

WRRTC AUGUST 2019 MEETING MINUTES – APPROVED

**Wisconsin River Rail Transit Commission
Commission Meeting - Friday, August 16th, 2019 at 10:00 am
Dane County Highway Garage, Madison, WI**

1. 10:02 AM **Call to Order** – *Alan Sweeney, Chair*
2. Roll Call. **Establishment of Quorum** – *Matthew Honer*

Crawford	Carl Orr	X	Jefferson	Mary Roberts	X
	Rocky Rocksvold, <i>2nd Vice Chair</i>	<i>Excused</i>		John Kannard	X
	Derek Flansburgh	X	Rock	Augie Tietz, <i>3rd Vice Chair</i>	X
	Tom Cornford, <i>Alternate</i>	X		Terry Thomas	X
Dane	Gene Gray, <i>Treasurer</i>	X		Wayne Gustina	X
	Jim Flemming	<i>absent</i>	Alan Sweeney, <i>Chair</i>	X	
	Chris James, <i>1st Vice Secretary</i>	X	Sauk	Chuck Spencer	X
Grant	Gary Ranum	X		Dave Riek, <i>2nd Vice Treasurer</i>	X
	Mike Lieurance	X		Marty Krueger	<i>Excused</i>
	Robert Scallon, <i>1st Vice Chair</i>	X		Tim McCumber, <i>Alternate</i>	X
Green	Harvey Kubly, <i>1st Vice Treasurer</i>	X	Walworth	David Bretl	X
	Oscar Olson	X		Richard Kuhnke, <i>2nd Vice Secretary</i>	<i>Excused</i>
	Paul Beach	X		Allan Polyock	<i>Excused</i>
Iowa	Charles Anderson, <i>Secretary</i>	X	Waukesha	Dick Mace	X
	Kate Reimann	X		Richard Morris	X
	Mark 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, Brian Baird – <i>WSOR</i> • Eileen Brownlee, Julia Potter – <i>BoardmanClark</i> • Jeff Huttenburg – <i>Mid-Continent Railway.</i> 	<ul style="list-style-type: none"> • Kim Tollers, Rich Kedzior, Ed Singer, Lisa Stern, Vince Bauer – <i>WisDOT</i> • Jim Matzinger – <i>Accountant</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 – Thomas/Mace. Passed Unanimously.*
4. Action Item. **Approval of Agenda** – *Prepared by Honer.*
 - *Motion to approve the agenda – Cornford/Nilson. Passed Unanimously.*
5. Action Item. **Approval of draft July 2019 Meeting Minutes** – *Prepared by Honer.*
 - *Motion approve the July 2019 meeting minutes with minor edits. Mace/Sweeney. Passed Unanimously.*
6. Updates. **Public Comment** – *Time for public comment may be limited by the Chair.*
7. Updates. **Announcements by Commissioners**

REPORTS & COMMISSION BUSINESS

8. **WRRTC Financial Report** – *Jim Matzinger, Accountant.*
 - Treasurer’s Report.

Matzinger handed out a revised report on cash disbursements. Matzinger reported that WSOR reimbursed the Commission for the first tax payment to Illinois. Matzinger reported that the 2019 project fund has \$275K that has not yet been billed. Matzinger reported on the income statement, interest income is higher, permit income is lower, and taxes had a large increase over the previous year but because it is reimbursed by WSOR, it does not affect the Commission overall. Matzinger reported that auditing will take place in the coming months. Matzinger reported on the disbursements which include the monthly bill for accounting, tax payments to McHenry County and Lake County, and to Southwestern Wisconsin Regional Planning Commission for a total of \$62,320.34

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

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

Lucht introduced Brian Baird, WSOR's attorney, and Preston Nelson, the general manager for WSOR.

Schaalma reported that the FRA (Federal Rail Administration) geometry car was on five of the subdivisions on the northern and southern divisions including the Madison, Waukesha, and Reedsburg Subs on the southern division. The test results were good and the FRA praised the good conditions of the system. The Sperry Rail Testing car is on the Waukesha Sub this week. There are a lot of defects on that Subdivision due to the age of the rail. The Waukesha Sub. has the highest ratio of defects per mile of the entire WSOR system, and likely on any of WATCO's short-line operations. Weed control continues. Crews are on the Reedsburg Sub. and Milwaukee Sub. installing ties. Three grade crossings were done, County Highway K on the Elkhorn Sub., Columbus Street in the Village of Randolph on the Cambria Sub, and Crocker Street in Mazomanie. WSOR is currently working on County Highway V in Okee on the Reedsburg Sub. and the Waukesha Bypass should be completed in the next couple of weeks.

The Waukesha CWR project is moving forward with the contractor on site to complete crossings and turnouts. Contractors are also in Milton to begin laying track and going east. WSOR will follow the rail contractors to ballast and surface the track.

Bridge 306 near Lodi received a lot of work recently. Rail is being installed on the Wauzeka Bridge. Contractors are mobilizing to replace a bridge with a series of culverts along State Highway 60 near Wauzeka. The bridge across the Yahara River in Madison is still on schedule for September.

Reiman asked about the plans to fix the crossings in Arena. Schaalma said they are still planning to do those crossings but struggling to get an asphalt contractor. Tietz asked about the issue on the Crawfish River on the east side of Waterloo. There is a perceived issue of the bridge catching bogs and causing water backups. Lucht stated that water is flowing under the bogs and through the bridge. In order for WSOR to remove the bogs, water would need to rise significantly. Gray asked about any significant issues with flooding, Schaalma reported that storms have increased maintenance and slowed down their annual maintenance schedule.

Lucht explained the operating rights and governance handout. Lucht stated that WSOR has several operating agreements with the Commission. The handout is a graphic interpretation of the existing operating, grant, and land use agreements within the right-of-way. Lucht also explained WSOR's common carrier certificate requirements according to the US Surface Transportation Board (STB) and Federal Rail Administration (FRA). Lucht stated that without the common carrier certificate, WSOR cannot operate and due to the certificate WSOR needs to follow STB guidelines. Lucht explained that WSOR is exclusively serving and attracting freight rail customers. Lucht stated that existing agreements show that WSOR has the exclusive lease to operate and maintain the right-of-way.

Baird explained common carrier status and federal preemption. Interstate commerce is regulated by the federal government and federal laws preempt state laws. The STB is a federal agency to deal with the regulations of freight rail traffic. There is an effort to make sure that local and state regulation does not hinder freight rail traffic because there is an interest in consistency and efficiency regarding interstate traffic. Baird discussed the issue of state regulation regarding transload facilities and stated that existing case laws would argue federal laws preempt state statute. Baird stated that if agreements and contracts are not clear he argues that federal preemption laws will be the standard.

Lucht stated that the STB is interested in establishing economic equity across the country.

Anderson asked about the scope of what Lucht is discussing, Lucht responded that he was giving a very broad overview of the agreements. Anderson asked if other operators go on the Waukesha subdivision, Lucht stated that WSOR is the only operator using the system. Tietz asked who has the final word on train whistles, Baird responded that it was the Federal Rail Administration (FRA). Stern suggested that Tietz talk with her and WisDOT about quiet zone options.

Scallon asked about the width of the right of way on the entire system. Lucht responded that in many locations it is 50 ft from center, but there are instances of more or less. Stern stated that the land lease as stated on the handout is oversimplified. Nilson asked who the FRA and STB report to, Brownlee stated that they report to the federal legislative and executive branches. Kedzior stated that FRA handles safety issues and the STB handles operating and service issues.

10. WisDOT Report – Rich Kedzior, Lisa Stern, Kim Tollers, Ed Singer - WisDOT.

Lisa Stern introduced Vince Bauer as the counsel for the Rail and Harbors Section of WisDOT. WisDOT petitioned for the partition of Railroad St in Eagle. Public meetings will take place at 2 pm and 6 pm on September 19th at the Village Hall in Eagle. Sweeney asked about the Merrimac Bridge BUILD grant. Kedzior stated he does not anticipate hearing from USDOT until the end of the year.

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

Honer reported that he is continuing discussions with Charter and Frontier regarding their utility crossings in the Village of Oregon. Charter has hired an engineer to begin working on the project. Honer reported that he received the Commission’s insurance policy from the insurance agent and it is effective until July of next year. The policy has a \$2M per incident coverage and a \$4M aggregate coverage. Also, he reported that he received certificates of liability insurance from WSOR.

12. Discussion of Improvements to Rail Property – Brownlee, BoardmanClark.

Brownlee stated that the Lycon project discussion has brought to light disagreements among the partners. Brownlee stated that agreements have been in place since the late 1970s. The main land use and grant agreement is from 1987, the main operating agreement is from 1997, and additional agreements were created with the acquisition of the Reedsburg and Harvard Subdivisions. The original agreements were created during a time when there was a strong effort of getting a solvent operator. This meant that the agreements were done quickly and it may account for some of the inconsistencies across and within agreements. Brownlee stated that since 1987 the general consensus among the partners was collegial and cooperative and that over the past few years the partnership has become more adversarial than in the past.

Brownlee stated that there is a lot of language in the agreements regarding the use or addition of improvements on the land and that language has inconsistencies regarding specifics across the various agreements. In general terms, all agreements state that all parties will cooperate in potential leases or improvements related to freight rail traffic because encouragement of freight rail is the underlying basis of why the partnership and the agreements exist. Brownlee stated that none of the agreements specifically address third parties building improvements.

Brownlee pointed out that the 2014 agreements were different because the STB requested changes are made so that WRRTC and WisDOT could not disrupt the operations of WSOR.

Brownlee stated that when a partnership has 30-year-old agreements with numerous attachments and amendments as well as changes to the law she advocates for a more comprehensive approach to revising these agreements to remove ambiguity.

13. Discussion regarding Hatchery Road, Spring Grove, Ill. – Honer, Admin.

Honer stated that this issue came to the attention of the Commission several months previous when a property owner who lived just north of the WRRTC right-of-way was having problems selling their house because a title search determined that their property is a land-locked parcel. Honer stated that the area on the map labeled Hatchery Road is located within a parcel of land that is owned by the Rail Transit Commission. He stated that Hatchery Road was built by the Village of Spring Grove on Commission property and that there is no agreement in place to allow them to do so, meaning they are trespassing on Commission property. Honer stated that he approached the Village of Spring Grove requesting additional information on why they constructed the road on Commission Property. The Village responded claiming various rights of access. Since the mailing packet went out, Honer received another letter from the Village outlining previous agreements for the Village to utilize the property. Brownlee stated that the previous agreement involved the Village of Spring Grove asking the Commission to remove a dilapidated structure and discussing an agreement allowing the right-of-use by the Village. The Commission and the Village agreed to a draft agreement, but WSOR had numerous objections to the agreement. The agreement was essentially abandoned by the Commission. Brownlee stated it was not a good look for the Commission to walk back on the agreement with the Village. Brownlee asked Lucht what use WSOR is making of the area. Lucht stated WSOR has made use of some the extra width and the land is very attractive for railroad operations and potential customers.

Ranum asked if the road encroaches on the operating right-of-way. Schaalma stated he does not think so and that the road was built on extra width. Ranum asked if the claim of adverse possession holds water, Brownlee stated that it does not and the second letter from the Village’s attorney acknowledges this. Brownlee stated it is an issue that has not been looked at since 2008 and at that time the Commission dropped the ball which was unfortunate.

Storti asked if the Commission can sell the property to the Village of Spring Grove. Brownlee responded that the Commission does not want to sell property that has value to railroad operations and it might be better to seek out what Spring Grove is proposing and re-look at the previous agreement. Anderson asked if the entirety of the road is on Commission property. Honer responded that it is. Lucht stated that they used to have primary access to the Hatchery via Wynn Rd. but a culvert failed and rather than reinstall the culvert they utilized the Hatchery Rd. Sweeney suggested that Honer continue communication with the Village of Spring Grove with Brownlee’s assistance. Storti asked if the discussion can include the Commission selling the property. Mace asked the age of the historic aerial. Honer stated it is from 1959. Mace asked about the use of the building at the corner on Hatchery Road. Honer stated that he believes it is a contractor that fixes and repairs dumpsters. Mace asked if there are houses that rely on Hatchery Rd. Honer stated that there are residential units whose only access is via Hatchery Road. Mace asked if the Hatchery is active, Honer stated he is unsure. Mace asked if an easement is an option. Brownlee stated there are draft agreements and that whatever happens, it will not be a unilateral discussion on the part of the Commission. Mace asked if there is interest by the railroad to make a more permanent transload facility in this location, Lucht responded that there are no immediate plans but that it is a valuable piece of property for future operations.

14. Adjournment

- *Motion to Adjourn at 11:49 am – Cornford/Gustina. Passed Unanimously.*