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## Not In Your House: The Court of Appeals Upholds Rental Restrictions

By Eric Nasstrom  
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**T**he local chapter of your former fraternity just violated the terms of its double secret probation, and the dean has ordered it to leave campus. You just purchased a large home near campus and are very sympathetic to the plight of your fraternity brothers. You'd love to rent your house to them. But can you? In 2005, the City Council of Winona enacted an ordinance restricting to 30 percent the number of rental units that could be located on a given city block in certain districts within the city. Winona, Minn., City Code Ch. 33A.03(i)(2013) *cited in Dean v. City of Winona*, – N.W.2d – 2014 WL 684689 (Minn. App., Feb. 24, 2014)(published opinion). Consideration of the ordinance was driven by increased parking demands, most notably around Winona State University's campus, as well as concerns that neighborhoods heavily concentrated with student rental housing are prone to becoming run-down. The cities of Northfield, Mankato and West St. Paul have enacted similar ordinances. Jenna Ross, *Court of Appeals Upholds Winona's Rental Limits*, STARTRIBUNE (March 1, 2014). If your property is in one of these cities, you may be out of luck.

In *Dean v. City of Winona*, Ethan Dean and

two other property owners who purchased properties in Winona after enactment of the 30 percent rule sued when their attempts to obtain rental certifications were rejected. *See Dean*, 2014 WL 684689 \*4. They alleged that Winona's City Council exceeded its legislative authority in enacting the 30 percent rule, and claimed the ordinance was unconstitutional. The Minnesota Court of Appeals dispatched the first argument, stating it "easily conclude[d]" that the public's interest in regulating rental housing was sufficient to justify a municipality's use of a police power to regulate housing. *Id.* \*5. It rejected equal protection challenges to the ordinance, concluding the 30 percent rule was facially neutral and did not result in similarly situated groups of persons being treated differently from one another, was not applied in an arbitrary manner, and in any event would not have resulted in "invidious" discrimination even if similarly situated persons were treated differently. *Id.* \*\*6-8. The ordinance likewise did not violate the purchasers' substantive due process rights because the ordinance: (a) promoted a valid public purpose of controlling rental density; (b) was enacted after considerable

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deliberation and analysis; (c) did not unreasonably, arbitrarily or capriciously interfere with private interests; and (d) was rationally related to the purpose served. *Id.* Finally, the court of appeals rejected the argument that the 30 percent rule delegated legislative power to the property owner's neighbors, noting that the neighbors on a given block do not vote on how it is applied and make no decision at all regarding application of the 30 percent rule. *Id.* \*\*10-11. The court of appeals sympathized with the owners' plight, but its holding left no doubt the 30 percent rule fit well within the bounds of constitutionality.

At this writing, a petition for review by the Minnesota Supreme Court has not been filed. Given that the court grants petitions just 10 percent of the time, the likelihood that the *Dean* opinion would even be reviewed, much less reversed or modified, is not high.

The *Dean* opinion is instructive on several levels. If zoning ordinances are facially neutral in their classification of property owners, land use laws and decisions made under them are usually reviewed under a rational basis standard. *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 179-80 (Minn. 2006).

The *Dean* opinion reminds that as long as there is a reasonable and rational connection between the objective sought by the legislation and the law itself, a reviewing court will not very likely disturb it. Zoning laws are sometimes challenged on the grounds they result in an impermissible taking or reverse condemnation. See, e.g., *Interstate Companies, Inc. v. City of Bloomington*, 790 N.W.2d 509, 512-516 (Minn. App. 2010). But these claims were not addressed in the *Dean* appeal, perhaps because the plaintiffs purchased after the 30 percent rule was enacted. As to the 30 percent rule itself, other municipalities likely are paying close attention to the *Dean* opinion, and may use it as a roadmap to enact similar ordinances. The opinion may have an impact in a number of cities where the proportion of renters is high or in parts of cities where rental units are dense. And for individual purchasers and current owners of properties with designs on using them as rental properties, the opinion illustrates that a deep price may be paid if a purchaser is unaware of zoning restrictions. So don't plan to host that toga party yet – it may be your house, but it may not be yours to do with as you please.

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