

WRRTC JUNE 2020 MEETING MINUTES – APPROVED

**Wisconsin River Rail Transit Commission
Commission Meeting - Friday, June 5th, 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	<i>Absent</i>		John Kannard	X
	Tom Cornford	X		Augie Tietz, <i>3rd Vice Chair</i>	X
Dane			Rock	Russ Podzilni	X
	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>	X	Walworth	Al Stanek	X
	Oscar Olson	X		Richard Kuhnke, <i>2nd Vice Secretary</i>	<i>Excused</i>
	Aaron Withee	<i>Excused</i>		Allan Polyock	<i>Excused</i>
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 – <i>WSOR</i> • David Torkleson, Scott Tebon – <i>Middleton Center PH3, LLC</i> • Julia Potter, Eileen Brownlee – <i>Commission Counsel</i> • Drew Hanson - <i>WIDNR</i> 	<ul style="list-style-type: none"> • Lisa Stern, Ed Singer, Teri Beckman – <i>WisDOT</i> • Alan Anderson – <i>Pink Lady RTC.</i> • Paul Wolter, Jerry Exterovich – <i>Sauk County Historical Society</i> • Rich Bostwick – <i>Rock County</i>
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3. Action Item. **Certification of Meeting’s Public Notice** – *Noticed by Honer.*
 - *Motion to approve meeting’s public notice – Anderson/Nilson. Passed Unanimously.*
4. Action Item. **Approval of Agenda** – *Prepared by Honer.*
 - *Motion to approve the amended agenda – Ranum/Reiman. Passed Unanimously.*
5. Action Item. **Approval of draft May 2020 Meeting Minutes** – *Prepared by Honer.*
 - *Motion to approve the May 2020 meeting minutes with minor edits and clarifying item #13 and #9. Mace/Nilson. Passed Unanimously.*
6. Updates. **Public Comment** – *Time for public comment may be limited by the Chair.*
7. Updates. **Announcements by Commissioners**

Anderson stated that there is a meeting scheduled on September 4th which is a holiday weekend. Sweeney suggested that Honer do a poll of Commissioners to perhaps move that date.

REPORTS & COMMISSION BUSINESS

8. **Discussion and Action on Offer to Use Agreement, Private Crossing Agreement, and associated issues of Fencing, Signage, and Water Tower for Middleton Center PH3, LLC in the City of Middleton** – *David Torkleson, Stevenson Construction and Scott Tebon, Middleton Center PH3, LLC*

Torkleson went through the drawings provided to the Commission. Torkleson stated the developer came to an agreement with WisDOT regarding the earth retention issue. Torkleson stated that the eaves are similar to what was presented at the May meeting. Both of these items are part of the proposed Offer-to-Use agreement that WisDOT and Middleton Center PH3, LLC are in agreement on.

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Torkleson stated that fencing will be installed the length of the building and will be a design that can prevent animals from entering the right of way. The water tower, picnic table, and sidewalk within the right-of-way will be removed. Torkleson stated that the agreements state that future residents of the apartment building will be informed that the railroad exists.

Torkleson stated that once the private crossing is approved but before it is installed, they will provide general layout and construction drawings to WSOR to confirm that the crossing is done correctly. Torkleson stated that he believes that all of the issues that were identified at the previous meeting were addressed.

Honer stated that two issues require Commission approval today, the private crossing agreement and a conceptual agreement regarding the Offer to Use Agreement (OTUA).

Lucht asked how many feet will be encumbered with the OTUA within 33ft of centerline. Stern is not sure of the square footage, although one is under the ground and the other is above operations so there is nothing at-grade that will be encumbered. Lucht asked if the permit to allow eaves includes rights from the ground to the eaves. Stern stated that it will be worked out in the agreement but would think that would not be the case. Ed Singer suggested that any type of maintenance will require a temporary access permit and any type of square footage from the grade would not be included in the OTUA. Stern clarified that the OTUA is to provide a legal agreement for the overhangs into railroad property.

Brownlee asked who will be using the private crossing. Honer clarified that the agreement states that residents of the building will be using the private crossing. Honer asked if anything is being done to make sure that the crossing is private and not public. Tebon stated that signs can be posted. Huttenburg clarified that the crossing is realistically open to the public. Tebon stated that a key-card access gate can be added. Eileen suggested the gate is the preferred design.

Anderson asked who is maintaining the property between the buildings. Tebon stated that the developer has done this in the past but per the request of the Commission, WisDOT, and WSOR will allow the property landscape to return to a natural state. Peper asked about the required DOT phone information and where that number goes and who answers it. Stern stated that it is a WSOR number. Stern stated that it is required by the FRA – Federal Rail Administration to be maned. Peper asked if all Private Crossings have these signs, Stern stated that they are not. Stern stated that some effort can be made to think what needs to be on the signage. Mace stated that he is not in favor of allowing this crossing because there is a public crossing existing nearby and there is no reasonable way to stop public use of the “private” crossing. Mace recognizes that the crossing has existed for some time but it does not mean that it needs to continue. Mace stated the proposed fencing should be greater in length to discourage trespassing. Mace stated that he believes that encroaching this much on the right of way sets a bad precedent. Reiman stated that she has concerns regarding the fencing being adequate and if the private crossing is approved, there needs to be more fencing to prohibit trespass from the public and from the building residents. Ranum stated he has concerns regarding the acoustics and seismic impacts of the properties being so close to buildings. Ranum sought best practices for residential construction this close to railroads and found that floating slabs are required in some instances, Ranum stated the parking garage in this instance will make noise and seismic impacts worse. Reiman stated she agrees with Ranum and has experience with railroad noise and seismic impacts to her own property. Gustina asked how much traffic is on the line and what hours is that traffic. There are four to six trains a day on the Prairie Subdivision and hours can fluctuate based on customer demand but there is at least one that takes place in the early morning and later in the evening. Sweeney asked Eileen what authority the Commission has over neighboring properties. Eileen stated that generally the Commission has no authority over neighboring property. Nilson asked what level of indemnification the Commission has for these issues. Brownlee stated that if there is language in the leases regarding the noise and seismic impact of trains as the developer stated there will be, it would be difficult for a resident to make an argument of nuisance or negligence. Scott Tebon stated that Phases 1 and 2 of the development were constructed in 2017 & 2019 with 159 units, and no railroad complaints. Tebon stated that additional thought is being given to addressing the sound in the design.

Mace stated that while the Commission cannot be concerned with the use on the adjacent property, it does have the ability to discourage developments that are encroaching into the railroad property which the overhangs and building shoring do. Nilson agreed. Peper asked about the setbacks that the City of Middleton has allowed. Tebon stated that the overhangs could be removed if it would help the application.

Storti stated that the private crossing should be removed, removing it would eliminate many of the safety and trespass concerns.

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- o *Motion to deny the private crossing agreement with Middleton Center PH3, LLC – Mace/Storti. 8 yea/ 15 no. Motion fails.*

Crawford	Carl Orr	<i>Absent</i>	Jefferson	Mary Roberts	<i>Yes</i>
	Derek Flansburgh	<i>Absent</i>		John Kannard	<i>No</i>
	Tom Cornford	<i>No</i>		Augie Tietz, <i>3rd Vice Chair</i>	<i>Yes</i>
Dane			Rock	Russ Podzilni	<i>No</i>
	Jeff Huttenburg	<i>No</i>		Wayne Gustina	<i>No</i>
	Chris James, <i>1st Vice Secretary</i>	<i>No</i>		Alan Sweeney, <i>Chair</i>	<i>No</i>
Grant	Gary Ranum	<i>No</i>	Sauk	Brian Peper	<i>Yes</i>
	Mike Lieurance	<i>No</i>		Dave Riek, <i>2nd Vice Treasurer</i>	<i>No</i>
	Robert Scallon, <i>1st Vice Chair</i>	<i>No</i>		Marty Krueger	<i>No</i>
				Tim McCumber, <i>Alternate</i>	
Green	Harvey Kubly, <i>1st Vice Treasurer</i>		Walworth	Al Stanek	<i>No</i>
	Oscar Olson	<i>No</i>		Richard Kuhnke, <i>2nd Vice Secretary</i>	<i>Excused</i>
	Aaron Withee	<i>Excused</i>		Allan Polyock	<i>Excused</i>
Iowa	Charles Anderson, <i>Secretary</i>	<i>Yes</i>	Waukesha	Dick Mace	<i>Yes</i>
	Kate Reimann	<i>Yes</i>		Richard Morris	<i>No</i>
	Susan Storti	<i>Yes</i>		Karl Nilson, <i>3rd Vice Treasurer</i>	<i>Yes</i>

Stanek asked if the developer can have a gate with activation cards to only allow residents. Tebon stated that card access can be done. Krueger stated he agrees with Stanek’s remarks and the Commission is overreaching if they are considering the desire of residents to live in buildings next to railroads. Krueger asked Lucht to expand on WSORs position. Lucht stated WSOR has a lot of concern because the right of way is narrower in this area. Lucht stated that the developer agreed to concessions regarding the use of railroad right – of- way. Lucht stated that serious thought needs to be given to right-of-way use within 33’ of the center line. Lucht stated derailments are a possibility so buildings this close are always a concern. Lucht stated the OTUA has a termination clause allowing either party to cancel with 60 days’ notice, Lucht is wondering how likely it is that these permanent encroachments can be amended with a 60-day notice.

Stern stated that the water tower is being removed. Stern stated that WisDOT will come to an agreement with the developer regarding required signage. Brownlee suggested signage reference railroad trespassing statute similar to those used near the University. Stern agreed. Stern stated that regardless of the private crossing agreement, signage will be necessary at any fencing opening. Stern stated that WisDOT is in favor of gating and restricting the private crossing to card access of residents and can include this in the OTUA. Kannard asked if additional fencing is required to keep people off the track. Lucht stated that WSOR does not like perpendicular fencing because it presents safety issues to railroad workers.

Reiman and Mace asked about the Commission’s role in the OTUA. Potter clarified that WisDOT is required to consult with the Commission and WSOR. The Commission and WSOR need to approve the use but are not parties to the agreement. Sweeney asked if the signage, gating, and fencing can be conditions on the approval, Potter agreed. Potter suggested an appropriate motion is to “conceptually agree to the offer to use subject to various items agreed to by all parties.

Kannard asked if natural vegetation is a fire hazard. Lucht responded that natural vegetation is use throughout the system and does not present any greater fire threat. Stern stated that WisDOT engineers agreed with leaving the footings in place 6 ft below the surface. Lucht asked if the Commission should be indemnified, Brownlee stated yes. Stern stated it will be included.

- o *Motion to conceptually agree to the OTUA subject to fencing that wraps around both ends of the property with WSOR’s approval, the card access gates for the private crossing, appropriate signage at crossings, no overhangs on railroad property, and encourage naturalizing of the landscape corrido, indemnification of the Commission. – Mace/Huttenburg. Passed Unanimously.*

Huttenburg asked about the consideration of the annual fees that are included in the agreement. Honer and Lucht explained that these fees are not usually enforced but are included as a right of the Commission in the agreement in the event that a private crossing is not being maintained. Mace asked why the Commission does not enforce the annual fee for private road crossings. Honer said it could be an additional activity, but the Commission would not likely see a significant benefit from collecting small fees and it is usually used as an enforcement right by the Commission.

- o *Motion to approve the private crossing agreement subject to the conditions of the previous motion Kannard/Gustina. Passed Unanimously.*

9. Discussion on Sauk County Historical Society’s proposed redevelopment of Baraboo Depot – Paul Wolter, Sauk County Historical Society
 Wolter explained that the Sauk County Historical Society (SCHS) is looking to restore the Historic Depot in Baraboo to its original design which includes a platform and canopy extending from the building towards the railroad right-of-way. SCHS is requesting to purchase the needed property from WisDOT in order to accomplish this. The depot’s existing property line does not allow the historical reconstruction of the depot platform and

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awning to be done solely on SCHS property. Jerry Exterovich explained that when reconstructed, the depot and platform will be approximately one foot from the end of ties on the siding in this location. Exterovich explained that the reconstruction would follow the same design restrictions as the Whitewater and Racine depots.

Nilson asked how the SCHS will be paying for it. It was explained that the building is being given to the SCHS along with money to fix the roof. Additional money will be raised through fundraising. Exterovich stated that additional fundraising cannot happen without having a viable project which is, in part, why they are presenting to the Commission. Exterovich stated that the condition of the building requires that they act quickly. Wolter stated that the building is potentially eligible for the National Register of Historic Buildings. That designation would make the building eligible for Historic Tax Credits which have the ability of covering up to 40% of costs. That all hinges on a historic restoration.

Peper asked the estimated cost of the project. Wolter stated that they have not had drawings or estimates completed because they are not aware of their ability to make the changes because they require permission from WisDOT. Mace asked Lucht if the siding is being used by WSOR. Lucht stated that the siding is heavily used. Lucht stated that if the proposed platform and awning setbacks of 9' 8" from the siding are allowed, WSOR would not be able to use the siding. WSOR uses the siding on a daily basis. Lucht suggested that WSOR could relocate the capacity of that siding and add the capacity to the passing track south of this location. WSOR did present this plan to SCHS and it did have a very high cost, and WSOR would not cover the cost.

Exterovich asked how the proposed designs would be different from the current operations in Whitewater or Racine where the depots are located directly on the mainline. Lucht stated that WSOR does not operate in Racine and he does not have information on Whitewater depot. Lucht stated that railroad standards and setbacks have changed dramatically since the original canopy and platform were in use. Mace asked how far a rail car sticks out from the center of the track. Lucht stated that they can be up to 10' wide. Exterovich acknowledges that standards have changed, and asked if track speeds exceed 10 mph in this location. Lucht stated that it is currently 10 mph in this location but it will be upgraded to 25 mph after a near future rehab project. Exterovich believes that the proposal will allow for safe operations and will even improve safety with the closure of the Vine St. public crossing.

McCumber feels the building is really important and SCHS is doing a lot to address the safety concerns of WSOR. McCumber believes it is important to preserve these buildings to continue rail advocacy. Stanek stated he lives in Whitewater; the depot location has a farmer's market twice a week with no safety concerns. He believes these uses can co-exist. Mace asked how fast trains move through Whitewater. Lucht stated that there are 2 – 4 trains a day at 25 mph with capacity to increase to allow 40 mph.

Wolter asked about next steps. Honer stated SCHS is proposing the purchase of state-owned railroad property and this requires WisDOT to bring to the Commission and WSOR for approval. WisDOT discussions are the next step for SCHS.

10. Discussion and Possible Action on WRRTC Insurance Policy and Blanket Bond – Honer, Admin.

Honer stated the general liability insurance fee is the same as prior years even though the Commission lost its previous insurance provider. Honer stated there are three issues the Commission is being asked to act on: elect to have additional coverage for terrorism, approve/deny general liability policy, and approve/deny public employee bond coverage. The Commission's policy expires the first of July, so the general liability and terrorism coverage must be acted on at this meeting. The public employee bond coverage can be decided at the July meeting if necessary. Brownlee does not see the public employee bond offering the Commission coverage.

- *Motion to approve the general liability insurance policy and forego the blanket bond and terrorism policies – Anderson/Storti. Passed Unanimously.*

11. WRRTC Financial Report – Huttenburg, Treasurer.

- Treasurer's Report and Payment of Bills

Huttenburg stated that since being on the Commission the financial statement was frustrating to him. He changed the last page to make a cash flow statement in an attempt to have a clearer report. The cash flow statement starts with a starting balance, the disbursements, the receipts, and ends with a final end of the month balance. Ranum asked if future cash flow statements will show the income as they come in. Huttenburg stated yes.

- *Motion to approve the Treasurer's Report and payment of bills subject to removing check 1449 (Public Employee Insurance Bond Policy) from the disbursements – Anderson/Cornford. Passed Unanimously.*

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

The continuous welded rails (CWR) were delivered to the Waukesha Sub. and will be installed in the coming weeks. Weed spraying and brush control is ongoing. WSOR paid the Lake County Real Estate Taxes on behalf of the Commission and provided a receipt to Honer. Lowland Dr. was closed in the Village of Palmyra (Jefferson County) on May 15th. The construction to close the crossing was done in one day. WSOR is very thankful to Jefferson County for their assistance in completing this work. There are a large amount of encroachments taking place in North Freedom (Sauk County) and Lucht wishes to discuss it at an upcoming Commission meeting. Krueger asked if Lucht discussed the encroachments with North Freedom's Village President. Lucht stated he had not. Krueger volunteered to make the introductions, believing it is a good way to start the conversation.

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

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Singer announced this is his last meeting as he is now retiring. His last active day of work is July 2nd. The Commission thanked him for his service.

14. WRTC Correspondence/Communications and Administrator's Report – Honer, Admin.

Honer is missing a few Oaths of Office from new Commissioners and will be reaching out to them to make sure those are on file. Commissioner onboarding files were sent to new Commissioners. If Commissioners did not receive their onboarding file or if existing Commissioners want a file, they can contact Honer. Policy and procedures for Offer to Use Agreements are ongoing discussions with WSOR and WisDOT. Draft budgets are being prepared for discussion by the Commission in July. Budgets are required to be approved prior to August 15th, so action can take place at the July or August meeting. Discussions took place between Honer, Sweeney, and Brownlee regarding how to move forward with the property in Spring Grove, Illinois. The Commission will look at this issue again in July.

15. Discussion of East Main Gardens Offer to Use – Ed Singer, WisDOT.

A site visit to the east main gardens in Madison was made the week prior with Lucht. The group, will be erecting a fence that is subject to approval by WSOR and WisDOT and is working to get appropriate insurance. It is an ongoing offer to use arrangement that all parties would prefer this use did not exist in this location, but because it is a long-term ongoing use that was permitted in the past, the parties have agreed to work to address the issues that the gardens present.

16. Adjournment

Sweeney asked if any member counties are interested in hosting a meeting over the summer, they should contact him.

- *Motion to Adjourn at 12:36 pm – Scallon/Nilson. Passed Unanimously.*