

WRRTC DECEMBER 2020 MEETING MINUTES - APPROVED

**Wisconsin River Rail Transit Commission
Commission Meeting - Friday, December 4th, 2020 at 10:00 am
Meeting via Zoom**

1. 10:00 AM **Call to Order** – *Alan Sweeney, Chair*
2. Roll Call. **Establishment of Quorum** – *Matthew Honer*

Crawford	Carl Orr, <i>2nd Vice Chair</i>	X	Jefferson	Mary Roberts	X
	Derek Flansburgh	<i>Absent</i>		John Kannard	X
	Tom Cornford	X		Augie Tietz, <i>3rd Vice Chair</i>	<i>Absent</i>
Dane			Rock	Russ Podzilni	X
	Jeff Huttenburg, <i>Treasurer</i>	X		Wayne Gustina	X
	Chris James, <i>1st Vice Secretary</i>	X		Alan Sweeney, <i>Chair</i>	X
Grant	Gary Ranum	X	Sauk	Brian Peper	X
	Mike Lieurance	X		Dave Riek, <i>2nd Vice Treasurer</i>	X
	Robert Scallon, <i>1st Vice Chair</i>	X		Marty Krueger	X
				Tim McCumber, <i>Alternate</i>	<i>Absent</i>
Green	Harvey Kubly, <i>1st Vice Treasurer</i>	X	Walworth	Al Stanek	X
	Oscar Olson	X		Richard Kuhnke, <i>2nd Vice Secretary</i>	<i>Absent</i>
	Michael Lowery	X		Allan Polyock	X
Iowa	Charles Anderson, <i>Secretary</i>	X	Waukesha	Dick Mace	X
	Kate Reimann	X		Richard Morris	X
	Susan Storti	X		Karl Nilson, <i>3rd Vice Treasurer</i>	X

Commission met quorum.

Others present for all or some of the meeting:

<ul style="list-style-type: none"> • Matt Honer - <i>WRRTC Administrator</i> • Ken Lucht, Roger Schaalma – <i>WSOR</i> • Alan Anderson – <i>Pink Lady RTC</i> 	<ul style="list-style-type: none"> • Lisa Stern, Teri Beckman, Chris Kern - <i>WisDOT</i> • Dave Popenhagen – <i>Belden, IL Resident</i> • Donald Stinespring – <i>Attorney representing Popenhagen</i>
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3. Action Item. **Certification of Meeting’s Public Notice** – *Noticed by Honer.*
 - o *Motion to approve meeting’s public notice – Nilson/Roberts. Passed Unanimously.*
4. Action Item. **Approval of Agenda** – *Prepared by Honer.*
Honer requested item #12 regarding the Offer-to-Use for the Belden Siding be placed before the Financial Report.
 - o *Motion to approve the amended agenda. Podzilni/Gustina. – Passed Unanimously.*
5. Action Item. **Approval of draft November 2020 Meeting Minutes** – *Prepared by Honer.*
 - o *Motion to approve the draft November 2020 meeting minutes with minor clarifications. Polyock/Mace. Passed Unanimously.*
6. Updates. **Public Comment** – *Time for public comment may be limited by the Chair.*
None

7. Updates. **Announcements by Commissioners**
McCumber thanked WSOR and WisDOT for repairing Highway 113 crossing. Polyock thanked Schaalma for his work on the Fox Lake Crossings.

REPORTS & COMMISSION BUSINESS

8. **Discussion and Possible Action on existing and future Offer-to-Use agreement in Belden, Illinois.** – *Honer, Admin.*
Honer reported the Commission requested several follow ups including pursuing existing lease payments, determining any environmental issues, and making a site visit for clarifications. Honer worked with Jim Matzinger, WRRTC’s Accountant, to determine when lease payments from Crop Production Services ended. It appears they ended in 2010. The lease also states that any back payments accrues a 12% interest fee on an annual basis. The final amount due with the lease and interest was \$5,254.53. An invoice was provided to Crop Production Services’ attorney. There is no evidence of storage tanks on WRRTC property. According to Crop Production Services, no Ammonia was stored within the buildings and they do not intend to undertake a Phase 1 environmental review and the prospective buyer is not requesting one. Honer believes there is little reason to undertake an environmental review of WRRTC’s property and WRRTC has no interest in CPS undertaking one on its property. A site visit was made and the photos were shared with the Commission. Honer asked if the Commissioners had any questions regarding the existing offer-to-use agreement with Crop Production Services.

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WSOR has provided a list of conditions to the prospective buyer. The prospective buyer expressed they are not in agreement with the conditions of WSOR and will not sign an agreement not allowing him access by way of the south-facing overhead doors.

Lucht stated it has been a long time since the WRRTC has had to look at a third party utilizing WRRTC Property. The prospective buyer is a non-railroad user so there is a need for a physical separation between a non-railroad user and the active rail. If the spur track is not being used by an industry, the WSOR will utilize it. Conditions that WSOR is requesting include insurance, indemnification, and fencing. Lucht stated that at the site visit, it was noticed that another user was utilizing the track to access their property, which will also be fenced off. Nilson asked how close the fencing will be from the overhead doors. Lucht stated that the proposed fence would be 2' from the buildings, providing the prospective buyer the ability to maintain the building. Nilson asked about access to the overhead doors.

Dave Popenhagen stated that he has four people interested in utilizing the rail corridor. Popenhagen asked if he is not going to be using the rail corridor why he needs to provide an insurance policy. Brownlee stated that the insurance policies are for the buildings that exist within the right-of-way. Brownlee stated if there are rail users utilizing the rail, those individuals would need to contact WSOR. Sweeney asked Brownlee if it makes sense for the Commission to wait until there is a rail user or act now as a non-railroad user. Brownlee stated that it makes sense to have an agreement with the prospective owner for the buildings but the lease can specify what changes when a rail user becomes available.

Popenhagen asked who is responsible for constructing the fencing. Lucht stated that it would be the responsibility of Popenhagen to build the fence if an agreement was entered into. Nilson believes the fence will get in the way and is not necessary. Lucht specified the fence will distinguish between rail and non-rail use. Popenhagen asked if can be included in the lease that he will not use the doors. Brownlee stated that typically the Commission would want a fence because it is unsure who also would be out there.

Popenhagen asked if the entire length of the right-of-way will be fenced. Lucht stated it would be the entire length of the right-of-way. Popenhagen asked how the railroad would access the property. Nilson suggested the lease outline how Mr. Popenhagen or a potential rail user will utilize the property and outline that in the lease. Huttenburg stated that the prospective purchaser should be responsible for paying for lease drafting. Nilson asked how often people or businesses currently occupy the buildings. Popenhagen stated the buildings are all empty at the moment. Popenhagen stated if a fence is constructed, WSOR will not be able to access the right-of-way though the easement he has on the property that is for sale.

Reiman asked if a jersey barrier would be an acceptable alternative to a fence. Popenhagen stated he has no issue with the barriers on the east end of the building but not the full length of the right-of-way. Lucht stated WSOR does not want Popenhagen to access the overhead doors on the building furthest to the west if he is not a railroad user because it will mean he is entering and exiting the right-of-way. Huttenburg stated he thinks its not worth the time to discuss this without a drafted agreement.

- o *Motion to postpone this action for another 30 days and bring back to the Commission an agreement that includes a fence and a monetary amount. Peper/Mace. Unanimously Approved.*

Crawford	Carl Orr, <i>2nd Vice Chair</i>	X	Jefferson	Mary Roberts	X
	Derek Flansburgh	<i>Absent</i>		John Kannard	X
	Tom Cornford	X		Augie Tietz, <i>3rd Vice Chair</i>	<i>Absent</i>
Dane			Rock	Russ Podzilni	X
	Jeff Huttenburg, <i>Treasurer</i>	X		Wayne Gustina	X
	Chris James, <i>1st Vice Secretary</i>	X		Alan Sweeney, <i>Chair</i>	X
Grant	Gary Ranum	X	Sauk	Brian Peper	X
	Mike Lieurance	X		Dave Riek, <i>2nd Vice Treasurer</i>	X
	Robert Scallon, <i>1st Vice Chair</i>	X		Marty Krueger	<i>Absent</i>
				Tim McCumber, <i>Alternate</i>	<i>Absent</i>
Green	Harvey Kubly, <i>1st Vice Treasurer</i>	X	Walworth	Al Stanek	X
	Oscar Olson	X		Richard Kuhnke, <i>2nd Vice Secretary</i>	<i>Absent</i>
	Michael Lowery	X		Allan Polyock	X
Iowa	Charles Anderson, <i>Secretary</i>	X	Waukesha	Dick Mace	X
	Kate Reimann	X		Richard Morris	X
	Susan Storti	X		Karl Nilson, <i>3rd Vice Treasurer</i>	X

9. WRRTC Financial Report – Huttenburg, Treasurer.

- Treasurer’s Report and Payment of Bills

Huttenburg reported there were two receipts, one from WSOR and one for a permit extension. WSOR’s payment is a pre-payment for 2021, although WSOR still owes approximately \$462.50 for 2020 that has been a hold over during recent years. Lucht stated that WSOR will look at it and resolve the issue. Huttenburg Received a payoff letter for the WisDOT loan for payment on January 20th. It is a little higher than expected and Huttenburg suggests the Commission pay the excess amount out of the Commission’s other funds. The Commission will borrow from the 2020 project funds to pay off the WisDOT loan because the county money will not be received by January 20th.

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Anderson asked how WSOR got behind on their payment. Huttenburg is not sure how it happened, but it has been carrying over for a few years now. Huttenburg hopes to work with Matzinger in January to adjust. Lucht believes WSOR overpaid. Sweeney stated that he feels it needs a separate motion to adjust the 2021 budget for paying off the WisDOT loan. Huttenburg believes that motion can be done in January.

- *Motion to approve the Treasurer's Report and payment of bills– Anderson/Sweeney. Passed Unanimously.*

10. Wisconsin & Southern Railroad's Report on Operations – Ken Lucht, Roger Schaalma – WSOR

Lucht reported WSOR is continuing to work with the Village of Palmyra to close two public crossings. Both crossings should be permanently closed in the next couple of weeks. It has taken awhile, but he believes both parties will be happy with the final result.

Schaalma report some final clean-up work is being done on the CWR Waukesha project. The final phase of the Waukesha sub was awarded just a month ago. Merrimac phase 2 is ongoing. Phase 1 of the Reedsburg Sub. rehab includes tie replacement in the Madison area and on the Cottage Grove Spur. An agreement is in place and work is expected to begin in the spring. WSOR is in the final phase of purchasing a Brandt Truck, which is essentially a semi-truck on rail. It will be used to support the Prairie Sub. rehab projects.

Lucht will mail out calendars and would like some indication of how many each Commissioner would like.

11. WisDOT Report – Lisa Stern, Chris Kern - WisDOT.

Kern sent out the annual offer-to-use letters requesting updates. Kern reported he will be leaving WisDOT in the coming weeks. Stern reported the Reedsburg Sub track rehab grant was signed prior to Thanksgiving. Huttenburg asked about the encroachments in North Freedom. Lucht stated a trailer and boat have been moved from the right-of-way but encroachments still exist. Lucht plans to meet with the Village to address the issue in the future.

12. WRRTC Correspondence/Communications and Administrator's Report – Honer, Admin.

Honer reported that the City of Middleton is challenging the Office of the Commissioner of Railroads determination in court. The City was given until November 20th to remove their infrastructure. Considering the City is challenging the OCR's decision, it is in the interest of WSOR to leave the crossing infrastructure in place until a determination is made. Honer requested WSOR install barriers on the north side of the crossing to prevent and discourage trespassing and WSOR has installed them. Other communications include a resident in Oregon calling about trees that have fallen from the right-of-way and Honer requested WSOR install property markers in Boscobel where development is planned.

Huttenburg asked if the Commission was a party to City of Middleton's challenge. Honer stated that the Commission is not, but we are mentioned as beneficiaries of the OCR's decision.

13. Discussion and Possible Action on a Utility Permit and Agreement with Scot Forge in Spring Grove, Illinois. – Honer, Admin.

Honer explained the permit. As discussed at the previous meeting, Scot Forge is not a public utility and the Commission does not want to provide them the same rights as a public utility. Scot Forge is installing water and electrical infrastructure underground crossing the right-of-way. Scot Forge is a rail customer and the Commission has worked with them over the years on several infrastructure projects that were done within the right-of-way. The current agreement has all of the requirements of the standard utility permit in that it follows Trans 29 of Wis Statute. It also has a lot of language similar to leases and temporary access permits. It is a combination of all three.

- *Motion to approve the underground infrastructure permit. – Anderson/Storti. Passed Unanimously.*

14. Discussion and Action on Private Crossing Permit in Palmyra, WI, Waukesha Subdivision. – Honer, Admin.

Honer provided the application to the Commission and explained it is a standard agreement for Private Crossings but that he has not received insurance or a signed final agreement. Honer recommends approving the application conditional on receiving insurance and a signed agreement from the applicant. Honer stated the applicant is requesting that the fee be waived. Honer stated that the Commission has not waived fees in the past. Kannard stated that he has map from 1920 showing that a crossing has been there for a long period of time. Honer stated that while a crossing has likely existed for a long time, it does not mean that the current property owner has an agreement for the existing crossing. The Commission asked about the application stating there may be future residential access. Sweeney stated that the agreement should state if additional users are able to utilize to crossing it should be considered public. Nilson stated that the application states there are potentially additional residential crossings at this area. Honer stated that the agreement is specific to the applicant and his neighbor. Anderson asked the purpose of the number at the crossing now. Honer stated that the crossing number is an FRA requirement that identifies the crossing but does not license it.

- *Motion to approve the application, not waive the fee, and limit the crossing to the two crossing users and future users will require a new private crossing application – Mace/Reimann. Passed Unanimously.*

15. Discussion and Action on Temporary Access permit for Trine Construction related to the work associated with Water and Sewer Work in Fox Lake, Illinois– Honer, Admin.

The temporary access permit is to allow Trine Construction to enter the right-of-way. They will need to coordinate their work with WSOR. Utility permits have already been approved.

- *Motion to approve the Temporary Access/Use Permit. – Mace/Nilson. Passed Unanimously.*

16. Presentation by WSOR: Future Janesville Bridge Project – Lucht, WSOR.

Lucht presented the Future Janesville Bridge Project to the Commission.

Nilson asked how much it would cost to bring WRRTC bridges up to 286k. Lucht stated it would cost about \$8M. Ranum asked if the project is undertaken to increase the ratings on WRRTC bridges, would it also raise the UP bridges ratings? Lucht stated it would not change the ratings of the UP bridges. Ranum asked if UP would want trackage rights on the rehabbed bridges. Stern is also asking what UP gets out of the upgrades including trackage rights on the newly rehabbed bridges. Stern stated WisDOT would be interested in all of the RTCs contributing and the project has potential for an INFRA grant. Lucht stated the last conversations with UP, there was no discussion of trackage rights for UP. Lucht believes the UP is comfortable with the existing weight ratings. Schaalma stated there was an agreement in place that gave WSOR's predecessor priority and the diamond would go back in at the UP's Cost. Stanek asked about quantifying the benefit. Lucht stated they have begun that work and will have something in the future. Stanek asked what impact this would have on the FRPP Grant Budget. Stern stated it depends on the budget and on the contributions of the RTCs and possible INFRA grant. It would be a big project but not out of the realm of what FRPP has funded in the past.

17. Adjournment.

Krueger stated Sauk County has entered into a contract for the geotechnical work for a new recreational bridge across the Wisconsin River on the WRRTC Corridor. He just learned the contractor was unable to place their barge into the water this week and had requested additional funds to complete by the end of the year. The project will be extended into next year.

- *Motion to Adjourn at 11:54 pm – Gustina/Nilson. Passed Unanimously.*