

February 4, 2022

Dear Representatives,

I failed to properly introduce myself at your committee's hearings on Feb. 2.

I live in Gorham, one mile from the OHRV trailhead, placed in a residentially zoned neighborhood by the Bureau of Trails and the Gorham Select Board.

The opening of the Presidential Rail Trail, Corridor 19 and Route 2 in Gorham to Off Highway Recreational Vehicles are violations of the multiple state laws that require the Bureau of Trails to, among other considerations, follow land management plans and ensure OHRV trails are compatible with existing uses:

215-A:41-II. **the bureau, in cooperation with the department of fish and game and all other state agencies that are custodians of the property involved....**
(b) Uses public lands that can host ATV and trail bike trails that are compatible with existing uses and management goals and plans;

215-A:42-I. **No ATV or trail bike trail shall be established unless all of the following conditions are met:(d) A management plan exists for the property that specifically allows ATV or trail bike use on the property**

The Presidential Range Rail Trail Management Plan reads: "Within the Right of Way Summer Use.....OHRVs will not be allowed at any time." pg 2

Similarly, recreational off highway vehicle use is incompatible with Gorham's Noise Ordinance and [Zoning Ordinances](#)

"ARTICLE II. PURPOSE This Ordinance is designed to promote the health, safety and general welfare of the inhabitants of Gorham, to protect the value of property, to prevent the overcrowding of land, to avoid undue concentration of population.....

In the districts described herein, only those uses listed as Permitted shall be allowed by right.**Uses not listed are neither Permitted nor allowed by Special Exception or Conditional Use Permit."**

OHRVs are not defined, listed, or allowed anywhere in Gorham's Zoning Ordinances.

In 2018, after years of fruitless conversations, meetings, hearings, letters, emails with town and state officials alike, seven Gorham households (all 5th/6th generation area residents) sued the state and town to remove the Off Highway Recreational Vehicle Trails from their neighborhood.

Despite the fact that the legislature wrote 3 detailed sections of law pertaining to OHRV trail siting: [RSA 215-A 41, 42, 43](#), the Judge granted the Bureau of Trails immunity from any responsibility to follow these carefully written laws:

"....there is nothing in RSA 215-A from which this court could infer, with reasonable clarity, that the State intended to waive sovereign immunity with respect to nuisance actions arising out of the State's management of the OHRV trail network. Accordingly, the court finds that the plaintiffs' nuisance claim against the State is barred by sovereign immunity." pg 10 "214-2018-CV-30 Harry Stearns, et al vs. Town of Gorham, et al NOD 10-15-18.pdf".

“...the court concludes that the Town’s decision to support the implementation of the PRT involved ‘weighing alternatives and making choices with respect to public policy,’ such that the decision is protected by the discretionary immunity doctrine.” Pg 6 “2021-04-08-15-26-05-01-1.pdf”

Thus the judge ruled that the Bureau of Trails and municipalities can operate outside the law when it comes to decisions involving OHRV trails. The judge nullified the very laws written to protect the public.

The New Hampshire Attorney General has spared no expense in defending BOT’s claim that it is immune from any requirement to follow the carefully crafted OHRV siting laws, no matter the consequences on trail abutters’ right to quietly enjoy their homes. The A.G.’s office, at times using up to five attorneys against these seven households, has mounted a ruthless legal campaign calculated to delay and crush the Gorham residents’ resources and will with multiple motions, briefs and memoranda, all at the expense of NH taxpayers.

I therefore ask that you to please abolish all immunity protections for the Bureau of Trails and municipalities in regards to OHRV trail siting decisions.

Please amend HB 1109 or HB 1188 to explicitly waive any claims of immunity for the State or municipalities, so that RSA 215-A can protect the public as clearly intended by the General Court.

Sincerely,
Abby Evankow
Gorham
466-3037