MEMORANDUM

TO: City of Ramsey Planning Commission
FROM: William K. Goodrich, City Attorney
RE: Conditional Use Permit for 16101 Ramsey Boulevard NW
DATE: October 20, 2011

FACTS

By its Resolution # 00-11-309 on November 28, 2000 the City issued a conditional use permit (the "CUP") granting the right to maintain a second dwelling on the residentially zoned property located at 16101 Ramsey Boulevard (the "Subject Property"). The CUP required that the occupants of the second dwelling can be only "relatives" of the permittee. In addition, the CUP provided that the permittee may not lease the premises in exchange for consideration. At the time of the issuance of the CUP accessory dwellings were not permitted in residential districts, thus the CUP. Currently, accessory dwellings are still not permitted in the City's residential zones.

Subsequent to the issuance of the CUP title to the Subject Property has transferred to another party. The new Subject Property owner (the "Applicant") has properly applied to the City to lease for payment the accessory dwelling which is the subject of the CUP to a non-relative.

The CUP did not expire with the Subject Property's title transfer and may continue in effect as to the property so long as its conditions are complied with.

ISSUE

The issue now is can the City enforce the "relative only" and "no lease for consideration" provisions both of which are requirements of the CUP.

OPINION

There is conflicting authority on the requirement that residents of single family properties be related by blood or marriage or be "relatives" as used in the CUP. The U.S. Supreme Court in 1974 case of *Belle Terre v. Boraas*, 416 U.S.1 (1974) found no evidence of infringement of constitutional rights by allowing an ordinance which prohibited six unrelated college students from renting a house in a single family neighborhood. The Supreme Court in that case found that the legitimate objectives of ordinances to protect family residential zoning are to maintain:

> A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land use project addressed to family needs. This goal is a permissible one within *Berman v. Parker* . . . The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion, and clean air make the area a sanctuary for people.

Thus the U.S. Supreme Court finds no objection in this 1974 case with family only restrictions.

However, *Belle Terre* was interpreting the U.S. Constitution and not the Minnesota State Constitution or any other state constitution. Since *Belle Terre* was decided in 1974, several state court decisions have held ordinances which totally exclude unrelated persons from single family districts as unconstitutional under their specific State Constitution.

To date, this issue has not been decided by the Minnesota Supreme Court. However, the Minnesota Supreme Court in two cases dealing with group homes has ruled that even with local zoning ordinances which require persons to be related in order to be a family, a group home is a single family dwelling. See *Costley v. Caromin House, Inc.*, Minn. 313 N.W.2d 21 (1981) and *Good Neighbor Care Center v. Little Canada*, 357 N.W.2d 159 (Min. App. 1984). In *Costley* the Minnesota Supreme Court went on to say that . . . the word "family" is no longer limited to a traditional concept of marriage and biological ties. . so long as the group home bears a generic character of a family unit as a relatively permanent household, and is not a framework for transients living, it conforms to the purpose of the ordinance."

In addition in another U.S. Supreme Court case, the court ruled in 1995 that zoning ordinances placing a limit on the number of unrelated persons who may live together in a single family zone may be challenged under the U.S. Fair Housing Act Amendments of 1988.

Thus notwithstanding the *Belle Terre* decision cited above, the trend in Appellate Court decisions clearly seems to be to define "family" or "relatives" in very broad terms and to NOT totally exclude groups of unrelated persons from occupying properties in single family zones. The courts, however, do seem to permit a restriction on the number of unrelated persons who can live together in a family zone. This limitation appears to be in response to legitimate zoning ordinance objectives of preserving "the sanctity of the family, quiet neighborhoods, low population, few motor vehicles and low transiency." *State v. Champoux*, 252 Neb. 769 (1997).

By way of example, the City of Richfield ordinance on definition of "family" appears to be in accord with the current state of the law on this subject. The Richfield ordinance defines family as (1) an individual plus (1) or more persons related by blood, marriage, etc.; (2) **two unrelated people and any children related to either of them; or (3) one or more persons occupying a premises, subject to a limit of not more than three (3) unrelated persons eighteen (18) years of age or older** (emphasis added).

Richfield goes on to state in its ordinance:

> The definition of family is established for the purpose of preserving the character of residential neighborhoods by controlling population density, noise, disturbance and traffic congestion and shall not be applied so as to prevent the city from making reasonable accommodation where the city determines it necessary under applicable federal fair housing laws.

In my opinion with regard to the instant case and the CUP, it will be difficult, if challenged in court for Ramsey to prevail in enforcing the total prohibition of non-relatives from the second dwelling. Some reasonable accommodation of a limited number of non-relatives would seem to be required as consistent with the zoning ordinance's ". . . legitimate objectives of preserving the sanctity of the family, quiet neighborhoods . . ." etc. An interpretation similar to the Richfield ordinance would seem reasonable and legally enforceable.

Finally, I see no specific authority with regard to the CUPS' no rent for consideration clause. The analysis of this provision should be similar to the "relative" issue restriction. That is, can the City as a governmental agency prove that this restriction is rationally related to the legitimate objectives of the zoning ordinance as discussed above.

Please advise if I can be of further assistance on this matter.