

THE STATE OF NEW HAMPSHIRE

Grafton County SS: Grafton Superior Court

Case No. 214-2018-cv-00030

Rene Albert, et al., plaintiffs

v.

State of New Hampshire and the Town of Gorham, defendants

Defendants

**Plaintiffs' Motion for Attorney Fees and Expenses
With Request for Evidentiary Hearing¹**

Plaintiffs move the Court for an award of attorney fees and expenses.

Memorandum

Plaintiffs' Attorneys Fees and Expenses are detailed in Exhibit A attached hereto.

Defendants' litigation strategy from the onset of plaintiffs' case was to deny plaintiffs' access to justice; to wear plaintiffs down financially and emotionally well knowing that the decision to place the OHRV trailhead and trails in plaintiffs' neighborhood was wrong.

A review of Exhibit A demonstrates how the State and Town forced plaintiffs, with their finite resources, to endlessly climb over procedural obstacles as they sought an end to the OHRV trailhead and trails in their neighborhood and chronicles the time and resources required to right the wrong done them.

¹ A hearing will provide the opportunity to offer evidence of the time and effort needed to find justice for the wrongs suffered by plaintiffs.

The State and Town litigation tactic has been to never look for a good faith end to the OHRV nuisance² they intentionally created in plaintiffs' neighborhood - conduct which plaintiffs expect will continue into the future.

For example, on several occasions plaintiffs' attorney suggested via email to Assistant Attorney General Frank Fredericks that alternate OHRV trailhead discussions be had after the June 21, 2018 hearing on preliminary injunction. Fredericks agreed. Plaintiffs' attorney renewed the request of Fredericks in person just before the hearing. Plaintiff Mike Pelchat prepared maps for those discussions.³ At the conclusion of the hearing, Senior Assistant Attorney General Anne Edwards, who attended the hearing, declared that there would be no such discussions.

Other than several pretextual email exchanges, including the mediation and one follow-up meeting, no good faith case resolution discussions have been had over the years-long course of plaintiffs' suit.

Plaintiffs are entitled to attorney fees and expenses. Harkeem v. Adams, Commissioner, 377 NH 687 (1977).⁴

Wherefore

Plaintiffs request that the Court order recovery from defendants their litigation attorney fees and expenses as previously incurred and as may be incurred in the future.

Respectfully submitted,

February 24, 2022

Arthur B. Cunningham

² The State and Town, all the while, made the factitious claim of immunity to prevent plaintiffs from obtaining the only remedy that will end the nuisance in their neighborhood-injunction.

³ Plaintiff Pelchat's maps were left with the Court monitor.

⁴ The Court must recognize that the plaintiffs, along with volunteers like Abby Evankow, invested countless hours in preparation for this case. The development of tallies, videos and sound tracks, the preparation of maps, to name a few items, were of immeasurable value in helping the Court understand the merits of the case.

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Certificate of Service

I certify that a copy of this filing was served on counsel of record in accordance with the Rules.

Arthur B. Cunningham