

## **400 KAR 2:100. Hearings and appeals.**

RELATES TO: KRS 146.465, 146.480, 146.495, Chapter 424

STATUTORY AUTHORITY: KRS 146.475, 146.485, 146.530

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.475 and 146.485 require the office to establish administrative regulations for the protection of nature preserves. KRS 146.530 requires the office to establish a procedure for orders and final determinations of the office to be appealed administratively. This administrative regulation establishes the procedure to be followed by the office in conducting hearings on issues related to nature preserves.

Section 1. Applicability. The office may conduct a public hearing for any reason, including determining:

- (1) If there exists an imperative and unavoidable public necessity that justifies the taking of a nature preserve or natural area, or any part thereof, by another public body, or disposition of a nature preserve or natural area or any part thereof by the office;
- (2) If proposed amendments to the articles of dedication of a nature preserve will not permit an impairment, disturbance, use, or development of the nature preserve that is inconsistent with the articles of dedication or the Act;
- (3) If differences exist in the characteristics and conditions of a proposed nature preserve, or other reasons, that justify making an exception in the articles of dedication to the requirements of these administrative regulations; and
- (4) The custodian of a nature preserve or natural area if the property is owned by the office in fee simple.

Section 2. Notice of Public Hearings. Notice of public hearing shall be given by the office in accordance with KRS Chapter 424.

- (1) The notice shall:
  - (a) State the time, place, and purpose of the public hearing; and
  - (b) Be published:
    1. Not less than seven (7) nor more than twenty-one (21) days prior to the public hearing; or
    2. In the county or counties, in which the nature preserve or natural area is located, and for the state at large.
- (2) The notice may:
  - (a) Be published more than once;
  - (b) State the address to which written comments on the purpose of the public hearing may be submitted and the date by which those written comments shall be submitted.

Section 3. Public Hearings.

- (1) The public hearing shall be conducted in accordance with paragraphs (a) through (e) of this subsection.
  - (a) The public hearing shall be held at a time and place to be set by the office.
  - (b) Any interested person may appear at the public hearing and make an oral or written presentation regarding the purpose of the public hearing. The office may regulate the length, order, and excessive repetition of oral presentations.
  - (c) The director may make a presentation and recommendation for action to the office at the hearing.
  - (d) The office shall consider all written and oral presentations in making its determination.
  - (e) The office shall issue a final determination within sixty (60) days of the public hearing. The determination shall set forth the findings of the office in reaching its determination.

(2) Copies of the final determination shall be sent to any person who made a written or oral presentation at the public hearing and any other person who makes a request in writing to the office for a copy.

Section 4. Appeals. (1) Any person who participated in the public hearing and considers himself aggrieved by the determination made by the office may file, in accordance with 400 KAR Chapter 1, a petition alleging that the determination is contrary to law or fact and is injurious to him or her, the grounds and reasons therefor, and demand a hearing. Unless the petition is frivolous, it shall serve written notice of the petition on each person named therein and shall schedule a hearing before the cabinet not less than twenty-one (21) days after the date of the notice unless the person complained against waives in writing the twenty-one (21) day period. The right to demand a hearing pursuant to this section shall be limited to a period of thirty (30) days after the petitioner has had actual notice of the determination complained of, or could reasonably have had notice.

(2)(a) All hearings, other than conferences, under this chapter shall be held before a hearing officer, duly qualified to practice law in the Commonwealth of Kentucky, who may be:

1. A full-time employee of the cabinet;
2. Serve by contract; or
3. Paid on a per diem basis.

(b) After the conclusion of the hearing, the hearing officer shall within thirty (30) days make to the secretary a report and recommended order that shall contain a finding of fact and a conclusion of law. If the secretary finds upon written request of the hearing officer that additional time is needed, the secretary may grant an extension. The hearing officer shall serve a copy of the report and recommended order upon all parties of record and their attorney of record to the proceeding, and the parties shall be granted the right to file exceptions thereto within fourteen (14) days of service.

(c) Any party may submit a written response to exceptions within twenty-one (21) days of service of the report and recommended order. Exceptions and responses not timely filed shall be noted and made a part of the record but shall not be considered by the secretary in making a final order.

(d) The secretary shall consider the report, exceptions, and recommended order and decide the case. The secretary may designate a deputy to sign any or all final orders of the cabinet, whether or not the orders are the result of hearing or agreement. The decision shall be served by mail upon all parties and their attorney of record, as well as all parties under Section 3(2) of this administrative regulation, and shall be a final order of the cabinet.

(3) Any party to a hearing under this subsection may:

- (a) Be represented by counsel;
- (b) Make oral or written argument;
- (c) Offer testimony;
- (d) Cross-examine witnesses; or
- (e) Take any combination of these actions.

(4) The record of the hearing shall be open to public inspection, and copies thereof shall be made available to any person upon payment of the actual cost of reproducing the original.

(5) The hearing office shall recommend that the secretary approve the final determination of the office unless, based upon the findings set forth in the final determination or any exceptions thereto, the secretary finds:

(a) There is no imperative and unavoidable public necessity due to the existence of a viable alternative to the proposed granting or disposition of a nature preserve, or natural area, or any part thereof;

- (b) The determination of the office is inconsistent with the articles of dedication or the Act; or
- (c) The office acted without or in excess of its power. (13 Ky.R. 1326; eff. 2-10-1987; 45 Ky.R. 1780, 2605; eff. 4-5-2019.)