

Press Release – October 17th 2024

Pease Development Authority - Board of Directors Meeting Substantive and Material Comments Absent From Meeting Minutes

The following are public comments delivered to the Pease Development Authority Board of Directors at the September 12th 2024 board meeting. These comments were read from a printed copy of remarks. A copy of was hand delivered to the Executive Director who is responsible for producing the minutes of the meeting. The text below in blue contain critical commentary regarding the board's decades long lack of compliance with state law. These salient and critical remarks in blue did not appear in the meeting minutes approved unanimously by the board on October 17th 2024.

"I am here to again identify how businesses at Rye Harbor are treated unfairly, unjustly and unequally by the board's unauthorized rule makings pursuant to Chapter RSA 541-A, the Administrative Procedure Act. Let me explain. Administrative Procedure Act [APA] rules are laws in all 50 states and the federal government that:

- 1. Requires agencies to keep the public informed of procedures and rules;*
- 2. Provides for constitutional due process: public hearings and public commentary;*
- 3. Establishes uniform standards for the conduct of formal rule making;*
- 4. Defines the scope of judicial review by the courts [RSA 541-A:22 II].*

While the board has broad authority regarding the Pease Tradeport, the PDA board must comply with RSA 541-A, Sections 3-15 regarding the Division of Ports and Harbors [RSA 541-A:21(n) & RSA 12-G:42]. The board has failed to that for years. I brought RSA 541-A non-compliance to the attention of the board on June 15, 2023 regarding Rye Harbor concession fees. A year has passed. The board has failed to comply with RSA 541-A.

For the four year period of 2021 – 2024, the board has likely collected well over \$200K in Division of Ports and fees for "Right of Entry" fees and "Concession" fees. And, there are still no administrative rules of record that permit the board to collect monies for "Right of Entry" or "Concession" fees. As a result, such non-compliance invites litigation by adversely affected persons [RSA 541-A:22] against the board and individual board members personally acting in excess of authority.

Specifically, some eighty DPH businesses are being treated unjustly and unfairly simply because written agreements governing these businesses are not standardized. Some are regulated more and other much less. Moreover, there are no due process policies, procedures, rules or regulations that allow injured interested parties to speak in a public hearing before agreements are approved. In terms of wasted time and materials, the lack of agreement standardization creates more than 800 pages annually of needlessly duplicated agreement terms and conditions which likely wastes ten of thousands of dollars of administrative costs.

I have prepared at my expense a proposed draft to create "Chapter Pda 800" standardized APA rules to resolve the problem. I am asking the board to authorize under "New Business" the Director of the DPH to work with me to perfect these rules and then propose the final product to the DPH Advisory Counsel for their disposition as RSA 541-A requires."

Pease Development Authority - Board of Directors Meeting Approved Meeting Minutes - October 17th 2024

The following are the published Pease Development Authority Board of Directors September 12th 2024 meeting minutes allegedly reporting the public comments that morning. These meeting minutes were approved by the board on October 17th 2024.

"David Delorey ('Delorey") -

Duprey noted Delorey had requested and would be provided five (5) minutes to speak. Delorey provided a handout to the Board; spoke to the treatment of businesses at RH. Delorey stated rules 1 procedures of the states are to: 1.) keep the public informed; 2.) due process (hearings / commentary); 3.) establish uniform standards of rule making; and 4.) define scope of judicial review by courts. PDA Board must comply with RSAs 12-G and 541 and spoke to the collection of monies by DPH; finds no rules regarding collection of the monies for ROES or CF, or due process for parties. Delorey referenced a need to standardize agreements / fees and proposed the creation of Chapter 800; asked for Director of DPH to work with him in perfecting rules for consideration.

*Delorey spoke of the parking study and spoke to the CF being a "tax". Duprey suggested providing the DRA with the information; Delorey indicated he provided information to **DRA**, Governor and Attorney General. Delorey stated a "fee" has a beneficiary and a "tax" has an indirect benefit. Duprey inquired if removing ROE fee and ROE costs be a percentage of sales; Delorey responded potentially, but not fair.*

Duprey indicated challenges to the draft 800 rules, specifically 804.01; Delorey's approach to grandfather all current tenants and potential tenants placed on wait list. Delorey said review of all rules provides a transitional process. Duprey spoke to opening facility to bidding process."

Correction and Commentary:

- (1) The reference above to the "**DRA**": All references to the DRA were exclusively made by the chairman and no other person. Accordingly, the reference above to the "DRA" in its current context should have been deleted.*
- (2) A request was sent to the chairman in writing to speak and be placed on the board of directors agenda of the September 17th meeting by adding an agenda item for board discussion: "Old Business- Explain the need for the board to support Pda 800". The chairman denied that request and decided instead to increase the typical three minute public comment duration to five minutes. There would be no board discussion on the matter.*
- (3) Both the September 12th and October 17th board agendas did not include a board discussion of the proposed draft to create "Chapter Pda 800" standardized RSA 541-A Administrative Rules to resolve the decades long RSA 541-A PDA non-compliance problem.*
- (4) Accordingly, the chairman, who determines the agenda of board meetings, has decided to continue delaying a resolution of the decades long RSA 541-A non-compliance matter and related potential financial liability issues.*