

TO: Mayor and Members of Troy City Council
FROM: Lori Grigg Bluhm, City Attorney
Allan T. Motzny, Assistant City Attorney
DATE: March 13, 2006
SUBJECT: Papadelis v. City of Troy

Once the City of Troy filed a Claim of Appeal in the *Papadelis v. Troy* lawsuit, the Plaintiffs filed a Claim of Cross Appeal of the claims where Oakland County Circuit Court Judge Colleen O'Brien ruled in favor of the City. A copy of the Cross Claim of Appeal is attached for your information.

The City's appeal challenges O'Brien's opinion that the Papadelis family and their business entities (Telly's Greenhouse and Garden Center and Telly's Nursery, L.L.C.) were conducting agricultural activities on the residential properties at 3301 and 3305 John R. Road in the City of Troy, which were protected by the State Right to Farm Act (RTFA). Based on this determination, O'Brien further held that the Papadelis family was exempt from obtaining permits or other approvals from the City, based on her interpretation of the agricultural building exemption under the State Code Construction Act.

The Papadelis family claims entitlement to monetary damages and injunctive relief, even though Judge O'Brien dismissed those claims on the City's motion. Specifically, they charge that City employees engaged in unconstitutional conduct, which violated the rights of Gust and Niki Papadelis, and/or Telly's Greenhouse and Garden Center and Telly's Nursery, L.L.C.

Absent objection from the Troy City Council, our office will represent the interests of the City in this cross appeal. If you have any questions concerning the above, please let us know.

STATE OF MICHIGAN
IN THE COURT OF APPEALS
(ON APPEAL FROM THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND)

GUST PAPADELIS, NIKI PAPADELIS,
TELLY'S GREENHOUSE AND GARDEN
CENTER, INC., a Michigan Corporation,
and TELLY'S NURSERY, L.L.C., a
Michigan Limited Liability Company,

Plaintiffs/Appellees-Cross Appellants,

v

CITY OF TROY, a Michigan Municipal
Corporation, MARK STIMAC, MARLENE
STRUCKMAN, and JOHN/JANE DOES(S),

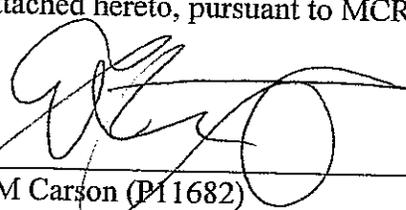
Defendants/Appellee-Cross Appellees.

COA Docket No. _____

Lower Case No.05-067029-CZ
Hon. Colleen A. O'Brien

CLAIM OF CROSS APPEAL

Plaintiffs/Appellees-Cross Appellants, GUST PAPADELIS, NIKI PAPADELIS, TELLY'S GREENHOUSE AND GARDEN and CENTER, INC. and TELLY'S NURSERY, L.L.C., through their counsel, CARSON FISCHER, P.L.C. , claim a cross appeal of right from the Opinion and Order dated February 17, 2006, in the Circuit Court for the County of Oakland, State of Michigan, by the Honorable Colleen A. O'Brien, a copy of which is attached hereto, pursuant to MCR 7.203(A)(1) and (G).


Robert M Carson (P11682)

Karen H. Safran (P51317)

CARSON FISCHER, P.L.C.

Attorneys for Plaintiffs/Appellees-Cross Appellants

4111 Andover Road

West, Second Floor

Bloomfield Hills, MI 48302-1924

(248) 644-4840

Dated: March 10, 2006

Trial Court/Tribunal Name:
Oakland Circuit Court

Court of Appeals, State of Michigan
Jurisdictional Checklist

CASE NO.
Trial Court/Tribunal:
05-067029-CZ
Court of Appeals:

Case Name: GUST PAPADELIS, et al. v CITY OF TROY, et al.

INSTRUCTIONS: Please complete this checklist and file with your claim of appeal. **ALL** of the numbered items are required. Check each box as you confirm that each item is being filed.

- 1. A **signed** claim of appeal form showing the correct lower court number(s). [MCR 7.204(B)(1) & (D).]
- 2. A filing fee of \$375.00 or appropriate fee substitute. [MCR 7.202(3) & 7.204(B)(2).] (Where multiple lower court or tribunal numbers are involved, an additional filing fee may be required. Appellants will be advised of any additional amount required.)
- 3. A copy of the order you are appealing. [MCR 7.204(C)(1).] (This is the order deciding the merits and not an order denying reconsideration, new trial, or other post-judgment relief.)
- 4. Evidence that the necessary transcript has been ordered. [MCR 7.204(C)(2).] (Only one item from a through e is required).
 - a. No transcript will be filed. [MCR 7.204(C)(2) & AO 2004-5 ¶ 8(A)(1).]
 - b. The transcript has already been filed. [MCR 7.210(B)(1)(a).]
 - c. The complete transcript has been ordered. [MCR 7.210(B)(1)(a).]
 - d. This appeal is from a probate court proceeding which does not require a complete transcript. [MCR 7.210(B)(1)(b).]
 - e. A motion has been filed in the lower court or tribunal for submission of the appeal on less than the complete transcript. [MCR 7.210(B)(1)(c).]
 - f. The parties have stipulated to submission of the appeal on less than the complete transcript. [MCR 7.210(B)(1)(d).]
 - g. The parties have stipulated to a statement of facts. [MCR 7.210(B)(1)(e).]
- 5. Proof of service demonstrating that all other parties have been served. [MCR 7.204(C)(3).] (Even if a party is not an appellee, they must be served.)
- 6. A **current** register of actions from the lower court or tribunal. [MCR 7.204(C)(5).]

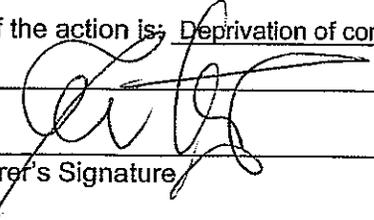
Finality of Order Being Appealed (Check the box that demonstrates your claim of appeal is by right. If neither applies, you do not have an appeal by right.)

- The claim of appeal is from an order defined as a final order by MCR 7.202(6) or MCR 5.801(B)(1). [MCR 7.203(A)(1).] Please specify which category of final order applies: MCR 7.202(6)(a)(1)
- The claim of appeal is from an order which is designated by statute, court rule, or case law as an order appealable by right to the Court of Appeals. Please specify the authority under which you have an appeal by right: _____

Track Designation [Administrative Order 2004-5]

This appeal involves only summary disposition. The nature of the action is: Deprivation of constitutional property rights and violation of 42 USC 1983.

03/10/2006
Date


Preparer's Signature