

WRRTC JUNE 2021 MEETING MINUTES – APPROVED

**Wisconsin River Rail Transit Commission
Commission Meeting – Friday, June 4th, 2021 at 10:00 am
Jefferson County Highway Department,
1425 S Wisconsin Drive, Jefferson, WI
and via Zoom**

1. 10:01 AM **Call to Order – Alan Sweeney, Chair**
2. Roll Call. **Establishment of Quorum – Matt Honer, Admin**

Crawford	Carl Orr, <i>2nd Vice Chair</i>	X	Jefferson	Mary Roberts	X
	Derek Flansburgh	<i>Absent</i>		John Kannard	X
	Tom Cornford	X		Kathy Bahner	X
		Karl Zarling, <i>Alternate</i>		X	
Dane	Kevin Potter	X	Rock	Russ Podzilni	X
	Jeff Huttenburg, <i>Treasurer</i>	X		Wayne Gustina	<i>ZOOM</i>
	Chris James, <i>1st Vice Secretary</i>	<i>ZOOM</i>		Alan Sweeney, <i>Chair</i>	X
Grant	Gary Ranum	X	Sauk	Brian Peper	X
	Mike Lieurance	<i>ZOOM</i>		Dave Riek, <i>2nd Vice Treasurer</i>	X
	Robert Scallon, <i>1st Vice Chair</i>	X		Marty Krueger	<i>ZOOM</i>
				Tim McCumber, <i>Alternate</i>	<i>ZOOM</i>
Green	Harvey Kubly, <i>1st Vice Treasurer</i>	<i>Excused</i>	Walworth	Al Stanek	<i>ZOOM</i>
	Oscar Olson	<i>ZOOM</i>		Richard Kuhnke, <i>2nd Vice Secretary</i>	X
	John Buol	<i>Absent</i>		Allan Polyock	<i>Excused</i>
Iowa	Charles Anderson, <i>Secretary</i>	X	Waukesha	Dick Mace	X
	Kate Reimann	<i>ZOOM</i>		Richard Morris	X
	Susan Storti	<i>ZOOM</i>		Karl Nilson, <i>3rd Vice Treasurer</i>	<i>ZOOM</i>

Commission met quorum.

Others present for all or some of the meeting:

<ul style="list-style-type: none"> • Ken Lucht, Roger Schaalma – <i>WSOR</i> • 	<ul style="list-style-type: none"> • Lisa Stern, Josh Cotter – <i>WisDOT</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 – Morris/Cornford. Passed Unanimously.*
4. Action Item. **Approval of Agenda – Prepared by Honer.**
 - *Motion to approve the agenda. Gustina/Riek. – Passed Unanimously.*
5. Action Item. **Approval of draft May 2021 Meeting Minutes – Prepared by Honer.**
 - *Motion to approve the draft May 2021 meeting minutes with minor clarifications and modifications. Mace/Podzilni. Passed Unanimously.*
6. Updates. **Public Comment – Time for public comment may be limited by the Chair.**
No Public Comment.
7. Updates. **Announcements by Commissioners**
No Announcement by Commissioners.

REPORTS & COMMISSION BUSINESS

8. **WRRTC Financial Report – Huttenburg, Treasurer.**
 - *Motion to approve the Treasurer’s Report and payment of bills. Anderson/Morris. Passed Unanimously.*

9. **Wisconsin & Southern Railroad’s Report on Operations – Ken Lucht, Roger Schaalma – WSOR**
Lucht stated that Clayton Rd in City of Fitchburg will be permanently closed in the coming weeks, through a voluntary closure process. WSOR is always looking for opportunities to close at-grade crossings. There are currently about 4000 at-grade crossings in the state. Lucht estimates 25% of them are low density and should be looked at for closure. WSOR has approached the Village of Woodman on the Prairie Sub. regarding the voluntary closure of several crossing in the Village. The Village would benefit from a payment of \$8500 from WisDOT, matched by WSOR. WSOR is looking at public crossings on the Prairie Sub. ahead of the upcoming CWR project.

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Lucht explained a drainage issue in the City of Watertown that has been ongoing for the past three years. A WSOR employee noticed a skidsteer within the corridor removing a berm on the northern boundary of the corridor was removed and on the south side of the corridor additional development has increased the velocity of stormwater runoff which has undercut the track profile. Lucht stated it is an area where there was a state rehabilitation project four years ago to bring the track to Class 2 standards. According to state statutes the corridor needs to be able to pass water, but is not required to function as part of the City's stormwater utility. Lucht stated there is water being pumped into rail corridor from a municipal pump. WSOR has done nothing differently but the conditions have changed and the current conditions are not sustainable as it interferes with infrastructure and operations.

Reiman asked when the CWR will be coming into Iowa County, Lucht stated there are a lot of variables but WSOR would like to be moving into Iowa County in 2-3 years. Mace asked if the Watertown issue is within City boundaries and if the City is aware of the issue. Lucht responded it is in the City, and the City is aware of the issue. The City and WSOR do not see the situation in same way. Peper asked about the skidsteer in the corridor and asked who was pumping water into the Corridor, Lucht stated that it was a private individual who was trying to level their backyard and the City is pumping the water into the Corridor from a stormwater retention pond. Kannard stated that there is an additional issue where a lot of material is being eroded by the pump and from the development which is causing sedimentation into the corridor as well.

Schaalma stated the first Continuous Welded Rail (CWR) delivery train for the last phase of the Waukesha Sub. is scheduled in the coming weeks, with another arriving in July. Contractors are mobilizing for the tie project for the Cottage Grove Spur and Reedsburg Sub. Eleven at-grade crossings are part of that project, currently out for bid. Lunda is doing a bridge rehab for bridge # 494 on the Fox Lake Sub. WSOR is doing the tie deck in Waunakee. The nine prairie bridges, two are through the bidding process, the remaining seven are being bid together (one to be removed, 6 replaced with culverts) Tie maintenance on the Madison Sub., surfacing of at-grade crossing, and weed spraying is scheduled and ready to begin. Schaalma stated that the high heat (90 + degrees) requires additional inspections and slow orders.

Anderson asked how much of the Waukesha Sub is currently CWR. Lucht stated the entire Sub (33 miles) should be completed by next year. Anderson asked about the highspeed passenger rail between Madison to Milwaukee. Lucht stated he does not have a lot of information on it and that a lot of the discussion is only political at the moment. Ranum asked if it were to happen, would WSOR be a part of it. Lucht stated yes because of the operating agreement and the intercity passenger agreement with WRRTC.

Alan Anderson asked for an update on the Merrimac Bridge. Schaalma stated engineering plans are nearly complete but they are awaiting a finalized Phase 3 funding agreement. Phase 2 of the Merrimac Bridge is finished and the final agreements to begin Phase 3 is being finalized. Completion date is expected to be 24 months from the start of Phase 3.

10. WisDOT Report – Lisa Stern - WisDOT.

Stern reported that the Offer-to-Use for Sector 67 was completed this week. The new property manager, Todd Wojciuk, was approached by a property owner in Edgerton seeking to purchase WisDOT owned land. Stern offered clarification on the passenger rail question, she explained that Amtrac had released its goals, which includes a connection to Madison. It is also something that is part of WisDOT's long term rail plan. It would be standard 79 mph rail. There is no actual plan at the moment but there is the goal from Amtrac. Stern stated that nearly all of the passenger rail in the US runs on Freight rail track.

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

Honer reported that he has had correspondence for a Utility Crossing in Illinois that he expects to be on the July Agenda. He also received correspondence regarding the Hillside Road Bridge in Walworth County.

Honer reached out to the Commission's insurance agent regarding renewing its policy. The McHenry County Real Estate and Railroad taxes have been paid and Honer collected a receipt. Honer will have the 2022 Budget on next month's agenda for review and possible approval. The budget will need to be approved in August.

Nilson reported that he had the opportunity to inspect the Creek Rd bridge, which was a humpback bridge, completely replaced with a new bridge. Al Stanek asked for an update on the Hillside Rd Bridge. Honer explained that Walworth County's Highway Department is seeking information for the Hillside Road Bridge regarding ownership and maintenance responsibility. Honer stated that Allan Polyock provided township meeting minutes from the Town of Linn, Walworth County that may indicate Township ownership of the bridge. Honer stated the township has been doing maintenance. Stanek asked Honer to respond to the County's letter. Lisa Stern stated that in order for that bridge to be eligible to be rebuilt with public funds it will need to be owned by the Town or the County. It will likely end up going to the Office of the Commissioner of Railroads (OCR) to determine ownership. Stern stated that the WRRTC will want to turnover ownership of the bridge to the Town so that it can be rebuilt. Honer stated a preferable path is for the Township to take ownership and not need to deal with the OCR. Currently, the WRRTC is being told by WisDOT and the Township that it owns the bridge and may be responsible for maintenance. The WRRTC does not agree with this and believes the OCR would determine Township ownership, but the WRRTC would be ok with transferring the bridge to the Township without an OCR decision. The end results are the same for the WRRTC.

12. Discussion and Action on Memorandum of Understanding related to a Farm Crossing in Belden, Illinois – Honer.

Honer stated the Commission's counsel was contacted by someone seeking to purchase a property that has a farm crossing on it. WRRTC's counsel reviewed the crossing and determined that it is a farm crossing according to Illinois law. A farm crossing allows someone the reasonable right to cross the railroad for agricultural reasons. Honer reached out to the prospective buyer to discuss the crossing. The prospective buyer is seeking to

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have a written agreement with the Commission. The proposed MOU essentially states WRRTC recognizes the crossing as a farm crossing as long as the crossing stays mostly the same and there is language that indemnifies the WRRTC, WSOR, and WisDOT.

Ranum asked who drafted the MOU. Honer stated that WRRTC's attorney drafted the agreement. Kannard asked why WisDOT was on the agreement, Honer responded there is value in having WisDOT indemnified because of how the grant, land use, and operating agreements even though the WRRTC is the land and improvement owner.

Lucht stated WSOR has concerns and the Federal Rail Administration does consider farm crossings as private crossings. Lucht stated that the WSOR, WisDOT, and WRRTC have not finalized their private crossing policies. Lucht provided the language from Illinois state law and WSOR believes the law is intended for the crossing of livestock. Lucht stated that WSOR has numerous concerns regarding the crossing including the lack of insurance, the lack of crossing standards, and lack of signage. Lucht stated a track inspector visited the crossing recently and provided photos of the crossing. Lucht pointed out that vegetation is not controlled in the crossing quadrants and there are no yield signs, culverts, or approaches. Lucht stated that it is very important to have insurance especially in this location that has 4-6 trains a day and is a next phase of CWR. Lucht highlighted a photo that shows an excavator that had presumably utilized the crossing and said that equipment like that can damage the rail. Lucht also highlighted an aspect of the Illinois Farm Crossing Law that WSOR believes shows the intention of the law was to provide for cattle crossing. Lucht suggests WRRTC create a subcommittee to work on private crossing issues. WSOR requested that WRRTC table the MOU until a better process can be established.

Jeff Huttenburg believes the MOU agreement is a good step forward. The Commission either has this agreement or has no agreement and no indemnification because it cannot force the landowner to sign the agreement based on farm crossing laws. Huttenburg stated the discussion on private crossing needs to continue because there is still a lack clarity regarding responsibilities. Huttenburg stated that the insurance requirements that WSOR requires is too expensive for most property owners. Huttenburg stated that farm crossing laws provide landowners a right to a suitable crossing but does not specify standards. Zarling asked why a crossing does not run with the land, Honer explained the Commission does not do easements because easements provide legal rights to the property. Honer stated the crossing cannot be removed because it is the only access to the property. If the crossing is removed, the Commission could expect further legal issues.

Potter stated that the amount of traffic and the improvements required for the crossing are two items that would change it to private crossing. Potter stated that a farm crossing is not required to be for only agricultural uses.

Ranum asked if the agreement should be referred back to the Commission's and WSOR's attorney. Honer responded the WRRTC would like to see all crossings meet the standards that WSOR has, but unfortunately that is not a reality in this situation. The landowner wants to keep the crossing as is and as it has always been. The landowner would not sign something that requires them to make substantial improvements and carry an expensive insurance policy on an established legal farm crossing they use a couple of times a month. Kate asked if language can be added to the MOU to restrict the types of vehicles allowed to use the crossings. Huttenburg stated it would be a good idea moving forward but it is always difficult when asking for changes from multiple parties.

- *Motion to approve the MOU for a Farm Crossing in Belden, Illinois. Huttenburg/Kannard.*

Kannard asked if WSOR can provide insurance recommendations for private crossing agreements. Lucht stated the policy is a general commercial liability policy and some farmers already have enough coverage in place. Anderson asked if language can be changed in the MOU to protect the trackage. Huttenburg stated language can be added but the farm crossings law does not require any type of agreements to be in place. Honer stated he believes in both Illinois and Wisconsin farm crossing laws, the railroad operator is required to maintain the farm crossings, so the responsibility of protecting the rail is on WSOR. Morris stated he has three farm crossings on UP trackage, and the UP constructs and maintains the crossing without requiring anything from Morris. Peper asked if there are varying degrees of farm crossings to deal with differing levels of crossing. Honer stated there are no differing degrees of farm crossings in the state laws and that is the problem. Bahner asked if there is anything in the agreement about the crossing user causing damages. Huttenburg stated that is generally the law and does not need to be explicit in the agreement and if it was in the agreement, it would still come down to an issue of proving where the damage came from. Honer referenced a clause in the agreement that instructs the crossing user to not do anything to interfere with rail operations. Mace asked if this was in Wisconsin would WSOR object. Lucht stated WSOR would object because they believe the state laws on farm crossings are not sufficient.

- *Motion to call the question. Huttenburg/Podzilni. Passed Unanimously.*
- *Motion to approve the MOU for a Farm Crossing in Belden, Illinois. Huttenburg/Kannard. Anderson, Mace, Kuhnke, and Reiman Opposed. Motion Passed.*

13. Discussion and Possible Action on July, August, and September Meetings – Sweeney and Honer.

Honer stated WRRTC has had an offer from Sauk County and Jefferson County to hold a future meeting in those locations. Honer stated that he is not sure of the restrictions in Dane County. There will be an agenda item next month regarding the Watertown Sub. so Jefferson County may be a good location again next month. Nilson stated the meeting being held by zoom and in person is not working, would like to see meetings take place

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in person or by zoom. Ranum suggested that future meetings consider in -person meetings taking place quarterly rather than monthly with monthly meetings being done by Zoom. Anderson stated Dane County or Sauk County are central for all members and would like to see the future meetings return there. Roberts suggested zoom continue to be an option. Stanek and Mace suggested additional microphones. The July meeting will be held in the Jefferson Highway Garage location and the August meeting will be held in Madison.

14. Presentation on WisDOT FRPP and FRIIP Programs – Stern, WisDOT.

Stern presented on the recent FRPP and FRIIP awards to WSOR on the WRRTC system.

15. Adjournment.

- *Motion to Adjourn at 11:50 am – Scallon/Cornford. Passed Unanimously.*