

WRRTC JULY 7, 2023 MEETING MINUTES – APPROVED 08/04/2023

**Wisconsin River Rail Transit Commission
Commission Meeting – Friday, July 7, 2023 at 10:00 am
Hill Farms State Office Building – Madison, WI**

1. 10:00 AM **Call to Order – Alan Sweeney, Chair**
2. Roll Call. **Establishment of Quorum – Misty Molzof, Admin**

Crawford	Carl Orr, <i>2nd Vice Chair</i>	X	Jefferson	Mary Roberts	<i>Excused</i>
	Mark Gilberts	<i>Excused</i>		John Kannard, <i>Vice Secretary</i>	X
	Tom Cornford	<i>Excused</i>		Kathy Bahner	<i>Late</i>
				Jeff Smith, <i>Alternate</i>	X
Dane	Kevin Potter	X	Rock	Russ Podzilni	X
	Jeff Huttenburg, <i>Treasurer</i>	X		Tom Brien	X
	Jim Bolitho	X		Alan Sweeney, <i>Chair</i>	X
Grant	Gary Ranum	X	Sauk	Brian Peper	X
	Mike Lieurance	X		Gaile Burchill, <i>2nd Vice Treasurer</i>	X
	Robert Scallon, <i>1st Vice Chair</i>	X		Marty Krueger	X
				Tim McCumber, <i>Alternate</i>	<i>Late</i>
Green	Harvey Kubly, <i>1st Vice Treasurer</i>	<i>Excused</i>	Walworth	Al Stanek	<i>Excused</i>
	Todd Larson	X		Richard Kuhnke, <i>2nd Vice Secretary</i>	X
	Kurt Schafer	X		Allan Polyock	X
Iowa	Charles Anderson, <i>Secretary</i>	X	Waukesha	Dick Mace, <i>3rd Vice Treasurer</i>	<i>Excused</i>
	Kate Reimann	X		Richard Morris	X
	Kevin Peterson	X		Karl Nilson	<i>Excused</i>

Commission met quorum.

Others present for all or some of the meeting:

<ul style="list-style-type: none"> • Misty Molzof, <i>SWWRPC</i> • Lisa Stern, <i>WisDOT</i> • Ken Lucht, <i>WSOR</i>. 	<ul style="list-style-type: none"> • Alan Anderson, <i>Pink Lady RTC</i> • Lawrence E. Bechler, <i>Murphy & Desmond</i>
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3. Action Item. **Certification of Meeting’s Public Notice – Noticed by Molzof.**
 - *Motion to approve meeting’s public notice – Scallon/Morris. Passed Unanimously.*
4. Action Item. **Approval of Agenda – Prepared by Molzof.**
 - *Motion to approve the agenda. Polyock/Kuhnke. – Passed Unanimously.*
5. Action Item. **Approval of draft June 9, 2023 Meeting Minutes – Prepared by Molzof.**
 - *Motion to approve the June 9, 2023 meeting minutes as presented. Brien/Reimann. Passed Unanimously.*

6. Updates. Public Comment – Time for public comment may be limited by the Chair.

Lawrence E. Bechler, Murphy & Desmond S.C., read letter submitted via email to administrator at 9:21 am on Friday, July 7, 2023. Letter is addressed to Commissioner Don Vruwink, Office of the Commission of Railroads, regarding City of Middleton – Aurora Street Pedestrian Railroad Crossing, Case No. 9170-RX-402. Following is the excerpt read by Attorney Bechler:

“Dear Commissioner Vruwink:

I am the Middleton City Attorney. I have been instructed to submit this letter to you, as well as read its contents into the record of the Wisconsin River Rail Transit Commission’s July 7, 2023 meeting.

I enclose a communication dated July 5, 2023, from Ken B. Lucht, Assistant Vice President of WATCO, the organization that controls the Wisconsin and Southern Railroad (WSOR). The track bed is owned by the Wisconsin River Rail Transit Commission.

Mr. Lucht makes the mistaken claim that a pedestrian railroad crossing of the WSOR line in Middleton at Aurora Street is a “private crossing.”

Under this mistaken position, Mr. Lucht claims that WSOR has the right to close the Aurora Street crossing indefinitely, which I interpret as being permanent.

The Aurora Street pedestrian crossing is a public crossing. It has been a public crossing since your agency’s predecessor decision on July 14, 1981 in Docket No. 9030-RX-233. See attached decision.

Your predecessor, Commissioner Yash Wadhwa, was convinced by WSOR that the Aurora Street pedestrian crossing had been transformed into a private crossing when he denied Middleton’s request for a hearing on the status of the Aurora Street pedestrian crossing.

Commissioner Wadhwa’s decision was overturned by the Dane County Circuit Court in Case Nos. 2020-CV-2049 and 2260. See attached decision.

The court found that changing the status of the Aurora Street crossing without any public hearing violated state law. This decision was not

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appealed. Accordingly, the court remanded the matter to OCR for a hearing, which was held on July 28, 2022 and is fully briefed and awaiting decision. Therefore, at this moment WSOR is blatantly misrepresenting the status of the Aurora Street pedestrian crossing. It is a public crossing, not a private crossing.

It almost seems that Mr. Lucht is once again seeking the right to close this public crossing unilaterally without OCR approval. Clearly, OCR has jurisdiction to prevent any such effort under Wis. Stat. §195.29(1).

Naturally, Middleton has no objection to WSOR making necessary changes to its rail line to improve safety for operations. As the photograph submitted by Mr. Lucht shows a fence has been constructed to limit pedestrian access to the public crossing. Middleton submitted evidence at a hearing on July 28, 2022, agreeing that the crossing surface should be improved in the area where Mr. Lucht's photo shows it is missing. Middleton stands ready to make necessary improvements to the crossing but has not been granted permission to do so at this time.

Evidence was offered by Middleton at the July 28, 2022 hearing about trespassing, and nothing has changed since then. In fact, the photo offered by Mr. Lucht shows a person approaching the Aurora Street pedestrian crossing, which the person had every right to do. Middleton has worked with the developer of the adjacent buildings to address any trespassing in the railroad right-of-way outside of the public Aurora Street pedestrian crossing, and will continue to do so.

Accordingly, the City of Middleton objects to any closing of the Aurora Street pedestrian railroad crossing indefinitely. WSOR should submit a reasonable schedule for when its repairs will take place, and when the crossing is estimated to reopen again."

7. Updates. **Announcements by Commissioners – None**

REPORTS & COMMISSION BUSINESS

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

Huttenburg summarized the current cash flow and revenue and expense summary for the month of May, 2023. There was very little activity. Discussion regarding funding the Janesville Bridge and where those designated funds are held was had.

- *Motion to approve the Treasurer's Report and pay SWWRPC in the amount of \$7,777.50 for 2nd quarter, 2023 services. Anderson/Kannard. Passed Unanimously.*

9. **Wisconsin & Southern Railroad's Report on Operations – Lucht, WSOR**

Lucht stated that weed spraying is complete across the entire network; there are some trespassing issues along Market Street in Oregon that has been addressed with jersey barriers for now; one business in Oregon will need a permit; WSOR is resurfacing Parameter Street crossing and intends to close the crossing once the OCR has sent out determination; WSOR had a booth in Arena for the parade; there were lots of trespassing issues around the 4th of July holiday where people were shooting fireworks off of the track; however, WSOR prepares and runs slower that day because of it; Devil's Lake derailment occurred due to conditions of that Class I track that had not yet been improved; Merrimac project is going steady; and he will be in touch with Bolitho regarding tie and surface work that has been done or is scheduled to be done.

10. **WisDOT Report – Stern - WisDOT.**

Stern stated that the Merrimac bridge project is going well; there is some movement on the Janesville bridges and a verbal agreement has been reached; the MOU is in draft phase now and once approved by WSOR, UP, and WisDOT, it will be brought to the WRRTC; the real estate and freight rail position postings have closed and interviews will occur next week; \$20 million was approved for the Freight Railroad Preservation Program (FRPP); and Jones Island Phase I is complete. Stern will show a short video at the next meeting.

11. **WRRTC Correspondence/Communications and Administrator's Report – Molzof, Admin. - None.**

12. **Private Rail Crossing Permit Applications - None.**

13. **Applications / Permits to Construct, Operate, and Maintain Utility Facilities, if any. None.**

14. **Offer to use agreement, Station of Belden, County of McHenry, State of Illinois. Attorney Brownlee.**

- *Motion to approve the offer to use agreement between David L. Popenhagen and the Wisconsin River Rail Transit Commission – Anderson/Orr. Passed Unanimously.*

Offer to use agreement was previously discussed at June 2023 meeting, is an annual offer to use of land area underneath existing buildings in McHenry County, IL located near Belden Station, previously held by Nutrien Ag Services and Crop Production Services, now with David L. Popenhagen.

15. **2023 General Liability and Terrorism Coverage. Molzof.**

- *Motion to approve 2023-2024 general liability insurance policy and decline the terrorism coverage policy through Richgels-Schaefer Agency as presented and pay the premium due in the amount of \$16,943.50 – Kannard/Peper. Passed Unanimously.*

Policies were discussed at June 2023 meeting, and Molzof gave a description on the terrorism coverage stating that insurance agent Tom Schaefer had explained to her that terrorism policies have never paid any claims due to mandated federal terrorism declaration, and there are other policy provisions in place that would cover most events. Recommendation is to decline terrorism coverage and keep insurance premiums through Richgels-Schaefer as has been in the past.

16. **Adjournment.**

- *Motion to Adjourn at 10:40 am. Scallon/Peper. Passed Unanimously.*