

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-002181-MR

WILLIAM G. HEADY AND
WILLIAM MARSHALL

APPELLANTS

v.

APPEAL FROM HENRY CIRCUIT COURT
HONORABLE KAREN A. CONRAD, JUDGE
ACTION NO. 07-CI-00220

ROBERT REED BUSH, FRANK DENTON,
WILLIAM FRANK POLLARD, ROBBIE JAENIGEN,
DENNIS YEARLY, DOUG KALBFLEISCH, DOUG
KALBFLEISCH, AND ADAM WEST, in their official
capacities as Members of the BOARD OF
ADJUSTMENTS OF HENRY COUNTY;
DENNY BENHAM, SAMUEL ADAMS, VICTOR
HARROD, GARLAND FRAZIER, GREG JAMISON,
ROBERT HARLAGE, LORRAINE HAWKINS,
MIKE RAY, TERRY ROWLETT, BARRY TAYLOR,
AND REUBEN YOUNG, in their official capacities as
Members of the HENRY COUNTY, KENTUCKY
PLANNING AND ZONING COMMISSION;
WAYNE GUNNELL, GUY COOMBS, DAVID
BROWN, NICHOLAS E. HAWKINS, MICHAEL
FISHER, AND JERRY BEASLEY in their
official capacities as Members of the HENRY
COUNTY FISCAL COURT; JOHN LOGAN
BRENT, HENRY COUNTY JUDGE EXECUTIVE;
FRED SNIDER, AND WILIAM JOSEPH LAWSON

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, CHIEF JUDGE; DIXON AND LAMBERT, JUDGES.

COMBS, CHIEF JUDGE: The Henry Circuit Court dismissed as untimely an appeal filed by William G. Heady and William Marshall in a dispute involving the Henry County Board of Zoning Adjustment (BOZA or the Board). Heady and Marshall now appeal that order of dismissal.

On May 11, 2007, Fred Snider filed an application with the Henry County Board of Zoning Adjustments for a conditional use permit related to a business that he proposed to operate on his property. BOZA conducted public hearings concerning his application on May 29 and June 25, 2007. The Board heard testimony from Snider and various neighbors. At the end of the second meeting, the Board made oral findings of fact and granted the application by voice vote. Minutes of the meeting were approved on July 25, 2007. Heady and Marshall, Snider's neighbors, appealed to the Henry Circuit Court on August 1, 2007.

In an order entered October 5, 2007, the circuit court dismissed the appeal as untimely because it had been filed more than thirty days after the Board's final action. This appeal followed.

The provisions of KRS 100.347 govern our review of this matter. That statute provides in pertinent part as follows:

(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 (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. (Emphasis added.)

KRS 100.347.

Heady and Marshall argue that the time for filing their appeal began to run only upon the Board's approval of the minutes of the hearing held June 25. We disagree. In *City of Lyndon v. Proud*, 898 S.W.2d 534, 536 (Ky.App. 1995), this Court held that the finality of the actions of an administrative body is not affected by the "administrative task of approving the minutes at the following meeting[.]" The final approval of the Board's minutes was a ministerial act that did not toll or extend the time for appealing after the vote had been taken on June 25. See *Triad Development/Alta Glyne, Inc. v. Gellhaus*, 150 S.W.3d 43 (Ky.2004).

Heady and Marshall also contend that this reasoning deprives them of due process. Again, we disagree. The absence of written findings and conclusions prior to the Board's approval of the minutes on July 25 did not compromise the appellants' right to meaningful judicial review. It is true that the approved minutes

constituted a record of the proceedings that would be relevant to an appeal. However, the minutes contained no findings or conclusions beyond those expressed orally at the conclusion of the June 25 hearing. The minutes were not a necessary component of the filing of an appeal from the Board's decision to grant the conditional use permit. They were merely ancillary to the final act of voting by the Board.

Since the appeal was not filed in the circuit court within thirty days of the Board's vote, it was untimely. Pursuant to the provisions of KRS 100.347, the circuit court lacked jurisdiction to consider the issues raised by Heady and Marshall. Therefore, the circuit court did not err by dismissing the appeal. In light of this dispositive conclusion, we need not consider any other arguments questioning the propriety of the court's order of dismissal.

We affirm the order of the Henry Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jean Kelly Cunningham
Shelbyville, Kentucky

BRIEF FOR APPELLEE BOARD OF
ADJUSTMENTS OF HENRY
COUNTY, KENTUCKY:

Joshua E. Clubb
New Castle, Kentucky

BRIEF FOR APPELLEE HENRY
COUNTY FISCAL COURT:

Bennett E. Bayer
Lacey Fiorella
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