

WRRTC JULY 2020 MEETING MINUTES – APPROVED

**Wisconsin River Rail Transit Commission
Commission Meeting - Friday, July 10th, 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>Absent</i>	Jefferson	Mary Roberts	X
	Derek Flansburgh	X		John Kannard	X
	Tom Cornford	X		Augie Tietz, <i>3rd Vice Chair</i>	<i>absent</i>
Dane			Rock	Russ Podzilni	<i>excused</i>
	Jeff Huttenburg	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>	X
Green	Harvey Kubly, <i>1st Vice Treasurer</i>	<i>Excused</i>	Walworth	Al Stanek	<i>Absent</i>
	Oscar Olson	X		Richard Kuhnke, <i>2nd Vice Secretary</i>	<i>Excused</i>
				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> • Eileen Brownlee – <i>Commission Counsel</i> 	<ul style="list-style-type: none"> • Lisa Stern, Vince Bauer – <i>WisDOT</i> • Alan Anderson – <i>Pink Lady RTC.</i> • Mark Opitz - <i>City of Middleton</i>
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3. Action Item. **Certification of Meeting’s Public Notice – Noticed by Honer.**
 - *Motion to approve meeting’s public notice – Cornford/Anderson. Passed Unanimously.*
4. Action Item. **Approval of Amended Agenda – Prepared by Honer.**
 - *Motion to approve the amended agenda – Gustina/Scallon. Passed Unanimously.*
5. Action Item. **Approval of draft June 2020 Meeting Minutes – Prepared by Honer.**
 - *Motion to approve the draft June 2020 meeting minutes with minor edits. Mace/Storti. Passed Unanimously.*
6. Updates. **Public Comment – Time for public comment may be limited by the Chair.**

Mark Opitz, City of Middleton Planner, stated that in 1981 the City of Middleton closed Aurora St and retained a public crossing at that location. Opitz stated the City learned on June 23rd that WSOR and WRRTC treated this crossing as private with conditions on the adjacent landowner. The City understands the need for the fence at the location but is concerned about the gate at the private crossing. The City has not heard of any safety concerns necessitating a gate at this location. Opitz requested an agenda item in August to provide a presentation on how the crossing can stay open to the public. Sweeney asked Brownlee if there is a process for reconsideration of the crossing. Brownlee stated she is not aware of a required process, but it can be a new request considering the City of Middleton is asking for a public crossing and not a reconsideration of the existing private crossing. Brownlee stated public crossing decisions are not made by the Commission, rather they are made by the Office of the Commissioner of Railroads. Opitz stated he would still like to have an opportunity to present to the Commission at the next meeting.

7. Updates. **Announcements by Commissioners**
The Commission congratulated Honer on his recent marriage.

REPORTS & COMMISSION BUSINESS

8. WRRTC Financial Report – Huttenburg, Treasurer.

- Treasurer’s Report and Payment of Bills

Huttenburg stated there are three disbursements this month and two receipts, one of which was a transfer of funds. Huttenburg reported there was nothing new regarding the financials.

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

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

Roger Schaalma stated the annual weed spraying was completed recently, rail testing begins next week, and geometry testing is scheduled for August. Annual bridge inspections are ongoing and are approximately 50% complete. Recent storms have not caused any major damage. Three at-grade crossings are completed this year and five more are scheduled this season. Work is ongoing with the Villages of Palmyra and Eagle on the closure of three at-grade crossings. Contractors are mobilizing for the Continuous Welded Rail (CWR) from Whitewater to Eagle, a bridge project on the Fox Lake Sub., and two bridges on the Prairie Sub. Phase 2 of the Merrimac bridge (major rehab of nine spans) will also begin soon. Work is ongoing with WisDOT to finalize grants for upcoming capital projects. The major one being Phase 3 of the Merrimac Bridge. Grant applications for the final phase of CWR on the Waukesha Sub., CWR on the Prairie Sub., and nine bridge projects are in the works.

Lucht recalled the briefing regarding the East Main Gardens Offer to Use Agreement (OTUA) at the June WRRTC Meeting. Discussions are ongoing with this OTUA. Part of the agreement is to have a fence installed to protect the gardeners from the rail right of way. Recently, Lucht and another WSOR employee were confronted by angry gardeners while staking out the location of the fence installation. The organizers of the community garden responded to Lucht, that they will talk with the gardeners to increase understanding of the need for a fence. Lucht stated that WSOR will be concerned about compliance if an agreement is entered into.

On the other side of the tracks from the East Main Gardens, an adjacent business installed a parking lot that encroaches 9 ft into the right-of-way. WSOR contacted the company, whose attorney is arguing that the company has used the property for many years and has the right to continue using the area. WSOR is not in favor of any type of encroachment but stated that if it is cost-prohibitive they may be open to allowing the company to leave the asphalt if a barrier is installed so that no one can park on the encroachment. Lucht stated that property issues are continuing to be an issue across the system and specifically within the City of Madison.

Lisa Stern is hopeful the gardeners will be more understanding and she is in favor of removing the parking lot improvement. She agreed that property issues are a constant struggle and there are encroachments happening in Boscobel as well. Brownlee commented that the Commission has been discussing encroachments forever. There has not been a consistent way to deal with encroachments because there is no one-size-fits-all approach to differing encroachment situations. Brownlee stated that while encroachments are each different, there does need to be a consistent approach to recognizing and addressing the encroachments as they pop up.

Mace asked if adverse possession applies to state-owned property. Brownlee stated that it does not. Brownlee stated that up until recently it was possible to acquire municipal property by adverse possession. Adverse possession requires more than occupancy and it is very difficult to argue acquisition of railroad property through occupation. Krueger stated he spoke with the Village of North Freedom to discuss encroachments taking place there and feels confident that the situation will be resolved, showing that some people are interested in working with the railroad. Roberts asked about liability issues associated with encroachments. Lucht stated that WSOR holds all liability on the right of way and believes there is unnecessary exposure when any unauthorized use is taking place in the railroad right-of-way. Anderson asked, in the case of the parking lot, if an improvement permit is required through the municipality. Sweeney and Brownlee stated it may vary based on the improvement and the location. It is possible that a building permit does not require notifying adjacent landowners. It may become a municipal issue if the municipality issued a permit to construct something on someone else’s property. Lucht asked if WSOR is required to ask for permission from WRRTC to remove the improvement from the property. Brownlee and the Commission believed that WSOR can remove the improvement, as it is their responsibility to maintain the right-of-way.

Lucht thanked the Commission and the Counties for their support as WSOR is celebrating its 40th year. He hopes to invite the Commission to see an engine that is getting a 40th anniversary paint job when it is ready.

10. WisDOT Report –Lisa Stern and Ed Singer, WisDOT.

Stern stated that Ed Singer retired on July 3rd. In the interim she is handling OTUAs and other property permitting. She will be bringing an issue to the Commission next month regarding an encroachment in Boscobel. WisDOT was awarded the INFRA grant for Phase 3 of the Merrimac Bridge Project. Stern gave kudos to Rich Kedzior on his work on the INFRA grant award. Stern stated there is a public comment period for WisDOT’s statewide 2050 rail plan and will have the link sent to the Commissioners. She expects the plan to be completed in 2022. Lisa explained a recent OCR order for the construction of medians in the Village of Maple Bluff, Dane County. She stated the Commission is welcome to provide comment on the proposed medians, as WSOR has already given comment.

11. WRRTC Correspondence/Communications and Administrator’s Report – Honer, Admin.

Honer received correspondence from the City of Middleton. Middleton is opposed to the access restriction of the private crossing that was approved at the Commission’s June meeting. Honer spoke with the City Planner and explained the Commission’s responsibility to license this crossing and reduce liability exposure. Honer explained if the City would like the crossing to be a public crossing, they will need to contact the Office of the Commissioner of Railroads (OCR). The private crossing applicant is waiting for the City to make a decision before signing the agreement.

Site visits were made to several OTUA sites in Madison with WisDOT and WSOR. He expects that these OTUAs will be on future Commission agendas.

Property assessments were received from McHenry County. Parcels owned by the Commission increased between 3% and 3.5% in value.

Additional communication took place to follow up on last month's action items related to insurance and the private crossing agreement. Communication also took place related to the audit, utility permits, and budget for this month's agenda.

12. Discussion and Action on Utility Permits– Honer, Admin.

- **Utility Crossing in the City of Fitchburg, WI.**
- **Utility Crossings (2) in the Town of Oregon, WI.**
- **Utility Crossings (2) in the Village of Richmond, IL.**
- **Utility Crossing in the Village of Spring Grove, IL.**

Since the meeting packet went out, Honer spoke with the new railroad facilities engineer at WisDOT regarding fiber optic utility crossings. WisDOT suggests directional bore utility crossings with PVC casings should be a minimum of 15' under the base of the rail. The fiber optic installation applicants were contacted and their applications were revised. All of the applications are now to the desired standards of Trans 29 and WisDOT. He suggested approving the permits conditional on the receipt of payment.

- *Motion to approve the Utility Crossings presented conditional on the payment of fees– Nilson/Storti. Passed Unanimously.*

Lucht stated WSOR would like to see the two natural gas crossings in the Town of Oregon include casings and the crossing near a bridge in Illinois will need to be looked at by WSOR's bridge inspector and engineer.

- *Motion amended to include the encasement of the natural gas lines and the inspection of the utility crossing that crosses under WRRTC's bridge. Krueger/Anderson. Passed Unanimously.*
- *Motion to approve the utility crossings as amended. Passed Unanimously.*

13. Discussion and Possible Action on 2019 Audit Engagement Letter – Honer, Admin.

The Commission received two separate audit engagement letters. The first letter is for just the year 2019 and the cost is \$5000. The multi-year letter costs are \$5000 for 2019, \$5250 for 2020, \$5400 for 2021, and \$5500 for 2022. Honer stated that the Commission is required to undertake an annual audit, even though financial actions are limited.

Sweeney stated that he believes the cost is high. Mace asked if the Commission wants to seek additional vendors. Peper asked if the Commission needs to pay all at once. Honer stated that in the past the Commission paid on yearly basis. Honer stated the PRTC and SCWRTC went with multi-year contracts with Johnson Block at the recommendation of Harvey Kubly. Honer believes that multi-year letter is in the best interested of the Commission.

- *Motion to approve the multi-year letter from Johnson Block– Mace/Anderson. Passed Unanimously.*

14. Discussion and Possible Action on 2021 Budget – Honer, Admin.

Honer created three different budget proposals (Budgets A, B, and C) to highlight the issues that Commissioners had mentioned to him. The variations included the complete payment of the WisDOT FRIIP Loan and the increase of WSOR annual rent.

Lucht explained WSOR's letter written to the Commission stating that WSOR's position would be to pay off the FRIIP Loan and to not increase WSOR's rent. WSOR would like the Commission to consider Budget Option C, to pay off the loan. It would save the Commission a considerable amount of money and allow the Commission to invest a little over \$100k in a rail project in 2021. Lucht expects this rail project to be a CWR project on the Prairie Sub.

Ranum asked why the taxes decreased in the budget. Honer stated that he decreased the taxes because while the 2018 taxes doubled in McHenry County, they returned to their 2017 levels in 2019. Lucht stated that when WSOR contacted the county regarding the doubling of the taxes, they were informed that the property valuation increase caused the increase in taxes, so WSOR is confused as to why the taxes are half of what they were the year prior. Lucht stated taxes in Illinois are uncertain and very impactful to the WSOR.

Huttenburg is in favor of WSOR's rent being increased to reflect the cost of the Commission's operation. He believes it is important to have a clear distinction between the county contributions being used for capital improvements and WSOR rent covering the operation of the Commission. Huttenburg also believes an increase in cost to WSOR will mean a greater contribution to future rail projects.

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Lucht stated that WSOR has had a substantial increase in rent over the past 10 years. Rent was approximately \$30k 10 years ago, while now it is \$50k. The proposed increase would mean a 100% increase over 10 years. Lucht stated that WSOR has been looking at the Commission's operation expense, which increased substantially over the past 10 years. Sweeney asked if the Commission's financial commitment to the Merrimac bridge is affected by the budget. Lucht stated that it would not affect the 2021 budget.

- *Motion to approve Proposed Budget C for 2021, the standard budget with the FRIP Loan Pay Off– Nilson/Cornford. Passed. Huttenburg Opposed.*

15. Discussion and Possible Action on Spring Grove, IL driveway – Honer, Admin.

Honer included this on the agenda to keep the ball moving on this issue. The last action on the item was to have Boardman Clark negotiate an agreement with the Village of Spring Grove.

Brownlee stated that Spring Grove was going to provide the Commission with a survey and agreement proposals, but have not done anything except asking the Commission to remove signage warnings against trespass. Brownlee state she thinks Spring Grove believes it is road and if WRRTC believes it is not a road, the Commission will need to do something about it. Brownlee is not sure it is the Commission's job to move the needle because of expenses, but could consider the option of having a survey done of the area.

Sweeney asked if the signage is still in place. Lucht stated it is. Ranum stated it might be in the Commission's interest to have a survey done. Mace agreed. Storti suggested a realistic survey estimate is \$5k. Nilson believes a survey is a good idea, but the Commission could wait to see if anything happens before having a survey done. Mace suggested the Commission talk with the Village to see if they want to cost share a survey.

Brownlee suggested the Commission do a survey, and not share the cost of the survey. Brownlee believes an independent surveyor that may be a witness on behalf of the Commission is important when two parties have a disagreement. Anderson asked about the age of the railroad and if it is possible to have a definitive survey. Brownlee stated surveyors very much dislike railroad property because of the ambiguity of the property. Mace asked about the need for a separate state license to do surveys in Illinois. Brownlee stated it is a state licensed occupation. Kannard stated that surveyors require a different license in Illinois and there are differences in the work.

- *Motion to have Honer explore survey options and return to the Commission next month with the options – Krueger/Mace. Passed Unanimously.*

16. Adjournment.

- *Motion to Adjourn at 11:33 pm – Scallon/Cornford. Passed Unanimously.*