

Peter Hayden, Tunbridge Resident

To Senate Transportation Committee
Re S.4 Public Comment
From Peter Hayden, Tunbridge resident
April 24, 2024

I would like to offer the following testimony to the debate over S.4 regarding rights to maintain Legal Trails (Public Rights of Way) and any notion of a Taking, should towns be newly granted that right.

It's important to remember that Legal Trails are Public Rights of Way. Yes, they typically cross property owned by an individual, but they are a Public Right of Way that anyone can use for the designated purpose. This is quite different from private trails that so many Vermont landowners so generously invite the public to use. The public does not have a right to use those trails – it is a privilege granted to them by the landowner. On the other hand, the public does have the right to use Legal Trails because, as the term implies, they are Public Rights of Way.

Common Law sets out a number of fundamental rights and obligations for Rights of Way. The most obvious right provides for use of the Right of Way for its intended purpose. In this case the use is as a former class 4 road, now a Legal Trail. Until the last year or two, means of passage over the Legal Trails in Tunbridge was completely unrestricted, and it has been historically used by hikers, horseback riders, and cyclists.

Common Law also grants the right to maintain the Right of Way as needed so it can be used as intended. So Common Law specifically grants a right of maintenance to whoever hold the Right of Way, in this case that is the public, so everyone and anyone. If a downed tree is blocking a Legal Trail, anyone has the right to remove it. They can't take the wood, and they can't stray off the Right of Way, but they can maintain the trail for its intended use. The right of maintenance is also retained by the landowner so they can remove the tree too, but it is not exclusive to the land owner – it is shared between the landowner and those who enjoy the Right of Way.

Common Law further prohibits the landowner from interfering with use or maintenance of the Right of Way. So a landowner cannot block passage or otherwise restrict use that is consistent with the provisions of the Right of Way. If there is a downed tree blocking the trail, the landowner cannot interfere with someone who is clearing the obstruction. In Tunbridge, a landowner is explicitly interfering with maintenance, and in turn interfering with free passage, both in contravention of Common Law.

Because Common Law grants the right to maintain Legal Trails to the public as well as the landowner, any person can clear the trails. It is worth noting that the current legal action is specifically and exclusively about a town's right to maintain a Legal Trail. Nowhere does it claim that the public doesn't have a right to maintain, so that has not been disputed. Even if it's found that the state withdrew a town's right to maintain

Legal Trails as part of the highway legislation, that right is still held by the public which means all the residents of Tunbridge, the State of Vermont, the United States, and in fact all 8 billion inhabitants of the planet.

Further, if it is determined that the state withdrew a town's right to maintain Legal Trails, the state has separately authorized towns to hold and enjoy property rights. All towns own property, maintain that property, and use that property. A right of way is a property right, and through this other authorization, a town is allowed to enjoy property rights, including the right to maintain a right of way. So even if it is found the highway laws do not authorize Legal Trail maintenance, a town's authority to hold and enjoy property rights DOES give it that right through a different mechanism.

All this renders any notion of a Taking as preposterous, or at least de minimis. If, by some tragedy the courts rule that the highway legislation doesn't grant towns the right to maintain Legal Trails, that right is NOT held exclusively by the landowner, but rather shared by the landowner and the whole public. So new legislation that adds towns to the list of people with maintenance rights will change the number from 8 billion to 8 billion and one. That is not a Taking.