



**TO:** Mayor and Members of Troy City Council  
**FROM:** Lori Grigg Bluhm, City Attorney  
Allan T. Motzny, Assistant City Attorney  
**DATE:** October 4, 2006  
**SUBJECT:** Papadelis v. City of Troy

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The City has the option to pursue an appeal of the recent *Papadelis v. Troy* decision to the Michigan Supreme Court. Such a pursuit necessarily requires an application for leave to appeal the decision of the Michigan Court of Appeals.

According to Court of Appeals decision, the Right To Farm Act (RTFA) allows the Papadelis family to use all of their residentially zoned property for the nursery and greenhouse operation, even though such use is an expansion of a nonconforming use. In addition, the Court also excused the Papadelis family from obtaining building permits from the City for any structures on their property. The Court of Appeals based this exemption on the State Construction Code Act, which states that permits are not required for a building or structure that is "incidental to the use for agricultural purposes of the land on which the building is located if it is not used in the business of retail trade." The Court of Appeals determined that since no transfer of cash occurred within the greenhouses or the other structures on the subject property, there was no requirement to comply with the permitting process for the Papadelis property. The Court also preempted the provisions of Troy's zoning ordinance that regulate building size, lot coverage, and setbacks for these residential parcels.

The initial lawsuit between the City of Troy and the Papadelis family was filed in May 1991, in an effort to stop the continuing expansion of Telly's Nursery in a residentially zoned district. The litigation between the parties has continued, as the expansion has continued. If left unchallenged, the Court of Appeals decision could conceivably lead to additional expansion onto other residential properties owned by the Papadelis family. However, Council should be aware that if an appeal to the Michigan Supreme Court is filed, then the Papadelis family will probably seek to reinstate their claims against the City employees, who they argue have allegedly violated their civil rights.

On a broader note, the Court of Appeals decision is one of many recent decisions construing RTFA in such a fashion as to eliminate any local control over residentially zoned property. Such decisions, as the Court noted, allows businesses to move into established residential neighborhoods and start a farm or farm operation in contravention of local zoning ordinances. Because this decision may have state wide impact, the Michigan Municipal League Legal Defense Fund may be interested in filing an amicus brief if the City chooses to pursue an application for leave to appeal to the Michigan Supreme Court.

We have attached two separate resolutions for your consideration. The first resolution authorizes our office to file an application for leave to appeal to the Michigan Supreme Court in the *Papadelis v. City of Troy* lawsuit. The second resolution requests Amicus Brief participation from the Legal Defense Fund of the Michigan Municipal League.

If you have any questions concerning the above, please let us know.