
**MINUTES FOR LUNCH OF THE BOARD OF DIRECTORS OF THE
HIGH PERFORMANCE TRANSPORTATION ENTERPRISE (HPTE) (Room 225)**

Held: Wednesday, July 16, 2014; 12:00pm in room #225

4201 E. Arkansas Ave, Denver, CO 80222

A lunch 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 (excused)	Brenda Smith
	Kathy Gilliland, Vice Chair	Gary Reiff	
	Doug Aden (excused)	Trey Rogers	

Discussion on matters relating to agenda items, upcoming projects, and administrative and budget matters.

Director Cheroutes reported on the following:

The status of the US 36 Project is good. Construction is proceeding and Phase 1 should be complete by April, 2015. HPTE and Plenary Roads have a strong collaborative working relationship.

The eastbound Peak Period Shoulder Lane (PPSL) on the I-70 Mountain Corridor is now under construction, and is short of funding by an estimated \$15M. HPTE is exploring a short term bank loan, secured by PPSL revenue, to fill the gap. HPTE will issue bonds if the loan is not repaid by term.

HPTE is assessing projects within the next five year timeframe to see how much revenue to expect from financings.

Other Comments:

Director Cheroutes reviewed recent transparency activities, including meeting with several editorial boards, individual meetings with each member of the Denver City Council, meetings with staff in Aurora and Commerce City, and three workshops with the Transportation Commission regarding the P3 decision-making process. Two town hall meetings were recently conducted for the I-70 East Project, including a telephone town hall that reached 5,000 participants and an open-house and Q&A meeting that attracted 80 area residents. More meetings and outreach are in the works. It was noted that the Public-Private Partnership (P3) on I-70 East will be different than the P3 on US 36, and it is difficult to get this message across.

A proposed Transparency Policy will be considered and acted on by the Board at the 1:00 meeting. A redline draft incorporating local input was before the Board. There was general agreement that incorporating public input on performance standards, HOV policy and other concerns must shape the terms of the P3 RFQ, RFP and ultimately the Concession Agreement. Director Reiff offered amendments to the draft Policy to clarify provisions for access to public forums and consideration of multi-modal inclusion. Director Rogers asked Assistant Attorney General Jordan Chase whether the adoption of the Transparency Policy needed to follow the rulemaking procedures found in the Administrative Procedures Act (APA). AAG Chase indicated that the HPTE Board was not engaging in rulemaking in adopting the Transparency Policy. HPTE did not have authority to promulgate rules on transparency measures and therefore did not need to follow the APA. Additionally, the APA exempts general statements of policy from the APA rulemaking procedures and the Transparency Policy, by its terms, are general statements of policy adopted by the board.

The Board will also consider a recommendation to the Transportation Commission that CDOT take steps forward with a P3 procurement on the I-70 East Project. Director Reiff offered amendments to the Resolution to clarify that this recommendation was subject to additional public input and future circumstances.

Adjournment: Lunch was adjourned at 12:59 p.m.

RECORD OF PROCEEDINGS

MINUTES OF THE REGULAR BOARD OF DIRECTORS OF THE
HIGH PERFORMANCE TRANSPORTATION ENTERPRISE (HPTE) (HQ Auditorium)

Held: Wednesday, July 16, 2014; 1:00pm

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 (excused)	Brenda Smith
	Kathy Gilliland, Vice Chair	Gary Reiff	
	Doug Aden (excused)	Trey Rogers	

Chair Gagen called the regular meeting to order @1:07pm:

Approval of minutes Resolution #134: Vice Chair Gilliland moved approval of June 18, 2014 meeting minutes, second by Director Smith, approved by all present.

Public Comment @ 1:10pm: Attorney Karen Hammer of Hammer Law spoke about the Sunshine Law's requirements for timely notice of meetings and documentation. She requested access to the full Board packets in advance of the meetings and the ability to speak during the lunch sessions.

Director's Report: Director Cheroutes reported he expects to have the HPTE Program Assistant position filled by this time next month. He said good progress is being made on the US 36 Project, which is now under construction. HPTE is exploring short-term bank loan, secured by I-70 Mountain Corridor Peak Period Shoulder Lane (PPSL) revenues, to help CDOT fill a \$15M gap in project funding. Kurt Morrison, Legislative Liaison with the Office of Policy and Government Relations, reported that there is an August 1, 2014 deadline for requested legislation to be filed with the Governor's Office. CDOT expects to propose legislation in the 2015 session to provide solutions for accounting issues with the Transportation Special Fund, and to provide solutions to multi-agency issues with temporary registration tags for vehicle purchases.

OMPD Report: Joe Mahoney reported that the C-470 Investment Grade Traffic and Revenue study will be given the Notice to Proceed in August. He spoke about the I-70 Mountain Corridor funding shortfall and possible solutions, including building out the westbound bore. He said the I-25 North Segment 2 Concept of Operations is wrapping up. He noted that OMPD Director Ben Stein is leaving CDOT on July 22, and offered thanks to Ben for his services.

Report on Public Outreach and Input on I-70 East Project: Director Cheroutes and Megan Castle of the Office of Public Relations reported on extensive public outreach and local engagement activities for the I-70 East Project, including meeting with editorial boards, individual meetings with local officials, and town hall events.

Public Comment on Proposed Policy for HPTE P3 Transparency: Karen Hammer of Hammer Law said that the Administrative Procedures Act, which is published in the Colorado Register, is not being followed by the Board in its review of the proposed Transparency Policy. She said the draft Policy was difficult to find on the HPTE website, that no timeframe for comment was given, and that the public had no real opportunity to provide input.

Transparency Policy Relating to Public-Private Partnerships (P3) Resolution #135: Chairman Gagen noted that all public comments received to date have been entered into the public record. Director Reiff noted there was good public comment on the proposed Transparency Policy, shown in redline on the draft. He suggested additional changes to the Policy and Resolution to encourage and consider additional future input. Director Rogers agreed, and discussed why the HPTE Board did not need to follow the Administrative Procedures Act (APA) in adopting the Transparency Policy, noting 1) that the rulemaking procedures found in Section 24-4-103, C.R.S. of the APA need to be

followed only when an agency is required or permitted by law to make rules, which is not the case here—HPTE does not have the statutory authority to adopt rules on transparency; 2) the Transparency Policy and the resolution adopting the Transparency Policy indicate that the measures adopted by the HPTE Board are intended to be general statements of policy, which are exempt from the APA by Section 24-4-103(1); and 3) a review of the legislative declaration of the APA found at Section 24-4-101.5, C.S.R. reveals that the APA was not intended to apply to situations like this. Assistant Attorney General Jordan Chase agreed with Directors Rogers. Upon a motion by Director Reiff and second by Director Rogers, the Policy and Resolution were approved by all directors present.

Recommendation
for P3 Procurement
on I-70 East Project
Resolution #136

Director Cheroutes spoke about the extensive analysis of procurement options for I-70 East over the last several months including the value for money analysis and three different workshops with the Transportation Commission. Director Reiff suggested a change to the Resolution so that the recommendation is subject to continued review and consideration of financial analysis and public input, and made a motion to approve the amended Resolution. Upon a second by Director Rogers, the motion was approved by all directors present.

Adjournment:

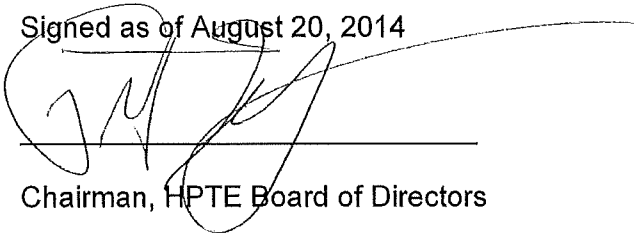
There being no further business to come before the Board, the meeting was adjourned.

Resolution – HPTE # 137

Approving HPTE July 16, 2014 regular meeting minutes

BE IT RESOLVED, that the July 16, 2014 regular meeting minutes attached hereto, are hereby approved by the High Performance Transportation Enterprise Board of Directors.

Signed as of August 20, 2014

A handwritten signature in black ink, appearing to be 'J. M. J.', is written over a horizontal line. The signature is stylized and extends to the right, crossing the line.

Chairman, HPTE Board of Directors

HAMMER --- LAW

Karen A. Hammer, J.D., LL.M.
Principal

Barbara K. Brown, Ph.D.*
Senior Strategy Advisor
*Non-lawyer professional
who does not practice law

3773 Cherry Creek Drive, North
Suite 575
Denver, CO 80209
hammer@hammer-law.com
303.204.4447

August 20, 2014

VIA EMAIL

Board Members
High Performance Transportation Enterprise
dot_hpte@state.co.us
michael.cheroutes@state.co.us

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