



# City of Fayetteville, Arkansas

113 West Mountain Street  
Fayetteville, AR 72701  
(479) 575-8323

## Legislation Text

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**File #: 2024-1674**

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**Appeal: CUP-2023-0170: Conditional Use Permit (854 E. SPARROW CIR/VAN WINKLE, 603): Submitted by GVM INVESTMENTS for property located at 854 E. SPARROW CIR. in WARD 1. The property is zoned RSF-8, RESIDENTIAL SINGLE FAMILY, 8 UNITS PER ACRE and contains approximately 0.10 acres. The request is to reconsider the denial of the residence as a short-term rental.**

A RESOLUTION TO GRANT THE APPEAL OF COUNCIL MEMBERS SCOTT BERNA, SARAH BUNCH, AND D'ANDRE JONES AND REFER CONDITIONAL USE PERMIT CUP 2023-170 BACK TO THE PLANNING COMMISSION TO CONSIDER THE APPLICATION FOR A SHORT TERM RENTAL AT 854 EAST SPARROW CIRCLE IN WARD 1

**WHEREAS**, on September 25, 2023, the Planning Commission voted to deny a conditional use permit to use the property located at 854 East Sparrow Circle as a Type-2 short-term rental; and

**WHEREAS**, an appeal of that denial to the City Council failed due to the applicant not meeting time, form, and place requirements of § 155.02 of the Unified Development Code; and

**WHEREAS**, pursuant to § 163.02(D) of the Unified Development Code “no application for a conditional use will be considered by the Planning Commission within twelve (12) months from the date of final disapproval of a proposed conditional use unless there is evidence of changed conditions or new circumstances which justify reconsideration submitted to the Planning Commission”; and

**WHEREAS**, the applicant submitted a new conditional use request for the same property within twelve months of the final disapproval of its previous conditional use request and on January 8, 2024, the Planning Commission voted against hearing the new application; and

**WHEREAS**, Council Members Scott Berna, Sarah Bunch, and D’Andre Jones properly appealed the Planning Commission denial of the applicant’s request to hear the new conditional use request.

**NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby determines, pursuant to § 163.02(D) of the Unified Development Code, that the applicant for a proposed short-term rental at 854 East Sparrow Circle has provided sufficient evidence of changed conditions or new circumstances which justify the consideration of the application prior to the expiration of twelve months; therefore, conditional use permit CUP-2023-170 is hereby referred back to the Planning Commission for

consideration of the full application.



**MEETING OF FEBRUARY 6, 2024**

**TO:** Mayor Jordan and City Council

**THRU:** Susan Norton, Chief of Staff  
Jonathan Curth, Development Services Director  
Jessica Masters, Development Review Manager

**FROM:** Donna Wonsower, Planner

**DATE:**

**SUBJECT:** **Appeal: CUP-2023-0170: Conditional Use Permit (854 E. SPARROW CIR/VAN WINKLE, 603): Submitted by GVM INVESTMENTS for property located at 854 E. SPARROW CIR. in WARD 1. The property is zoned RSF-8, RESIDENTIAL SINGLE FAMILY, 8 UNITS PER ACRE and contains approximately 0.10 acres. The request is to reconsider the denial of the residence as a short-term rental.**

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**RECOMMENDATION:**

City Planning staff and the Planning Commission recommend denial of a request to reconsider a conditional use permit for a short-term rental as described and shown below.

**BACKGROUND:**

The subject property is in south Fayetteville southeast of the intersection of S. Morningside Dr. and E. 15<sup>th</sup> St. The 0.10-acre property is zoned RSF-8, Residential Single-Family, Eight Units per Acre and is not part of any overlay districts. The property is developed with a 1,990 square foot single-family structure that received a certificate of occupancy in April 2023. On September 25, 2023, the Planning Commission voted 1-7-0 to deny this item. A subsequent appeal to the City Council failed due to the applicant not meeting time, form, and place requirements. A zoning violation letter for operating a short-term rental illegally was issued on October 25 and escalated to the city prosecutor on December 5. The applicant has since requested that the conditional use request be reconsidered pursuant to §163.02(D), which requires that the Planning Commission make a determination on changed conditions or new circumstances prior to hearing the new request.

*Request:* The applicant requests reconsideration for the denial of a conditional use permit to use the property as a Type 2 short-term rental. The reconsideration request was denied by the Planning Commission on January 8, 2024.

*Findings:* Staff does not find evidence of changed conditions or new circumstances that would warrant a reconsideration by the Planning Commission. Of the four items listed in the applicant's letter, three have not changed since the previous application. The applicant states they will limit guests to a maximum of eight; however, an occupancy limit of eight guests was a recommended condition of approval for the previous report and does not constitute a change. Additionally, the applicant states that a maximum of four cars will be permitted to park on the property with no on-street parking permitted. The staff report and applicant letter for the previous conditional use request list a maximum of four off-site parking spaces. Further, on-street parking

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is not legal at this location due to the presence of a fire hydrant and associated fire lane. As such, the described parking limitations on the property and street also do not constitute a change of circumstances. The final item that the applicant cites as a change of circumstance is the monitoring of the property via a property manager and cameras. As the monitoring of the property was not discussed in the previous report, staff is unable to determine if this constitutes a change.

**DISCUSSION:**

At the January 8, 2024, Planning Commission meeting, a vote of 2-6-0 denied the request to reconsider the conditional use request. Commissioner Sparkman made the motion and Commissioner Garlock seconded. Staff presented their findings, and the applicant described reductions in guest counts, the addition of monitoring cameras and the similarity of the parking to other properties in the neighborhood. Commissioner Sparkman requested clarification on the applicant's stated guest count in their reconsideration request compared to the previous request. Staff confirmed the proposed reduction to eight permitted guests matches staff recommendations of approval from the previous request. There was no additional discussion. Commissioners Brink and Payne voted in favor of the reconsideration request. Commissioner Holcomb was absent, and all other commissioners voted against the reconsideration. No members of the public spoke during the meeting.

**BUDGET/STAFF IMPACT:**

NA

**ATTACHMENTS:** Appeal Letter (#3), City Council Member Sponsor: Berna (#4), City Council Member Sponsor: Bunch (#5), City Council Member Sponsor: Jones (#6), City Attorney Memo (#7), Exhibit A (#8), Planning Commission Staff Report (#9), Memo - Kit Williams (#10)

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# DEPARTMENTAL CORRESPONDENCE



OFFICE OF THE  
CITY ATTORNEY

TO: Mayor  
City Council  
Kara Paxton, City Clerk/Treasurer

Kit Williams  
City Attorney  
Blake Pennington  
Senior Assistant City Attorney  
Hannah Hungate  
Assistant City Attorney  
Stacy Barnes  
Paralegal

CC: Susan Norton, Chief of Staff  
Jonathan Curth, Development Services Director

FROM: Kit Williams, City Attorney

DATE: January 23, 2024

RE: City Council must follow its enacted rules of appeal procedure until and unless it repeals them

Mr. Casey D. Copeland has written to you requesting that you agree to hear at your next meeting the two Conditional Use Requests for Short-Term Rentals on the merits which had months ago been denied by the Planning Commission with no proper appeal to the City Council. His client recently sought to present them again to the Planning Commission, but failed to satisfy the Planning Commission that there was sufficient evidence of changed circumstances to justify a new hearing before the normal one year had passed to allow submittal of the same conditional use requests. His client properly appealed that denial of a new hearing. That denial of a new hearing is what is before the City Council for your decision. This appeal process is codified in the *Unified Development Code* enacted as law by the City Council.

Mr. Copeland suggests that you use the Agenda Additions subsection of the *Rules of Order and Procedure of the Fayetteville City Council* to get around the **Appeals Chapter** of the *Unified Development Code*. This cannot be done for two reasons. First the enacted *UDC* is City Law which always will control over your procedural rules adopted by Resolution, not by ordinance. Secondly, the agenda additions subsection of your rules of order only allows a proper new item to be placed upon the agenda. Conditional Use requests pursuant to the *UDC* must be heard first by the Planning Commission and only considered upon three City



Council Members' appeal from the Planning Commission to the City Council. Because there was no proper appeal of the Planning Commission's initial denial of the Conditional Use requests, you lack jurisdiction to hear such requested appeal on the merits now. You may only decide whether or not to reverse the recent denial of the Planning Commission to hear a too soon reapplication for conditional uses on the previously rejected applications.

Although the City Council has clear authority to amend the *UDC* to change the **Appeals Chapter** so that the City Council can hear and decide a Conditional Use request without the Planning Commission's currently required first review and decision, until such an amendment occurs you **must** obey the current *Fayetteville Code of Ordinances* which includes the *UDC*. The Arkansas Supreme Court has so explicitly held.

"A city simply cannot pass procedural ordinances they expect to be followed by their residents and then conveniently ignore them themselves. **A legislative body must substantially comply with its own procedural policies.**" *Potocki v. City of Fort Smith*, 279 Ark. 19, 648 S.W. 2d 462, (1983). (emphasis added)

Similarly, the Arkansas Supreme Court agreed with the Pulaski County Chancery Court that the Little Rock Board of Directors had acted arbitrarily, capriciously and unreasonably in a rezoning case.

"(N)or does a city have to create a zoning ordinance or a land use plan or adopt planned use districts or planned commercial districts, but once it has done so **it must follow the ordinance until it is repealed or altered.**" *City of Little Rock v. Pfeifer*, 318 Ark. 679, 887 S.W. 2d 296, 298 (1994). (emphasis added)

Therefore, Mr. Casey Copeland's request that you ignore your **Appeals Chapter** procedure you enacted into the *UDC*, and allow him to present and argue the merits of the conditional use permits rather than whether the Planning Commission was correct or wrong when it denied him his untimely request for a new hearing is not legally within your power. We must comply with our enacted rules for this appeal even if some think it expedient to ignore them. It would be illegal for the Council to try to hear and decide the merits of the conditional use requests at your upcoming meeting.



**AUNDREA STONE HANNA, P.L.L.C.**

**ATTORNEY AT LAW**

**ATTORNEYS**  
Aundrea Stone Hanna  
Casey D. Copeland

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January 22, 2024

Fayetteville City Council & Mayor, *Via Email*

RE: GVW Investments, LLC's - February 6, 2024  
CUP-2023-0170 & CUP-2023-0171

Dear Members of the City Council and Mayor:

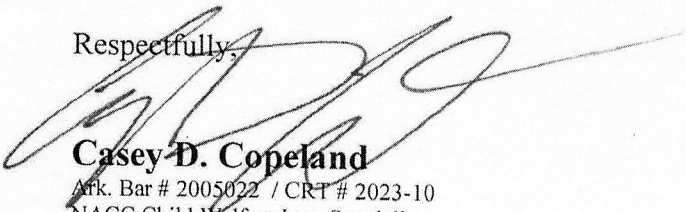
Please accept this letter as a request from my client, GVW Investments, LLC, to have its applications numbered CUP-2023-0170 and CUP-2023-0171 heard and determined on the merits by the City Council at the February 6, 2024 meeting, pursuant to rule A-7-b of the *Rules of Order and Procedure of the Fayetteville City Council*.

To be clear, this request is for the Council to hear and approve the CUP-2023-0170 and CUP-2023-0171 applications in addition to (not instead of) the appeal that is already set to be heard by the Council on February 6, 2024. If the Council determines not to consider the applications under rule A-7-b, then my client would ask that the appeal still be heard.

Finally, GVW Investments, LLC, believes that this request is necessary given the risk of further delay as a result of the currently enforced limitations on the number of short-term rental units, i.e., GVW Investments, LLC believes this request "requires immediate City Council consideration and...the normal agenda setting process is not practical" given the above noted limitations.

Thank you for your consideration.

Respectfully,

  
**Casey D. Copeland**

Ark. Bar # 2005022 / CRT # 2023-10  
NACC Child Welfare Law Specialist

cdc

cc: client, and City Attorney's office

**AUNDREA STONE HANNA, P.L.L.C.**

**ATTORNEY AT LAW**

**ATTORNEYS**  
Aundrea Stone Hanna  
Casey D. Copeland

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**SENDER'S EMAIL:**  
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[caseycopeland@aundreahannalaw.com](mailto:caseycopeland@aundreahannalaw.com)

January 9, 2024

City of Fayetteville, Arkansas  
City Council Members  
Mayor & City Clerk

**RE: GVW Investments, LLC vs. Fayetteville City Planning Commission**  
**Appeals from CUP-2023-0170 & CUP-2023-0171**  
**Commission action on appeal dated January 8, 2024**

Dear Members of the Fayetteville City Council, Mayor, and City Clerk:

The appellant here is GVW Investments, LLC, (“GVW”) owned and operated by Greg Van Winkle, who are represented herein by attorney Casey D. Copeland (#2005022), PO Box 163 Ft. Smith, AR 72902.

This appeal is brought pursuant to Section 155.05 of the Uniform Development Code within the Code of Ordinances for the City of Fayetteville (referenced herein as “UDC”). At issue is the Planning Commission’s January 8, 2024 denial of GVW’s request for reconsideration pursuant to Section 163.02(D) of the UDC. That reconsideration request stems from the previous denial of a conditional use permit application by the Planning Commission at their September 25, 2023 meeting. The September application numbers are CUP-2023-0104 and CUP-2023-0105; and the applications on appeal here are CUP-2023-0170 and CUP-2023-0171.

Attached to this letter are copies of the Planning Commission Memo prepared for the January 8, 2024 meeting, which also include the Planning Commission Memo for the September 25, 2024 meeting.

Pursuant to Section 155.03 of the UDC, we also request a stay of the effect of the Planning Commission so that the application remains within the current cap on short-term rental units until the Council has an opportunity to hear and determine this appeal. Section 155.03 simply reads “*An appeal shall stay all proceedings in furtherance of the action appealed from unless the person in charge of administration of the chapter certified that a stay would, in their opinion cause imminent peril to life or property.*” We believe a reasonable interpretation of this section would mean GVW’s applications continue to fall within the current cap, and would request confirmation of this by the Council.



This issue began with the Planning Commission meeting on September 25, 2023, at which GVW Investments presented three (3) conditional use permit applications pursuant to Section 163.02 of the UDC. Two (2) of GVW's original applications (CUP-2023-0104 and CUP-2023-0105) were denied by the Planning Commission, while the third was approved. The recording of the Planning Commission discussion of the two (2) items at issue in this appeal can be found at the 01:12:43 and 1:31:16 time-stamps at the following link:

**<http://reflect-fayetteville-ar.cablecast.tv/CablecastPublicSite/show/8000?seekto=4363&site=1>**

With regard to the original applications, Planning Department staff recommended approval with conditions. Those conditions included occupancy limitations, and parking restrictions. GVW was accepting of the staff recommendations on September 25, 2023, and those recommendations remained unchanged for January 8, 2024. Regardless, the occupancy and parking issues were not the primary concerns of the Planning commission. Instead members of the Planning Commission primarily focused on the potential impact on first-time homeowners, ignoring the fact that the properties were already subject to long-term rentals, i.e., not homeowners. Concerns about traffic and safety were also raised, without any substantive discussion or presentation of data indicating any negative effects caused by short-term rentals. No public comment was made either to Planning staff or the Planning Commission with regard to the original applications. In short, the Planning Commission discussed and ultimately denied two (2) of GVW's applications for reasons unrelated to real or identifiable facts. The Planning Commission also ignored the fact that the properties, like many others, will likely remain a long-term rental property, and not become the property of the first-time homeowners for whom the Planning Commission expressed concern. Unfortunately, an appeal could not be perfected to the City Council from that September 25, 2023 in time and to form. The attempted appeal was rejected by the City Attorney's office, and thus was never presented for your consideration.

That being the case, and with the short-term rental cap looming, GVW's only viable option was to request reconsideration pursuant to Section 163.03(D) of the UDC, which reads, *"Approval/Reconsideration. No application for a conditional use will be considered by the Planning Commission within twelve (12) months from the date of final disapproval of a proposed conditional use unless there is evidence of changed conditions or new circumstances which justify reconsideration submitted to the Planning Commission."* The terms "changed conditions" and "new circumstances" are not defined in that section of the UDC, nor in "Definitions" section 151.01 of the UDC. Whether or not these undefined "changed conditions" or "new circumstances" existed was the only consideration the Planning Commission gave to GVW's new applications (CUP-2023-0170 and CUP-2023-0171) on January 8, 2024.

In a reversal from their September memo, Planning staff now recommended against GVW's request for reconsideration because staff believed there were no "changed conditions" or "new circumstances". The Planning Commission agreed. However, Planning staff focused primarily on the their own recommendations from September, which are the same as those they recommend to the Planning Commission now. Thus, according to Planning staff, there is no "changed conditions" or "new circumstances". Such a construction of Section 163.03(D) of the UDC logically removes input and control by applicants such as GVW, and in effect provides Planning staff and the Planning Commission with an impenetrable excuse to deny any reconsideration request. Further, given the issues focused on by the Planning Commission on

September 25, 2023, i.e., density, traffic, and impact on first-time homeowners, it's even more unclear how any applicant could satisfy the limited construction of "changed conditions" or "new circumstances" applied in this instance.

As such, meeting the burden of "changed conditions" or "new circumstances" becomes overwhelmingly difficult without knowing what factors, considerations, data, or other matters are or are not relevant. This ambiguity in the Section 163.03(D) of the UDC creates an unfair disadvantage to applicants such as GVW who were denied for nebulous reasons unrelated to the specific properties in question. In the end however, the Planning Commission is not the final authority on the meaning of the UDC. The City Council can take up GVW's request, and determine if there is merit in the reconsideration.

GVW believes that the adoption of the prior recommendations, along with the added provision of monitoring and enforcement of such rules by the owner and manager constitute a change in condition or "new circumstance" which warrants reconsideration by either the Planning Commission or the City Council. GVW also believes the conditions and circumstances are much more changed and new given that the Planning Commission announced at the January 8, 2024 meeting that the short-term rental cap has been met, meaning that GVW's investment in the properties in question will be significantly impacted without swift approval of the applications at issue on appeal.

In conclusion, GVW is asking that three (3) or more members of the City Council give them an opportunity to present this matter to the full council, and that the City Council reverse the decision of the Planning Commission regarding the reconsideration of CUP-2023-0170 and CUP-2023-0171 at the January 8, 2024 meeting.

Please feel free to contact myself or GVW if you have any questions about this request for appeal.

Respectfully,



**Casey D. Copeland**  
Ark. Bar # 2005022 CRT # 2023-10  
NACC Child Welfare Law Specialist

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GVW Investments, LLC,  
Greg Van Winkle,  
Applicant



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As such, meeting the burden of "changed conditions" or "new circumstances" becomes overwhelmingly difficult without knowing what factors, considerations, data, or other matters are or are not relevant. This ambiguity in the Section 163.03(D) of the UDC creates an unfair disadvantage to applicants such as GVW who were denied for nebulous reasons unrelated to the specific properties in question. In the end however, the Planning Commission is not the final authority on the meaning of the UDC. The City Council can take up GVW's request, and determine if there is merit in the reconsideration.

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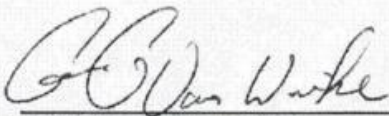
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Please feel free to contact myself or GVW if you have any questions about this request for appeal.

Respectfully,

**Casey D. Copeland**

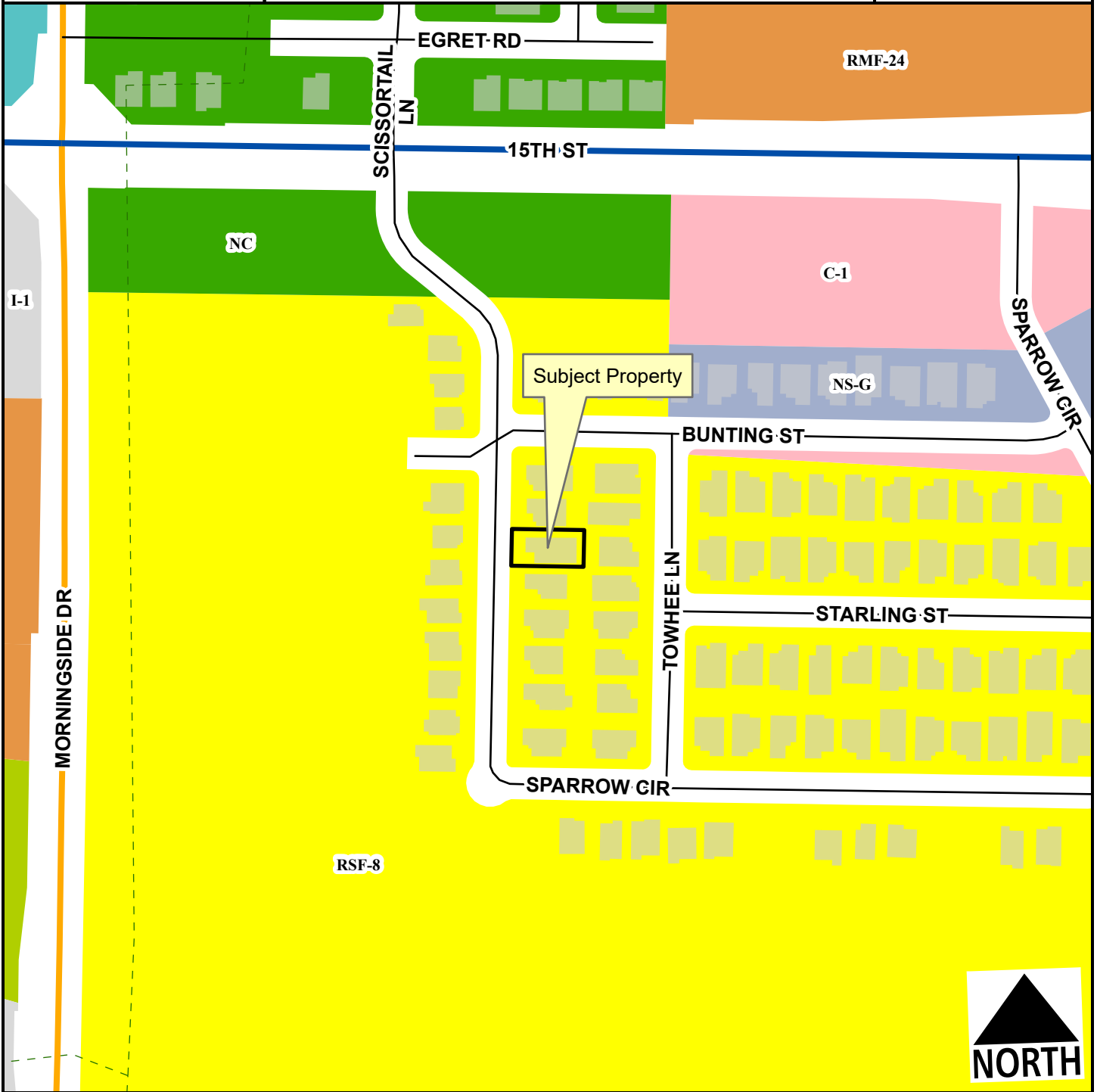
Ark. Bar # 2005022 / CRT # 2023-10  
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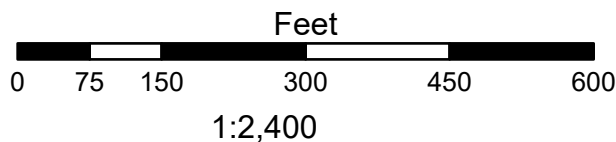
GVW Investments, LLC,  
Greg Van Winkle,  
Applicant



Close Up View



- Neighborhood Link
- Regional Link - High Activity
- Residential Link
- Planning Area
- Fayetteville City Limits
- Trail (Proposed)



- Residential-Agricultural
- RSF-8
- RMF-24
- I-1 Heavy Commercial and Light Industrial
- C-1
- Main Street Center
- Neighborhood Services - Gen.
- Neighborhood Conservation