

[Town of Lyndeborough v. Boisvert Properties, LLC](#)

Good Morning!

In my last Plan-Link post, I mentioned the issue of preemption. This topic has come roaring back this morning, in the form of Town of Lyndeborough v. Boisvert, in which the supreme court has concluded that municipalities are NOT preempted by state law from regulating OHRV/ATV (Off-Highway Recreational Vehicle/All Terrain Vehicle) use on private property.

The court found that the statute in question, RSA 215-A, was mainly intended to deal with OHRV use on state-owned property, although there were certain nods to such activities on private land (particularly dealing with private land owners granting easements for OHRV use as part of a state-wide OHRV trail system). The court found that there was a comprehensive regulatory scheme relating to the use of state property, including a statement that in permitting the use, DRED must "give due consideration to local planning and zoning ordinances...", but that there was no similar treatment of these uses on private land. The court concluded that the statute's silence on the possible interplay between the use of private land and relevant local regulation could not logically be interpreted to mean that the local regulations were preempted.

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