

NEW HAMPSHIRE UNION LEADER

Judge says town, state inadequately compensated Gorham landowners over ATV use

By John Koziol
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GORHAM — A judge has ruled that the town and state inadequately compensated the owners of several residential properties along U.S. Route 2 when they permitted ATVs to operate on and near the road.

In an order he signed Feb. 15 in Grafton County Superior Court, Judge Lawrence MacLeod said the decision by the New Hampshire Department of Transportation, the Department of Natural and Cultural Resources and the Town of Gorham to permit use of ATVs, “constitutes an unconstitutional taking of the plaintiff’s properties by inverse condemnation, pursuant to which each plaintiff homeowner is entitled to just compensation as damages.”

The 13 Gorham plaintiffs, who filed the suit in 2018, alleged that ATVs were extremely noisy, caused excessive fumes and dust, and that some ATV operators urinated on their properties and threatened them.

MacLeod said at trial last year, he had concluded “that the interference with the plaintiff’s property, meaning the overwhelming amount of OHRV traffic, and the associated noise that traffic generates, in Gorham was ‘the direct, natural, or probable result of authorized IOHRV’” by the state and town.

He rejected the defendants’ argument that they mitigated problems on Route 2 by moving the OHRV access onto the Presidential Trail to state Route 16, saying that while the Gorham plaintiffs may have been affected only seasonally, it “still constituted inverse condemnation,” a legal term meaning the property owners were not adequately compensated for the loss of value of their land.

In explaining his order, MacLeod wrote that noise from OHRV use, “even though it is not a physical taking, can amount to inverse condemnation, so long as the interference with the plaintiff’s property meets two requirements.”

The first requirement, he said, is that “the interference or deprivation must be the result of the government’s intentional invasion of a protected property interest or be ‘the direct, natural or

probable result of an authorized activity and not the incidental or consequential injury inflicted by the action.”

The second requirement is that “the government’s interference with or deprivation of the property right must be ‘substantial and frequent enough to rise to the level of a taking,’ said MacLeod.

He added that the town and state testified that the intent of permitting OHRVs to operate in Gorham was “to generate revenue, the amount of OHRV traffic in Gorham was foreseeable to the defendants, and, as the court sees it, increased traffic was their goal and intention.”

The defendants’ actions “directly caused noise to interfere with plaintiffs’ use and enjoyment of their land,” said MacLeod, “because, by permitting OHRV use in Gorham, the defendants welcomed in a great deal of traffic to the environment surrounding the plaintiff’s homes that would not have existed otherwise.”