TO: Members of Troy City Council
FROM: Lori Grigg Bluhm, City Attorney
Allan T. Motzny, Assistant City Attorney
DATE: July 3, 2007
SUBJECT: Papadelis v. City of Troy

Enclosed please find the favorable decision from the Michigan Supreme Court in the *Papadelis v. City of Troy* case. According to this opinion, the City's zoning regulations are not pre-empted by either the Right to Farm Act or the Michigan Construction Code Act. According to the Michigan Supreme Court, the structures used for Telly's Nursery on John R. Road, north of Big Beaver Road, are not "incidental to the use for agricultural purposes of the land." This means that the Papadelis family is required to comply with the City's permitting requirements, as well as the size, height, bulk, floor area, construction, and location criteria, as set forth in our ordinances and development standards. This is a reversal of the Michigan Court of Appeals decision. The Supreme Court has remanded the case to the Oakland County Circuit Court for an order. The counter-appeal filed by Plaintiffs against the City and Mark Stimac and Marlene Struckman was dismissed.

It is unusual for the Supreme Court to award the requested relief without oral argument or an official filing of the appellate briefs. However, the City filed its application for leave to appeal, which set forth our legal analysis that supported the requested reversal of the adverse decision of the Michigan Court of Appeals. Although the Michigan Municipal League usually waits to see if an application for leave to appeal will be granted before committing to file an amicus brief, they agreed to file an amicus brief at the application stage in this case, since the Court of Appeals decision could have had far reaching implications to Michigan municipalities. Fortunately, we now have a decision that makes it clear that local zoning regulations are not pre-empted by the Right to Farm Act or the Michigan Construction Code Act.

If you have any questions, please let us know.

Order

Michigan Supreme Court
Lansing, Michigan

June 29, 2007

132366 & (65)(69)

Clifford W. Taylor,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

JUL 2 2007

GUST PAPADELIS, NIKI PAPADELIS,
TELLY'S GREENHOUSE AND GARDEN
CENTER, INC., and TELLY'S NURSERY LLC,
Plaintiffs-Appellees/
Cross-Appellants,

v

SC: 132366
COA: 268920
Oakland CC: 2005-067029-CZ

CITY OF TROY, MARK STIMAC, and
MARLENE STRUCKMAN,
Defendants-Appellants/
Cross-Appellees.

_____/

On order of the Court, the motion for leave to file brief amicus curiae is GRANTED. The application for leave to appeal the September 19, 2006 judgment of the Court of Appeals and the application for leave to appeal as cross-appellants are considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we REVERSE in part the judgments of the Oakland Circuit Court and the Court of Appeals to the extent that they hold that the Right to Farm Act, MCL 286.471 et seq. (RTFA), and the State Construction Code, MCL 125.1502a(f), exempt the plaintiffs from the defendant city's ordinances governing the permitting, size, height, bulk, floor area, construction, and location of structures used in the plaintiffs' greenhouse operations. Assuming that the plaintiffs' acquisition of additional land entitled them under the city's zoning ordinance to make agricultural use of the north parcel (a point on which we express no opinion, in light of the defendant city's failure to exhaust all available avenues of appeal from that ruling after the remand to the Oakland Circuit Court in the prior action, see *City of Troy v Papadelis (On Remand)*, 226 Mich App 90 (1997)), the plaintiffs' structures remain subject to applicable building permit, size, height, bulk, floor area, construction, and location requirements under the defendant city's ordinances. The plaintiffs' greenhouses and pole barn are not "incidental to the use for agricultural purposes of the land" on which they are located within the meaning of MCL 125.1502a(f). As no provisions of the RTFA or any published generally accepted agricultural and

management practice address the permitting, size, height, bulk, floor area, construction, and location of buildings used for greenhouse or related agricultural purposes, no conflict exists between the RTFA and the defendant city's ordinances regulating such matters that would preclude their enforcement under the facts of this case. We REMAND this case to the Oakland Circuit Court for further proceedings not inconsistent with this order. In all other respects, the applications are DENIED, because we are not persuaded that the remaining questions presented should be reviewed by this Court.

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 29, 2007

Corbin R. Davis
Clerk

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