

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

Held: Wednesday, November 19, 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
	Kathy Gilliland, Vice Chair	Gary Reiff	
	Doug Aden (excused)	Trey Rogers	

I-70 East Workshop with Transportation Commission and Colorado Bridge Enterprise @ 11:05am in the Auditorium. Members of HPTE Board of Directors attended an I-70 East Workshop with the Transportation Commission and the Colorado Bridge Enterprise. A recording of the I-70 East Workshop can be obtained upon request.

Chair Gagen called the regular meeting to order @12:00pm in Room 225. Roll call was taken to establish a quorum, all were present.

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:

Director Cheroutes discussed the I-70 East Project Workshop that occurred in the prior hour, noting that the procurement has slipped into January. Director Cheroutes also noted that the procurement and delivery decision regarding the I-70 East Project has been delayed. The HPTE and Transportation Commission will revisit this matter early January 2015.

Director Marostica commented on the existing financial scenarios for the I-70 East Project and the substantial changes to initial revenue projections.

Executive Director Don Hunt added that he couldn't agree more with Director Marostica, noting that this demonstrates the chaos that we face in the state and in transportation.

Director Cheroutes reported on the I-25 Corridor North activity. The North I-25 Corridor was discussed with the RAMP Governance Committee and Region 4 two weeks ago. Director Cheroutes also stated that the RAMP Governance Committee was recommending that \$35 million of the RAMP allocation to HPTE be moved to the Northern I-25 managed lanes as a result of more corridor activity. The Transportation Commission acts on this formally next month. If there are no objections on the reallocation of money, next month there will be a formal motion. Director Cheroutes also stated it shows support to the corridor.

Chair Gagen asked if there were any other competing projects for those funds.

Vice Chair Gilliland added that the Northern Colorado officials and business leaders are pursuing every avenue in lobbying for the widening of Interstate 25 between Fort Collins and Longmont.

Director Cheroutes stated that this again underscores the hard choices we are going to have to make as an organization, trying to figure out ways to get private investments. Next month we will do a motion or resolution on it that supports for that action by the Transportation Commission.

Director Marostica reported the outcome of his trip to the P3 awards in New York on October 23rd, involving the US 36 Project. Director Marostica also noted that the P3 model has and is expected to continue to be applied in industries outside of transportation.

Megan Castle spoke about the HPTE communications and public relations activities over the last month. She discussed the re-branding efforts of HPTE, noting that HPTE will have a formal presentation at next month's HPTE Board meeting. Megan also discussed the results of the HPTE Transparency outreach from the November 5th town hall meeting. Megan noted that HPTE received several questions from the public regarding private financing - mainly protections for the state when entering into a P3. She added that the I-70 East financial and environmental processes are concurrent and noted that it has been an ongoing effort to educate the public on that. Megan also discussed the express lane education program that HPTE has been working on for the various corridors. HPTE is starting with a website, how to use videos as well as working with partners on this education effort. She went on to add that HPTE is looking at Plenary and also E-470 on developing this campaign and making it seamless in promoting choices and working with our Partners to do that. Megan went on to inform the HPTE Board that the Legislative Session is approaching.

Director Cheroutes followed up on the upcoming Legislative Session. He briefly discussed the on-going Legislative Audit on Project US 36, stating we should be seeing preliminary findings next month. He noted that they are on schedule and doing a very thorough job. Director Cheroutes also noted that he believed that this audit ultimately is going to be helpful.

Director Cheroutes discussed the status of the 1-70 Peak Period Shoulder Lanes commercial loan negotiations coming to a close.

Acting Director Peter Kozinski discussed acquiring project equipment, the notice to proceed with financing and capturing revenues for the project.

Director Cheroutes also highlighted for the Board the Proforma Cashflow Projection from Stifel Nicolaus. He briefly informed the Board of a 10 year HPTE forecast regarding the operating fund, repayment to the Transportation Commission of the loans, the value of HPTE, and the Fund balance outcome.

Bryan Stelmack from Stifel Nicolaus reported to the HPTE Board that he has been working with Director Cheroutes and the HPTE staff on the Proforma Cashflow and the value HPTE provides CDOT. Mr. Stelmack discussed the Proforma that was provided to the HPTE Board and described the method of preparing the document.

Director Cheroutes described Resolution #147, which recommends to the Transportation Commission a delivery method of the C-470 Express Lanes Project. He stated it is based on a preliminary analysis done for HPTE by Ernst & Young, taking a look at different delivery models. The conclusion is that we receive better value to proceed with a public financed design build basis. The resolution makes that determination and gives enough information to start the process. He also described Resolution #148, Amendment No.1 to the Amended and Restated Concession Agreement for the US 36 and the I-25 Managed Lanes. He added Kay Hruska is giving a Budget to Actual report

Meeting Break
(12:50)

Regular Board meeting moved from Room 225 to the Auditorium.

Chair Gagen reconvened the regular meeting @1:00pm in the Auditorium. Board reconvened and roll was called to re-establish a quorum after a short break, all were present.

Approval of minutes Resolution #146: Director Reiff moved approval of the October 15, 2014, meeting minutes. Upon a second by Director Smith, the minutes were approved by all present.

Public Comment @ 1:10pm: Jan Dowker, chair of the Northern Front Range Metropolitan Planning Organization (NFRMPO), presented a Resolution passed by the North Front Range Transportation and Air Quality Planning Council supporting the reconstruction of I-25 bridge over Crossroads Boulevard using RAMP funding.

Attorney Karen of Hammer of Hammer Law pointed out that last month's HPTE Board meeting was not recorded, noting that HPTE could receive a copy of her recording. She also went on to add her views on HPTE Board committing securities exchange fraud and the legality of the Board's prior actions and possible future actions, including specific items on the Board's agenda today. She went on to add these actions did not comply with the State's "transparency and accountability laws." Regarding Resolution 148 (the Amended and Restated Concession Agreement), she objected to its ratification from the February 19, 2014 Board meeting stating it was flawed and the Amended and Restated Concession Agreement was never duly authorized and HPTE cannot ratify and affirm. Ms. Hammer submitted the attached written comments.

Director Reiff followed up with a question to Ms. Hammer, asking if she was a securities litigator or whether she had handled securities litigation. Director Reiff indicated that he wanted to know how to weigh counsel's comments.

Ms. Hammer replied that she would engage in a question and answer with Director Reiff. She went on to ask Director Reiff if he had disclosed to the Board that he is the Chair on the Audit Review Committee of the Transportation Commission and had asked people under Directors Reiff's direct order and supervision to create a false Internal Audit.

Director Marostica called for a Point of Order, stating Director Reiff was asking a question of yes or no.

Director Reiff went to say with no expertise in this area, Karen Hammer was trying to advise the HPTE Board.

Ms. Hammer said that she understands securities, and that you could check her resume if he had any more questions.

Director's Report: Director Cheroutes stated he would keep his report short and reported that he has been on vacation for two weeks. Director Cheroutes is looking forward to moving ahead with the Agenda. Director Cheroutes requested that Director Marostica discuss his recent trip to New York for a P-3 award ceremony.

Director Marostica reported that he attended the 2014 P3 Awards in Conrad, New York on October 23. He noted that the US 36 Project was up for an award because it was a great project. Director Marostica went on to add that he sees what is going on with P3's and how they are a major part of not only Transportation but also other public financings worldwide. He went to add that most states are involved in P3's and thanked the Board for sending him.

OMPD Report: Acting Director Peter Kozinski discussed the I-70 Peak Period Shoulder Lanes commercial loan and noted that the project was on schedule for October 2015. He also briefly highlighted toll points for that project. Acting Director Kozinski also mentioned the progress of I-25 North Segments 2 & 3, the upcoming progress of C-470 and Louis Berger and Associates working on the Investment Upgrade Study for that project, as well as the concerns of the HOV Lane. Director Kozinski also reported the purchase of

the switchable transponders and the I-70 East Project telephone town hall.

Budget to Actual Report:

Kay Hruska reported on the preliminary October budget to actual statements. She also discussed the Division of accounting is in the process of implementing a new accounting system and is experiencing issues with the posting of transactions. She also informed the Board that the budget to actual statements are not final and will change when the accounting system issues have been rectified. Additionally, Kay Hruska added, the expenses and revenues appear negative, which is due to fiscal year-end accrual reversals.

HPTE Business Plan Update:

Bryan Stelmack, from Stifel Nicolaus, described to the Board the forecasted 10 year Proforma Cashflow Projections for HPTE starting in 2015. He stated the goal of the Proforma is to back into the revenue necessary to pay the ongoing expenses on an annual basis for HPTE as well as re-pay the outstanding Commission Loan balance as stated in the Proforma. Mr. Stelmack noted that HPTE will need to generate \$2 million a year to pay the Transportation Commission loan balance in full in a 10 year period. Mr. Stelmack briefly stated its upcoming project with staff, which entails determining the value HPTE provides CDOT and to provide comparable back up data from other Tolling Enterprises throughout the country.

Plenary Roads Denver Quarterly Report Update:

Terry Ostrom, Project Manager of Plenary for US 36, highlighted the Plenary Quarterly Report. Terry gave an overview of operational performance and key events for the reporting period. He also covered traffic reports, customer levels and environmental monitoring. He also reported Transfield Services Infrastructure (TSI) and their ongoing and preventative maintenance activities for the I-25 Managed Lanes.

C-470 Express Lane Project Resolution #147:

Director Cheroutes gave a brief overview of C-470 Express Lanes Project and noted that the public funding delivery method is the preferred approach for delivering the project. Vice Chair Gilliland moved approval of Resolution 147, considering recommendation regarding the financing of C-470 Express Lanes Project. Upon a second by Director Reiff, Resolution #147 was approved by all present.

Amendment #1 to the Amended and Restated Concession Agreement Resolution #148:

Assistant Attorney General Chase presented Resolution 148, Amendment #1 to the Amended and Restated Concession Agreement for US 36 and I-25 Managed Lanes and ratifying and affirming the Amended and Restated Concession Agreement. AAG Chase addressed the affirmation and ratification and mentioned that it was being done for three reasons, noting the following: 1) while HPTE has always believed that the Amended and Restated Concession Agreement was validly authorized by the Board, some people have questioned it and since HPTE is amending the document, it was decided that HPTE would eliminate any question regarding the process, noting that there was nothing illegal about the ratification; 2) it is always good legal practice to ratify and affirm the underlying document when amending it; and 3) it gives the Board an opportunity to ask any questions about the underlying Concession Agreement when it considers the Amendment. AAG Chase also stated that Karen Hammer of Hammer Law filed a Preliminary Injunction on this very Board action and noted that the motion was denied. AAG Chase also discussed the various actions the Board has taken with respect to the US 36 Concession Project, which included approving the Concession Agreement on June 19, 2013, as well as approving various amendments to the Concession Agreement that dealt primarily with modifying deadlines and allowing certain work to occur to ensure the project stayed on schedule. AAG Chase noted that these amendments were approved by the Board and entered into in October and December of 2013 and January and February of 2014. AAG Chase also described that the Concession Agreement was amended and restated in its entirety in February 2014 to incorporate details related to financial close. The financing package at financial close included a TIFIA loan, equity, and subdebt. AAG Chase also described that the Amended and Restated Concession Agreement documented a more detailed process by which Phase 1, when completed, would transfer to Plenary, noting that HPTE is liable under that loan until it is assumed, which is expected to occur simultaneously with the transfer of Phase 1. AAG introduced Tony Ryan and noted that Tony Ryan will walk the Board through the amendment.

Tony Ryan from Hogan Lovells spoke at length about the specifics of the amendment, stating there are two elements to the amendment. The first thing relates to the acceptance of Phase I that is being done

under a separate design build contract which is anticipated to be handed over to Plenary to operate once that's completed. Mr. Ryan went on to add that the amendment reflects that the transfer will occur upon project completion as opposed to final acceptance. That means the project is done with the exception of punch list items, landscaping and things like that. Otherwise the road is operational and can be managed and can be fully operated. Mr. Ryan described the second portion of the amendment and stated that it provides additional time periods for HPTE to make a payment to Plenary if the managed lanes are closed due to the request of HPTE or CDOT. Mr. Ryan noted that the Board memo does a good job of explaining that. Mr. Ryan explained that this does not apply in instances when weather, for example, flooding that occurs and the State Patrol says we have to close the lane. This applies when HPTE or CDOT have requested Plenary to close the managed lanes for a set period of time and we need to determine what the compensation amount is. An example would be if CDOT is doing a project on general purpose lanes on I-25 and they find that it would be more efficient from a cost and time perspective to request that the managed lanes be closed and HPTE/CDOT would owe compensation for that. The amendments that we provided for here allow for expanded time for HPTE to make those payments. Those are the changes that are included on the requested Amendments.

Director Rogers requested that Mr. Ryan discuss the implications of rejection of these two changes in the Amendment.

Mr. Ryan stated the Concession Agreement continues in full force and effect if these Amendments are not provided for. If you elected to not replace final acceptance with project completion, it means that the date when the lanes are turned over to Plenary will be pushed back. It is in the best interest of HPTE to accelerate that, along with opening up of the highway. It is also the moment when the existing Phase I debt that is on HPTE's books passes over to Plenary's. The second piece is a process of timing. There is still the obligation to make the payment from HPTE to the private developer, HPTE would not have that extra time to make that calculation and payment to Plenary.

Director Rogers went on to ask Mr. Ryan about other changes made to the Concession Agreement since the February 14th adoption of the agreement?

Mr. Ryan stated that there were changes made to schedule 17 relating to insurance requirements and changes made to schedule 2A. He added that 2A is the new schedule that was added between June of 2013 and February of this year. This schedule talks about the condition of transferring over Phase I debt. A force majeure event was modified to include the litigation that was threatened at this hearing in February 2014. This means the parties have agreed that in the event litigation results in a halt to the project, it would be a standstill until the parties were able to address it. This was intended to provide certainty for the parties that there is not a threatened compensation event at the Phase I transfer date.

Director Rogers asked Mr. Ryan, does this change the structure of the deal or do you characterize this as clean-up?

Mr. Ryan stated that he characterizes these as clean-up items that were initiated on the CDOT HPTE side and were done to make the payments with efficiency and give certainty.

Director Rogers asked, as someone who does this for a living, is it typical for a deal like this, with hundreds of pages implemented over a long period of time for clean-ups of this nature that happen after the original execution of the deal?

Mr. Ryan answered, almost without exception.

Director Rogers thanked Mr. Ryan for his work.

Director Reiff commented that he took Karen Hammer's comments with respect to diligence and lack of diligence seriously. Director Reiff went on to add that he did not hear anything unique that brings this to a higher level and he was relying on his understanding of diligence and counsel's advice. Director Reiff went on to add that he wants to take seriously comments made before the Board, but he also wants to

put them in the context of the background and the degree of experience of those making the comments especially when they are providing legal advice, so that was the reason for his question earlier. He noted that Ratification Clauses are about as routine as you can get. Director Reiff noted that he wanted to understand if there was something unique in Ms. Hammer's transactional background and experience that would override that. Director Reiff stated that he takes seriously the viewpoint and input of others. Having heard nothing that changes his understanding of diligence and obligations, Director Reiff noted that he was comfortable with what the Board has done.

Director Rogers agreed with Director Reiff's comments to move forward and approve Resolution 148. Director Rogers also stated that the challenges raised by Karen Hammer were rejected by the Federal District Court, in the form of a Request for Temporary Restraining Order and Preliminary Injunction. Director Rogers is optimistic of a Dismissal.

Vice Chair Gilliland moved approval of Resolution 148 Amendment #1 to the Amended and Restated Concession Agreement. Upon a second by Director Marostica, Resolution #148 was approved by all present.

Vice Chair Gilliland thanked the North Front Range Metropolitan Planning Organizations (NFRMPO) for their efforts in improving North I-25.

Adjournment:

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