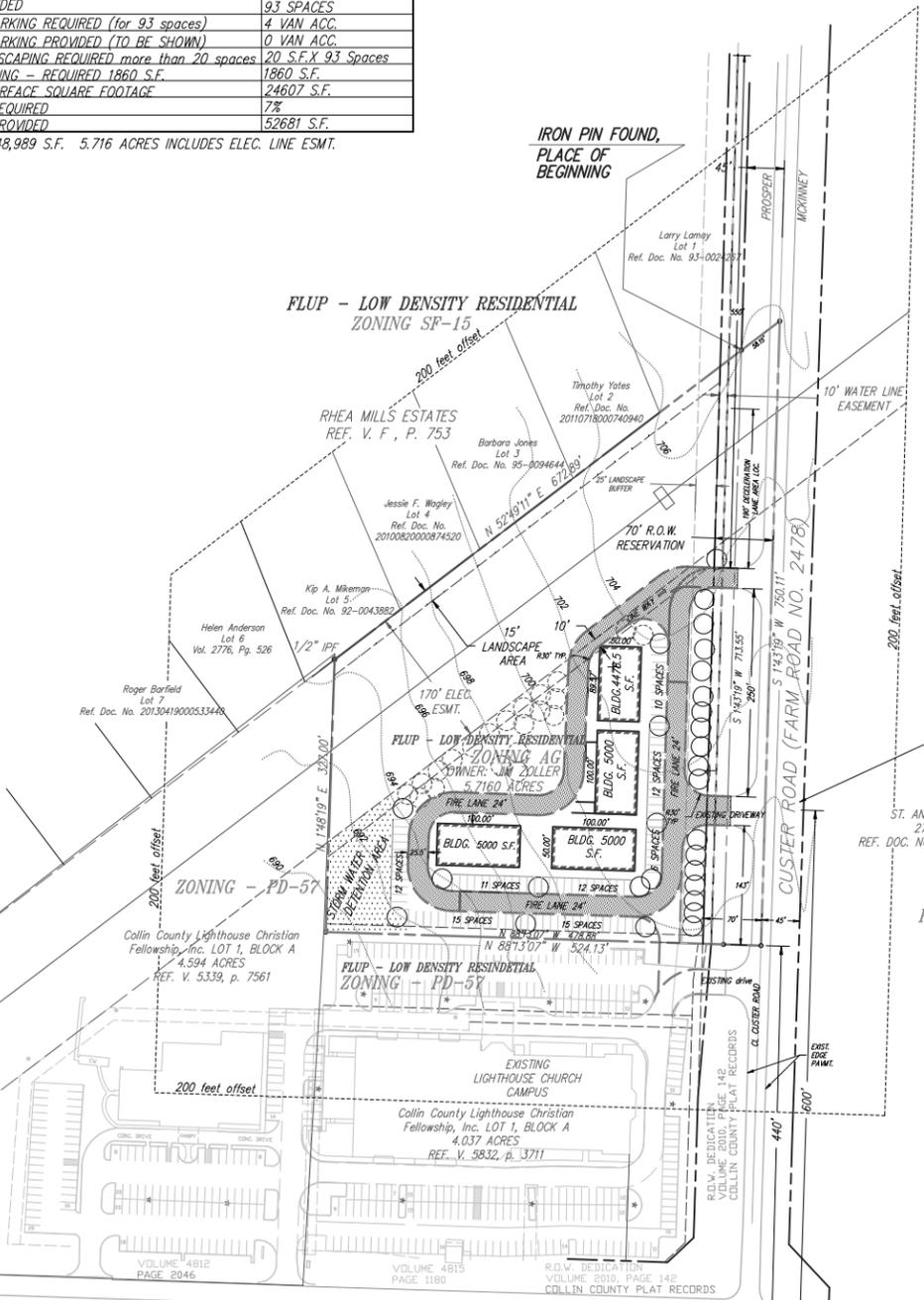
## **2.0 Perimeter Landscaping**

**2.01** Due to the 170' wide overhead electric transmission line easement, the required perimeter plantings shall be permitted to be located interior to the property, generally located between Rhea Mills Estates and any new development.



SITE DATA SUMMARY TABLE	
ZONING	PD-OFFICE (PD-0)
PROPOSED USE	ALLOWED PER PD
LOT AREA GROSS	5.71601 ACRES
LOT AREA NET OF ELEC. ESMT.	3.8533 ACRES
ZONING AREA GROSS	6.7160 ACRES
INTERIOR BUILDING AREA (4 BLDG.'S)	19,478 S.F. TOTAL
BUILDING HEIGHT	19' ONE STORY
LOT COVERAGE	0.0782
FLOOR AREA RATIO	0.0206
PARKING REQUIRED 1-250 HEALTH	78 SPACES
PARKING REQUIRED 1-350 OFFICE	56 SPACES
PARKING PROVIDED	93 SPACES
ACCESSIBLE PARKING REQUIRED (for 93 spaces)	4 VAN ACC.
ACCESSIBLE PARKING PROVIDED (TO BE SHOWN)	0 VAN ACC.
INTERIOR LANDSCAPING REQUIRED more than 20 spaces	20 S.F.X 93 Spaces
INT. LANDSCAPING - REQUIRED 1860 S.F.	1860 S.F.
IMPERVIOUS SURFACE SQUARE FOOTAGE	24607 S.F.
OPEN SPACE REQUIRED	7%
OPEN SPACE PROVIDED	52681 S.F.
SITE AREA: 248,989 S.F. 5.716 ACRES INCLUDES ELEC. LINE ESMT.	

\*PARKING SPACES MEDICAL OFFICE 1/250 S.F.=78 SPACES, OFFICE 1/350 S.F. TOTAL S.F. 19,479 FOR FOUR BUILDINGS = 56 SPACES REQ'D.  
 \*FIRE LANE EASEMENT 24' WITH 30' TURNING RADII.  
 \*8' BOARD ON BOARD FENCING ALONG RESIDENTIAL PROPERTY LINE AS APPROVED BY RESIDENTS OR 6' HIGH MASONRY WALL.  
 \*NOT TO BE USED FOR CONSTRUCTION-NOT APPROVED FOR CONSTRUCTION.  
 \*NOTES:  
 1. PARKING SPACES (93-9x20') ARE TO SHOW THAT THERE IS ENOUGH PARKING FOR THE BUILDINGS SHOWN.  
 2. NO ACCESSIBLE SPACES ARE SHOWN BUT WILL BE PROVIDED AS REQUIRED.  
 3. DETENTION POND NOT CALCULATED BUT WILL BE REQUIRED.  
 4. CROSS ACCESS TO SOUTH PROPERTY NOT APPROVED BY THE LIGHTHOUSE ENTITY YET.  
 5. RESIDENTIAL SCREENING TREES ARE TO BE LOCATED ON THE SOUTH SIDE OF THE ELECTRICAL LINE EASEMENT.  
 6. TxDOT DRIVEWAY RESEARCH: AFTER MEETING WITH TxDOT IN THE MCKINNEY OFFICE, AND RESEARCHING THE UNFUNDED, PRELIMINARY PLANS FOR CUSTER ROAD FOR AT LEAST 10 OR MORE YEARS IN THE FUTURE AT THIS LOCATION, THE EXISTING DRIVE IS THE ONLY ONE THAT IS ALLOWED TO HAVE A MEDIAN OPENING. THE NORTH DRIVE MAY HAVE TO MOVE NORTH SOME. THE DECEL LANE WILL BE WITHIN THE RIGHT-OF-WAY ON BOTH DRIVES.



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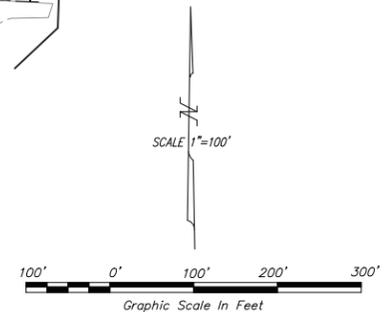
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**Case # Z13-0009 ZONING EXHIBIT D**  
**4855 N. CUSTER ROAD, MCKINNEY, TEXAS 75071**  
 6.4760 (5.7160) Acres in the George Horn Survey, Abstract No. 412, City of McKinney, Collin County, Texas  
 SURVEYOR: G. M. GEEB  
 OWNER: JAMES ZOLLER AND DAIL LEBOWIC  
 4855 N. Custer Road, McKinney, Texas 75071  
 Phone: 214-548-8801  
 1101 West University Drive, McKinney, Texas 75069  
 972-562-3959  
 www.geeb-surveyingandengineering.com

**EXHIBIT E**

There is no construction schedule at this time for this proposed Concept Plan. No construction is planned or may ever be planned.

Jim Zoller