

WRRTC JUNE 2019 MEETING MINUTES – APPROVED

**Wisconsin River Rail Transit Commission
Commission Meeting - Friday, June 7th, 2019 at 10:00 am
Dane County Highway Garage, Madison, WI**

1. 10:05 AM **Call to Order – Alan Sweeney, Chair**
2. Roll Call. **Establishment of Quorum – Matthew Honer**

Crawford	Carl Orr	<i>excused</i>	Jefferson	Mary Roberts	X
	Rocky Rocksvold, <i>2nd Vice Chair</i>	X		John Kannard	X
	Derek Flansburgh	X		Augie Tietz, <i>3rd Vice Chair</i>	X
	Tom Cornford, <i>Alternate</i>	X		Terry Thomas	X
Dane	Gene Gray, <i>Treasurer</i>	X	Rock	Wayne Gustina	X
	Jim Flemming	<i>absent</i>		Alan Sweeney, <i>Chair</i>	X
	Chris James, <i>1st Vice Secretary</i>	X		Chuck Spencer	X
Grant	Gary Ranum	X	Sauk	Dave Riek, <i>2nd Vice Treasurer</i>	X
	Mike Lieurance	X		Marty Krueger	X
	Robert Scallon, <i>1st Vice Chair</i>	X		Tim McCumber, <i>Alternate</i>	X
	Harvey Kubly, <i>1st Vice Treasurer</i>	X		David Bretl	X
Green	Oscar Olson	X	Walworth	Richard Kuhnke, <i>2nd Vice Secretary</i>	<i>excused</i>
	Paul Beach	<i>Absent</i>		Allan Polyock	<i>excused</i>
	Charles Anderson, <i>Secretary</i>	X		Dick Mace	X
Iowa	Kate Reimann	X	Waukesha	Richard Morris	X
	Mark 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 - <i>WRRTC Administrator</i> • Ken Lucht, Roger Schaalma – <i>WSOR</i> • Jim Matzinger – <i>Dane County Highway, Accountant</i> 	<ul style="list-style-type: none"> • Kim Tollers, Rich Kedzior, Ed Singer, Lisa Stern – <i>WisDOT</i> • Duane Jorgenson, Rock County • Alan Anderson - <i>Pink Lady RTC</i>
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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.**
The agenda was changed to move items 14 and 15 to follow the financial report,
 - o *Motion to approve the amended agenda – Scallon/Cornford. Passed Unanimously.*
5. Action Item. **Approval of draft April 2019 and May 2019 Meeting Minutes – Prepared by Honer.**
Mace stated that he had some minor clarifications in April that were changed satisfactorily and that May minutes were good with minor edits.
 - o *Motion approve the April and May 2019 meeting minutes with minor modifications. Storti/Tietz. Passed Unanimously.*
6. Updates. **Public Comment – Time for public comment may be limited by the Chair.**
7. Updates. **Announcements by Commissioners**

Cornford passed out flyers on the Dousman house in Prairie du Chien that he thought the Commission might be interested in.

Mace stated the July issue of Trains magazine has an excellent article on rail infrastructure and damage issues and he encouraged the Commissioners to pick up a copy.

REPORTS & COMMISSION BUSINESS

8. **WRRTC Financial Report – Gene Gray – Treasurer.**

- Discussion and Action to approve WRRTC insurance policy renewal.
Honer stated that he met with the Commission's insurance agent Tom Schaefer. The insurance policy has not changed and the premiums have not changed. In the past the Commission has approved the insurance policy on a yearly basis.
 - Motion to approve 2020 Insurance Policy Renewal. Anderson/Thomas. Approved unanimously.
- Treasurer's Report.
Matzinger reported that all county contributions (\$275K) have been collected but has not been paid out yet. Matzinger reported that taxes were paid last month and the Commission is awaiting reimbursement from WSOR. Matzinger reported that interest rates have gone up and that the Commission received approx. 2.5% return on its funds. Matzinger reported the better interest rates will be accounted for in the 2020 budget.

Matzinger identified that management has only billed for Q1 of 2019 and legal has billed for the first quarter of the year. Matzinger reported the cash disbursements as billing from Dane County Highway, the insurance premium, and the loan payment to WisDOT that is due July 20th.

Scallon asked when the Commission will receive the tax reimbursement from WSOR. Matzinger reported that he has invoiced. Gray asked if there will be another billing for taxes. Matzinger stated there is another payment. Reiman asked about the employment dishonesty policy that is part of the insurance billing. Matzinger stated that the employee dishonesty policy covers the accounting. Honer corrected him saying that Honer and Matzinger are not covered under the policy but that Honer and Matzinger are covered under their respective organizations insurance. Honer explained that the employee dishonesty policy covers the Commissioners. Anderson asked about the insurance policy. Honer stated he did not have it with him but will report back on the coverage for the Commission. Honer stated that he asked Tom Schaefer to change the calendar schedule so that the Commission can spend more time with the insurance policy before it is due.

Nilson stated that the Commission has always used a County accounting agency and SWWRPC because those organizations are required by the state to perform annual audits.

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

9. **Discussion and Possible Action on 2020 Staff services agreement with the Southwestern Wisconsin Regional Planning Commission – Honer, Admin.**

Honer stated that the agreement has not changed since last year. The Commission will bill the entire amount. Honer stated that project management, grant management, and other management items are billed separately, but will not be billed without Commission approval.

- *Motion to approve 2020 staff services agreement with Southwestern Wisconsin Regional Planning Commission. Mace/Thomas. Passed Unanimously.*

10. **Discussion and Possible Action on 2020 Budget – Honer, Admin.**

Sweeney stated that the Commission is not required to approve the budget at this meeting and the Commission has until August 15th to approve the budget. Matzinger explained that he increased the interest revenue, which allows him to increase several expense items. Matzinger also explained that the expense and reimbursement needed to be changed for the increase in taxes. Matzinger explained that there is an increase in revenue due to the interest, so additional expenses can be added to some of the line items that have been tight in the past including legal and accounting. Thomas asked how flexible the Commission will be if interest rates are lowered. Matzinger stated that he keeps an eye on it and the budget. Honer explained that the project management line item is related to the additional billing outside of the regular management contract.

Ranum asked about the increase in taxes. Honer stated that he looked into the issue and the increase in taxes is due an increase in equalized assessed value of the line in McHenry County. Honer stated that the separate railroad tax in McHenry county is actually a state tax and if the Commission would want to appeal that tax we would need to appeal to the State of Illinois.

Bretl asked if the Commission wanted to consider increases in county and WSOR contributions, or consider Rail Car assessments. Sweeney stated that county and WSOR contributions were discussed and determined to be locked for two years.

- *Motion to approve 2020 budget. Storti/Morris. Passed Unanimously.*

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

Schaalma reported that two continuous welded rail trains were unloaded last week between Milton and Whitewater. A preconstruction meeting for prospective bidders was held for the project. Knapp (contractor) completed the last crossing at Plum Street ahead of the CWR project. Volkman (contractor) will complete the turnouts prior to the project. WSOR completed an at-grade rail crossing on Park Street on the Monroe Sub. and two more are planned for Vicki and Murry road on Monroe Sub. The Blair St./ US Highway 151 crossing in Madison is moving forward, and expects the crossing to be completed in the next two weeks. A major tie installation was done on the Cambria Sub. Several hundred ties are being replaced on the Reedsburg Sub. A culvert will be replaced near Bridgeport on the Prairie Sub. Substantial repairs are being made to a bridge in Lodi this week. The geometry car is currently on the system. There were only a few minor issues and they have been corrected. The annual weed spraying has been delayed due to the rain. Rail still needs to be installed on the Wauzeka Bridge. WSOR and WisDOT are working through grant agreements for other bridges on the system.

Mace asked Schaalma to provide a written report ahead of the meeting with updates on the maintenance and capital improvements. Schaalma reported that he can look into it but because things are so dynamic things can change. Alan Anderson asked when work will begin on the Merrimac Bridge. Schaalma reported that he hopes August.

12. WisDOT Report – Rich Kedzior, Lisa Stern, Kim Tollers - WisDOT.

Kedzior reported there is no budget yet. On June 25th, WisDOT will be hosting WSOR's annual financial report at the state office building and it is open to the Commissioners.

Stern provided an update on the crossing improvement projects on the WRRTC system. Stern stated that she hopes that WisDOT can continue to regularly (perhaps twice a year) provide an update to the Commission. Riek asked if can be provided electronically. Stern stated that she will share it with Honer who can send it out. Nilson asked if the description of work being done can be improved. Stern stated that she can work on that and clarified that these are existing crossings that are being repaired. Stern stated that crossings on local roads are maintained by WSOR. Mace asked what preemption means in this report. Stern stated that it refers to the crossing devices that are in communication with each other in order to make sure that cars are not stopping on the track. The Commission agreed that the report is valuable to be sent out twice a year.

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

Honer stated that he undertook research regarding cyber security and insurance for the Commission and that Southwestern Wisconsin Regional Planning Commission and Johnson Block (auditors) have cyber insurance to protect against any cyber threats.

Honer stated that he has had a few conversations with the Village of Spring Grove's police chief regarding the trespassing that is taking place by the Village of Spring Grove on the Commission's property. The police chief stated that he has placed it on the agenda and that he expects the Village Board will begin to address the trespassing issue.

Discussions are continuing with Frontier Communications and Charter regarding utility crossings installed in the Village of Oregon that are not compliant with the crossing standards of the Commission. Honer stated that he has progressed past the administrative staff and is now talking with the engineers to bring the crossings into compliance.

Several letters regarding private crossing permits were sent out to landowners with unpermitted crossings in Illinois. Honer stated that he initially heard back from some of the landowners following the letters, but that the landowners are not following up with their permits. Honer stated that he intends to follow up with them. Honer stated that he spoke to a landowner in Arena regarding a private crossing that he would like to extend for farm equipment. Honer stated that when he told the landowner that he will be required to apply for and receive a permit. Upon hearing about the application fee, the landowner stated that he has no intention of working with Commission to permit his crossing.

Honer stated that he has oath of office forms that he is asking Commissioner to complete and they can pick up the forms after the meeting.

14. Update on the Creek Road Bridge Project in Rock County – Duane Jorgenson- Rock County Highway Commissioner, Ellery Schaefer – Jewell Engineering.

Jorgenson stated that the bridge is currently 60% designed and he expects to begin on real estate in the coming weeks and the final design is due November 1st. He is expecting work to begin late April/early May 2020. The location of the bridge in question is 10 miles east of Janesville in the town of Bradford. Ellery Schaefer from Jewell and Associates explained the existing structure. The current structure was built in 1935 as a nine-span timber structure. It is about 137' long. Currently, the bridge is closed because of deterioration. It will be replaced with another grade separated crossing, a single span structure. Schaefer explained the concrete abutment walls. Schaefer discussed the minimum vertical clearance of and the length of the bridge is 89'. This is a replacement of a hump bridge. Jorgenson stated that the new bridge will be long enough to accommodate a second rail.

15. Update on Great Sauk Trail Project in relation to the Sauk Spur – Marty Krueger and Chris James.

Krueger asked that Honer distribute the RFP for the feasibility study for the Great Sauk Trail Bridge. James stated that the work group met last week to finalize the details of the RFP for the feasibility study. Proposals are due on June 28th. There is a mandatory pre construction meeting next week for interested parties. Krueger stated that the work group is moving forward will all interested parties and thanked all parties involved. Krueger also stated that all parties are aware of the issues that WRRTC's legal counsel have brought to the attention of Dane and Sauk Counties. James stated that Dane County is discussing sponsorship of the rail-to-trail conversion between Racek Rd and the Wisconsin River.

16. Update and Possible Action on Illinois Private Crossings – Julia Potter and Eileen Brownlee – Boardman Clark

Potter stated that just because there is no license for the crossings does not mean that those using the crossings do not have a right to cross or that we can force them to get a license. Potter stated that there are various legal theories that would allow crossings to exist without a written license agreement. Potter stated that in relation to the Gritmacker crossing, the Commission does not have all of the facts and cannot force Gritmacker to provide the facts without going to court. Potter stated that the liability to the Commission is minimal because the rail carrier maintains insurance and indemnifies the Commission. If the Commission decides to go to court to force Gritmacker to provide the facts it will be expensive and the results are not certain.

Nilson stated that WSOR built the crossing recently so it is safe and he believes the Commission should continue to pursue the agreement. Lucht stated that WSOR has questions about maintenance and safety. Lucht asked about who will be responsible for maintenance. Potter stated that it depends on what right the landowner believes they have to cross. Some crossing rights state that the railroad will maintain the crossing. Anderson asked if it is only for farm equipment crossings. Potter stated it depends on the type crossing that the law determines it is.

- Motion to no longer pursue a private crossing agreement with Mr. Gritmacker. Kannard/Nilson.

Bretl asked there are some agreements that can be made with Mr. Gritmacker. Potter stated that Mr. Gritmacker's attorney has advised him to not make any agreements with the Commission. Potter stated that the Commission still maintains its positions that a crossing permit is required to establish an agreement of location and maintenance, but that the Commission can decide to no longer work with Mr. Gritmacker. Potter indicated that if the land is ever sold, the title insurance company and the lender will likely seek a written agreement. Mace asked if Potter looked at the life of the crossing and stated that historic air photo resources are available to see how long that the crossing has existed. Potter stated those resources would only impact some rights that Mr. Gritmacker claims. Reimann asked if the action sets a precedent. Potter stated that she does not believe so because the Commission will still require an agreement and, in this case, not continue to pursue a permit but rather wait for a title search to require a crossing agreement. Ranum stated that some discussions should be considered for future closed sessions due to attorney client privileges. Brownlee stated that the conversation has gone beyond the scope of the agenda item.

- Kannard withdraws the previous motion.
- Motion to postpone this issue for the next available meeting. Bretl/Sweeney. Nilson opposed. Passed.

Anderson asked about the private crossings and the right-of-way and the requirements of the railroad to maintain the entire crossing right-of-way. Tollers stated that a permit covers the entire right-of-way.

17. Update and Discussion on Offer to Use Agreement – Lisa Stern, Rich Kedzior, Ed Singer.

Stern stated that the issue that brought this to the attention of WisDOT is the current issue with Lycon. Lycon constructed service-related improvements on WisDOT property without receiving approval from WisDOT. Stern stated that the improvements are installed and there is no signed agreement with Lycon. WisDOT believes that a clarified procedure and policy will help avoid issues such as this in the future.

Kedzior stated that when WisDOT took over the line it took over the customer and noncustomer leases and WisDOT was required to come up with a mechanism to allow use of the property by someone other than the railroad. The offer to use (OTU) agreement was created to allow use by someone other than the operator but not to convey any rights to the property, thus protecting the state's property interest. In the operator agreement and the grant agreement (Operating Agreement: section 5.2 (g)) states that the operator has no authority to enter into easements, permits, licenses or leases affecting the land whether under the use of the operator or not under the use of the operator and this is understood to be written, verbal, or implied. Kedzior stated that WRRTC has leasing authority but has never done so, WisDOT has the authority. In the 1980s the general guideline was that a non-rail operator had to obtain an offer to use license for state owned property more than 25' from center of the mainline tracks.

Singer presented a review process for improvements on state-owned rail corridor that WisDOT suggests as a process to utilize in the future. Singer stated that WisDOT has always approved track improvements. Singer stated that the main ask is for the Commission to wait for WisDOT Rails and Harbors Section (RHS) to review and determine the offer to use agreement prior to approving any sort of improvement. Nilson asked who is responsible for executing the offer-to-use agreement. Singer stated that he is responsible once the agreement has been approved by WisDOT. Mace asked if the track improvements would have been improved by WSOR prior to execution. Stern stated that most of these proposals will come from

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WSOR because WisDOT does not seek out non-rail operator users of the property. Mace stated that the proposed flow chart presumes that WRRTC is ok with any sort of track improvement. Stern stated that WRRTC has the ability to approve the offer-to-use. Mace pointed out that it is at the end of the process after a lot of work has been done on the agreement. Stern stated that a preliminary review by WRRTC can be added. Stern stated that WisDOT wants to avoid the WRRTC giving an ok and that being understood by the applicant as an ok to install improvements.

Lucht asked if WSOR is a signatory party on the execute offer-to-use proposed process. Stern stated that WSOR is not, and has not been in the past. Lucht asked if there is an opportunity for WSOR to comment on the review process, as it is a lease on top of the property that WSOR is already leasing. Kedzior stated that WSOR has an exclusive operating agreement but do not have the authority to use the property for whatever use they would like, only freight railroad uses. Stern stated that WSOR has the opportunity to comment when the issues is presented at the WRRTC meetings and that WisDOT always discusses proposed improvement designs with WSOR.

Storti stated that he believes that within the flow chart, WSOR could be brought into the discussion at the point that RHS Determines OTU agreement is required. Kedzior stated that WSOR has never been a party to offer to use agreements in the past. Lucht stated that WSOR has been a party to the OTU negotiations in the past but that since 2014 WSOR has been removed from the discussions and he believes that as the operator should be part of the discussion. Lucht stated that he believes that due to the federal requirements of being a common carrier, WSOR should have the ability to participate in the agreement to make sure that WSOR is able to continue to serve the customer. Stern stated that she has concerns regarding WSOR weighing in on the terms of the agreement (which is a standard template), but not on the general design and rail impact. She stated that if WisDOT gets a set of conceptual plans from WSOR, they assume that WSOR is okay with the design and general concept.

Singer stated the OTU agreements are templates. Rates are low and have not changed in 30 years. Freight customers get a discounted rate and an extended termination notice. Singer stated that it would have to be a serious event where WisDOT would request termination. WisDOT does not seek out customers. Singer stated that OTUs are used to protect state property as a legal instrument to allow non-railroad entities to operate on the railroad, to satisfy legal requirements, and to protect the corridor from improper uses. Stern stated that WisDOT would like to ask that WRRTC and WisDOT have more of a concurrent approval process for track improvements.

Lucht asked if OTUs cover the track and the land that the track is on. Stern stated the Lycon agreement covers the pit, conveyor and other operation agreements but not the track. Each situation will be different. Mace asked why a notice of termination is 180 days, believing it may be too long. Stern explained that WisDOT was willing to negotiate with Lycon as they are a rail shipper. Schaalma stated that improvements are usually multi-million-dollar investments, he asked if the termination notice will dissuade investments. Kedzior stated that that this is a common agreement in the industry and is not unreasonable.

Lucht stated that Lycon has three other facilities on the WRRTC system and due to their facilities, a lot of concrete and aggregate is not on the highway. Lucht stated that the offer-to-use agreement with Lycon does not specify that a large project will prompt an OTU termination, it only states it is at the discretion of WisDOT. Lucht stated that WSOR wants to make sure they are not undertaking unnecessary encumbrances and that previous agreements like this can be utilized with Temporary Access Permits. Lisa stated that WisDOT only has two agreements Temporary Access Permits (TAPs) and Offers to Use (OTUs). The Lycon situation is not a temporary improvement.

Lucht stated that the current operating agreement states that WSOR is required to obtain written approval for improvements but that that permits should not be unreasonably withheld. Lucht stated that WSOR is concerned about permits being unreasonably withheld. Lucht passed out a handout showing WSOR's interpretations of its operating rights and governance, mentioned that WSOR is confused about how OTUs fit into the various layers shown on the handout, and mentioned that if there's an anti-competitive practice, STB will hold a hearing.

Brownlee stated that discussions have gone past the agenda item. Stern stated that WisDOT will look for the Commissions agreement on an established flow chart at an upcoming meeting.

18. Discussion and Possible Action on scheduled July WRRTC meeting – Alan Sweeney, Chair.

Sweeney asked if the Commission has an interest in moving the WRRTC meeting to July 12th as the currently scheduled meeting takes place on July 5th following a holiday. The Commission agreed that July 12th is a better date to hold the meeting.

1. Adjournment

- *Motion to Adjourn at 12:16 pm – Cornford/Gustina. Passed Unanimously.*