

WRRTC SEPTEMBER 2020 MEETING MINUTES – APPROVED

**Wisconsin River Rail Transit Commission
Commission Meeting - Friday, September 11th, 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>	<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>	<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>	X	Walworth	Al Stanek	<i>Absent</i>
	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 - WRRTC Administrator • Ken Lucht – WSOR • Eileen Brownlee – Commission Counsel 	<ul style="list-style-type: none"> • Drew Hanson - WIDNR. • Alan Anderson – Pink Lady RTC
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3. Action Item. **Certification of Meeting’s Public Notice – Noticed by Honer.**
 - o *Motion to approve meeting’s public notice – Gustina/Cornford. Passed Unanimously.*
4. Action Item. **Approval of Agenda – Prepared by Honer.**
 - o *Motion to approve the agenda – Ranum/Podzilni. Passed Unanimously.*
5. Action Item. **Approval of draft August 2020 Meeting Minutes – Prepared by Honer.**
 - o *Motion to approve the draft August 2020 meeting minutes. Mace/Anderson. Passed Unanimously.*
6. Updates. **Public Comment – Time for public comment may be limited by the Chair.**
7. Updates. **Announcements by Commissioners**
Nilson asked the Commission to take a moment of silence in remembrance of September 11th, 2001.

REPORTS & COMMISSION BUSINESS

8. **WRRTC Financial Report – Huttenburg, Treasurer.**
 - Treasurer’s Report and Payment of Bills

Huttenburg presented bills from SWWRPC and Dane County Highway. Huttenburg explained the receipts are from permits approved at the last meeting. Huttenburg stated the Commission is doing well financially.

 - o *Motion to approve the Treasurer’s Report and payment of bills– Anderson/Scallon. Passed Unanimously.*
9. **Wisconsin & Southern Railroad’s Report on Operations – Ken Lucht, Roger Schaalma – WSOR**
Schaalma reported a busy previous month but projects are moving well. The continuous welded rail (CWR) is installed on the Waukesha Sub. between Milton and Eagle. WSOR is soliciting bids for the scrap rail on the Waukesha Sub and ballast is being secured to finish the CWR project. Two new bridges were completed in the past month, A-492 near Bardwell/Darian on the Fox Lake Sub. and B-368 on the Prairie Sub. was replaced with two culverts. The contractor for the Merrimac Bridge Project - Phase 2 is working a Thursday to Monday schedule through the fall and winter. Bridge 226 on the Reedsburg Sub. is out for bid for winter work and the tie deck for Bridge 272 in Waunakee will be completed by WSOR this winter. Albany Street Crossing in Spring Green (Prairie Sub.) is complete. South Valley Rd and Olson Rd crossings near Black Earth (Prairie Sub.) are

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next up for replacement. A contractor is lined up to do crossing improvements at Lang Rd and Winn Rd in Illinois. The entire system with the exception of the far west end has had rail inspection. Contractor and vendor delays were an issue this year, including the tie contractor. WSOR expects the tie replacement contractor to be on the system yet this.

Charles Anderson asked about recent improvements to the Highway 23 crossing in Spring Green causing a significant dip in the road at the rail crossing. Peper stated that Hwy 23 would have been a state project. Schaalma stated the crossing is in good repair but he also noticed the dip. Polyock asked about finishing the crossing in the Town of Lynn, Schaalma stated he would take care of it. Mace asked what is happening with the CWR project on the Waukesha Sub east of Eagle into Waukesha. Schaalma stated the final phase of CWR has not been awarded by WisDOT but WSOR expects the award and project to take place next year. Nilson asked if box culverts have improved in recent years. Schaalma stated box culverts have improved and are usually 6' x 6' precast concrete with coated rebar. James stated Dane County Land Conservation is doing streambank restoration near the wye in Mazomanie and it may change the current of Black Earth Creek. The County would like to meet with WSOR on site to discuss the project. James expects it will be an improvement for all parties. Alan Anderson asked when Phase 2 of the Merrimac bridge will be done. The scheduled finish date is April, but expected to be sooner. Anderson asked about Phase 3 timeline. That project is two years and hoping to start next year. Reiman asked for clarification on the Mazomanie wye project. James stated the County Land Conservation Department is working with a private landowner to install bank stabilization and trout habitat.

Lucht stated WSOR is engaged in conversations with Sun Prairie following a collision at a public crossing. WSOR has concerns about the adequacy of crossing warning devices in the City of Sun Prairie. WSOR is hoping the City will install stop signs at the crossings in question. WSOR is seeking permanent closure for two crossings in the Village of Palmyra. Lucht stated WSOR is in discussions with the City of Prairie du Chien regarding a rail yard on the north end of the island and the construction of some transload facilities. WSOR has worked with the City of Prairie du Chien to avoid train interruptions to music in the park on Thursdays over the summer. Cornford thanked Lucht regarding the cooperation with concerts in the park.

10. WisDOT Report – Chris Kern, WisDOT.

Kern announced the Wisconsin Freight Railroad Conference will be held online November 10th. Nilson asked if the freight rail conference will be a Zoom meeting. Kern is unaware of how the conference will take place. Mace believes it will be a zoom meeting.

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

Honer spoke with several counties regarding their upcoming budget discussions. Jefferson County's economic development Commission has considered leaving the WRRTC. Honer provided Jefferson County with a recent rail study and with a letter outlining the role of WRRTC and the importance of all the member counties. He informed Jefferson County that either Ken Lucht or he would be happy to talk to the Economic Development Commission or the County Board. Honer coordinated with the Village of Fox Lake, IL regarding an upcoming permit application. Discussions with WisDOT and WSOR regarding ongoing property issues on the system continue on a monthly basis.

Honer followed up on the Middleton Private Crossing Agreement WRRTC approved in the Spring of 2020. He has not received a final agreement because the City of Middleton is appealing the crossing being private. Honer provided the developer an extension of completing the crossing agreement until the next meeting to provide a signed crossing agreement. If they do not provide a signed agreement, the Commission can reconsider the agreement at the October meeting.

Ranum stated he would like Honer to send the letter he sent to Jefferson County to all Commissioners.

12. Discussion and Action on Offer to Use Agreement (OTUA) for East Main Gardens, Madison, WI – Kern, WisDOT.

Kern stated the last update to the agreement, before the finalization, is insurance language. He does not expect this to be an issue.

Honer stated the OTUA sent out in the meeting packet does not have insurance language within the agreement and it does not indemnify the Commission and its member counties. Honer suggested any motion to approve the agreement today should include a contingency that these issues be included within the final agreement. Honer clarified the Commission's role is to approve the land use within the railroad corridor, it is not to approve the contract between East Main Gardens and WisDOT. Although, the Commission can place contingencies to be included in the agreement as part of approving the land use. Brownlee confirmed the Commission's role as Honer stated. Kern stated he will address these issues within the OTUA.

Lucht stated that WSOR is requesting a \$2M/occurrence and \$6M/aggregate insurance policy language in the agreement. All other concerns WSOR had have been addressed.

Charles Anderson has concerns regarding the public being so close to the railroad. Lucht stated this is always a concern and normally WSOR would not approve this type of use, but it was an inherited approved use when the state bought the line. There is a fence separating the public garden use from the rest of the railroad corridor and language in the permit regarding trespass, indemnification, and termination issues if unsafe activity takes place. Huttenburg stated an indemnification from an LLC with no assets does not provide a lot of value to the Commission. Brownlee responded that is why the insurance is so high. Brownlee stated the Commission is protected by the insurance policy of the permittee, statutory limitations to claims against municipalities, and recreation laws.

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Sweeney asked if the Commission will see this again in two years for renewal. Honer responded that the Commission is not part of the renewal negotiations for OTUAs. This is in part because all OTUAs are one to two years in length and reviewing all of these would take hours at every meeting. Lucht stated this is an agreement WSOR will be watching closely for compliance over the next two years.

- *Motion to concur with the use of railroad property for garden uses contingent on the Offer-to-Use document having the Commission and its member counties indemnified and the required insurance per WSOR standards language included. – Huttenburg/Storti. Passed Unanimously.*

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

Honer explained a parcel of land adjacent to the railroad right of way is being used by the Village as a public driveway without any type of agreement. The Commission had asked Honer to gather quotes for a survey and title work. Honer had gathered information from several survey companies and followed up with two of them at the Commission's request. He provided the Commission with the requested information and a matrix of qualifications. Honer explained that prior motions have only asked him to gather information on surveyors and title work, but no motion indicated the Commission is committed to undertaking the survey and title work.

Mace asked about specifics regarding the two contracts. Mace asked why OES's contract states it is with SWWRPC. Honer stated this is incorrect and would be fixed prior to any agreement being signed. Mace asked why the contract states it is only governed by the State of Wisconsin. Honer explained he had asked for a draft agreement, and any final agreement would have been reviewed by Brownlee prior to signing. Brownlee stated she would have left the contract to be governed by laws of the State of Wisconsin because she, as a Wisconsin attorney, wants the contract to be interpreted and governed by the State of Wisconsin. Mace asked if the contracts should reference the survey company being licensed in the State of Illinois.

Sweeney asked Brownlee her thoughts on moving ahead with this project. Brownlee responded it is a very pricy project and the Village is going to claim what it claims, and the Commission will assert its rights, regardless of the results of the survey and title work. Brownlee stated rather than undertaking a survey or title search, it may be a better action to send a letter asserting the Commission's rights to the property to the Village and the people using it as a driveway.

Lucht stated WSOR installed signs stating the property is the Commission's and the signs are still standing. Mace stated he believes there is an industrial use building that may be partially on the Commission's property based on the McHenry County GIS map. Mace also doesn't think that 100 years is a sufficient length of time to go back for the title search. Brownlee stated one of the proposals stated explicitly that 100 years may not be enough.

Sweeney asked Huttenburg about the Commission's financial ability regarding the unbudgeted project. Huttenburg stated he would have to double check but he believes the Commission has the ability, but it would need to be addressed in coming years. Huttenburg stated the only way to have a definitive answer is through litigation and that will be very expensive.

Nilson stated it would be nice to have a survey but it looks like it will cost a lot of money and won't provide a definitive answer. Nilson stated if the Village has any other plan other than driving on the driveway, they need to prove ownership.

Brownlee stated WSOR's attorney provided information from an Illinois licensed attorney that the Commission's position was very good. Boardman Clark has also done work regarding crossings in Illinois. Brownlee stated the Commission carries liability insurance, and in the instance the Village brings litigation against the Commission, the insurance may cover this cost.

Huttenburg asked if signs and permission are sufficient to prevent adverse rights. Brownlee believes it is sufficient and will look into Illinois statute regarding notice and rules.

- *Motion for Brownlee to send notice of Commission ownership and permission to use Commission property to the Village of Spring Grove and adjacent property owners. – Nilson/Peper. Passed Unanimously.*

14. Adjournment.

- *Motion to Adjourn at 11:12 pm –Gustina/Podzilni. Passed Unanimously.*