

**MINUTES OF THE REGULAR BOARD OF DIRECTORS OF THE  
HIGH PERFORMANCE TRANSPORTATION ENTERPRISE (HPTE) (Room 225 and HQ Auditorium)**

Held: Wednesday, August 20, 2014; 12:00

4201 E. Arkansas Ave, Denver, CO 80222

A meeting of the Board of Directors of the HPTE was convened in accordance with applicable statutes of the State of Colorado, with the following Directors present:

Attendance:	Tim Gagen, Chair	Don Marostica	Brenda Smith (excused)
	Kathy Gilliland, Vice Chair	Gary Reiff	
	Doug Aden	Trey Rogers	

Chair Gagen calls the regular meeting to order @12:00pm in Room 225

Roll call was taken to establish a quorum, and it was noted that Director Smith was excused.

General Discussion

The HPTE Board engaged in discussion of matters relating to subsequent agenda items, upcoming projects, and administrative and budget matters.

Director Cheroutes reported on the following:

An Executive Session of the Board will take place in the Auditorium, after an abbreviated lunch discussion, with the subsequent agenda items to occur after the executive session. There is on-going consideration of how transit fits into HPTE-related projects, and how to assess how transit might function effectively on projects. It was suggested by Chair Gagen that perhaps Division of Rail and Transit within CDOT could do the initial query for projects. Executive Director Hunt noted this would be an appropriate assignment for the Division of Rail and Transit.

Director Cheroutes reported on the development of a 10-year pro-forma, which will look at potential revenue over time, keeping in mind project completion dates. HPTE is working with CDOT CFO Scott Richrath on this effort.

Relations with Plenary Roads Denver are smooth, with continuing discussions about distribution of the new switchable transponders. There are also concerns about enforcement of HOV violations on the I-25 Express Lanes, and it is probable that HPTE will recommend increasing the civil penalties to the Board next month. It was also noted that Plenary will also request an across-the-board flat rate surcharge increase for License Plate Tolling.

Director Cheroutes then gave a status briefing on current HPTE-related projects. Of particular note is the probability that HPTE will seek a \$30M commercial loan for the I-70 eastbound peak period shoulder lane, and also that HPTE will propose an installment purchase agreement with the Transportation Commission for tolling equipment on projects that will be rolling out soon. Status of the I-70 East project was discussed, with a note that the Record of Decision was expected to be completed in the spring of 2016.

The HPTE-sponsored open house for C-470 on August 19 was discussed and described as having gone well. There continues to be significant community outreach on I-70 East. Executive Director Hunt asked if Director Cheroutes believed the outreach efforts have resulted in a better understanding by the public of the projects. Director Cheroutes believed so.

Other Comments:

Vice Chair Gilliland requested a briefing on the status of the I-25 North Corridor, and Director Cheroutes agreed he would address this in the Auditorium so the Board could stay on schedule. Director Marostica agreed that this is a good idea.

Director Cheroutes introduced and welcomed Sharon A. Williams as the new HPTE Program Assistant, who will become the Secretary to the Board next month.

Meeting Break  
(12:35-12:40)

Regular Board meeting moved from Room 225 to the Auditorium.

Chair Gagen reconvened the regular meeting @12:40pm in the Auditorium.

Board reconvened and roll was called to re-establish a quorum after a short break. All directors present with the exception of Director Smith.

Executive Session:

Chairman Gagen asked for a motion to move into Executive Session (script attached to these minutes). Upon a motion by Director Reiff and a second by Director Marostica, the Board voted affirmatively by all present to go into Executive Session for the purpose of discussing with an attorney, Pat Sayas from the Attorney General's Office, a pending court action and to receive legal advice pursuant to Colorado Revised Statutes Section 24-6-402(3)(a)(II). The members of the public were excused.

The topic of the Executive Session was to discuss legal matters related to the Drive Sunshine Institute lawsuit against HPTE (Drive Sunshine Institute v. HPTE, et al., 14-cv-00844, United States District Court of Colorado).

Upon a motion by Director Rogers and second by Director Aden, the Board voted affirmatively by all present to move out of Executive Session.

Executive Session Ends @1:04pm:

Members of the public were invited back into the meeting.

Approval of minutes Resolution #137:

Director Rogers moved approval of the July 16, 2014 meeting minutes, and attaching to them an email from Karen Hammer to Mike Cheroutes, without accepting or acknowledging the contents of that email. Upon a second by Vice Chair Gilliland, the minutes were approved by all present.

Public Comment @ 1:10pm:

Attorney Karen Hammer of Hammer Law said the Transparency Policy adopted last month does not meet the requirements of the Administrative Procedures Act, and future HPTE deals must comply with the Administrative Procedures Act. She requested Colorado Open Records Act access to the redacted information contained in Plenary's 4<sup>th</sup> Quarter performance report. Attorney General's representative Kathy Young advised that Ms. Hammer must make that request in writing.

Director's Report:

Director Cheroutes reported on the status of current projects. He noted that the Tuesday night open house for C-470 was well attended. He noted several key meeting dates and events upcoming for the I-70 East project, including potential release of an RFQ in December. He said staff continues to evaluate several interim projects under RAMP. Vice Chair Gilliland noted that there may be opportunities to move the projects along by leveraging flood relief funding, and said I-25 North Corridor has the strong support of the business community. Director Cheroutes then introduced the new HPTE Program Assistant, Sharon A. Williams who will become the Secretary to the Board of Directors.

OMPD Report:

Acting Director Peter Kozinski spoke about the on-going efforts to advance the I-25 North projects. It was noted the RAMP time extension is in place until December, 2014. He also noted significant progress on the I-70 East Project, the C-470 Project and the I-70 Mountain Corridor eastbound peak period shoulder lanes. He said CDOT would likely seek innovative proposals (finance and design) for the westbound lanes soon.

I-25 Express Lanes 4<sup>th</sup> Quarter Performance Report

Terry Ostrom, of Plenary Roads Denver, delivered the concession's first quarterly performance report to the Board. He reported that traffic and revenues were down a bit in the 4<sup>th</sup> quarter, following expected seasonal fluctuations. The total revenues for this quarter were \$747,000. He acknowledged E-470's role

in delivering customer service satisfaction levels that exceeded the performance goal. Chairman Gagen asked if bus travel times were not included in this report. Ostrom spoke about the installation of new travel time indicators, and said Plenary is making an application to the FCC for additional bandwidth to support the indicators. He also noted most buses in peak hours are managing a travel time at or better than required travel times. Director Cheroutes said Plenary is a good partner and thanked Ostrom. He then mentioned the need to increase HOV violation civil penalties and the License Plate Toll surcharge.

Adjournment: There being no further business to come before the Board, the meeting was adjourned.

# HAMMER --- LAW

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August 20, 2014

## **VIA EMAIL**

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## **CORRECTION OF PUBLIC COMMENTS SET FORTH IN JULY 16, 2014 DRAFT MINUTES**

1. Objection to not being provided a separate opportunity to provide public comment on the proposed minutes before the Board votes on the resolution to adopt such minutes.

As I have previously noted, the public comment period for HPTE Board Meetings occurs after the Board considers and votes whether to approve the draft minutes presented for the prior month's meeting. I request that the public be permitted to comment prior to voting on minutes if any member of the public has corrections for such minutes.

2. Correction of comments attributed to me during the general public comment period.

The proposed minutes do not accurately reflect my comments during the initial general public comment period (noted on the agenda as occurring at 1:10pm). The minutes omit serious issues I raised during these comments and attributed to me a comment that I did not actually make. Therefore, I request the following corrections:

- a. While I would welcome the opportunity to speak during the lunch meeting, I have not actually made that request. Therefore, the phrase at the end of the description of my comments “and the ability to speak during the lunch session” should be deleted.
- b. The following substantive comments I made that were omitted and should be reflected in the minutes are as follows:
  - 1) The Lunch Meeting agenda violates the Sunshine Laws because it is not as “specific as possible” and in fact is extremely vague. The public has no full and timely notice of who will be presenting reports during the Lunch Meeting and what specific topics will be addressed in greater detail at that time.
  - 2) The Lunch Meeting provides substantive information of interest to the public which is omitted at the Regular Board Meeting that follows. I gave by way merely of example the OMPD Report by Mr. Stein at the June 2014 Lunch Meeting that provided specific updates about the various transportation corridors, as well as other substantive information not reported to the public during the Regular Board Meeting. Mr. Stein merely stated at the Regular Board Meeting that he had already briefed the Board at lunch on corridor issues and spoke merely of his upcoming travel plans and internal staffing issues.
  - 3) The agendas for the Regular Board Meetings continue to be improperly vague and do not meet the standards required by the Sunshine Laws that the agenda be as “specific as possible.”
  - 4) The public is not provided with the same information that is provided to the Board in its agenda packets. (For example, Director Cheroutes stated during the July Lunch Meeting that the Board had been presented with budget to actual financial information. This information was not provided to the public.)
  - 5) The public comment period precedes presentations to the Board so that public has no meaningful opportunity to comment on the information which forms the basis for Board decisions.
  - 6) Because the Board Meeting in July was already in violation of the Sunshine Laws, any resolutions adopted by the Board will be void and never become legally effective.

3. Correction of comments attributed to me during the public comment on the transparency policy.
  - a. The first sentence is inaccurate. The APA itself is not “published in the Colorado Register” and so the phrase in sentence one “,which . . . Register,” should be deleted. The notice of proposed rule-making is required to be published in the Colorado Register per the APA.
  - b. Additional substantive comments made that were deleted from the minutes include the following:
    - 1) Acknowledging the comments by Director Rogers and Attorney Chase at the Lunch Meeting that the APA does constrain HPTE.
    - 2) Disagreeing with the characterization of the proposed Transparency Policy as a “general statement of policy” and providing specific examples of portions of the policy that purported to create rules when the public receives information, the scope of that information, and sets a minimum of public comment.
    - 3) The proposed Transparency Policy conflicts with the already existing minimum standards set forth in the Open Records Act, the Sunshine Laws, and the Administrative Procedure Act.
    - 4) The townhall meetings which the proposed Transparency Policy purports to use to fulfill its obligations to permit public comment are not legally sufficient because these meetings are merely public relations events. In addition, no substantive information is provided to the public *before* the meeting so that the public can be prepared with questions.

I ask that these comments be distributed to the Board prior to its meetings today. Please raise or permit me to raise these corrections prior to the Board’s vote on the proposed minutes.

Please let me know if you have any questions.

Regards,

/s/  
Karen A. Hammer  
Principal