

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001157-MR

HANS KALLENBERGER

APPELLANT

v.

APPEAL FROM HENRY CIRCUIT COURT
HONORABLE KAREN A. CONRAD, JUDGE
ACTION NO. 05-CI-00187

HENRY COUNTY BOARD OF ZONING
ADJUSTMENTS; ROBERT REED BUSH,
DENNIS YEARY, FRANK DENTON,
ROBBIE JAEHNIGEN, WILLIAM FRANK
POLLARD, AND ADAM WEST AS
MEMBERS OF THE BOARD OF ZONING
ADJUSTMENTS

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: KELLER AND VANMETER, JUDGES; GUIDUGLI,¹ SENIOR JUDGE.

VANMETER, JUDGE: Hans Kallenberger appeals from an order entered by the Henry Circuit Court dismissing his appeal to that court as untimely. We affirm.

¹ Senior Judge Daniel T. Guidugli, 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.

On June 6, 2005, Kallenberger filed an application with appellee Henry County Board of Zoning Adjustments (Board) seeking a conditional use permit relating to operations conducted on his real property. On June 27, Board members and citizens discussed the application during a public hearing, and the Board denied the application by a voice vote. The detailed minutes of the meeting were made available once they were approved on July 25, and Kallenberger appealed to the Henry Circuit Court on August 24, 2005.

Relying on KRS 100.347, the circuit court dismissed the appeal as untimely because it was filed more than thirty days after the Board's final action. The court overruled Kallenberger's motion to reconsider, and this appeal followed.

KRS 100.347 provides in pertinent part:

(1) Any person or entity claiming to be injured or aggrieved by any final action of the board of adjustment shall appeal from the action to the Circuit Court of the county in which the property, which is the subject of the action of the board of adjustment, lies. Such appeal shall be taken within thirty (30) days after the final action of the board. All final actions which have not been appealed within thirty (30) days shall not be subject to judicial review. The board of adjustment shall be a party in any such appeal filed in the Circuit Court.

....

(5) For purposes of this chapter, final action shall be deemed to have occurred on the calendar date when the vote is taken to approve or disapprove the matter pending before the body.

We are not persuaded by Kallenberger's claim that the time for filing his appeal began to run only upon the July 25 approval of the minutes of the June 27 hearing at which the

vote was taken. Indeed, in *City of Lyndon v. Proud*, 898 S.W.2d 534, 536 (Ky.App. 1995), a panel of this court confirmed that the finality of an administrative body's action is not affected by the “administrative task of approving the minutes at the following meeting[.]” As in *Triad Development/Alta Glyne, Inc. v. Gellhaus*, 150 S.W.3d 43, 46 (Ky. 2004), the final approval of the minutes was a ministerial action which did not toll or extend the time for appealing after the vote was taken on June 27. Further, a different result is not compelled by the other cases cited by Kallenberger, including *Leslie v. City of Henderson*, 797 S.W.2d 718 (Ky.App. 1990), which held that for appeal purposes a final action occurred only after a second reading and vote on a proposed ordinance. Here, by contrast, there were not multiple readings of an ordinance, and the sole vote to approve or disapprove the conditional use permit was taken on June 27.

Further, we cannot agree with Kallenberger's argument that because no written findings or conclusions were available for appellate review prior to the July 25 approval of the minutes, his constitutional right to meaningful judicial appeal will be denied unless the time for filing his appeal is calculated from July 25. Although the approved minutes certainly constituted a record of the proceedings which would be relevant to any appeal, they contained no findings or conclusions beyond those expressed during the June 27 hearing, and they were not a necessary component of the initial steps for filing an appeal from the Board's denial of the conditional use permit.

As Kallenberger's appeal was not filed within thirty days from the Board's vote, the appeal was untimely and the trial court lacked jurisdiction to consider the issues

raised therein. It follows that the court did not err by dismissing the appeal with prejudice.

The court's order of dismissal is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Kirk Hoskins
Louisville, Kentucky

BRIEF FOR APPELLEE HENRY
COUNTY BOARD OF ZONING
ADJUSTMENTS:

Joshua E. Clubb
New Castle, Kentucky