

# City of Richland Center

## Conditional Use Permit – Application, Evaluation, Reporting and Decision Form

This form assists with three specific steps required in a Conditional Use Permit Application Process.

- 1) The application
- 2) The evaluation of the conditional use request and report to City Council
- 3) The required reporting to the decision making bodies and the recording of the final decision.

<b>For Office Use Only</b>	
Application #	CUP 01-2023
Fee \$400	<input checked="" type="checkbox"/> Paid \$400
<input type="checkbox"/> Approved	<input type="checkbox"/> Denied
Date	_____

- 1) **The Conditional Use Permit Application** must be completed and submitted to the clerk's office along with the corresponding application fee. Please note that incomplete applications may be delayed. Please contact the City of Richland Center Zoning Office for any related questions at 608-647-3466.

All Owner(s) of the subject property: John C Fjelsted

Owner's Mailing Address: 491 North Church St.

Owner's Telephone Number: 608-379-2903 Owner's e-mail: Fjelsted.John@gmail.com [Optional]

Street address of the Property Subject to this Application: 26788 Hwy 0 Richland Center  
W: 53581

Is the property located in the City  or in the Extra Territorial Zone (ETZ)

Tax parcel number of Property Subject to this Application: 022-2744-1100

[NOTE: This can be found on the tax bill for the property]

Zoning District Classification of the Property Subject to this Application: Industrial

If the Property Subject to this Application is to be used for a business:

Name of Business: JEDS Electric Motors

Address of Business: 26788<sup>Hwy 0</sup> Richland Center W: 53581

Describe the business to be conducted at this location: Rebuilding electric motors  
starters, generators, alternators, electrical tools  
selling of all above

What is the Conditional Use Permit being requested for?

475.08(3) #4 & #18 INDUSTRIAL ZONING IN ETZ  
475.10 (1) (a)

# City of Richland Center

## Conditional Use Permit – Application, Evaluation, Reporting and Decision Form

Signatures of all owners of the Property that permit is being requested for.

Sign: _____	Date: _____
Print: _____	
Sign: _____	Date: _____
Print: _____	
Sign: _____	Date: _____
Print: _____	

Date application filed with City Clerk	<u>3/15/2023</u>
Date Referred to Zoning Department	<u>3/15/2023</u>

**EXHIBIT A**

**Legal Description for Real Property Conveyed by Warranty Deed between Richard A. Fruit and Mary Jean Fruit, husband and wife, as survivorship marital property (Grantor) and John C. Fjelsted and Erica S. Fjelsted, husband and wife as survivorship marital property (Grantee)**

A tract of land located in the East half (E 1/2) of the Southeast quarter (SE 1/4) of Section Twenty-seven (27), Township Ten (10) North, Range One (1) East, Richland County, Wisconsin, described as follows:

Beginning in the West fence line of County Highway "O" at a point 1,462 feet South and 20.5 feet North, 61° 30' minutes West, from the Northeast corner of the Southeast quarter (SE 1/4) of said Section Twenty-seven (27);

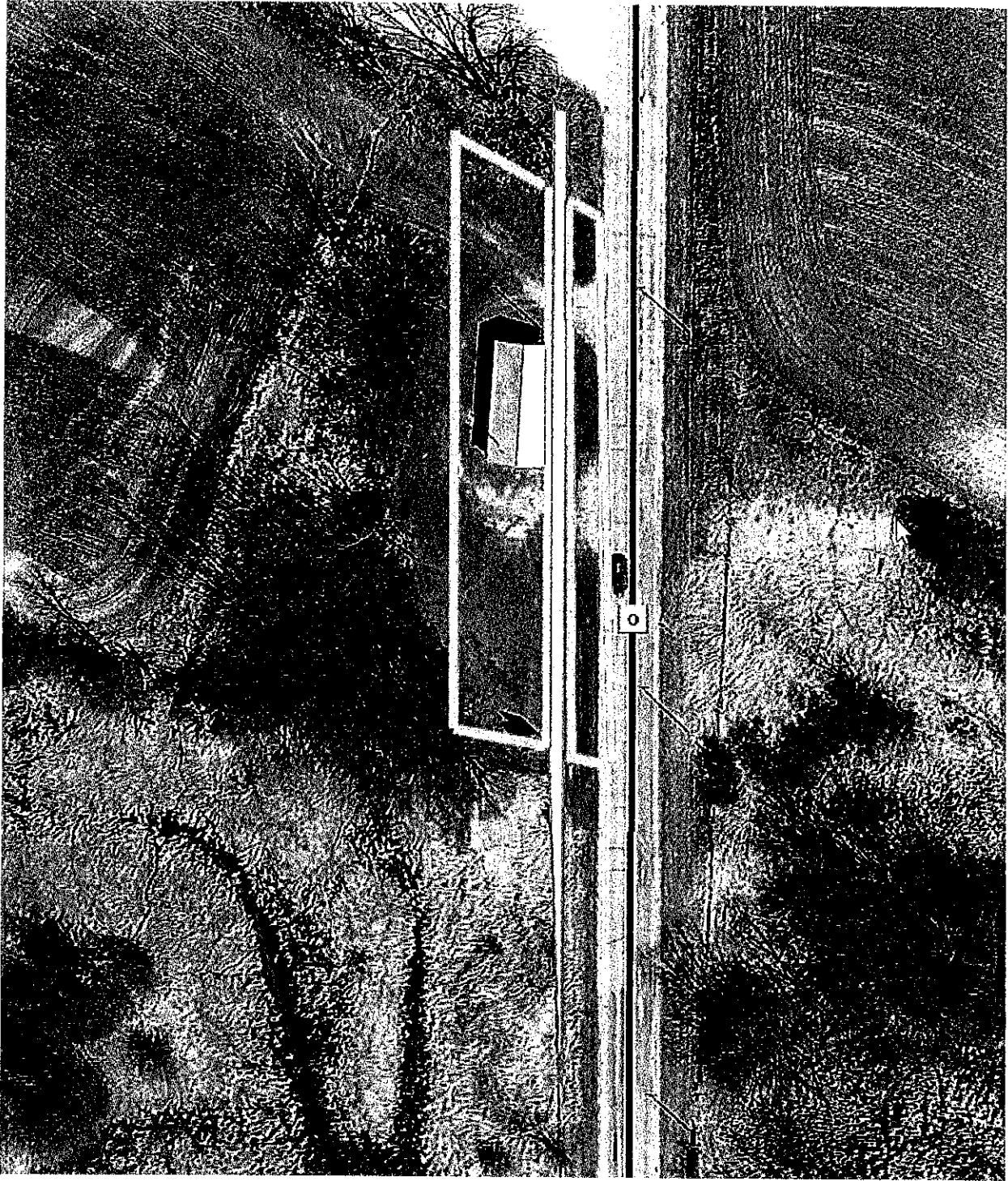
Thence North 61° 30' West, 83 feet;

Thence South, 01° 30' West, 300 feet;

Thence South, 76° 20' East, 82.5 feet to the aforesaid fence line;

Thence North 278 feet, along the said fence to the place of beginning.

EXCEPTING THEREFROM lands conveyed to Richland County Highway Commission by a Warranty Deed recorded in Volume 211 of Records, page 208, as Document No. 198187.

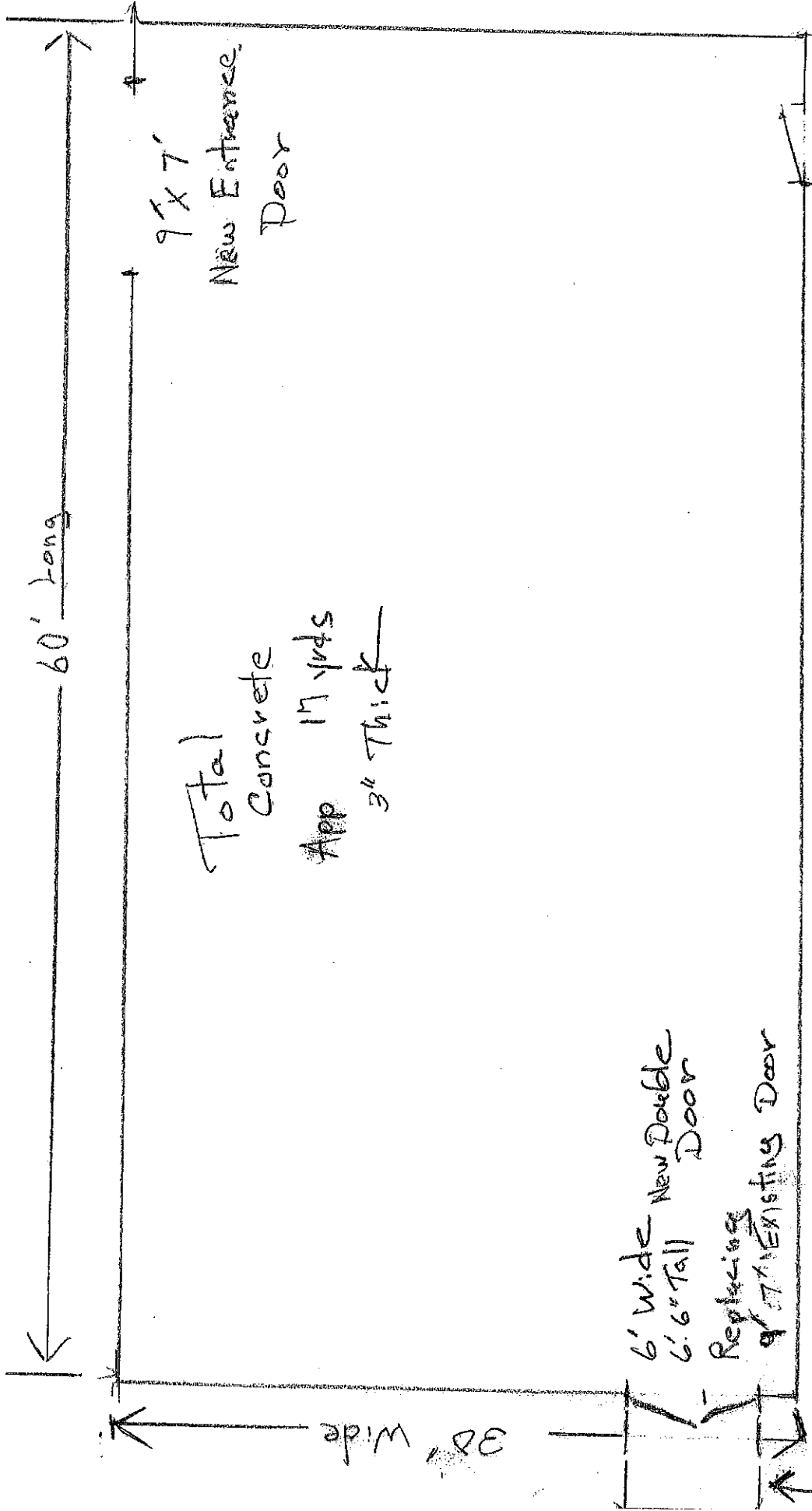


Fire No. 26788

Scale

$\frac{1/8" = 10' \text{ app.}}$

30' X 60' Building



Total  
Concrete  
App 17 yds  
3" Thick

App 8 X 6 out side Cement Slab

Road HWY O

## Building Plans

Replace front sliding door with double door

Cement apron in front of door

Framing in rest of door + installing one window

Building of walls on inside, insulating and drywalling

Adding steel ceiling with insulation

Reapplying <sup>existing</sup> 3 inches of cement over cement floor

Replacing all windows

Adding back overhead door

Re-doing all electrical, adding plug-ins

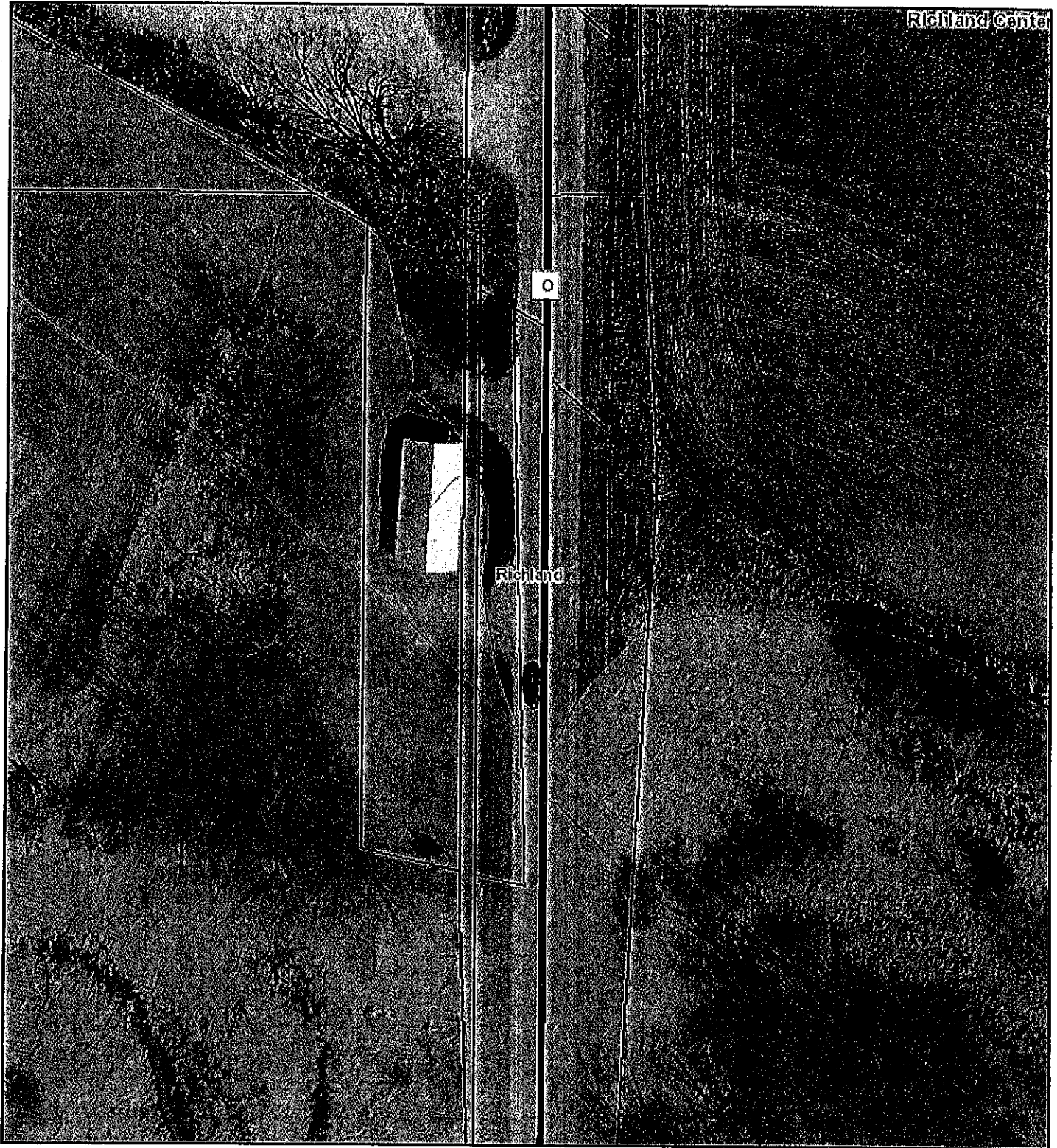
Installing bathroom

Installing holding tank

Installing new lights

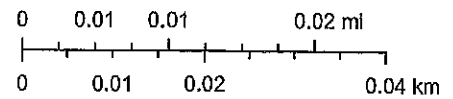
Building already has electric, heat, + water

# Fjelsted CUP - Floodplain



3/22/2023, 2:46:29 PM

1:1,128



- |                |   |
|----------------|---|
| Parcel Lines   | County Highway  |
| Municipalities | State Highway   |
| <b>Roads</b>   | <b>Floodplain 12-6-16</b>                                     |
| City Streets   | New - 0.2 PCT ANNUAL CHANCE FLOOD HAZARD                      |
| Town Roads     | New - A Floodplain  |
| US Hwy         | New - AE - Floodplain were base flood elevations are provided |

By Richland County GIS, Richland County, WI

**CITY OF RICHLAND CENTER**  
*Office of the City Clerk/Treasurer*  
450 S. Main Street, Richland Center, WI 53581

**OFFICIAL ZONING NOTICE**

**NOTICE OF PUBLIC HEARING ON CONDITIONAL USE PERMIT**

**NOTICE IS HEREBY GIVEN** that the Common Council of the City of Richland Center, Richland County, Wisconsin, will hold a public hearing on Tuesday, April 4, 2023 at approximately 6:30 P.M. or as soon thereafter as the matter can be heard. The public hearing on the conditional use permit application will be held in the Council Room of the Municipal Building at 450 S. Main Street.

The application of John Fjelsted requests a conditional use permit to allow for the operation of an electric motor repair shop on tax parcel 022-2744-1100, located 26788 County Highway O.

All interested parties may appear and be heard at the public hearing.

If you have any questions or concerns on the above, please call the City Clerk / Treasurer's office at 608-647-3466.

Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services to enable them to attend and participate in the public hearing. For additional information or to request such services contact Ashley Oliphant, City Administrator at 450 S. Main Street, Richland Center, WI 53581 or by telephone at 608-647-3466.

Aaron Joyce City Clerk / Treasurer



**CITY OF RICHLAND CENTER**  
*Office of the City Clerk/Treasurer*  
450 S. Main Street, Richland Center, WI 53581

**NOTICE OF PUBLIC HEARING ON CONDITIONAL USE PERMIT**

March 20, 2023

RE: Notice of Public Hearing regarding Application for Conditional Use Permit

Dear Property Owner:

As the owner of the property within 300-feet of 26788 County Highway O, please be advised that the aforementioned property is the subject of an application for a Conditional Use Permit requesting allowance for the operation of an electric motor repair and sales shop at 26788 County Highway O.

Public hearing for the Conditional Use Permit submitted by John Fjelsted will be held as follows:

**MEETING:** Regular Meeting of the Common Council

**DATE:** April 4, 2023

**TIME:** 6:30 PM or as soon thereafter

**PLACE:** The Council Room of the Municipal Building, 450 S. Main Street, Richland Center

**Accessibility Arrangements:** Upon reasonable notice, a minimum of 24 hours in advance, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information or to request this service, contact Ashley Oliphant, City Administrator at 450 S. Main Street, Richland Center, WI 53581, or call 608-647-6428.

**Planning Commission & Extraterritorial Zoning Board:** The Planning Commission and Extraterritorial Zoning Board will hold a joint meeting on Wednesday March 29, 2023 at 5:30 PM in the Council Room of the Municipal Building at 450 S. Main Street, Richland Center. The Application for Conditional Use Permit will be reviewed by the joint Commission and Board. However, the joint meeting of the Planning Commission and Extraterritorial Zoning Board will not be holding a public hearing.

**Comprehensive Planning:** The Comprehensive Plan was adopted as part of the City of Richland Center's commitment to promote and manage development consistent with the values, goals, and objectives of the community. The Comprehensive Plan is one of the primary tools for managing land development. AS part of the decision-making process for land division, rezones, conditional use permits, and other changes, the Planning Commission and Common Council analyze whether the request is consistent with the vision, goals, objectives, and policies contained in the immediate vicinity or to the community as a whole. Consideration is given to potential adverse impacts to the natural environment and if mitigation is necessary. Additionally, consideration is given to the ability to provide adequate public facilities or services.

**Public Involvement Opportunities:** All interested parties are invited to attend any or all of the above described meetings. If you are unable to attend but wish to provide written comment, please submit comments to Aaron Joyce, City Clerk/Treasurer at 450 S. Main Street, Richland Center, WI 53581.

For more information, you may contact the Clerk/Treasurer's Office at (608) 647-3466.

02226321300  
STATE OF WISCONSIN (DOT)  
3550 MORMON COULEE RD PO BOX 337  
LACROSSE WI 54602-0337

27626321400  
RICHLAND COUNTY (HWY)  
181 W SEMINARY ST  
RICHLAND CENTER WI 53581

02226331000  
SCHMITZ LLC  
25360 COUNTY HWY RC  
RICHLAND CENTER WI 53581

27627411100  
RICHLAND CENTER CITY OF  
450 S MAIN ST  
RICHLAND CENTER WI 53581

02226331200  
RICHLAND COUNTY (HWY)  
181 W SEMINARY ST  
RICHLAND CENTER WI 53581

27627411110  
RICHLAND COUNTY (HWY)  
181 W SEMINARY ST  
RICHLAND CENTER WI 53581

02227411300  
RICHLAND COUNTY (HWY)  
181 W SEMINARY ST  
RICHLAND CENTER WI 53581

02227412000  
SCHMITZ FARMLAND LLC  
25360 COUNTY HWY RC  
RICHLAND CENTER WI 53581

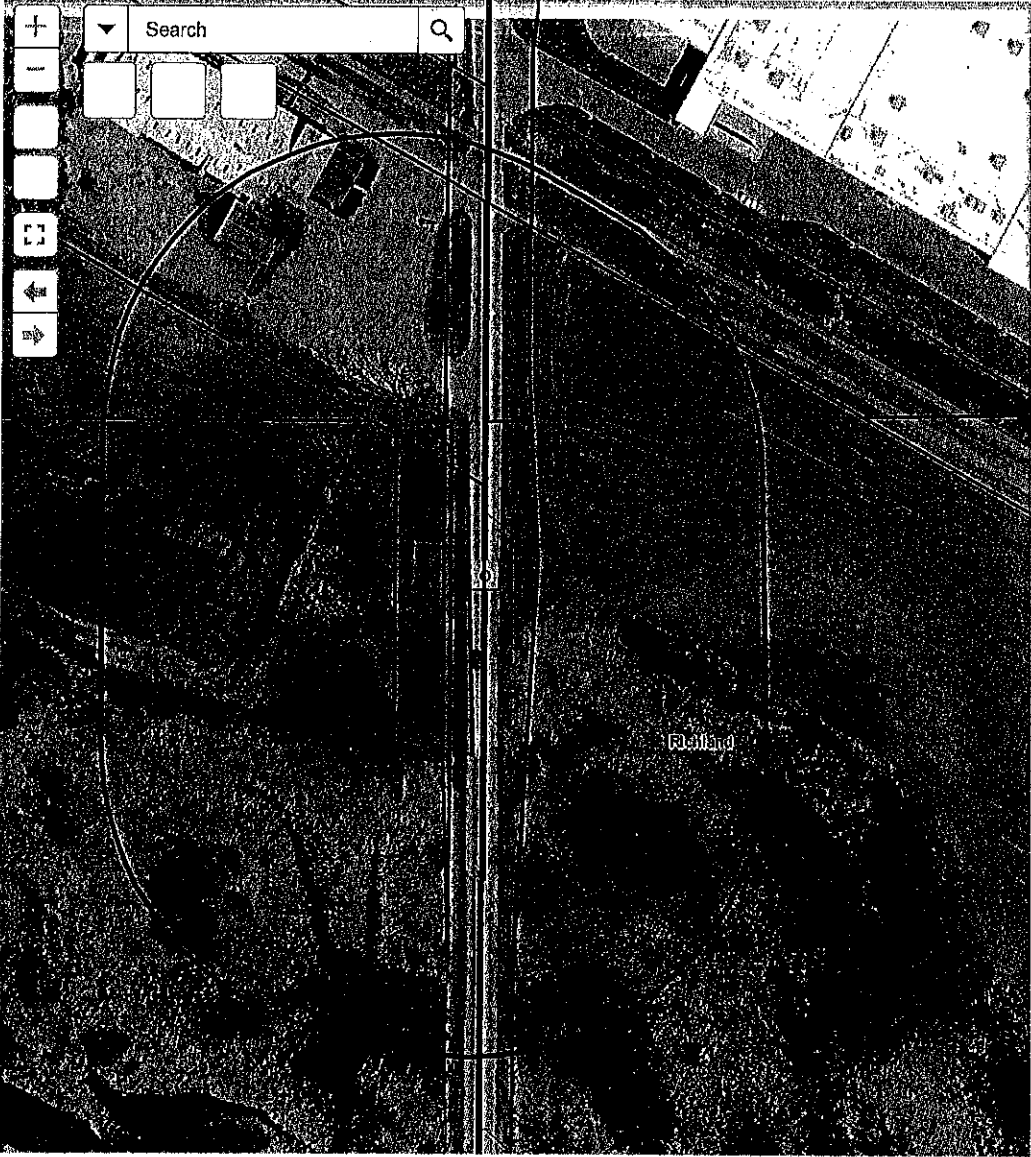
02227413000  
EQUITY CO-OP LIVESTOCK & SALES ASS'N  
P O BOX 1003  
BARABOO WI 53913

02227441000  
SCHMITZ FARMLAND LLC  
25360 COUNTY HWY RC  
RICHLAND CENTER WI 53581

02227441100  
RICHARD A & MARY J FRUIT  
26389 COUNTY HWY N  
RICHLAND CENTER WI 53581

02235221100  
RICHLAND COUNTY (HWY)  
181 W SEMINARY ST  
RICHLAND CENTER WI 53581

27626321300  
RICHLAND COUNTY (RR)  
181 W SEMINARY ST  
RICHLAND CENTER WI 53581



Public Notification

Select or search for a feature in the map



Select

Clear

Apply a search distance

Addressee Layer

Format

13 addressees found; do you want to continue?

Download



# City of Richland Center

## Conditional Use Permit – Application, Evaluation, Reporting and Decision Form

### 2) Conditional Use Permit Evaluation and Report to City Council

When reviewing an application for a conditional use, the local government must look to the requirements and conditions found in the local zoning ordinance and determine if the applicant meets those requirements and conditions. The local government must provide substantial evidence supporting their decision to grant or deny the permit, and to impose additional conditions on the permit. **Substantial evidence** means facts and information, directly relating to the requirements and conditions, that a reasonable person would accept in support of a conclusion. Personal preferences and speculation are not sufficient forms of evidence. All requirements and conditions imposed by the local government must be reasonable, and to the extent practicable, measurable.

#### Ordinance Requirements

List ordinance requirements related to the conditional use:

- 
- 

Does the applicant meet all of the ordinance requirements?  Yes  No

Provide substantial evidence supporting this conclusion:

--

#### Permit Conditions

A local government is authorized to impose conditions on the permit that relate to the purpose of the ordinance. Conditions must be reasonable, and to the extent practicable, measurable. Conditions may limit the permit's duration, transfer, or renewal.

List conditions imposed on the permit:

Condition 1:

------

Reason and Evidence:


#### Ordinance Requirements

An ordinance often lists requirements in multiple locations. Look for requirements that apply generally to all conditional uses, as well as those that apply to specific uses.

**Tip:** Answer yes or no to each ordinance standard, then provide information supporting your conclusion.

#### Ordinance Purpose

In order to provide support for your conditions, refer to the general purpose statement found at the beginning of your ordinance (usually referencing public health, safety and welfare), and detailed purpose statements describing zoning districts and other special provisions.

**Tip:** Provide facts and information supporting each condition. Refer to the definition for "substantial evidence" provided above.

# City of Richland Center

## Conditional Use Permit – Application, Evaluation, Reporting and Decision Form

Condition 2: \_\_\_\_\_

Reason and Evidence: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Condition 3: \_\_\_\_\_

Reason and Evidence: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Condition 4: \_\_\_\_\_

Reason and Evidence: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date reviewed by Zoning Department \_\_\_\_\_

Comments by the Zoning Department: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Approval Recommended with the conditions stated above.

Denial Recommended for the following reasons: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Signature of Zoning Administrator

\_\_\_\_\_  
Date

Date referred to Planning Commission \_\_\_\_\_

# City of Richland Center

## Conditional Use Permit – Application, Evaluation, Reporting and Decision Form

Date reviewed by Planning Commission 5/29/2023

Recommendation from the Planning Commission: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- Approval Recommended with the conditions stated above.
- Denial Recommended for the following reasons: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Planning Commission Member                      Date

Date Referred to City Council \_\_\_\_\_

# CITY OF RICHLAND CENTER

## Conditional Use Permit 01-2023 Electric Motor Rebuild and Sales

John Fjelsted  
JEDS Electric Motors  
022-2744-1100  
26788 County Highway O (site address)  
491 North Church Street – Applicants Address  
Extraterritorial Zoning – Industrial Zoning District  
Joint Planning Commission and ETZ Board Meeting – March 29, 2023 – 5:30 PM  
Public Hearing April 4, 2023 – 6:30 PM

### Comprehensive Plan:

#### Vision Statement

The City of Richland Center Vision 2032 states, "Recognition of, and investment in, Richland Center's many great assets will make us a prosperous place to live and a choice destination for visiting."

#### Goals:

**Economic Development, Housing, and Transportation Goal:** Build a resilient economy by supporting local businesses, fostering entrepreneurship and increase housing options through effective marketing, focusing on the downtown and creating a robust tourism destination.

**Land Use Goal:** Land use policies and zoning that maximize the available opportunities and encourages residential, commercial, and industrial development.

**Land Use Goal:** Follow the Future Land Use identified within this chapter to inform any future zoning and land acquisition. – Current map shows the area next to Commercial and Industrial.

#### Land Use Strategies:

- **Strategy 1** – Maximize the current opportunities. Additionally, the city should empower residents to take advantage of the resources they have and permit by-right land uses that empower entrepreneurship, ...

#### Implementation Strategies:

- **Strategy 1** – Implementation and Continual Improvement. Use this Comprehensive Plan and the Market Analysis and Action Plan, as "living documents" to guide decision-making and measure progress. Utilize the Plan-Do-Study-Act (PDSA) cycle to embed the plan into the city operations and develop a culture of continual improvement.

Property is located within the City of Richland Center extraterritorial zoning and is zoned as industrial.

**475.08 (3) Conditional Used in a "C" Commercial District.** Within any "C" Commercial District no structure or land shall be used for any of the following uses except with a Conditional Use Permit:

4. Auto Repair garage or facility

18. Electrical service, heating, plumbing, appliances, upholstery or air conditioning service shop.

29. Similar uses, provided the structure in which the use is carried out shall not be located within one hundred (100) feet of any "R" District.

**475.10 (1) Permitted Uses in "I" Districts.** Within any "I" District, no structure or land shall be used except for one or more of the following uses:

(a) Any non-residential use which is either a permitted use or a conditional use in a "C" District, except off-premises sign or billboard and also except any such use which is a conditional use in this district.



**CONDITONS:**

- A. THE SITE HAS REASONABLE ACCESS TO ROADS AND HIGHWAYS.**
- B. IS THE PROJECT, SITE, LOCATION DESIGNED TO MINIMIZE TRAFFIC CONGESTION AND THE POTENTIAL EFFECT ON TRAFFIC FLOW?**
  - a. Traffic Count on County Trunk Highway O is 1200 ADT**

**THESE ARE THE CONDITIONS SET FORTH IN SECTION 475.05 (7) CONDITIONAL USE PERMITS:**

- 1. In granting a conditional use permit, the City Council may impose such conditions or limitations as it considers necessary to protect the public health, safety and welfare, any such conditions or limitations may include a time limit for the conditional use to exist or for the operation or activity permitted by the permit to be carried on.**
- 2. A conditional use permit shall become void one (1) year after it was granted unless within the year the permitted use is actually commenced, or within such extension of the period as the City Council within the year may provide.**
- 3. A conditional use permit, when issued, is personal to the permittee, and the permit shall not be deemed to run with the land. Any transfer of ownership of a lot for which a conditional use permit has been issued, whether legal or equitable, shall automatically terminate and void any previously issued conditional use permit affecting the lot.**
- 4. A conditional use permit may, at the time of its issuance, contain a limitation to a stated period of time, and upon the expiration of such period the permit shall be void and the formerly permitted activity must then forthwith cease.**
- 5. Must obtain sanitary permit from Richland County prior to issuance of land use permit from Zoning Administrator and building permit by Building Inspector.**
- 6. Must meet plans and specifications at time of application and any modifications made during the Joint Planning Commission and ETZ Board meeting or at the Common Council meeting.**
- 7. Applicant is responsible for any Federal, State, County and/or local permits.**

**Conditional Uses Criteria.** In reviewing the conditional use, the City of Richland Center shall consider the following:

- o The erosion potential of the site based on topography, drainage, slope, soil type, and vegetative cover and mitigation of erosion potential.
- o The prevention and control of water pollution, including sedimentation, and the potential impacts on floodplain and wetlands.
- o Whether the site has adequate utilities including, if necessary, acceptable disposal systems.
- o Whether the site has reasonable access to roads and highways.
- o Whether the site has suitable, ingress and egress.
- o Whether the site is designed to minimize traffic congestion, and the potential effect on traffic flow.

**Adherence to Conditions.** The City of Richland Center shall have the authority to attach such conditions and restrictions on the establishment, location, maintenance, and operation of the conditional use as it deems necessary to ensure the conditional use adheres to the purpose and review criteria of this chapter. Such conditions shall be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence. For purposes of section 1.09(4), substantial evidence is defined as facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.

**Approval or Denial.** If an applicant meets or agrees to meet all the requirements and conditions specified in this ordinance and those imposed by the City of Richland Center, the City of Richland Center shall grant the conditional use permit. The applicant must demonstrate that the application and all requirements and conditions established by the City of Richland Center relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The City of Richland Center's decision to approve or deny the conditional use permit must be supported by substantial evidence.

**Recording.** If applicable, prior to commencing the authorized activity on the site and obtaining any necessary land use permits, the zoning administrator may require the property owner to record notice against the property of the approved use, applicable plans, and conditions of approval with the county Register of Deeds.

**Time Limits Associated with Conditional Use.** If the conditional use is not initiated by securing a land use permit within 365 days of the date of the approval, the conditional use shall be considered void. The applicant may apply, without a fee, and the City of Richland Center may grant a one-time 365-day extension provided that a written request for extension is submitted to the zoning administrator before the original expiration date. If a use or activity associated with a previously approved conditional use ceases for 365 days or more after first being established on the property, the use will be deemed to have been terminated and the property owner or authorizing agent must reapply and obtain another conditional use before recommencing the use or activity.

**Effect of Denial.** No application that has been denied under this section may be resubmitted for a period of 365 days from the date of final City of Richland Center action, except on grounds of new evidence or proof of changes of factors found valid by the City of Richland Center.

**Monitoring and Potential Revocation of a Conditional Use.** The City of Richland Center or zoning administrator may require evidence and guarantees as either may deem necessary as proof that approved plans are being followed, required conditions are being met, and review criteria are being satisfied for conditional use at all times. If the City of Richland Center or zoning administrator finds that the approved plans are not being followed or that the review criteria of this section are not satisfied or the conditions attached to the permit are not complied with, the zoning administrator may suspend the permit and promptly schedule a public hearing before the City of Richland Center, at which the permit holder and other interested parties shall have the right to present evidence. If the City of Richland Center finds that the approved plans are not being followed, that the review criteria of this section are not satisfied, or that the conditions attached to the permit have not been complied with, the City of Richland Center may revoke or modify the conditional use permit.

**Expansion of Conditional Use.** The expansion of any use approved by a conditional use shall require an application and review by the City of Richland Center. What constitutes an expansion of use shall be determined by the zoning administrator.

# City of Richland Center

## Conditional Use Permit – Application, Evaluation, Reporting and Decision Form

### 3) The Decision

The information provided in this document represents the application, review and report for a conditional use permit. If the applicant for the permit meets, or agrees to meet, all of the requirements found in the zoning ordinance and all conditions imposed on the permit, the local government is required to grant the permit.

Based on the above findings of fact, conclusions of law, and the record in this matter, the permit is:

Approved, with the conditions stated above.

Denied, for the following reasons:

---

---

---

\_\_\_\_\_  
Signature of Representative of City Council

\_\_\_\_\_  
Date

### **Applicant Responsibility**

The applicant must provide substantial evidence demonstrating that the application and all requirements and conditions established by the local government are or shall be satisfied. Once granted, the conditional use permit will remain in effect as long as the permit requirements and conditions are met, subject to limits imposed on the permit's duration, transfer, or renewal. If the permit holder fails to meet any of the permit requirements or conditions, the local government may revoke the permit.

The applicant acknowledges and agrees to take the necessary steps to meet the permit requirements and conditions.

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of applicant

\_\_\_\_\_  
Date

**Tip:** When denying a permit, state the ordinance requirements or conditions that cannot be met.

### **Long-Term Compliance**

Consider the following techniques to help ensure long-term compliance:

- Record permit requirements and conditions directly on the deed for the property, or note how and where they are recorded and may be accessed.
- Require periodic compliance reporting as a condition of the permit.
- Consider requiring a cash or surety bond for projects involving large capital expenditures.
- Provide funding for local government monitoring and enforcement.

### **A Note on Application and Decision Forms**

Application forms and supporting materials should clearly describe each ordinance requirement and prompt the applicant to show how they meet those requirements. Staff can be an invaluable resource in helping the applicant understand the terms of the ordinance and how to navigate the development review process.

Written decision forms and checklists for local decision-makers are not required, but greatly aid in documenting the process and decision. Use forms to prompt local government officials to consider each ordinance requirement and provide facts and information supporting their decision and conditions.

# City of Richland Center

## Conditional Use Permit – Application, Evaluation, Reporting and Decision Form

### Exhibits

#### Exhibit 1.1 -

#### **400.05 (7) Conditional Use Permits. [As Amended by Ord 2004-10 and 2014-9]**

The procedure for issuance and enforcement of conditional use permits is as follows:

**(a) Application.** Persons applying for a conditional use permit shall fill out completely and file with the Zoning Administrator an Application for Conditional Use Permit form, which form shall be furnished by the City. The Conditional Use Permit form shall be signed by the land owner and by any person seeking the conditional use permit, if that person is not the same as the land owner. The applicant shall pay over to the Zoning Administrator the prescribed fee for the requested permit. [History Ord 1998-5]

**(b) Initial Review by Zoning Administrator; Referral to Planning Commission.** The Zoning Administrator shall review the filed application to determine whether the application is fully and correctly filled out. The Zoning Administrator may require the applicant to furnish as part of the application any additional information which the Zoning Administrator deems necessary to an evaluation of the merits of the application. Once the Zoning Administrator is satisfied that the application is fully and correctly filled out and any requested additional information has been received, the Zoning Administrator shall refer the application to the Planning Commission. [Amended by Ord 2014-9]

**(c) Notice of Application to Neighboring Landowners; Consideration by the Planning Commission.** The Planning Commission shall consider the application at its next regular meeting which will allow for the seven (7) day notice provided herein. The City Clerk shall mail notice of the application and of the Planning Commission meeting at which the application will be considered to the applicant and to the owner of each property located within 200 feet of the outside boundaries of the land which is the subject of the application not less than seven (7) days

Oct 31, 2017

400-34

400.05 thru 400.11

# City of Richland Center

## Conditional Use Permit – Application, Evaluation, Reporting and Decision Form

Exhibit 1.2

prior to the meeting. Failure to mail the notice to all landowners, providing it is unintentional, or failure of a property owner to receive the notice, shall not invalidate the proceedings. [Amended by Ord 2014-9]

**(c) Notice of Application to Neighboring Landowners; Consideration by the Planning Commission.** The Planning Commission shall consider the application at its next regular meeting which will allow for the seven (7) day notice provided herein. The City Clerk shall mail notice of the application and of the Planning Commission meeting at which the application will be considered to the applicant and to the owner of each property located within 300 feet of the outside boundaries of the land which is the subject of the application not less than seven (7) days prior to the meeting. Failure to mail the notice to all landowners, providing it is unintentional, or failure of a property owner to receive the notice, shall not invalidate the proceedings. [Amended by Ord 2014-9 and by Ord 2017-5]

**(d) Request for Additional Data or Information.** The Planning Commission may request from the applicant any additional data or information which it deems necessary to an evaluation of the merits of the application. A request by regular mail to the applicant at the address shown on the application shall constitute a valid demand for any such data. Alternatively, the Planning Commission may make such request verbally to the applicant at any meeting where the applicant is present, which also constitutes a valid request. [History: Ord 1997-13]

**(e) Optional Public Hearing before Planning Commission.** The Planning Commission may, in its discretion, hold a public hearing on any application for a conditional use permit. If the Planning Commission determines to hold such a public hearing, it shall give notice thereof by publishing a Class I notice under chap. 985 Wis. Stats. in the official City newspaper. If the Planning Commission has held such a public hearing, the Commission's report shall contain or have appended thereto a list of the persons who appeared at the public hearing and a brief synopsis of each person's testimony or statement made at the public hearing.

**(f) Report of Planning Commission.** The report and recommendation of the Planning Commission, which may be in the form of minutes of the meeting at which the matter was considered by the Commission, shall be transmitted to the City Clerk, who shall thereafter place the matter on the agenda of the City Council at an upcoming regular City Council meeting no more than ninety (90) days after the completed application has been submitted by the applicant. [Amended by Ord 2014-9]

**(g) Council Action.** The City Council shall take action on the application within sixty (60) days after receiving the report from the Plan Commission. However, the Council may deny or defer indefinitely consideration of any application when the applicant has been duly requested by the Zoning Administrator, the Planning Commission or by the Council to furnish additional information or data and the applicant has failed to do so, which such failure shall toll the 60 day period. The City Council may, in its discretion, hold a public hearing on any application for a conditional use permit, but is not required to do so. If the Council determines to hold such a

Oct 31, 2017

400-35

400.05 thru 400.11

# City of Richland Center

## Conditional Use Permit – Application, Evaluation, Reporting and Decision Form

Exhibit 1.3

public hearing, it shall give notice thereof by publishing a Class 1 notice under chap. 985 Wis. Stats. in the official City newspaper. [Amended by Ord 2014-9]

**(h) Criteria.** Each request for a conditional use approval shall consider the following criteria in addition to any other criteria which the City Council deems appropriate:

1. The request is consistent with applicable provisions of the comprehensive plan.
2. The request is compatible with the existing or allowable uses of adjacent properties.
3. The request can demonstrate adequate public facilities, including roads, drainage, potable water, sanitary sewer, and police and fire protection exist or will exist to serve the requested use at the time such facilities are needed.
4. The request can demonstrate adequate provisions for maintenance of the use granted by the conditional use permit and associated structures approved under said permit.
5. The request has minimized, to the degree possible, adverse effects on the natural environment.
6. The request will not create undue traffic congestion
7. The request will not adversely affect the public health, safety and welfare.
8. The request conforms to all applicable provision of this code. [History Ord 2002-2]

**(i) City Council's Options.** A request for a conditional use permit may be approved, approved with conditions or limitations or denied. [Amended by Ord 2014-9]

**(j) Imposition of Conditions or Limitations.** In approving the grant of a conditional use permit, the City Council may impose such conditions or limitations on the permit as it considers necessary to protect the public health, safety and welfare, and any such conditions or limitations may include a time limit for the conditional use to exist or for the operation or activity permitted by the permit to be carried on. The City Council may provide for an expiration date of a conditional use permit in order to enable a review of the use or the property under the permit, and may, if satisfied after such review that the use of the property pursuant to the conditional use permit is satisfactory, renew the permit or may add additional conditions or limitations on the permit as a condition of renewal. If the City Council determines that the permittee has committed serious or repeated violations of the conditions or limitations on the permit or that renewal of the permit adversely affects the public health, safety and welfare it may refuse to renew the permit. [Amended by Ord 2014-9]

Oct 31, 2017

400-36

400.05 thru 400.11

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Exhibit 2 –

Wis. Stat. 62.23(7)(de)

Parallel wording found in Wis. Stat. 59.69(5e), 60.61(4e) and 60.62(4e)

Substitute the terms county, town or village for city

Effective date 11-28-17

*(de) Conditional use permits.*

1. In this paragraph:

a. "Conditional use" means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a city, but does not include a variance.

b. "Substantial evidence" means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.

2.

a. If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the city ordinance or those imposed by the city zoning board, the city shall grant the conditional use permit. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence.

b. The requirements and conditions described under subd. 2. a. must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the city relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The city's decision to approve or deny the permit must be supported by substantial evidence.

3. Upon receipt of a conditional use permit application, and following publication in the city of a class 2 notice under ch. 985, the city shall hold a public hearing on the application.

4. Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the city may impose conditions such as the permit's duration, transfer, or renewal, in addition to any other conditions specified in the zoning ordinance or by the city zoning board.

5. If a city denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures contained in par. (e) 10.

Exhibit 3 –



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### CONDITIONAL USES

A conditional use or special exception is a tool designed to introduce flexibility into the zoning ordinance. For each zoning district, the ordinance will usually describe uses that are allowed by right, uses that may be allowed if specified standards are met, and uses that are prohibited. The second type of use is known as a conditional use, special use or special exception. Exceptions may also be made for minor deviations from dimensional requirements (such as setbacks or height limits), and for specified construction activities (such as filling and grading near navigable waters). Throughout the remainder of the text, these terms will be considered together and referred to as conditional uses.

A conditional use must be specifically listed in the zoning ordinance.<sup>40</sup> Unlike a permitted use, however, a conditional use is not allowed by right at all locations in a district. Rather, it must undergo special review by the plan commission, governing body, or zoning board to determine if it is appropriate for the site.

#### Conditional Use or Special Exception?

Wisconsin courts have utilized the terms conditional use, special use, and special exception interchangeably. However, some Wisconsin communities make a distinction.

Conditional use is generally used to refer to specified uses of a property that may be allowed under certain circumstances (i.e. gas station, landfill).

Special exception is more commonly used to refer to minor deviations from dimensional requirements (i.e. setback, height).

Adapted from: Olson, Daniel M. "Zoning Tools: Conditional Uses and Special Exceptions." *The Municipality*, October 2008. League of Wisconsin Municipalities.

The local zoning ordinance should identify which body has authority to decide conditional use permits.<sup>41</sup> If the governing body is authorized to decide conditional uses, it may request a recommendation from the plan commission.<sup>42</sup>

#### Process for Deciding Conditional Use Permits

The process for deciding conditional use permits should be described in the local zoning ordinance. Common steps are outlined below:

1. Application for conditional use permit. The application for a conditional use permit must be complete by the first time that notice is given for the final public hearing on the matter, unless an ordinance expressly allows later submission of information.<sup>43</sup> The applicant has the burden of proof of showing that they meet the standards outlined in the local ordinance.<sup>44</sup>
2. Notice and public hearing. Because the decision to grant or deny a conditional use permit is quasi-judicial, local decision-makers must follow the rules of procedural due process. Among other things, this means that testimony should be limited to the public hearing, decisions should be based on pre-determined standards, and decision-makers should be impartial. Public notice requirements also apply and are described on page 12.
3. Decision by governing body, plan commission or zoning board. The authorized permit review body has authority to grant or deny the permit<sup>45</sup> based on general or specific

<sup>40</sup> *Foresight, Inc. v. Bahl*, 211 Wis. 2d 599, 565 N.W.2d 279 (Ct. App. 1997).

<sup>41</sup> Wis. Stat. §§ 59.694(1) & (7)(a) and 62.23(7)(a)1 & 7.

<sup>42</sup> A member of the governing body who serves on the plan commission should not participate in both decisions. *League of Wisconsin Municipalities, Zoning Caption #45*.

<sup>43</sup> *Weber v. Town of Saukville*, 209 Wis. 2d 214, 562 N.W.2d 412 (1997).

<sup>44</sup> *Edward Krasner & Sons, Inc. v. Sauk County Bd. of Adjustment*, 183 Wis. 2d 1, 515 N.W.2d 256 (1994).

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standards laid out in the local zoning ordinance.<sup>46</sup> These standards often relate to site suitability or compatibility with neighboring land uses due to factors such as noise, odor or traffic. The applicant must demonstrate that the proposed project complies with each standard in the ordinance. The permit review body may impose conditions on development consistent with the ordinance standards and objectives.<sup>47</sup>

4. **Filing and notice of decision.** The decision to grant or deny the permit, including any associated conditions, should be promptly filed in the planning and zoning office and provided to the landowner. A reasonable time limit within which an appeal may be filed should be specified in the local zoning ordinance. If no such provisions are made, the appeal period begins when an aggrieved party finds out about the decision<sup>48</sup> or is given notice of the decision.<sup>49</sup>

### Notice Requirements

Advance notice of meetings or hearings to decide conditional use permits should be provided to the following parties:

- **News media.** Notice must be provided in writing or by phone, fax or email to any news media that have filed a written request. Notice must also be provided to the government unit's official newspaper, or if there is no official newspaper, to other media likely to give notice in the affected area.<sup>50</sup>

<sup>46</sup> *Village of DeForest v. County of Dane*, 211 Wis. 2d 804, 816, 565 N.W.2d 296 (Ct. App. 1997).

<sup>47</sup> *Edward Krasner & Sons, Inc. v. Sauk County Bd. of Adjustment*, 183 Wis. 2d 1, 515 N.W.2d 256 (1994).

<sup>48</sup> *Rainbow Springs Golf Co. v. Town of Mukwonago*, 2005 WI App 163, 284 Wis. 2d 519, 702 N.W.2d 40.

<sup>49</sup> *State ex. rel. DNR v. Walworth County Bd. of Adjustment*, 170 Wis. 2d 406, 414, 489 N.W.2d 631 (Ct. App. 1992).

<sup>50</sup> *State ex. rel. Brookside Poultry Farms, Inc. v. Jefferson County Bd. of Adjustment*, 131 Wis. 2d 101, 117-18, 388 N.W.2d 593 (1986).

<sup>51</sup> Wis. Stat. § 19.84.

- **Parties in interest.** Notice should be mailed to 'parties in interest' including the applicant, nearby property owners, and others as specified by local ordinance.<sup>51</sup> Many counties provide notice to affected towns, but are not specifically required to do so by statute.
- **Department of Natural Resources.** Written notice must be provided to the appropriate local DNR office at least 10 days prior to hearings for shoreland, shoreland-wetland, and floodplain zoning.<sup>52</sup>

### Attaching and Tracking Conditions

Conditions attached to a conditional use permit should be designed to diminish the adverse impacts of the use on the district. For example, a daycare facility might be allowed as a conditional use in a residential district subject to parking, fencing and signage requirements.

### How Do You Develop Conditions?

Conditions are usually developed in one of three ways. They may be:

1. listed in the local zoning ordinance for the district.
2. recommended by zoning staff during the public hearing or in a staff report, or
3. developed by the permit review body at the conclusion of the public hearing.

Permit conditions that are routinely imposed for similar projects should be adopted by ordinance as minimum standards for approval. Incorporating standards in the ordinance allows permit applicants to anticipate and plan for design, location, and construction requirements.

<sup>51</sup> Wis. Stat. §§ 59.694(6) & 62.23(7)(e)6 which apply to zoning boards deciding appeals, variances and conditional use permits. Presumably, the requirements also apply to the governing body or plan commission.

<sup>52</sup> Wis. Admin. Code §§ NR 115.05(4)(h) & NR 116.20(2)(c).

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### Time Limits, Modification and Revocation of Permits

Once a conditional use permit is granted, subsequent owners of the property are generally allowed to continue the use subject to limitations imposed in the original permit.<sup>56</sup> However, there are some exceptions to this rule. Communities may issue a limited-term permit for uses that are temporary in nature, such as a gravel pit or annual concert series. Permits can also be revoked or conditions added if the owner changes the use or violates permit conditions.<sup>57</sup> Revoking a conditional use permit is not considered a taking without just compensation because a conditional use permit is a type of zoning designation and not a property right.<sup>58</sup>

If a zoning code amendment removes the conditional use that was the basis for a permit, the conditional use permit becomes void.<sup>59</sup> In situations like this, the use is allowed to continue as a nonconforming use. However, the permit conditions are not enforceable.

### Reconsideration and Appeal of Decisions

A person who is dissatisfied with a decision of the plan commission may ask to have their case reheard multiple times hoping for the answer they desire. Courts have found that requests for re-hearings can be denied unless there is a significant change in the project proposal, new information relevant to the decision, or a reversible error in the original process or decision.<sup>60</sup>

<sup>56</sup> See Rohan, *Zoning and Land Use Controls*, sec. 44.01[4], p. 44-18, and Anderson, *American Law of Zoning* 3d, vol. 3, sec. 21.32, p. 754-5.

<sup>57</sup> Action may be taken following notice and a public hearing. *Hartland Sportsman's Club v. Town of Delafield*, 35 F.3d 1198 (7th Cir. Wis. 1994) and *Bettendorf v. St. Croix County Bd. of Adjustment*, 224 Wis. 2d 735, 591 N.W.2d 916 (Ct. App. 1999).

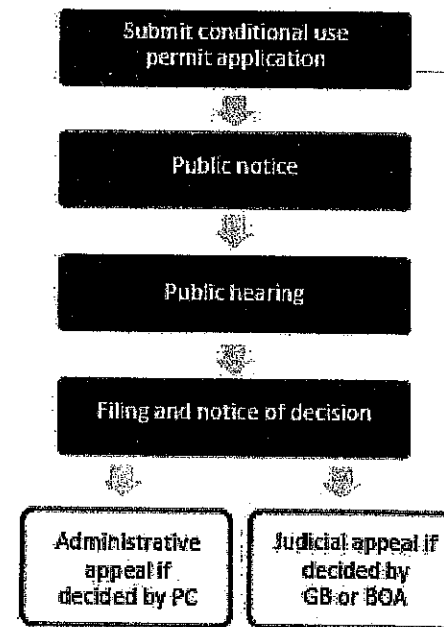
<sup>58</sup> *Rainbow Springs Golf v. Town of Mukwonago*, 2005 WI App 163, 284 Wis. 2d 519, 702 N.W.2d 40.

<sup>59</sup> *Hussein v. Village of Germantown Bd. of Zoning Appeals*, 2011 WI App 96, 334 Wis. 2d 764, 800 N.W.2d 551.

<sup>60</sup> *Tatsoka v. City of Waukesha Bd. of Zoning Appeals*, 220 Wis. 2d 656, 583 N.W.2d 871 (Ct. App. 1998);

Likewise, a person may appeal a decision of the plan commission. Appeal of conditional use decisions is handled differently depending on the body that made the initial decision to grant or deny the permit. The diagram below shows the relationship between the initial decision-making body and the appropriate appeal body. Conditional use decisions of the plan commission are appealed to the zoning board of adjustment or appeals, unless the ordinance provides an alternate mechanism of appeal to the governing body.<sup>61</sup> Conditional use decisions of the governing body or zoning board are appealed directly to circuit court.<sup>62</sup>

### Conditional Use Permit Application and Appeals



PC – Plan Commission, GB – Governing Body, BOA – Board of Adjustment/Appeals

*Goldberg v. Milwaukee Bd. of Zoning Appeals*, 115 Wis. 2d 517, 340 N.W.2d 558 (Ct. App. 1983)

<sup>61</sup> *League of Woman Voters v. Outagamie County*, 113 Wis. 2d 313, 334 N.W.2d 887 (1983); *State ex. rel. Brookside Poultry Farms, Inc. v. Jefferson County Bd. of Adj.*, 131 Wis. 2d 101, 388 N.W.2d 593 (1984).

<sup>62</sup> *Town of Hudson v. Hudson Town Bd. of Adjustment*, 158 Wis. 2d 263, 461 N.W.2d 827 (Ct. App. 1990); *Magnolia Twp. v. Town of Magnolia*, 2005 WI App 119, 284 Wis. 2d 361, 701 N.W.2d 60.