

WISCONSIN RIVER RAIL TRANSIT COMMISSION

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MEMBER COUNTIES: CRAWFORD • DANE • GRANT • IOWA • JEFFERSON • ROCK • SAUK • WALWORTH • WAUKESHA

SUBJECT: Friday, January 6, 2017 Meeting Agenda
TO: Wisconsin River Rail Transit Commissioners & Other Interested Persons
FROM: Mary Penn, WRRTC Administrator

Wisconsin River Rail Transit Commission

Meeting Friday, January 6th, 2017 @ 10 AM

Dane County Hwy Garage, 2302 Fish Hatchery Rd, Madison, WI

WRRTC's Schedule of Meetings:

2017
January 6
February 10
March 10
April 7
May 5
June 9
July 7
August 4
September 8
October 6
November 10
December 8

NOTE: The WRRTC's meetings are usually held at 10:00 AM on the **first Friday after the first Tuesday** of the month at the **Dane County Highway Building** in Madison, WI.

NOTICE is sent to: County Clerks in WRRTC's Region for Posting and to Local News Media as an FYI.

Thank you for your interest and assistance.

Wisconsin River Rail Transit Commission

Meeting - Friday, January 6th, 2017 @ 10 AM

Dane County Hwy Garage, 2302 Fish Hatchery Rd, Madison, WI

1. 10:00 AM *10 minutes estimated | Action Items*
Call to Order – Alan Sweeney, Chair
2. Roll Call. **Establishment of Quorum** – Mary Penn
3. Action Item. **Certification of Meeting's Public Notice** – Noticed by Penn
4. Action Item. **Approval of Agenda** – Prepared by Penn
5. Action Item. **Approval of draft December 2016 Meeting Minutes**– Prepared by Penn
6. Updates. **Public Comment** – Time for public comment may be limited by the Chair
7. Updates. **Announcements by Commissioners** – No Discussion Permitted

REPORTS & COMMISSION BUSINESS

- 5 minutes estimated | Update and Action Item*
8. **WRRTC Financial Report** – Jim Matzinger, Accountant
 - Treasurer's Report for December and Payment of Bills
- 5 minutes estimated | Discussion and Possible Action*
9. **Discussion and Possible Action on Amending 2017 WRRTC Budget** – Jim Matzinger, WRRTC Accountant
- 5 minutes estimated | Update*
10. **Wisconsin & Southern Railroad's Report on Operations** – WSOR
 - Update on Monthly Maintenance Activities
 - Update on Capital Projects
 - Update on Business Development
 - Update on Office of Commission of Railroads
 - Other Continuing Issues/ Topics
- 5 minutes estimated | Update*
11. **WisDOT Report** – Kim Tollers, Rich Kedzior, WisDOT
- 5 minutes estimated | Update*
12. **WRRTC Correspondence/Communications and Administrator's Report** – Mary Penn, Admin.
- 5 minutes estimated | Discussion & Update*
13. **Discussion and Acknowledgment of 2015 Audit** – Mary Penn, Admin.
- 10 minutes estimated | Discussion & Possible Action*
14. **Discussion and Possible Action on Revenue Memorandum of Understanding By and Between the PRTC and the WRRTC** – Alan Sweeney, WRRTC Chair
- 10 minutes estimated | Discussion & Possible Action*
15. **Discussion and Possible Action on the Release of Interest and the Resolution to Affirm the Release of Rights in Industrial Spur Tracks on Property Owned by Madison Gas & Electric property in Madison, WI** - Madison Gas & Electric
- 10 minutes estimated | Discussion & Possible Action*
16. **Discussion and Possible Action on approving an exchange of permanent easements between the City of Madison and the State of Wisconsin Department of Transportation** - Dave Simon, WisDOT
17. Action Item. **Adjournment**

WISCONSIN RIVER RAIL TRANSIT COMMISSION
 COMMISSION MEETING - FRIDAY, NOVEMBER 4TH, 2016 @ 10AM
 DANE COUNTY HWY GARAGE, 2302 FISH HATCHERY RD, MADISON, WI

1. 10: 03 AM **Call to Order** – Alan Sweeney, Chair
2. Roll Call. **Establishment of Quorum** – Mary Penn

Crawford	Tom Cornford, <i>2nd Vice Chair</i>	x	Rock	Ben Coopman, Alternate	-
	Rocky Rocksford	x		Wayne Gustina	x
	Derek Flansburgh	excused		Alan Sweeney, <i>Chair</i>	x
Dane	Gene Gray, <i>Treasurer</i>	x	Sauk	Terry Thomas	x
	Jim Flemming			Marty Krueger, Alternate	x
	Chris James, <i>Vice Secretary</i>	excused		Chuck Spencer	x
Grant	Gary Ranum	x	Walworth	Craig Braunschweig	x
	Mike Lieurance	x		Dave Riek, <i>3rd Vice Treasurer</i>	x
	Robert Scallon, <i>1st Vice Chair</i>	x		Eric Nitschke	x
Iowa	Charles Anderson, <i>Secretary</i>	x	Waukesha	Richard Kuhnke, <i>2nd Vice Treasurer</i>	excused
	William G Ladewig	x		Allan Polyock	excused
	Jack Demby	x		Karl Nilson, <i>4th Vice Chair</i>	x
Jefferson	Jeni Quimby	x		Dick Mace	x
	Gary Kutz	x		Richard Morris	x
	Augie Tietz, <i>3rd Vice Chair</i>	x			

Commission met quorum.

Alan Sweeney asked Jeni Quimby, the newest Commissioner to the WRRTC, to introduce herself. She gave a brief history and was welcomed to the Commission by all.

Others present for all or some of the meeting:

<ul style="list-style-type: none"> • Mary Penn, WRRTC Administrator • Ken Lucht, WSOR • Michelle Brokaw, WisDOT SW Region Multimodal Coordinator • Alan Anderson, Pink Lady RTC 	<ul style="list-style-type: none"> • Kim Tollers, Rich Kedzior, Dave Simon, Frank Huntingdon, WisDOT • Eileen Brownlee, Julia Potter, Boardman & Clark • Tim Lins, Asso. of Sauk Co Snowmobile Clubs • Sam Landes, AWCS
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3. Action Item. **Certification of Meeting’s Public Notice** – Noticed by Penn
 - Motion to approve posting of meeting – Ladewig/Mace, Passed Unanimously
4. Action Item. **Approval of October Agenda** – Prepared by Penn
 - Motion to approve October agenda – Cornford/Ladewig, Passed Unanimously
5. Action Item. **Approval of draft October 2016 Meeting Minutes**– Prepared by Penn
 - Motion to approve draft October 2016 meeting minutes with minor corrections – Mace/Tietz, Passed Unanimously

Gary Ranum had some minor corrections to the minutes.

6. Updates. **Public Comment** – Time for public comment may be limited by the Chair
 There were no public comments.
7. Updates. **Announcements by Commissioners** – No Discussion Permitted None
 There were no announcements by the Commissioners.

REPORTS & COMMISSION BUSINESS

8. WRRTC Financial Report – Jim Matzinger, Accountant

Jim Matzinger gave the Treasurer's Report to the Commission, reporting on the balance remaining for the year. He said there was no project money remaining as 2015/2016 projects had been closed out. On the income statement, Matzinger said nearing the end of the year, in view of the budget, WSOR had been billed for leases and the Commission received \$2,800 for permits in 2016. On expenses, the Commission was on the mark but there were still quarters 3 and 4 payments to SWWRPC to make, as well as finish paying the audit fee. He said legal fees were anticipated for the end of the year. Brownlee said the legal fees would be significantly more than what was budgeted. Sweeney said some of the budgeted items would need to be examined going forward.

- *Motion to approve the Treasurer's Report and payment of four bills as presented – Ladewig/Gustina, Passed Unanimously*

Matzinger listed the payments made this month for accounting, buoys, the Johnson Block audit progress payment, and for September accounting. Penn asked if SWWRPC's Q2 and Q3 invoice had been received. Matzinger said it had not. He said there might be an invoice to process and suggested it could be done later in the meeting. Penn said it was ok and could be paid at the December meeting.

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

Ken Lucht reported on routine maintenance of the past month. On capital projects, he said WSOR was gearing up for next year, including the last phase of continuous welded rail (CWR) on the Fox Lake Sub. As of this September, he said WSOR had received a grant for CWR on the Wisconsin portion of the sub, with a \$1.8M grant. There was no grant agreement yet but he had presented to the Peconica Rail Transit Commission (PRTC) last week, who had taken action to contribute two years of funding on this regional rail service project. Lucht said once WSOR had a grant agreement, he would present it to the Commission.

Lucht said WSOR had also received funding for bridge work on the Prairie and Reedsburg subs for nine bridges and they were working with WisDOT on those agreements. He said a Phase 1 CWR project on the Prairie sub starting on the Island was about to begin. Ranum asked how much CWR would cost on that sub. Lucht said a \$3.5M investment and there was also a grant for a Phase 2 project on the Waukesha sub. Also, he said the grant agreement on the Spring Green Bridge replacement and its bid came in significantly under budget by about \$5-6M dollars, a tremendous savings on the project.

Lastly, he reminded the Commission that Roger Schaalma had presented on the capital projects for the next couple of years at the last meeting. Lucht shared again the costs spent on capital expenditures, saying they had increased by 50% since 2011 in maintaining and upgrading the track on the WRRTC system.

Lucht said he would come to the Commission in December in regard to an issue on a Madison Gas & Electric (MG&E) rail removal proposal and would be seeking the Commission's concurrence on that. He explained the situation, saying MG&E wanted to remove track so they can redevelop the land under it.

Bill Ladewig asked what happened if a bid came in lower than a grant. Lucht deferred to WisDOT. Rich Kedzior said those extra dollars became available for other projects. Jack Demby asked about the extra funds and the commitment of two years of funding by the WRRTC. Lucht clarified that those two years of funding commitment had been for the TIGER project which had not been awarded to WSOR. He said the percentage would remain the same, despite no TIGER funding.

Karl Nilson asked why the Office of Commission of Railroads (OCR) bullet was on Lucht's report. Lucht said he had asked to have it as a standing item on the agenda. He said at-grade crossings were becoming more of an issue with WSOR, as well as other rail issues so he wanted to report regularly about them at meetings.

Dave Simon asked if Lucht wanted to discuss WSOR's response on the issue of another application for a federal project called "Fast Lane" (FL). Simon said this program was soliciting applications for multi-modal transportation projects, saying there were differences between FL and the TIGER grant, as FL was more appropriate for freight rail projects (TIGER was more passenger oriented). Lucht said WSOR had been approached to participate in FL and thought they could reuse the TIGER application information with some tweaking. He said there were about 5-6 weeks for WSOR to examine the program and see if they wanted to apply. He said WisDOT was also looking at the program and that it would require local matching from WRRTC, WSOR, and WisDOT. He said there was a good chance he could bring this to the Commission in December. The application was due in December 15th. Simon said he thought the odds were good for this application to have a really good chance of being awarded. This was the only cycle for FL projects from WisDOT so there was no competition from other State agencies. He expressed his appreciation for WSOR's efforts to pursue it. Ladewig asked if Lucht would be seeking Iowa County's co-sponsorship on it. Lucht said yes. Alan Anderson asked if there was enough money at WisDOT to do this. Rich Kedzior said there were always priorities for funding and to accommodate this project, other project awards would be reduced. Simon said WisDOT needed to work closely with

WSOR and WRRTC to prioritize projects and WisDOT had not yet identified which projects would get dropped in priority if the grant was awarded. He said WisDOT thought FL a great program and asked why not try to get those dollars.

Dick Mace asked if there were a requirement that the WRRTC approve a resolution to apply for those funds. Lucht said he would have to look at the requirements, adding that past efforts had required a letter of financial support on behalf of the Commission. Lucht said WSOR and Watco always submitted a letter of financial commitment and had gotten letters of same from Iowa County: a request for a support letter would probably be on the December agenda.

Ranum asked how at-grade crossings affected rail capacity. Lucht explained capacity impacts.

10. WisDOT Report – Kim Tollers, Rich Kedzior, WisDOT

Kim Tollers reported that the Temporary Access Permit (TAP) for the surveying and brushing on the Sauk Sub in Sauk City had been signed. Kedzior reported he and Stephen Sams had met with WSOR to go over next year's work plan and they altered the work plan on the Prairie du Chien Feriole Island CWR project, agreeing that it would be more cost effective to install jointed rail rather than CWR due to low speeds and the large number of at-grade crossings: the rail got cut at each crossing anyway. For cost effectiveness and a little more procurement flexibility, WSOR would use jointed rail at this location.

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

Penn reported on her activities since the last meeting, including ordering hazard buoys for the Sauk City Railroad Bridge, attempts to connect with a contractor to place the buoys, her communication with Marilyn Weiss at DATCP in regard to an alternative route change on the proposed Great Lakes Basin Transportation, her communications with Westbrook Engineering on the Sauk City Railroad Bridge inspection, and the correspondence she had dealt with. She distributed an email and photos of the Sauk City Bridge received from Allen DeSchepper of Westbrook the day before. The Commission discussed the bridge situation and the necessity and practicality of placing the buoys this year, in consideration of the shortening window of time before the Wisconsin River iced up. Chuck Spencer asked how it was decided to place the buoys in the River this year and if they were not received in time, would it be worth doing so in December. Ladewig said assuming the buoys did not go in this year should a press release be sent out to warn the public of the bridge's instability. Sweeney said he and Simon had discussed how to proceed but adding that most of this issue would covered under item 12. Mace asked if WDNR knew about the dive. Penn said she would share this with them Monday.

12. Discussion and Possible Action on Sauk City Railroad Bridge – Alan Sweeney

Alan Sweeney spoke of the difficulty in getting the buoys made and placed. He said it could be that the Commission put them in and then have to remove them the following week: any chunk of ice would destroy them. Simon suggested the bridge be signed as a temporary measure for this fall and winter. He said giving the message to people to not be around the structure was important and although there were fences to keep people off the bridge, signs on the piers to not approach on the bridge could remain, regardless of the weather.

Sweeney asked about the advisability if the Commission should place the buoys this fall as it would probably be the end of November before the buoys would even be ready. Mace said if things went as predicted, November might be quite warm. Being a boater himself, he found it difficult to believe that there was much activity in this portion of the River other than the occasional hunter or fishermen and questioned how much value there was in placing the buoys this fall. He advised to definitely place them next spring but did not believe there was value in placing them this fall. Putting signs up would probably be as effective as the buoys. Spencer asked about the buoy placement and storage of the buoys.

Sweeney asked Lucht if WSOR had warning signs to put on the bridge and if they could mount them. Lucht said the availability of signs was not the issue. However, WSOR did not have boats to place the signs. Sweeney clarified that the signs would be mounted on the bridge, not the piers. Lucht said the question was who was willing to walk out on the structure. Demby said the Commission should not worry about the buoy placement until the spring, agreeing they definitely needed to be placed by next spring.

Simon said WSOR could perhaps get the signs made and get someone to lag bolt the signs on. Nilson asked what the buoys said. He said he thought signs would be more visible than buoys. Brownlee said the WDNR had brought that up and explained how the waterway placement notice had been executed. Nilson said a big "danger" sign might be more useful.

Demby asked if WRRTC was liable without signs. Sweeney said the Commission was liable even if there were signs. Brownlee concurred. Nilson said this would be a good faith effort. Brownlee said this was about Aesop's "belling the cat" and who would go out there and put the signs on. Demby said one could get to the shore on both sides of the bridge in both counties and no one would need to go out on the bridge itself.

Alan Anderson said he thought that a sign saying “don’t go under the bridge” or “don’t go under the span” would be more effective. He then asked if the Sauk County Highway Dept. could store the buoys. In regard to the liability, it was important to warn people. Mace asked if the WRRTC had asked Sauk County if they would have room to store the buoys or even Dane County. He said in Price County, the Township placed and pulled buoys on the lakes there.

Sweeney said they were only talking about \$115 dollars for storage in comparison to the final dollar value. What the Commission needed to decide was what type of sign, where to place them on the structure, and if they decided to do that, allow administration to get the signs made and placed.

- *Motion to incur expenses up to \$1500 for signs and placing on the bridge with the understanding that the buoys will not be placed until the spring and a press release warning people to stay away from the bridge will be made – Ladewig/Mace, Passed Unanimously*

Ranum said this sounded like permanent signage and asked if there were highway signage that could be used and be big enough to allow the message to be changed if needed. Sweeney said in his experience in town government, they had never been able to rent signs. Demby said a company in Mazomanie rented signs to highway departments. Sweeney said he thought there was a connection for a sign manufacturer in Madison. Anderson suggested amending the motion to also put posters in place in the bait shops to warn boaters. Nilson said he did not think \$1500 was enough.

- *Motion to amend to incur expenses up to \$2,500.00 - Karl/Cornford, Passed Unanimously*

Jeni Quimby asked about warming snowmobilers. Spencer asked about a canoe rental upstream and said even with signs, canoeists would go under the span. Sweeney said the Commission was talking about protecting themselves. Gene Gray asked if the Army Corp of Engineers or Coast Guard had any jurisdiction. Brownlee said they both did.

13. Discussion and Possible Action on Authorization Letter for Approval to Incur Preliminary Costs Associated with the Sauk City to Prairie du Sac and BAAP track removal, and Stabilization of Bridge B-428 – Alan Sweeney, Chair

Dave Simon explained the letter was to address funding issues associated with the Bridge. Its main purpose was to make work done prior to any agreement reimbursable. Specifically, the letter allowed engineering work, brushing, and survey work to occur while preserving the ability to reimburse costs. This would be from October 1st, 2016 to July 1, 2017. He said the WRRTC would be responsible for any permits and also WisDOT could not guarantee that any grant would be awarded, due to the competitive nature of grants. Brownlee said in a nutshell the letter said the Commission was about to incur significant expenses in dealing with the Sauk County trail conversion and that some track salvage income would come in. If the Commission incurred expenses without the letter, there was no way to go back to WisDOT and ask for reimbursement. The letter would allow WisDOT to pick up costs prospectively but also to go back to expenses incurred on the dates noted for retroactive reimbursement. The letter did not bind WisDOT to give the WRRTC any money. Sweeney asked if the letter meant that grants would be automatically applied for or would the Commission need someone to apply for a grant. Simon said the Commission would have to apply and there would need to be a grant agreement if awarded. Sweeney asked if the letter would be part of that grant application process. Kedzior said the WRRTC would have to apply for a grant: the letter did not do that. Sweeney said counsel’s advice was to accept the letter. Brownlee said there was no down side to signing.

- *Motion to approve authorization letter for approval to Incur preliminary costs associated with the Sauk City to Prairie du Sac and BAAP track removal and Stabilization of Bridge B-428 – Nilson/Thomas, 23 Ayes, 1 No, (Ladewig)*

Mace asked Sweeney to read the letter. Brownlee explained who had written it and her discussions on its ramifications. Sweeney said it had had the applicable dates changed since its first draft, adding that he had had some concerns about the costs. Ladewig asked why the letter included BAAP removal, bridge inspection, etc... Brownlee said this all needed to be one project in order for the salvage profits to come to WRRTC for the bridge: they needed to be “married”. Anderson asked if Sauk County agreed to do some of this work and if they were looking for reimbursement. Sweeney said yes, for costs, out of the rail salvage proceeds.

14. Discussion and Possible Action on WSOR salvaging 120 pieces of 90# rail and some switch components between Water Street (MP 7.95) and Water Street/Hwy 78 (MP 9.20) and between the fertilizer plant (MP 11.85 and MP 12.50) on proposed Great Sauk Trail – Ken Lucht, WSOR

Ken Lucht said this past August WSOR approached Eileen Brownlee, the WRRTC administrator, and the WRRTC Chair about WSOR’s interest in salvaging rail on the Sauk sub. He explained that some of the rail infrastructure there was valuable and could be used elsewhere on the system. He explained where this rail and switches were still used. The WSOR thought salvaging these materials would be a better use of them rather than selling for scrap at the current very low steel prices. Lucht said there were 70 tons of rail and switches on the sub to be used elsewhere for repairing rail. Lucht said WSOR’s crews would mobilize to remove the material and return it to inventory and not cost the Commission anything. He said WSOR had not heard back initially so offered an added incentive: WSOR would scrap some of their own rail and reimburse the Commission entirely for the rail removed. Lucht

explained this issue had come up because WSOR was in desperate need of rail of this type. He asked for action immediately in order to get the material. Mace asked if it were true 90 lb. rail. Lucht said from WSOR reports some was 85 lb. but it was mostly 90 lb., not as worn as some. Mace then asked if there were a reason WSOR had limited themselves to 120 pieces. Lucht said that was the only material worth salvaging.

Ladewig asked if Sauk County had to agree to this. Brownlee said the draft agreements had this included but once WSOR started salvaging, Sauk County might want to start salvaging as well and she asked if WisDOT had any salvaging concerns for WSOR or Sauk County. Frank Huntington said that was covered on the pre-approval letter. He confirmed that the salvage rail would be compensated to the Commission. Lucht said WSOR proposed 70 tons of materials salvaged and have a "like" salvage for cash, compensating the Commission. Nilson estimated that it would be about \$16,800.00. Ladewig asked if that amount of money would be credited towards the amount of salvage with Sauk County. Brownlee said no, that agreement was set up so that Sauk County would remove all that was left and keep track of their costs for doing so, ultimately salvaging all the remaining rail. If for some reason the salvage costs would be less, the Commission was held harmless. If it were more, then Sauk would get nothing above costs. Demby asked if the ties would be salvaged. Lucht said Sauk County would do that. Gray asked about the length of rail pieces. Lucht said the rail was primarily 39' long.

- *Motion to authorize WSOR salvaging 120 pieces of 90# rail and some switch components between Water Street (MP 7.95) and Water Street/Hwy 78 (MP 9.20) and between the fertilizer plant (MP 11.85 and MP 12.50) on proposed Great Sauk Trail – Tietz/ Gustina, Passed Unanimously*

15. Discussion and Possible Action on drafting funding contract with Sauk County for track removal and determination of division of salvage proceeds – Eileen Brownlee, Corp. Counsel

Referring to Item 14, Brownlee said Sauk County would go out and do the work in removing the ties and track. The County was not sure about removing the ballast. They would track their costs in doing so and be entitled to retain salvage value up to their salvage costs and the brushing going on right now. If there are salvage proceeds greater than the cost of the work, all of that would be divided between WRRTC and WisDOT, according to the agreements when WRRTC acquired the track and WisDOT got the land. She said removal of that corridor would require amendments to the Land and Grant agreements but they were not at that point yet. Sweeney asked if that action would authorize drafting contract without a number. Brownlee said she had not received an estimate from the County to remove the existing track, due to Item 14 on the agenda. She said she expected to hear from Sauk County as to when they could go out and remove track soon. Gray asked for clarification on the ties. Brownlee said they would be removed.

Ladewig asked if the bridge had been discussed and if there were a salvage value to the bridge. Brownlee said that had not been discussed in this framework. She was still not sure about the bridge. Huntington said the key thing on the bridge was that the County wanted to proceed with the trail, not the bridge. There was time to work on the bridge issue. He said WisDOT wanted to take the bridge down and might not currently have bonding funds to do that. However, there was not as much of a rush to get the bridge done.

- *Motion to authorize corporation counsel to begin drafting funding contract with Sauk County for track removal and determination of division of salvage proceeds – Nilson/Spencer, Passed Unanimously*

Mace asked if the WRRTC was not going to approve a contract with Sauk County and instead just drafting a funding contract, why would it take a motion to draft a proposal that did not have any teeth in it. Nilson said it was to get the ball rolling. Mace said then the Commission would have to wait another month. Brownlee said she thought it good for the Commission to see a full draft form and, not to be ingenuous, the contract was already well underway.

Marty Krueger said one of the things pushing this was that after the Temporary Access Permit (TAP) was signed, the planner was out on the corridor with the Bluff Eagle Counsel, identifying eagle roosting sites and Dec. 1st was when the eagles returned to Prairie du Sac for the winter (there were none identified in the corridor). If there was warmer weather it could delay their return but if were colder, they would return. The moment they came back, the County could not do work: State statutes required that the monumenting be complete.

Anderson asked about the timing of rail removal. Krueger said he would not be calling Brownlee unless they got local complaints about it. He said he was trying to make this as painless as possible and just get it done. The moment work began, pressure for a solution of the bridge on the Dane County side would begin. Mace asked what surprises might the contract hold for the WRRTC. Brownlee said at every stage of this issue there had been some twists, starting with the pier twisting on the bridge so she was anticipating there would be something else out there. Mace said he was concerned they were somewhat unnecessarily delaying and he did not want that. Brownlee said right now the Commission was bound by this agenda. Anderson asked if there were a problem if both WSOR and Sauk County were on corridor at the same time. Gray asked if WSOR could start removing rail. Brownlee cautioned the Commission that they were moving beyond the agenda language. She reminded them contracts had been signed and motions

already taken and now there was a salvage agreement already approved. Now the Commission was just looking at the contract with Sauk County to remove the track.

16. Discussion and Possible Action on leases vs offer-to-use and non-railroad uses on railroad right-of-way – Eileen Brownlee, Corp. Counsel

Brownlee explained how this issue this came to the agenda while Penn distributed a hand out of an example on the Fox Lake sub. Brownlee said the billboards did not belong to the Commission and once the lease agreement was over, the lessee's were supposed to remove the signs but that did not always happen. She said some signs had been there for a very long time and that billboards were highly regulated at the federal, state, and other agency level. The IDOT had a similar set of provisions relating to billboards and virtually every town/city/village with a zoning ordinance had a sign ordinance. When you allowed these, whomever constructed them had to jump through a lot of hoops.

One of her concerns was if the Commission allowed billboards, what kind of liability did this incur. She said the Commission did not want signs that could impair rail operations and safety. Another issue to consider was that neither Illinois nor WI regulations had one iota of penalty for the landowner. The penalty was on the owner of the billboard. Where the Commission did have risk was with the local ordinances because many local ordinances were written to not violate a zoning law. If you inadvertently allowed a sign in one of these locations, then the local governmental organization could come after you as well as the person who put the sign up. Sometimes a hold harmless agreement could address this and liability could be passed on. That was the billboard law in a nutshell. Brownlee said she had looked at this from a liability through a zoning ordinance. She added she was not sure who would be taking an inventory of signs and their conditions. If something was unsafe for rail operations, WSOR would have some concerns. She said the Commission had historically used "offers to use" and she thought they had been intended to avoid certain lease requirements. However, she said you could call it anything but if operated like a lease, it was a lease. The bottom line she recommended was that there was not a lot of risk but there was a lot of management required and the risk of irritating people along the ROW. There was certainly a risk with train safety and operations and did not know if they wanted to burden WSOR with that.

Sweeney said the handout was on an intersection of IL Hwy 12 and local road with a stop sign and the rail corridor on one side of the corridor. Mace asked about the photo location. Lucht clarified where the sign was in the photo. Demby asked if this was something to be allowed and advised keeping the ROW clean.

Nilson asked if the sign in the photo was on railroad property. Kruger said he had dealt with billboard issues and if you had the chance to get rid of it, do so and do it while the family owned it because otherwise you would need many dollars to remove it. Brownlee said you could not regulate content: the courts were not interested in helping out with this issue once the sign was there. Huntington asked about other signs, saying the general consensus was that they really did not provide revenue and if you had a chance to remove them, it probably should be done.

Ranum asked if they would have to end the contract with Lamar. Sweeney said there were other commercial uses on ROW. Penn said she knew of at least one other sign. Sweeney asked if they needed to contact the owner to not renew the lease. Brownlee said she did not know how long the lease ran and if the motion carried, it implied any use of it is "on its last legs".

- *Motion to not allow commercial billboard uses on ROW and not renew existing commercial leases – Grey/Mace, Passed Unanimously*

Tollers asked if this just applied to Illinois. Brownlee said both Illinois and Wisconsin. Sweeney said one other issue was how to remove the one on the Fox Lake sub since there was a metal sign and electrical hookup. Gray asked if the railroad was in any position to help remove it. Mace asked if the sign owner knew to remove the sign. Lucht said the railroad is definitely the caretaker of the property and was willing to help the commission demolish the sign and would see if they had the equipment to do this and if not, to contract it out. He asked for help on the power hook-up.

Ladewig asked Brownlee if this ended up abandoned property. Brownlee said she did not think so other than what she found in her records. Sweeney asked for latitude for staff to take care of the removal of the electrical and structure through WSOR and the Commission Administrator which was concurred with by Commissioners.

17. Action Item. Adjournment
Motion to adjourn at 12:05 PM – Gustina/Scallon, Passed Unanimously