



[Jon D. Becker](#)
[Jesse S. Ishikawa](#)
[Melanie S. Lee](#)
[Justin F. Oeth](#)
[Barbara Rule Osborn](#)
[Dean B. Richards](#)
[Harvey L. Temkin](#)
[Julie A. Tjugum-Rasmussen](#)
[Nathan J. Wautier](#)

With the largest real estate department in Wisconsin, Reinhart offers clients custom-tailored real estate expertise. Our attorneys provide clients with creative solutions for all of their real estate needs.

reinhartlaw.com

[subscribe/](#)
[unsubscribe](#)

[Reinhart Weekly](#)
[Real Estate Report](#)
[Archives](#)



11-17-08

Can a City Base Its Land Use Decision on the Identity of the End User?

Anecdotes we've heard on the street:

A zoning official requires, as part of the application, that the applicant identify the end user.

A plan commissioner tells an applicant: "You've got a great track record in this city, and that's the only reason we're rezoning your land. We wouldn't have done this for an outsider."

A plan commissioner states that she'll support a rezoning petition if it the occupant is a locally based store, but not if it's a national chain.

Can municipal officials base their land use decisions on such criteria? In Wisconsin, the answer is a resounding NO. The reason? Land use decisions must be based on the land use, not the land *owner*. The theories underlying this rule are:

Basing a land use decision on the identity of the end user violates the constitutional right of due process by using a classification that is unrelated to any public purpose.

A city that intentionally and arbitrarily treats an applicant differently from others similarly situated violates the constitutional right of equal protection.

Basing a land use decision on the identity of the end user is outside the scope of the city's authority.

The Wisconsin court of appeals has prohibited consideration of the applicant's past, even where the applicant was a demonstrably bad actor. In *Staege v. Town of Norway*, the Wisconsin court of appeals barred consideration of the applicant's past business practices and reputation even where the applicant had illegally moved junk onto his property and had a long history of past zoning violations (including, even, some jail time).

The court of appeals has even held consideration of *good* character to be a no-no. In *Keen et al. v. Dane County Board of Supervisors*, the court held that a member of the Dane County Zoning and Natural Resources Committee created an impermissibly high risk of bias when he wrote a letter to the Committee stating that the applicant "has always stood out above the rest in their efforts and caretaker of the land."



[Jesse S. Ishikawa](#)
Reinhart Boerner Van Deuren s.c.
22 East Mifflin Street
Madison, WI 53703
608-229-2208
jjshikawa@reinhartlaw.com

Have a question for a
Real Estate Guru? [Click here!](#)

**CURRENT RATES**

		<u>Associated Bank</u>	<u>Grandbridge Real Estate Capital LLC</u>	<u>US Bank</u>
Apartment/Multi Family Loans	Rate	L*+ 200-275	6.15% - 6.35%	L*+ 250-300
	Term	Up to 10 Years	10 Years	Up to 5 Years
	LTV	80%	80%	Up to 80%
	Amortization	Up to 30 Years	Up to 30 Years	Up to 30 Years
Retail/ Office Loans	Rate	L*+ 250-275		L*+250-300
	Term	Up to 10 Years		Up to 5 Years
	LTV	75%		Up to 80%
	Amortization	Up to 25 Years		Up to 30 Years
Commercial Loans	Rate	L*+ 250-275		L*+ 250-300
	Term	Up to 10 Years		Up to 5 Years
	LTV	75%		Up to 80%
	Amortization	Up to 25 Years		Up to 30 Years

*L equals the Libor swap rate for the applicable period

Maturity	Today	Last week	Last month
5 year Treasury	2.32%	2.48%	2.82%
10 year Treasury	3.73%	3.74%	3.93%

This Reinhart Weekly Real Estate Report provides general information about real estate issues. It should not be construed as legal advice or a legal opinion. Readers should seek legal counsel concerning specific factual situations confronting them.

Any advice expressed in this writing as to tax matters was neither written nor intended by the sender or Reinhart Boerner Van Deuren s.c. to be used and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. If any such tax advice is made to any person or party other than to our client to whom the advice is directed and intended, then the advice expressed is being delivered to support the promotion or marketing (by a person other than Reinhart Boerner Van Deuren s.c.) of the transaction or matter discussed or referenced. Each taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

