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**RODNEY W. CARTER**  
MILWAUKEE:  
414.978.5365  
CHICAGO:  
312.655.1500  
RODNEY.CARTER@  
HUSCHBLACKWELL.COM

**LISA M. LAWLESS**  
MILWAUKEE:  
414.978.5438  
LISA.LAWLESS@  
HUSCHBLACKWELL.COM

**JAMES C. REMINGTON**  
MILWAUKEE:

# Husch Blackwell Earns Appellate Victory in Wisconsin Land Use Case

## WISCONSIN COURT OF APPEALS DECISION BECOMES BINDING PRECEDENT FOR SIMILAR CASES THROUGHOUT THE STATE.

Husch Blackwell prevailed for a plaintiff real estate developer in the Wisconsin Court of Appeals against the City of Brookfield in a closely-watched land use case. The litigation attracted widespread industry attention. The Wisconsin REALTORS® Association, the Wisconsin Builders Association, and NAIOP-WI filed an amicus brief in the appeal.

The case pitted a developer who sought to subdivide property against the City of Brookfield. The plaintiff owns a five-acre parcel of land located between two residential subdivisions in the City of Brookfield. The two subdivisions each have dead-end streets that terminate on either side of plaintiff's parcel, and the City desired a through street connecting the dead ends, built and funded by the plaintiff. The city would only approve plaintiff's land-use proposal on the condition the developer give up part of the land to create the through street and fund that street. The City declined plaintiff's land-use application because the plaintiff developer did not accept these conditions.

Following the rejection of the plaintiff's submission, the plaintiff filed a lawsuit in Wisconsin state court in January 2020, moving for summary judgment and arguing that the City engaged in an unconstitutional taking when it refused to approve the initial land-use application and conditioned approval of the development on the dedication of property and construction of the through street for public use. The trial court granted summary judgment, concluding that the required conditions were an unconstitutional exaction and ordered approval of plaintiff's proposed property division.

On the City's appeal, the Court of Appeals affirmed the lower court's judgment in unequivocal terms, holding that the required land dedication and street-connection conditions are unconstitutional exactions. Exactions required for land-use approval are only constitutional if they satisfy the *Nollan/Dolan* test requiring an essential nexus with a legitimate government interest and rough proportionality between the government's exaction and the impact of the development. The Court of Appeals held that the City failed to prove that the property dedication and street-connection conditions are required to mitigate negative impacts caused by the proposed lot-split development.

As the Court explained, the dead-end streets were not created by the developer's subdivision proposal, but rather by platting of earlier subdivisions on either side of the property. The City "failed to identify any anticipated impacts caused by the proposed land split, much less impacts that would be roughly proportional to the costs of the exaction."

The decision is "recommended for publication," meaning it becomes binding precedent applicable in other cases and land-use proceedings throughout the state.

"The facts of this case were clear from the outset, as was the applicable legal standard—the City had no legal justification for denying our client's submitted plan," said Rodney Carter, a partner with Husch Blackwell's Real Estate, Development & Construction team who led the developer's litigation efforts. "Our team is pleased that our client can put this behind them and move on with the development plan, but the real winner here is the people of Wisconsin. This case was important to safeguarding private property rights against the encroachment of local governments."

"This is a terrific result for developers across Wisconsin," added Carter. "We never argued that the City couldn't take the property for the road, but that if the property is taken, then the developer needed to be compensated accordingly. This goes back to *Nollan v. California* and *Dolan v. City of Tigard*, which are seminal land use cases."

Husch Blackwell's Lisa Lawless and Jake Remington led the firm's representation in the Wisconsin Court of Appeals.