

WRRTC NOVEMBER 2020 MEETING MINUTES – APPROVED

**Wisconsin River Rail Transit Commission
Commission Meeting - Friday, November 6th, 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, 2 nd Vice Chair	X	Jefferson	Mary Roberts	X
	Derek Flansburgh	Absent		John Kannard	X
	Tom Cornford	X		Augie Tietz, 3 rd Vice Chair	Absent
Dane			Rock	Russ Podzilni	X
	Jeff Huttenburg, Treasurer	X		Wayne Gustina	X
	Chris James, 1 st Vice Secretary	X		Alan Sweeney, Chair	X
Grant	Gary Ranum	X	Sauk	Brian Peper	X
	Mike Lieurance	X		Dave Riek, 2 nd Vice Treasurer	X
	Robert Scallon, 1 st Vice Chair	X		Marty Krueger	X
				Tim McCumber, Alternate	X
Green	Harvey Kubly, 1 st Vice Treasurer	Excused	Walworth	Al Stanek	X
	Oscar Olson	X		Richard Kuhnke, 2 nd Vice Secretary	Absent
	Michael Lowery	X		Allan Polyock	X
Iowa	Charles Anderson, Secretary	X	Waukesha	Dick Mace	X
	Kate Reimann	X		Richard Morris	absent
	Susan Storti	X		Karl Nilson, 3 rd Vice Treasurer	absent

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 • Dave Popenhagen – Belden, IL Resident 	<ul style="list-style-type: none"> • Lisa Stern - WisDOT • Alan Anderson – Pink Lady RTC • Donald Stinespring – Attorney, Representing Popenhagen
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3. Action Item. **Certification of Meeting’s Public Notice – Noticed by Honer.**
 - o Motion to approve meeting’s public notice – Mace/Anderson. Passed Unanimously.
4. Action Item. **Approval of Agenda – Prepared by Honer.**
Polyock requested moving item #12 to before item #8.
 - o Motion to approve the amend agenda Cornford/Reimann – Passed Unanimously.
 - o Motion to approve the agenda Polyock/Anderson – Passed Unanimously.
5. Action Item. **Approval of draft October 2020 Meeting Minutes – Prepared by Honer.**
 - o Motion to approve the draft October 2020 meeting minutes with minor clarifications. Mace/Kannard. Passed Unanimously.
6. Updates. **Public Comment – Time for public comment may be limited by the Chair.**
None.
7. Updates. **Announcements by Commissioners**
Mace stated that Honer will be sending out a revised 2021 meeting agenda.

REPORTS & COMMISSION BUSINESS

8. Discussion and Possible Action on existing and future Offer-to-Use agreement in Belden, Illinois. – Honer, Admin.
Honer stated that he was not aware of the existing Offer-to-Use in Belden, Illinois and is not sure the last time the lease payment was made. Attorneys representing the existing lease holder and a prospective buyer of the the buildings that are on WRRTC property contacted him. Honer informed the attorneys the Commission will need to review the lease agreement and take action to transfer the lease if they chose to do so. The attorney representing the prospective purchaser, Mr. Stinespring, stated the railroad currently uses the driveway, which is not the Commission’s property, to access the tracks and that this could be included in a future agreement.

Lucht stated that WSOR understands the property is for sale and existing buildings and tanks exist within the right-of-way. Lucht stated that the new owner does not intend to be a rail customer or use. Lucht would like the current offer to use to end but would understand if the Commission needs to permit the existing agreement. Brownlee stated that the current offer-to-use agreement ends it is the obligation of the permittee to

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remove anything the permittee placed within the rail corridor. This extends to tanks and buildings. Eileen stated that now is the time to remove buildings that the Commission would like to see removed. Eileen stated that if the buildings exist there without a permit, it would be considered a trespass. Eileen stated that if the Commission would like to enter into an agreement allowing the buildings for another use it is probably ok, but now is the time to make decisions to remove the property that do not serve any railroad purpose.

The attorney representing the prospective buyer stated that the farmer to the north of the railroad right-of-way is interested in purchasing the property as well as the buildings and would be interested in the lease being transferred from the existing lease holder to the prospective buyer. Mr. Stinespring also stated that there may be a party interested in leasing the buildings for rail purposes (salt delivery and storage).

Sweeney asked Eileen Brownlee if there is an opportunity to bring the Offer-to-Use Agreement up to date. Brownlee stated it is a possibility and the Commission also has the ability to request the buildings and storage tanks to be removed.

Mr. Stinespring stated that his clients are not interested in the tanks. Jeff Huttenburg stated that all payments past due should be brought up to date. Ranum asked about the potential for rail delivery of salt and if it would involve the use of the buildings that are on the right-of-way. Mr. Stinespring stated it would involve use of the buildings. Mace clarified the property lines on the map that was distributed and confirmed that 4 -5 buildings encroach on the right-of-way. Honer stated that any storage of salt would require addressing regulations on salt storage. Sweeney asked if the buildings are being used for fertilizer storage. Stinespring stated that he does not believe fertilizer is being stored currently. The prospective buyer, Dave Popenhagen, stated that all the tanks have been removed and he has prospective client that would be interested in storing salt in one of the buildings he is intending to buy. Popenhagen stated that the greatest encroachment is 10 ft and all the buildings are in good shape and he would have no problem maintaining them. Popenhagen stated that the railroad uses the driveway which is an easement that he has to access the rail property. Mace stated that if an agreement was made, he would request an updated map.

Anderson stated the Commission has for a very long time been against encroachments on the rail property and is asking why the Commission would consider it again. Mace stated that if the Commission decides to continue the agreement, he would like to see pictures of the existing structures and is interested to know if the tanks left behind contamination. Sweeney asked Stinespring if a phase 1 environmental review has been completed on site. Stinespring stated it has not. Mace asked if it was required. Stinespring stated that it is not required for the sale because the transaction is a cash transaction. Lucht stated WSOR would need to consider a separation of rail and non-railroad uses if an agreement were entered into. Peper asked if there was a monetary amount of the lease. Sweeney stated that it would need to be addressed.

Anderson asked for clarification on the motion to address the existing lease and the issues that were discussed. Mace believes that in order for the Commission to move forward, the prospective buyer will need to provide additional information. Mace believes the Commission needs to know if the site is clean. Reiman stated that she believes the environmental issues need to be addressed and the payment for the existing lease needs to be brought up-to-date.

Popenhagen clarified all tanks were enclosed and stored liquid fertilizer. The tanks have been removed and never were encroached into the WRRTC owned property. He does not believe there is any contamination associated with the encroachments. Lucht pointed out the purpose of lease states that it is for the storage of fertilizer including anhydrous ammonia. Popenhagen does not believe ammonia was stored there ever. Stinespring stated Popenhagen is willing to maintain the buildings that are on the right-of-way. Popenhagen agreed.

- *Motion to continue discussions through the issues discussed as though an offer-to-use agreement will be entered into. – Polyock/Peper. Approved. Anderson and Mace Opposed.*

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

- Treasurer's Report and Payment of Bills

Huttenburg reported on cash flow statement. \$500 was received from the private crossing agreement and there are two bills for accounting services and the quarterly WisDOT loan payment.

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

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

Lucht stated he met with the Sauk County Highway Committee on October 14th to discuss Phase 2 & 3 of the Merrimac Bridge Project. Lucht is working with Rock County Public Works and Economic Development on the design of County Highway M crossing in Janesville for Klassen Quality Coatings, a new rail shipper. Lucht will be visiting with the City of Prairie du Chien Public Works regarding opportunities in the City. Rail customers have been asking about the bridges in Janesville and when the current weight restrictions will be lifted. Sweeney asked about the Milton project on the Waukesha Sub, Lucht stated it is an industry track connecting to the Waukesha Sub. Peper thanked Lucht for attending the Sauk County Highway Committee meeting and looks forward to a site visit.

Schaalma reported roughly 3 miles of track surfacing remains to be done on the Waukesha Sub Continuous Welded Rail (CWR) Project between Palmyra and Eagle. Two contractors are out removing the scrap. WSOR is working on two crossing closures in the Village of Palmyra and expects them to be closed this year. The Hwy 113 at-grade crossing project was completed on the Reedsburg Sub. Two crossings in Illinois at Lang Rd and Winn Rd were done with surfacing and signals. Work on two bridges on the Prairie Sub. are being finalized. Phase 2 of the Merrimac project is being worked on currently, the contractor is out there every weekend until April. Bridge 226 on the Reedsburg Sub. was recently awarded to a contractor, and is expected to be completed before the seasonal traffic resumes in April.

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For the year, 21 grade crossings were done (11 by WSOR) and 22k cross ties were installed. Next year has a major tie project on the Madison Sub. that is being prepared for now.

Alan Anderson asked when Phase 3 will be completed on the Merrimac Bridge. Schaalma is hopefully it will be completed in 2022. Stern commented that WisDOT is working on the federal environmental review for the INFRA grant to keep the INFRA Grant process moving.

Ranum asked when CWR west of Blue River will begin. Schaalma expects the project to kick off late next summer.

11. WisDOT Report – Lisa Stern - WisDOT.

Stern reported the Rails Conference is next week Tuesday at 8:15 am. It is a half-day virtual event. The track rehab agreement for the Reedsburg Phase 1 is being worked through. A grade crossing safety engineer is likely to be hired in the coming weeks. Sweeney asked about WebEx hosting of the conference. Stern stated that it should not be difficult to use but it might take awhile depending on your web browser. Stern stated that there is no need to have a camera to participate. Sweeney asked about connecting with a phone. There is a call-in number. Ranum asked what kind of prep time it takes. Stern stated Commissioners should give themselves an extra five minutes to connect.

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

Honer stated that on October 13th, the City of Middleton made a public records request for all emails related to the private crossing in Middleton, copies of any reports provided by WSOR, reports of any issues related to trespassing or safety concerns in the area of the crossing, and the location of the rule that determines this is a private crossing and not a public crossing. This information was provided to the City of Middleton with the exception of the "rule" determining this is a private and not a public crossing because it is not something the WRRTC determines. Shortly after the records were provided, Honer informed the Developer, the City of Middleton, and WSOR of the Commission's decision to request the City of Middleton remove their property from the right of way, to close the north end of the crossing, and to inform the developer that any future agreement for a crossing at this location will require a new application. Honer then provided a recording of the October meeting to the City of Middleton. Because of the delay in getting the notice to the City of Middleton, the Developer, and WSOR Honer pushed the date for the crossing removal back to November 20th.

On October 20th, Honer spoke with the Mayor and Engineer from the City of Watertown. The discussion was about issues of water drainage and Jefferson County's participation in the Wisconsin River Rail Transit Commission. WisDOT is currently evaluating the situation.

Honer stated there was significantly more correspondence regarding the Audit this year and there was correspondence with counsel regarding the permit and offer to use that are on the agenda today. Correspondence was sent to finalize the Sauk County rail removal project. Honer met with Kern and Lucht in Boscobel to discuss public crossings and an existing offer-to-use where the use within the right-of-way has changed. Honer expects these issues to be on future agendas.

Peper asked about the freight cars being stored in Rock Springs. Lucht stated grain shippers own their own cars and United Co-op is the likely owner. Peper stated that there are some unsettling graffiti on the cars and would like to know how to address it. Lucht stated it is a worldwide issue and they often try to address the issue in the yard. Peper stated that he will take down a car number and let United Co-op know.

13. Discussion and Possible Action on a Utility Permit and Agreement with Scot Forge in Spring Grove, Illinois. – Honer, Admin.

Honer received a utility permit just prior to the agenda going out and he forwarded the permit on to WSOR's engineer for review. There are two aspects of this agenda item, to review the engineering standards of a utility installation and to determine how the Commission would like to permit the private utility. This can be done with a Temporary Access Permit, which is a simple permit stating outlining the responsibilities of both parties, or it can be done with a lease. Brownlee stated the Commission's options are open but the Commission should not refer to the permit as a utility permit because it is not a utility (public). The Commission does not want to provide any private landowner with the rights of a public utility. Brownlee suggested the Commission use an "underground access permit" as an option. Lucht has not heard back from Brent Marsh (WSOR P.E.) on WSOR's review of the engineering standards. Sweeney asked if there are any bad precedents being set by an "underground access permit." Brownlee does not believe so and engineering standards should continue to be followed. Lucht asked if the Commission would need approval from the railroad. Brownlee is not sure but could look into it. Stern stated that WisDOT looks for concurrence from the Railroad for Trans 29 public utility permits.

- *Motion to postpone action until the next appropriate meeting. – Mace/Anderson. Passed Unanimously.*

14. Update and Action on 2019 Audit. – Huttenburg, Treasurer.

Huttenburg asked if the Commission had any questions or concerns regarding the draft audit. Ranum pointed out that the required correspondence included an adverse opinion and asked what caused it to come about in this audit and not the prior audits. Huttenburg stated it will be addressed in the next agenda item.

- *Motion to Acknowledge the 2019 Audit. – Kannard/Stanek. Passed Unanimously.*

15. Possible Action on the scope of future WRRTC Audits - Huttenburg, Treasurer.

Huttenburg stated the accountants suggested WRRTC should in the future undertake a *funds financial statement audit*. In the past they have been trying to keep track of the capital improvements, but they are only doing so on the projects that the Commission funds and are not aware of the projects that WSOR is completing. The end result of the capital improvement accounting is not accurate. The *funds financial statement audit* will

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follow the funds only and not necessarily the appreciation and depreciation of the capital assets. The auditor working on it believes it would save the Commission money each year.

McCumber stated that because of the extent of the rail he suggests not tracking the capital improvements. Huttenburg stated WisDOT has commented the Commission is not required to do this for the loans and grants from WisDOT. Huttenburg stated that the current issue is only important if the Commission would sell, and that is not likely to ever happen. Huttenburg stated in place of the depreciation and capital assets being accounted for, he suggests a calendar year statement on capital improvements and maintenance from WSOR.

- *Motion to only require a fund financial statement audit for years following the 2019 Audit. – Huttenburg/Reimann. Passed Unanimously.*

16. Presentation by WSOR: Railroading 101 – A look into the US railroad industry – Lucht, WSOR.

Lucht presented to the Commission on the current trends of railroads in the United States.

Peper asked the last time two trains collided in Wisconsin and the requirement of Positive Track Control (PTC). Lucht is unsure and PTC was an unfunded mandate that was not well-received from the freight and commuter industry.

17. Adjournment.

- *Motion to Adjourn at 12:24 pm – Anderson/Scallon. Passed Unanimously.*