

WRRTC AUGUST 2020 MEETING MINUTES – APPROVED

**Wisconsin River Rail Transit Commission
Commission Meeting - Friday, August 7th, 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>		X	
Green	Harvey Kubly, <i>1st Vice Treasurer</i>	<i>Absent</i>	Walworth	Al Stanek	X
	Oscar Olson	X		Richard Kuhnke, <i>2nd Vice Secretary</i>	<i>Absent</i>
				Allan Polyock	<i>Absent</i>
Iowa	Charles Anderson, <i>Secretary</i>	<i>Excused</i>	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> • Julia Potter – <i>Commission Counsel</i> 	<ul style="list-style-type: none"> • Teri Beckman, Lisa Stern – <i>WisDOT</i> • Drew Hanson - <i>WIDNR</i>. • Mark Opitz - <i>City of Middleton</i> • Alan Anderson – <i>Pink Lady RTC</i>
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3. Action Item. **Certification of Meeting’s Public Notice – Noticed by Honer.**
 - *Motion to approve meeting’s public notice – Gustina/Podzilni. Passed Unanimously.*
4. Action Item. **Approval of Agenda – Prepared by Honer.**
 - *Motion to approve the agenda – Ranum/Nilson. Passed Unanimously.*
5. Action Item. **Approval of draft July 2020 Meeting Minutes – Prepared by Honer.**
 - *Motion to approve the draft July 2020 meeting minutes with minor edits. Mace/Roberts. Passed Unanimously.*
6. Updates. **Public Comment – Time for public comment may be limited by the Chair.**
7. Updates. **Announcements by Commissioners**

Krueger reported the RFP was released for geotechnical work associated with the borings of the recreational bridge across the Wisconsin River. Submissions are due at the end of August and contract expected to be awarded in September. It is a joint effort between Dane and Sauk Counties.

REPORTS & COMMISSION BUSINESS

8. **Presentation and Discussion regarding Middleton Center PH3 crossing in Middleton, WI – Mark Opitz, City of Middleton.**
Mark Opitz presented the history of the existing crossing in Downtown Middleton. Opitz stated that the crossing exists in an area where there was once a public road. When the public road was vacated, the City retained a public crossing by agreement with the Office of the Commissioner of Railroads (OCR). Opitz stated that the pedestrian crossing was installed at the City’s expense. Opitz stated that the OCR and WRRTC staff reviewed the crossing in the spring of 2020 and determined that it was no longer a public crossing. Opitz stated that in July 2020, the City worked with the developer to have a public access easement approach to both sides of the crossing. At the end of July, the City of Middleton sent a letter to the OCR requesting the crossing be public. Opitz stated that the City’s goal is to make sure the crossing remains open to the public.

Lucht stated that there have been issues with trespass and encroachments into the right of way including an earth retention system as part of the development. Lucht asked Opitz to explain the process with the development taking place with zero-setbacks to the lot line. Opitz stated that the

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downtown ordinance allows zero lot line development and directed the developer to not encroach into the railroad right-of-way. Opitz stated that the developer chose to ignore the directive of the City to not encroach into the railroad right-of-way. Mace asked what businesses are located north of the railroad. Opitz stated the ground floor is commercial and includes a restaurant. The walkway is the former road.

Nilson asked what is happening to the water tower. Opitz stated it was removed and relocation was attempted, but it was rather fragile and not feasible to relocate. Nilson asked if the proposed fence would allow emergency use. Opitz stated the proposed fence is four feet high with a locked gate at the private crossing that can only be unlocked by residents.

9. **WRRTC Financial Report – Huttenburg, Treasurer.**

- Treasurer's Report and Payment of Bills

Huttenburg presented the cash flow and income statement, along with the bills for payment. Huttenburg stated the permit fees will be reflected in the next month's statement.

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

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

Schaalma reported restrictions during the spring are causing a bottle-necking of work later in the summer. Rail testing is ongoing, currently on the Watertown Sub. The geometry car is currently on the northern division and will be coming to the southern division. WSOR scheduled another round of weed spraying. Bridge inspections are 85% complete. The Waukesha Continuous Welded Rail (CWR) installation between Whitewater and Eagle is ongoing. The Reedsburg rehabilitation tie project is currently delayed, meaning that getting anything done on that project this year is unlikely. Five of the eleven grade crossings on the WRRTC network are completed. Piling is being driven in Bardwell for a new bridge, with the change out of bridges scheduled in a few weeks. Contractors are mobilizing for bridge projects on the Prairie Sub. The contractors are mobilizing for work on the Merrimac Bridge. WSOR is replacing the tie deck on a bridge near Waunakee. Bids are being prepared for a bridge repair south of Madison. Storti asked about the railroad crossing on Highway 80 in Muscoda. Roger responded it is not scheduled for this year but believes it is scheduled in the coming years. State Highway Crossings are done with the assistance and planning of WisDOT.

Alan Anderson asked about the delay on the tie rehab project on the Reedsburg Sub. He asked if the work can be divided so that the work that does not interfere with the historical review can take place to replace some of the ties during the delay. Schaalma is unsure if the project can be divided. WSOR has done 1000 maintenance ties on the Sub. recently.

McCumber inquired about State Highway 113 Crossing in Sauk. Lisa Stern stated the crossing is scheduled to be repaired this year. Stern explained there is a State program to repair State Highway crossings, and the work needs to be done with State assistance. Ranum asked about the Highway 80 crossings in Muscoda. Storti stated that it is a very rough crossing, especially in winter.

Lucht reported WSOR is proceeding to close Taft and Second Street in Palmyra, in coordination with the installation of CWR. Lucht reported that WSOR is being assessed stormwater and urban forestry fees from the City of Madison (over \$250k over the past few years). WSOR and WisDOT's position is that state-owned rail corridor is exempt. Lucht stated that Eileen Brownlee and Julia Potter have been providing assistance to WSOR on this issue. Lucht reported that WSOR will place other projects with the City of Madison on hold until this issue is resolved. WSOR was contacted about putting lights on a bridge over the Rock River. The lake district will be allowed to put lights on the bridge to help define the navigation channels on the Rock River in Edgerton.

Lucht reported on the installation of a parking lot on railroad property in Madison. WSOR provided the business until July 31st to remove the parking lot from railroad property. It is now August and the parking lot has not been removed. Additionally, the parking lot has provided an opportunity for others to trespass into the corridor, including bicyclists and walkers. Lucht reported that jersey barriers will be installed to prevent access into the rail corridor.

Huttenburg asked about the North Freedom encroachments. Lucht plans to schedule a visit in the next few weeks. Krueger stated that he will be working to set up a meeting between WSOR and the Village of North Freedom's Village President. Mace asked about a legal issue with Canadian National (CN), who restricted access to WSOR into the Waukesha industrial park. Lucht stated that 8 or 9 years ago, WSOR was working with the City of Waukesha and Waukesha Electric regarding a WSOR claim of operating rights into the industrial park. CN has a different interpretation of WSOR's operating rights. Lucht stated it was very messy for the WSOR and has not been pursued further in the past eight years. Schaalma stated that it is very complicated matter and some of the rights are no longer clear after railroad ownership has changed.

11. **WisDOT Report –Lisa Stern, WisDOT.**

Stern reported today is Dave Simon's last day with WisDOT. Ed Singer's position has been filled by Chris Kern and WisDOT is excited to have him in that role. Stern reported each State Highway Crossing is inspected every two years and crossings are prioritized based on need.

Storti asked about encroachments in Boscobel. Lisa reported new awnings were built into the right-of-way but she has not had the opportunity to visit the site and draft an offer to use agreement. She hopes to have this on the agenda in September. James asked if there is a replacement for Dave Simon in the near future. Stern stated she has not heard from the Secretary's Office.

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

Honer reported that his work over the past month involved finalizing the utility permits that were conditionally approved at the July meeting. Honer reported he has begun to have regular meetings with Chris Kern and Ken Lucht regarding the outstanding offer-to-use agreements and property issues. Honer reported that the approved budget was sent to all of the counties.

13. **Discussion and Action on Attachment 13: Rental Agreement to WSOR/WRRTC Operating Agreement– Honer, Admin.**

Honer reported that Attachment 13 is the rental agreement between WSOR and WRRTC. The attachment reflects the budget that was approved at the July meeting. Lucht stated that the attachment reflects all previous rental agreement attachments and WSOR has no concerns.

Mace asked when the WRRTC changed the rental rate. Honer stated the most recent increase took place in 2018 from \$48,150 to \$50,000.

- *Motion to accept Attachment 13: Rental Agreement– Storti/Mace. Passed Unanimously.*

14. **Discussion and Possible Action on Spring Grove, IL Driveway – Honer, Admin.**

Honer reported on the survey proposals that were returned to him following his request for proposals. Honer stated that Kannard helped him identify potential surveyors that would be interested. Sweeney asked if the intention of the action item is to authorize a contractor and approve the work. Honer stated that was his intention although the agenda item was left open ended because previous action only authorized Honer to gather quotes and no action was taken to commit to undertaking the survey. Mace stated he is familiar with RA Smith and they have done good work in the past. Mace believes it is important that substantive title work is part of the work to be approved. Mace also believes that there is a building encroachment into WRRTC property at this location.

Sweeney asked Potter if the Commission is required to take the low bid. She has not done the detailed legal work, so if a motion is made it should be subject to legal review. Sweeney asked what Honer requested in the proposal. Honer reported that he requested a survey of the Commission’s property and the right-of-way shown on McHenry County GIS is in fact a public right-of-way by title.

Kannard spoke with some of the contractors and explained what the Commission is seeking. Stanek stated if qualifications-based contracting is being done a process needs to be outlined and recorded for the public record. Lucht stated that the Commission should ask the surveyors if they have experience with railroad right-of-way. Kannard believes these surveyors likely have right-of-way experience and RA Smith and OES have done a lot of highway work and should be familiar. Mace stated that RA Smith’s proposal does not include his office doing the title work, but that he provided the quote based on the quote from the title company. Mace asked if the OES title work would be the same as RA Smith’s. Honer and Kannard were unsure of the extent of OES title work.

Sweeney asked Potter if title work is important in this situation. Potter responded it is important, and the Commission is not in a rush to complete the work so it is appropriate to gather further information. Huttenburg asked for each firm to report on their fees if asked to appear in court. Stanek asked that the Commission develop a matrix of factors, mirroring the Federal Brooks Act for public purchasing, for determining a qualifications-based decision.

- *Motion to postpone deciding on a surveyor to allow additional work. Mace/Nilson. Passed Unanimously.*

15. **Discussion and Possible Action on Offer to Use Agreement (OTUA) for East Main Gardens, Madison, WI – Stern, WisDOT.**

Stern reported this issue has been before the Commission on a few occasions. A new offer to use agreement will be drafted that will have requirements for fence maintenance and required insurance.

Lucht asked if the Commission is looking to provide comment now and act with a motion today or act with a motion when a new OTUA is drafted. Lucht reported the community garden has existed without permit for several years. WSOR has worked with the gardeners and WisDOT on several issues including the height of the gardens, several trees to be removed, compost and dumping, vision triangles, insurance and indemnification, and the fence. WSOR is having a hard time with this because he is worried about compliance in the future. Lucht stated he hopes that the parties can re-evaluate in the next 9 months. Stern agreed that WisDOT is not in favor of the use on railroad property but they have been there since 1995, so WisDOT has to consider what is realistic.

Mace asked about the height requirements of vegetation. Stern stated that she will look at that in the language but the intention is to prevent blocking sightlines at the vision triangles.

- *Motion to postpone action until a final OTUA can be presented to the Commission in September. – Mace/Huttenburg. Passed.*

16. **Discussion and Possible Action regarding the offer to purchase property adjacent to Depot in Baraboo, WI. – Stern, WisDOT.**

Stern reported Sauk County is looking to develop an official offer to purchase but wanted to receive comments from the Commission and WSOR prior to undertaking the necessary work including a legal description. The proposal from the Historical Society would meet current FRA standards. Stern is looking for comments from the Commission on what they are open to considering for sale and for lease. WisDOT is open to selling the land underneath the canopy.

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Lucht commented that current right-of-way in this location is only 22' from centerline of the side track to the building. The proposal would diminish this to approximately 9' from centerline of the side track and 23' center line of the main line. Lucht commented there are state guidelines for industry track, but this sidetrack is used as a main line, on headlight meets. Lucht stated that minimum setback from mainlines are 12'. The setback are operational setbacks and not public setbacks. WSOR does not believe that land should not be sold that is within 50' of centerline. Lucht stated that if the sale takes place, WSOR would not be able to use the side track.

Alan Anderson stated that the Historical Society can get up to 40% tax credits if they do this to federal guidelines. He believes there are more restrictions on the Historical Society's end. Nilson stated that the Historical Society's restrictions are not the Commission's restrictions, and he has concerns about the project falling through. Stern stated that it would be sold to the City of Baraboo and WisDOT would retain reversion options if the property was sold.

Ranum asked if there are standard setbacks that can be applied. Stern stated that she looked at the current platform in Milwaukee and the standards they are meeting.

Potter stated this issue falls under the 2014 agreements and for WisDOT to sell the land they need approval from both WSOR and WRRTC. The way the agreements are written, WRRTC cannot approve without WSOR approval.

McCumber stated that the Sauk County Historical Society is a long-standing institution that is not going to go belly up. McCumber stated that this an exceptionally unique situation that may warrant an exception to the general rules.

Schaalma stated other platforms are generally open and the proposal from the Historical Society has a fence in their proposal. Schaalma stated that it is a dangerous situation to have an improvement this close. Stern stated that the fence could be moved. Stern stated it is possible to allow the construction but close off the entire area to the public.

Huttenburg stated that it is important that WisDOT, WSOR, and the Historical Society work out their issues before the Commission discusses this issue any further.

- *Motion to postpone discussions and decisions until WSOR and the Sauk County Historical Society are able to find solutions – Huttenburg/Kannard. Passed Unanimously.*

17. Resolution Commending Dave Simon – Sweeney, Chair.

Sweeney stated that Dave Simon has worked tirelessly to preserve freight rail corridor. Sweeney stated that the Commission cannot thank Dave Simon enough and the resolution is only but a small act of gratitude toward Dave Simon and the work he has done.

- *Motion to approve the resolution commending Dave Simon–Nilson/Cornford. Passed Unanimously.*

18. Adjournment.

- *Motion to Adjourn at 11:56 pm –Nilson/Gustina. Passed Unanimously.*