RENDERED: JULY 30, 2010; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-001105-MR

HAROLD GENE CUNNINGHAM;
ANN CUNNINGHAM; DON BROCK;
SHERRY BROCK; HENRY BRINKMAN;
JEWELENE KING; MICHAEL KING;
JOELLE DADDARIO; CHRIS DADDARIO;
CAROL TAYBI; KEWMARS TAYBI;
RONALD HENDRICKS; LADONNA
HENDRICKS; PATRICK HARNEY;
LESLIE HARNEY; EMILY MACFARLANE;
JAMES MACFARLANE; KEVIN BIARD;
KRISTEN BIARD; DAN TOMBRAGEL;
JACQUELINE TOMBRAGEL; CINDY
STEFFEN; DANIEL STEFFEN;
MARY M. CRANK; FLOYD CRANK;
VIRGINIA LAWRENCE; RODNEY
LAWRENCE; GARY SCHULER;
MARSHALL HUTCHINSON; SUSAN
HUTCHINSON; ROGER WILDER;
CAROLINE WILDER; MARJORIE KUHN;
RALPH COX; DON HOLLAND; PAMELA
HOLLAND; SANDRA ASHLEY; SILAS
ASHLEY; DONNA TREGO; WAYNE
TREGO; WILLIAM SLAYBACK;
CONNIE SLAYBACK; VICKI MILLER;
RODNEY MILLER; SARA HAYDEN;
MICHAEL HAYDEN; MARILYN ROHLING;
HERB JOHNSON; MARY JOHNSON;
GREG STEFFEN; ANGELA STEFFEN;

BRUCE HARTMAN; BEATA KOT;
JASON GILLISPIE; BRUCE BORNE;
AND NANCY BORNE APPELLANTS

APPEAL FROM BOONE CIRCUIT COURT
v. HONORABLE ANTHONY W. FROHLICH, JUDGE
ACTION NO. 06-CI-01893

CITY OF FLORENCE, KENTUCKY;
DIANE WHALEN; FLORENCE CITY
COUNCIL; JULIE METZGER; TED
BUSHELMAN; MEL CARROLL; BETSEY
CONRAD; DAVID A. OSBORNE;
EIGHTEEN, LTD.; DENNIS C. HELMER;
GAYLE S. HELMER; DAVID L.
HELMER; AND SANDRA G. HELMER APPELLEES

AND NO. 2009-CA-001160-MR

CITY OF FLORENCE, KENTUCKY CROSS-APPELLANT

v.

CROSS-APPEAL FROM BOONE CIRCUIT COURT
HONORABLE ANTHONY W. FROHLICH, JUDGE
ACTION NO. 06-CI-01893

HAROLD GENE CUNNINGHAM;
ANN CUNNINGHAM; DON BROCK;
SHERRY BROCK; HENRY BRINKMAN;
JEWELENE KING; MICHAEL KING;
JOELLE DADDARIO; CHRIS DADDARIO;
CAROL TAYBI; KEWMARS TAYBI;
RONALD HENDRICKS; LADONNA
HENDRICKS; PATRICK HARNEY;
LESLIE HARNEY; EMILY MACFARLANE;
JAMES MACFARLANE; KEVIN BIARD;
KRISTEN BIARD; DAN TOMBRAGEL;
JACQUELINE TOMBRAGEL; CINDY
STEFFEN; DANIEL STEFFEN;
MARY M. CRANK; FLOYD CRANK;
VIRGINIA LAWRENCE; RODNEY
LAWRENCE; GARY SCHULER;
MARSHALL HUTCHINSON; SUSAN
HUTCHINSON; ROGER WILDER;
CAROLINE WILDER; MARJORIE KUHN;
RALPH COX; DON HOLLAND; PAMELA
HOLLAND; SANDRA ASHLEY; SILAS
ASHLEY; DONNA TREGO; WAYNE
TREGO; WILLIAM SLAYBACK;
CONNIE SLAYBACK; VICKI MILLER;
RODNEY MILLER; SARA HAYDEN;
MICHAEL HAYDEN; MARILYN ROHLING;
HERB JOHNSON; MARY JOHNSON;
GREG STEFFEN; ANGELA STEFFEN;
BRUCE HARTMAN; BEATA KOT;
JASON GILLISPIE; BRUCE BORNE;
AND NANCY BORNE CROSS-APPELLEES

AND NO. 2009-CA-001161-MR

EIGHTEEN, LTD.; DENNIS C. HELMER;
GAYLE S. HELMER; DAVID L.
HELMER; AND SANDRA G. HELMER CROSS-APPELLANTS

CROSS-APPEAL FROM BOONE CIRCUIT COURT
v. HONORABLE ANTHONY W. FROHLICH, JUDGE
ACTION NO. 06-CI-01893

HAROLD GENE CUNNINGHAM;
ANN CUNNINGHAM; DON BROCK;
SHERRY BROCK; HENRY BRINKMAN;
JEWELENE KING; MICHAEL KING;
JOELLE DADDARIO; CHRIS DADDARIO;
CAROL TAYBI; KEWMARS TAYBI;
RONALD HENDRICKS; LADONNA
HENDRICKS; PATRICK HARNEY;
LESLIE HARNEY; EMILY MACFARLANE;
JAMES MACFARLANE; KEVIN BIARD;
KRISTEN BIARD; DAN TOMBRAGEL;
JACQUELINE TOMBRAGEL; CINDY
STEFFEN; DANIEL STEFFEN;
MARY M. CRANK; FLOYD CRANK;
VIRGINIA LAWRENCE; RODNEY
LAWRENCE; GARY SCHULER;
MARSHALL HUTCHINSON; SUSAN
HUTCHINSON; ROGER WILDER;
CAROLINE WILDER; MARJORIE KUHN;
RALPH COX; DON HOLLAND; PAMELA
HOLLAND; SANDRA ASHLEY; SILAS
ASHLEY; DONNA TREGO; WAYNE
TREGO; WILLIAM SLAYBACK;
CONNIE SLAYBACK; VICKI MILLER;
RODNEY MILLER; SARA HAYDEN;
MICHAEL HAYDEN; MARILYN ROHLING;
HERB JOHNSON; MARY JOHNSON;
GREG STEFFEN; ANGELA STEFFEN;
BRUCE HARTMAN; BEATA KOT;
JASON GILLISPIE; BRUCE BORNE;
AND NANCY BORNE CROSS-APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: TAYLOR, CHIEF JUDGE; THOMPSON, JUDGE; WHITE,[1] SENIOR JUDGE.

WHITE, SENIOR JUDGE: This appeal and accompanying cross-appeals are taken from orders of the Boone Circuit Court in a zoning amendment case entered on May 12, 2009, and April 19, 2007. The appellants are Harold Gene Cunningham and fifty-five other individuals who own lots in the Dilcrest Manor subdivision, which is located across the street from the Florence Mall in Florence, Kentucky. The appellees are the City of Florence; members of the Florence City Council; Dennis C. Helmer, Gayle S. Helmer, David L. Helmer and Sandra G. Helmer; and Eighteen, Ltd. The City of Florence, the Helmers, and Eighteen, Ltd., have cross-appealed from the order of April 19, 2007, which denied their motions for summary judgment on the grounds of the statute of limitations. This opinion will refer to the appellants/cross-appellees collectively as "Cunningham" and to the appellees/cross-appellants as "the City" and "the Helmers."

On October 9, 2003, the Helmers, acting through Eighteen, Ltd., filed an application to rezone a tract of property they own in the Dilcrest Manor subdivision from "residential family" to "commercial" and for a variance to reduce a buffer zone in the rear yard, so as to allow the Helmers to construct two office buildings on the tract. The Helmer tract is located at the southeast corner of the intersection of US 42 and Mall Road. Mall Road runs in a northerly direction from

[1] Senior Judge Edwin M. White sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

US 42. It becomes Dilcrest Drive on the south side of US 42. The Helmers' tract borders Dilcrest Drive on the west and US 42 on the north.

On November 19, 2003, the Boone County Planning Commission conducted a public hearing on the Helmers' application. On December 2, 2003, the Zone Change Committee also held a public meeting on the application, although no further information was taken. On December 16, 2003, the Helmers submitted a revised plan which incorporated suggestions made by the Zone Change Committee, which voted the next day to approve the project. The Boone County Planning Commission then approved the application and forwarded it to the City.

The City did not hold public hearings and decided the matter based upon the record compiled by the Planning Commission. On March 16, 2004, the City Council voted to deny the application, in part because the development would have an adverse impact on traffic congestion in the area. Specifically, the Council explained that: "It would have been mandatory, in order to minimize this impact [on traffic], for the proposal to include a separate right turn lane of adequate length from Dilcrest Drive onto US 42 together with a frontage road, parallel to US 42, through adjacent properties to the intersection at Sycamore Drive." Sycamore Drive borders the Helmer property on the east.

The Helmers appealed the denial of their application to the Boone Circuit Court. While the appeal was pending, the City settled its case with the Helmers. On August 22, 2006, an agreement setting forth the terms of the settlement was voted upon and approved by a municipal order and an ordinance

was enacted which incorporated the agreement by reference. The Helmers' appeal was dismissed with prejudice by order of the Boone Circuit Court on September 13, 2006.

On September 21, 2006, Cunningham filed an appeal of the ordinance in Boone Circuit Court, arguing that the actions of the City were arbitrary, unsupported by substantial evidence, and violated the Open Meetings Act. During the course of the litigation, the City and city officials filed a motion for summary judgment which argued, among other things, that Cunningham's appeal was barred by the statute of limitations because he had failed to intervene in the earlier appeal brought by the Helmers. The trial court denied the motion on April 19, 2007. The City thereafter renewed its motion for summary judgment, and the Helmers and Cunningham also filed motions for summary judgment. The circuit court entered summary judgment in favor of the City and the Helmers on May 12, 2009. This appeal and cross-appeals followed.

We address first the argument on cross-appeal[2] that Cunningham's appeal to the Boone Circuit Court on September 21, 2006, was untimely filed. KRS 100.347(3) requires any person or entity claiming to be "injured or aggrieved" by a rezoning decision to appeal within thirty days of the "final action" of the legislative body. The City argues that this thirty-day period commenced on March 16, 2004, the date on which the City denied the Helmers' requested zone change. The City contends that Cunningham should have intervened in the

[2] This argument was made by the City in its motion for summary judgment. The Helmers have raised the issue for the first time on cross-appeal.

Helmers' appeal, instead of choosing to "sit back" while the City carried the burden of litigation in that action.

The opinion relied upon by the City, *Pearman v. Schlaak*, 575 S.W.2d 462 (Ky. 1978), addresses whether a party may intervene pursuant to Kentucky Rules of Civil Procedure (CR) 24.01 after entry of a final judgment by a circuit court. In *Schlaak*, the planning commission approved the Pearmans' request for a zoning amendment, which was then denied by the city council. The Pearmans filed a complaint in circuit court alleging that the action of the city council was arbitrary and capricious. The trial court entered a judgment in favor of the Pearmans and directed the city council to rezone their property. The city council did not appeal from that judgment. After entry of the judgment, Schlaak and other property owners filed a motion to intervene as additional parties pursuant to CR 24.01 for purposes of appealing the judgment, and to file a motion for judgment notwithstanding the verdict or a new trial. The trial court ruled that their interests had been adequately protected by the defense made on behalf of the city and that the motion to intervene after judgment was not timely filed. The Kentucky Supreme Court affirmed the trial court's ruling, holding that under CR 24.01, Schlaak and the other property owners did not have a right to intervene.

By contrast, Cunningham made no attempt to intervene under CR 24.01 to challenge the judgment dismissing the Helmers' appeal. Cunningham appealed, as an "injured or aggrieved" party, from a final action of the City, namely the passage of the ordinance which granted the Helmers' zoning

amendment request. The plain terms of KRS 100.347(3) entitled Cunningham to file this appeal, without requiring a prior intervention on his part in the earlier action. Cunningham's appeal was timely filed, and the circuit court did not err in denying the motion for summary judgment on this ground.

On direct appeal, Cunningham raises five arguments: (1) that the City engaged in impermissible "contract zoning"; (2) that the adoption of the settlement agreement between the City and the Helmers violated the Open Meetings Act; (3) that the City improperly based its decision on evidence outside the record; (4) that the zone change is not consistent with the Boone County Comprehensive Plan; and (5) that Cunningham's substantive and procedural due process rights were violated because the City engaged in arbitrary action.

Our standard of review requires that we show considerable deference to the legislative process:

> since zoning determinations are purely the responsibility and function of the legislative branch of government, such determinations are not subject to review by the judiciary except for the limited purpose of considering whether such determinations are arbitrary. Arbitrariness review is limited to the consideration of three basic questions: (1) whether an action was taken in excess of granted powers, (2) whether affected parties were afforded procedural due process, and (3) whether determinations are supported by substantial evidentiary support.

Hilltop Basic Res., Inc. v. County of Boone, 180 S.W.3d 464, 467 (Ky. 2005) (citing *American Beauty Homes Corp. v. Louisville & Jefferson County Planning & Zoning Comm'n*, 379 S.W.2d 450 (Ky. 1964)).

Cunningham's first argument concerns the settlement agreement arrived at by the Helmers and the City, which he claims constituted impermissible "contract zoning." He contends that when the City Council denied the Helmers' zoning amendment request on March 16, 2004, it had acted finally in the matter and was without power thereafter to amend the ordinance without complying with the statutory requirements of notice and a public hearing under KRS 100.211.

Although the term "contract zoning" is not widely used in Kentucky case law, Cunningham has provided citations to opinions from other jurisdictions which have developed the concept more fully. "Contract zoning" is disfavored on the grounds that it constitutes an abdication of legislative authority, and bypasses statutory procedural safeguards. As the Superior Court of New Jersey has explained,

> [a] municipality has no power to circumvent . . . substantive powers and procedural safeguards by contract with a private property owner. . . . If a municipality desires to allow a deviation from the permitted uses under the zoning ordinance, it must either amend the ordinance or follow the necessary procedures for granting a variance; it cannot short cut these procedures and permit the . . . use by means of . . . a contract with the landowner. In other words, the municipality's exercise of its police power to serve the common good and general welfare of all its citizens may not be surrendered or curtailed by bargain or its exercise controlled by the considerations which enter into the law of contracts.

Warner Co. v. Sutton, 644 A.2d 656, 659 (N.J. Super.A.D. 1994) (internal citations and quotation marks omitted).

The *Warner* court further observed that state courts are divided on the issue of contract zoning, with "some holding that the court has equitable power to enter such consent decrees and others holding that a municipality may not contract away the exercise of its zoning power by settlement." *Id.* at 661. Kentucky appears to fall in the former camp. In *City of Louisville v. Fiscal Court of Jefferson County*, 623 S.W.2d 219 (Ky. 1981), the Kentucky Supreme Court addressed the propriety of a zoning agreement between the City of Louisville and Oxmoor which contained a provision which bound the city to set specified ad valorem tax rates in the future. The Supreme Court did not hold that such agreements are void per se, but it did delineate limitations on a legislative body's power to abdicate its future governmental functions in such an agreement:

> The law is clear that a legislative body may not limit its power to act one way or another in the future in governmental, as opposed to proprietary, functions.
>
> Thus, [w]here the contract involved relates to governmental or legislative functions of the council, or involves a matter of discretion to be exercised by the council, unless the statute conferring power to contract clearly authorizes the council to make a contract extending beyond its own terms, no power of the council so to do exists, the council presently holding such powers is vested with no discretion to circumscribe or limit or diminish their efficiency, but must transmit them unimpaired to their successors[.]
>
> It is beyond cavil that the power to tax and to set tax rates is a governmental function. It is the right and duty of the legislative body of the City of Louisville to set the tax rate.

> We have no difficulty in declaring that the provision of the agreement which sets tax rates for twenty years is void as being against public policy.

Id. at 224 (citations and internal quotation marks omitted).

When we review the Helmer settlement agreement in the light of these principles, we cannot say that it represented an impermissible abdication of legislative authority by the City. The terms of the agreement were essentially limited to alleviating the traffic congestion that had formed the basis of the City's initial rejection of the Helmers' application. Specifically, the City agreed to adopt the zone change and variance approved by the Planning Commission; to permit the Helmers, at their sole expense, to remove a median island and create a turn lane to handle traffic turning right into the Dilcrest subdivision; and to use its best efforts to assist the Helmers in obtaining the assistance of the Kentucky Transportation Cabinet to relocate the electric pole and traffic signal to accommodate the new turning lane; and to assist the Helmers in obtaining the necessary approval to construct such a lane, but without any obligation or assurances that the Council's assistance would be successful. The Helmers agreed that the new buildings would include medical, dental, or professional offices. The terms of this agreement simply do not rise to the level of abdicating future governmental functions in a manner which would render the agreement void under *City of Louisville*.

Cunningham also argues that the settlement agreement implicated the due process concerns associated with "contract zoning," by bypassing the statutory requirement for a public hearing. "The fundamental requirement of procedural due

process is simply that all affected parties be given 'the opportunity to be heard at a meaningful time and in a meaningful manner.'" *Hilltop Basic Res.*, 180 S.W.3d at 468 (citing *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 902, 47 L.Ed.2d 18 (1976)). We agree with the trial court that the public hearing before the Planning Commission in November 2003 provided sufficient opportunity for the affected parties to be heard on the matter, especially since the ordinance that was passed was identical to the earlier proposal except that it contained mitigation measures which directly addressed public concerns about the impact of the new development on traffic congestion. Cunningham argues that the trial court misstated the holding of *Minton v. Fiscal Court of Jefferson County*, 850 S.W.2d 52, 56 (Ky. App. 1992), when it stated there that "[t]here is no requirement for additional public hearings when a City adopts a less obtrusive plan by adding conditions during the rezoning process, as when the revisions decrease intensity or mitigate the impact on surrounding areas." Although the procedural circumstances in *Minton* are distinguishable, the principle that there "is no requirement that a new public hearing must be held any time there is a revision" is applicable to this case, where the ordinance passed was essentially unchanged apart from the additional measures to decrease traffic congestion.

Cunningham's second argument is that the circuit court erred in ruling that the adoption of the settlement agreement did not violate the Open Meetings Act, which provides in part that "[a]ll meetings of a quorum of the members of any public agency at which any public business is discussed or at which any action is

taken by the agency, shall be public meetings, open to the public at all times[.]" KRS 61.810(1). Cunningham concedes that the City council was free to discuss the litigation in private under the exception provided in the statute for "[d]iscussions of proposed or pending litigation against or on behalf of the public agency[,]" KRS 61.810(1)(c), but contends that the discussion of the agreement to rezone property was not covered under this exception and required public input and scrutiny. Cunningham argues that the City's announcement that it had settled the Helmer complaint by agreeing to rezone the property, and its subsequent formal vote and passage of the ordinance were inadequate to meet the procedural safeguards of the Open Meetings Act. In our view, however, the City's action in entering into the settlement agreement was covered under the exception in KRS 61.180(1)(c). If the City was required to conduct another public hearing on the proposed terms of the settlement agreement prior to entering into such an agreement, the possibility of ever settling any litigation under these circumstances would be severely restricted and would essentially render such settlement agreements presumptively void.

Cunningham next argues, relying on *Ridenour v. Jessamine County Fiscal Court*, 842 S.W.2d 532, 535 (Ky. App. 1992), that the City improperly based its decision to pass the ordinance on evidence that was not in the Planning Commission record. Although the Helmers' initial application for rezoning did not provide for a right turn lane leading out of the subdivision, the settlement agreement provided that Helmer was to remove a median and create a right turn

lane on Dilcrest Drive. Cunningham contends that the idea was suggested to Helmer privately by the City council or the mayor and by subdivision residents whom Helmer interviewed at the suggestion of the Zoning Committee. Because these discussions are not in the record, Cunningham contends that the City could not consider them in making its decision.

In *Ridenour*, this Court held that the fiscal court improperly based its findings upon a record from a previous zone change request that related to a much larger tract of property, and was never made part of the record. By contrast, in the case before us, the record is replete with references to the traffic implications of the zone change. Concerns about traffic congestion were raised repeatedly during the course of the public hearing before the Planning Commission, and in public submissions to the Planning Commission. There was more than sufficient evidence in the record to support the City's conclusion that remediating traffic congestion would make the rezoning proposal acceptable. Moreover, there is no indication that Helmer's contacts with the City or subdivision residents were improper. "As rezoning is a legislative function, judicial concepts, like an impartial tribunal and prohibitions of ex parte contacts with the decision makers, do not apply. . . . Only bias or prejudicial conduct that demonstrates malice, fraud, corruption, conflicts of interest, or blatant favoritism, are considered arbitrary in zoning actions." *Hume v. Franklin County Fiscal Court*, 276 S.W.3d 748, 752 (Ky. 2008) (internal citation omitted).

Cunningham next argues that the zone change is not consistent with the 2000 Boone County Comprehensive Plan. The Land Use Element of the Plan provides in pertinent part that

> [a]n extremely well-designed, low-impact professional office use may be considered for this area, however, the potential developer must submit detailed buffering and building design plans, and demonstrate that the project would establish a positive focal point for the US 42 corridor in addition to minimizing visual, traffic, and stormwater impacts on adjacent residential uses. All developments must provide for connecting parking lots or a frontage road. In addition, right-turn lanes may be required for each development. Development must accommodate plans for double left turn lanes from US 42 to Mall Road.

Cunningham argues that the evidence in the record shows that the Helmers' revised plan does not provide for connecting parking lots or for left turn lanes from US 42. The settlement agreement adopted the recommendation for zone change and variance approved by the Boone County Planning Commission on January 7, 2004, via Resolution R-04-001. That Resolution incorporated findings of fact made by the Commission, which stated as one of the conditions for approval that "A paved, two-way driveway connection between this site and the driveway on the adjoining commercial property to the east shall be provided with the initial construction of the building." This condition constitutes substantial evidence that the development plan is in harmony with the Comprehensive Plan's requirement of a frontage road.

The Planning Commission did not mention the left turn lanes issue when it made a general finding that the revised development plan was in harmony with the Comprehensive Plan. Left turn lanes from US 42 to Mall Road would be located on the west side of the intersection. The Helmers' property is located on the east side. According to an email in the record from the owner of the lots at the southwest corner of the intersection, if US 42 were expanded it would take 22 feet from the front of his lots. There is no evidence that it would affect properties to the east. Julie Metzger Aubuchon, a City Council member, testified in her deposition that the left turn lanes referred to in the Comprehensive Plan would be located on the west, rather than the east side of the intersection of US 42 and Mall Road. Similarly, Dennis Helmer testified at his deposition "Well, Dilcrest aligns with Mall Road. So any left lane into Mall Road would be prior to getting to our property. . . . [I]f you are going east on US 42, you will take a left-hand turn into Mall Road . . . . [A]ll that will occur before you get to our property." There is simply no substantial evidence in the record that the Helmer plan was required to accommodate left turn lanes.

Finally, Cunningham argues that the circuit court erred in not finding that the appellants' substantive and procedural due process rights were violated because the City engaged in arbitrary action by contract zoning, violating the Open Meetings Act, and considering evidence not in the record. As we have already determined that the City's actions in regard to these issues were not arbitrary, we affirm the judgment of the Boone Circuit Court.

TAYLOR, CHIEF JUDGE, CONCURS.

THOMPSON, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

THOMPSON, JUDGE, DISSENTING: I respectfully dissent. The City was not exempt from the Kentucky Open Meetings Act. *Ridenour v. Jessamine County Fiscal Court*, 842 S.W.2d 532 (Ky. App. 1992). When the City ratified the agreement to rezone the property, it was required to conduct a public meeting in compliance with the Kentucky Open Meetings Act, KRS 61.805-61.845. There simply is no exception to the Open Meetings Act applicable to the City's decision to not expose to public scrutiny the proposed settlement which effectively rezoned the property.

Although the City could privately discuss proposed or pending litigation, the rezoning of property, whether by decision or agreement, must be subject to public input and scrutiny. To hold otherwise renders our statutory scheme regulating zoning matters a nullity.

I would reverse.

BRIEFS FOR APPELLANTS/CROSS-APPELLEES:

Teresa Cunningham
Florence, Kentucky

BRIEFS FOR APPELLEES, DIANE WHALEN; FLORENCE CITY COUNCIL; JULIE METZGER; TED BUSHELMAN; MEL CARROLL; BETSEY CONRAD; AND DAVID A. OSBORNE; AND FOR APPELLEE/CROSS-APPELLANT, CITY OF FLORENCE, KENTUCKY:

Thomas A. Sweeney
Crescent Springs, Kentucky

Hugh O. Skees
Florence, Kentucky

BRIEFS FOR APPELLEES/CROSS-APPELLANTS, EIGHTEEN, INC.; DENNIS HELMER; GAYLE S. HELMER; DAVID L. HELMER; AND SANDRA HELMER:

Michael T. McKinney
Burlington, Kentucky