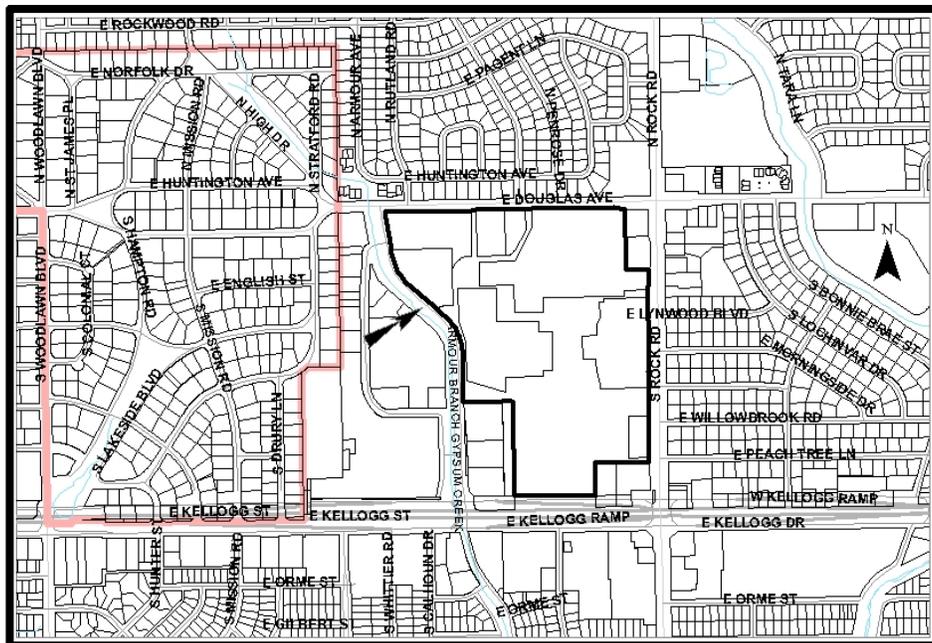




STAFF REPORT
DAB IV July 1, 2013
MAPC July 11, 2013

- CASE NUMBER:** CUP2013-00018
- OWNER/APPLICANT:** Simon Property Group, LP, c/o Michael Payton (owner/applicant)
- REQUEST:** Amendment to that portion of Parcels 1, 1a, 2 and 5a, located in Lot 1, Kellogg Mall Addition, DP-12, the Kellogg Mall Community Unit Plan
- CURRENT ZONING:** LC General Commercial (LC)
- SITE SIZE:** Approximately 78-acres
- LOCATION:** Generally located on the west side of Rock Road, between Kellogg Street/US 54 Highway and Douglas Avenue, on the east side of Towne East Mall Drive
- PROPOSED USE:** To allow short term outdoor retail sales, nurseries, farmers Markets, display of vehicles, outdoor recreation and entertainment, and food and beverage sales



BACKGROUND: The applicant is request an amendment to Parcels 1, 1a, 2 and 5a, located in Lot, 1, Kellogg Mall Addition, all in the LC Limited Commercial zoned DP-12, the Kellogg Mall Community Unit (CUP). The DP-12 is located on the west side of Rock Road, between Kellogg Street/US 54 (south side), Douglas Avenue (north side), and on the east side of Town East Mall Drive (west side).

Per the Unified Zoning Code (UZC), outdoor business promotions are allowed in the LC district for up to 48 hours per month provided a license is obtained as required by City Code Section 3.04.010, an subject to five other conditions dealing with food handling licensing, no admission fee is to be charged, circuses and carnivals require specific licenses; the outdoor promotion or sales activity may not occupy any part of the required off-street parking for the principal use and all electrical connections, temporary structures, etc., shall be in compliance with City Code. The applicant is requesting approval to conduct temporary outdoor retail sales that are in “good taste and consistent with the neighborhood and the property...” for a total of 60 days per year. The proposed activities include: art and craft shows, lawn and garden and landscape exhibits and retail sales, farmers markets, the display of motorized vehicle vehicles, including boats, RV’s, automobiles, farm equipment and motorcycles, carnivals or circuses limited to 10 days and the sale of food and beverages.

The subject site occupies most of the LC zoned Towne East Mall development. Development in the regional drawing Mall includes, but is not limited to, Dillard’s, JC Pennys, Sears, fast food restaurants, full service restaurants, a bank a standalone tire store and other retail businesses. There are no outdoor sales or displays on the Mall site. A SF-5 Single-Family Residential (SF-5) zoned single-family residential development is located north of the site, across Douglas Avenue, as well as some B Multi-Family Residential (B) apartments and MF-29 Multi-Family Residential zoned townhomes. East of the site, across Rock Road, there is an SF-5 zoned single-family residential development and some LC zoned apartments, fast food restaurants, small retail and office strips. West of the site, across Town East Mall Drive is the PUD Planned Unit Development (PUD) zoned Ford dealership and LC zoned offices, a Target retail store, full service restaurant, and a bank. South of the site is Kellogg Street/US 54 Highway.

The parking for Towne East that is located in its south and west areas are located the furthest from residential development. These areas present possible sites for the proposed temporary outdoor uses. Proximity to SF-5 zoned developments makes the other parking areas less probable sites.

CASE HISTORY: Town East was established in the 1970s.

ADJACENT ZONING AND LAND USE:

NORTH: SF-5, B, MF-29	Single-family residential, apartment, townhouses
SOUTH: Unzoned	Kellogg Street/US 54 Highway
EAST: SF-5, LC	Single-family residential, apartment, retail, fast food restaurant,
WEST: PUD, LC	Outdoor vehicle sales, big box retail, bank, offices, full service restaurant

PUBLIC SERVICES: All municipal services are available.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for “Regional Commercial” development. The Commercial Location Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Comprehensive Plan Objective II.B is to “Minimize the detrimental impacts of higher intensity land uses and transportation facilities located near residential living environments.” The applicant has proposed multiple temporary activities/uses that can be considered in the LC zoning district, but are not permitted by right or/and are not permitted in the CUP overlay DP-12.

The UZC requires multiple Conditional Uses for the proposed temporary outdoor uses in the LC zoned site. The CUP does not permit the proposed temporary outdoor uses. An amendment to the CUP substitutes for the required Conditional Use. Approval will introduce new uses to the area.

The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. Locating the proposed temporary outdoor uses in the south and southeast portion of the site would appear to not adversely impact the Mall’s required/principle parking areas and have the least amount of negative impact to the neighborhood.

RECOMMENDATION: Based upon the information available prior to the public hearings, planning staff recommends that the request for an amendment to DP-12 be **APPROVED**, with the following conditions:

- (1) All temporary outdoor business promotions and/or sales that include associated carnivals, circuses, rides, outdoor entertainment and recreation and food and beverage sales shall be allowed per the UZC Sec.III-B.14.1., except all total outdoor business promotions and/or sales that include associated carnivals, circuses, rides, outdoor entertainment and recreation and food and beverage sales shall be allowed for a total of 60 calendar days unless otherwise noted, and shall be located in the south, southwest, and west portions along Kellogg Street/US 54 and Town East Mall Drive, of Parcel 1, 2 (Sears Parcel 2) and 5a as shown on an approved site plan.
- (2) Temporary outdoor business promotions and/or sales that include associated food and beverage sales but not carnivals, circuses, rides and outdoor entertainment and recreation may be located in the portion of Parcel 1, 2 and 5a, located along Kellogg Street/US 54, Town East Mall Drive and Douglas Avenue as shown on an approved site plan.
- (3) The temporary outdoor display, but not sales, of motorized vehicles, including boats, RVs, automobiles, farm equipment and motorcycles, including car shows and the associated sale of food and beverages, shall be permitted as shown on an approved site plan in the portion of Parcel 1, 2 and 5a, located along Kellogg Street/US 54, Town East Mall Drive and Douglas Avenue as shown on an approved site plan.
- (4) Temporary carnivals, circuses, rides, outdoor entertainment and recreation not associated with temporary outdoor business promotions shall be allowed 10 days calendar year and be located shall be located in the south, southwest, and west portions along Kellogg

Street/US 54 and Town East Mall Drive, of Parcel 1, 2 (Sears Parcel 2) and 5a as shown on an approved site plan.

- (5) A seasonal nursery shall be allowed per the UZC Sec.III-D.6.z., as shown on an approved site plan, shall be located in the south, southwest, and west portions along Kellogg Street/US 54 and Town East Mall Drive, of Parcel 1, 2 (Sears Parcel 2) and 5a. The seasonal nursery would operate from April through June, seven days a week, 8AM – 7PM/dusk, Monday – Saturday, and 9AM – 7PM/dusk, Sunday.
- (6) No temporary equipment or buildings shall be located within any setbacks or easements.
- (7) No outdoor lighting shall be added.
- (8) A Farmer’s Market shall be allowed per the UZC Sec.III-D.6jj., and located in the portion of Parcel 1, 2 and 5a, located along Kellogg Street/US 54, Town East Mall Drive and Douglas Avenue as shown on an approved site plan.
- (9) Restroom facilities for employees must be provided and may be provided by agreement with a permanent use in the center upon approval of the Superintendent of Central Inspection. No portable bathroom facilities are allowed.
- (10) All approved temporary outdoor business promotions and/or sales shall be on paved surfaces.
- (11) No outdoor speakers or amplifiers shall be allowed.
- (12) Signage shall be per DP-12.
- (13) Provide a parking analysis to ensure parking remains in compliance with the parking standards of the UZC.
- (14) Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
- (15) The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
- (16) The applicant shall secure all required permits and inspections, including, but not limited to, a Community Event Permit and temporary building permits from MABCD for each of the approved temporary outdoor business promotions and/or sales.
- (17) The applicant shall submit four revised copies of the CUP to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.
- (18) If the Zoning Administrator finds that there is a violation of any of the conditions of the amendment to the CUP, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the amendment to the CUP is null and void.

This recommendation is based on the following findings:

- (1) **The zoning, uses and character of the neighborhood:** The The subject site occupies most of the LC zoned Towne East Mall development. Development in the regional drawing Mall includes, but is not limited to, Dillard’s, JC Pennys, Sears, fast food restaurants, full service restaurants, a bank a standalone tire store and other retail

businesses. There are no outdoor sales or displays on the Mall site. A SF-5 Single-Family Residential (SF-5) zoned single-family residential development is located north of the site, across Douglas Avenue, as well as some B Multi-Family Residential (B) apartments and MF-29 Multi-Family Residential zoned townhomes. East of the site, across Rock Road, there is an SF-5 zoned single-family residential development and some LC zoned apartments, fast food restaurants, small retail and office strips. West of the site, across Town East Mall Drive is the PUD Planned Unit Development (PUD) zoned Ford dealership and LC zoned offices, a Target retail store, full service restaurant, and a bank. South of the site is Kellogg Street/US 54 Highway.

(2) **The suitability of the subject property for the uses to which it has been restricted:**

The site is zoned LC, with a CUP over lay, DP-12 which permits: a regional shopping center, restaurants, theaters, automobile service and parts sales, including tire and battery sales (not including new or used car sale or body and fender shops), drive in banks, offices, service stations, motel, private clubs, medical clinics, laboratories and parking. The regional shopping center, Towne East Mall, is the anchor of all the permitted uses.

(3) **Extent to which removal of the restrictions will detrimentally affect nearby**

property: The proposed listed outdoor retail sales and uses are temporary or seasonal in their duration. The proposed listed outdoor retail sales and uses are intended to draw more traffic to the mall. The conditions of the amendment to the CUP are intended to minimize the negative impact on surrounding businesses, which may benefit from the additional vehicular traffic.

(4) **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:**

The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for “Regional Commercial” development. The Commercial Location Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Comprehensive Plan Objective II.B is to “Minimize the detrimental impacts of higher intensity land uses and transportation facilities located near residential living environments.” The applicant has proposed multiple temporary activities/uses that can be considered in the LC zoning district, but are not permitted by right or/and are not permitted in the CUP overlay DP-71.

The UZC requires multiple Conditional Uses for the proposed temporary outdoor uses in the LC zoned site. The CUP does not permit the proposed temporary outdoor uses. An amendment to the CUP substitutes for the required Conditional Use. Approval will introduce new uses to the area, although a south portion of the site appears to have had small temporary carnivals or circuses operating on for the last couple of years.

The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. Locating the temporary carnivals, circuses, rides, outdoor

entertainment and recreation in the south and southeast portion of the site would appear to not adversely impact the Mall's required/principle parking areas and have the least amount of negative impact to the neighborhood.

- (5) **Impact of the proposed development on community facilities:** It is possible that approval of this request could result in an increased demand for Code compliance and increase in traffic.