

Wisconsin River Rail Transit Commission
Commission Meeting – Friday, May 6, 2022 at 10:00 am
Waunakee Public Library

1. 10:00 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
	Mark Gilberts	X		John Kannard, <i>Vice Secretary</i>	X
	Tom Cornford	<i>Excused</i>		Kathy Bahner	<i>Excused</i>
Dane	Kevin Potter	X	Rock	Russ Podzilni	X
	Jeff Huttenburg, <i>Treasurer</i>	X		Tom Brien	<i>Excused</i>
				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>	<i>Excused</i>		Marty Krueger	<i>Excused</i>
				Tim McCumber, <i>Alternate</i>	<i>Excused</i>
Green	Harvey Kubly, <i>1st Vice Treasurer</i>	<i>Absent</i>	Walworth	Al Stanek	X
				Richard Kuhnke, <i>2nd Vice Secretary</i>	X
				Allan Polyock	X
Iowa	Charles Anderson, <i>Secretary</i>	X	Waukesha	Dick Mace	X
	Kate Reimann	X		Richard Morris	X
	Kevin Peterson	<i>Excused</i>		Karl Nilson, <i>3rd Vice Treasurer</i>	<i>Excused</i>

Commission met quorum.

Others present for all or some of the meeting:

<ul style="list-style-type: none"> • Mark Opitz, City of Middleton 	<ul style="list-style-type: none"> • Lisa Stern – WisDOT • Alan Anderson, Pink Lady RTC.
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3. Action Item. **Certification of Meeting’s Public Notice – Noticed by Honer.**
 - o *Motion to approve meeting’s public notice – Podzilni/Anderson. Passed Unanimously.*
4. Action Item. **Approval of Amended Agenda – Prepared by Honer.**
 - o *Motion to approve the agenda. Morris/Kuhnke. – Passed Unanimously.*
5. Action Item. **Approval of draft April 2022 Meeting Minutes – Prepared by Honer.**
 - o *Motion to approve the April 2022 meeting minutes with minor grammatical corrections. Mace/Polyock. Passed Unanimously.*
6. Updates. **Public Comment – Time for public comment may be limited by the Chair.**
None
7. Updates. **Announcements by Commissioners**
Gaile Burchill from Spring Green in Sauk County introduced herself as a new WRRTC Commissioner from Sauk County.
8. Action item. **Election of Officers – Honer, Admin.**
Honer asked for a nomination for Chair of the Commission.
 - o *Motion to nominate Alan Sweeney as Chair. – Podzilni/Reiman. Motion to close nominations – Peper/Huttenburg. Passed Unanimously.*
 - o *Motion to continue with the current elected officers. – Anderson/Reiman. Motion to close nominations – Kuhnke/Huttenburg. Passed Unanimously.*
 - o *Motion to nominate John Kannard as Vice Secretary. – Roberts/Mace. Motion to close nominations – Huttenburg/Potter. Passed Unanimously.*
 - o *Motion to nominate Gail Burchill as 2nd Vice Treasurer. – Reimann/Burchill. Motion to close nominations – Anderson/Podzilni. Passed Unanimously.*

REPORTS & COMMISSION BUSINESS

9. WRRTC Financial Report – Huttenburg, Treasurer

Huttenburg explained the BMO Harris charge was due to the Audit and presented the cash flow and revenue/expense statement. All member county funds have been collected for 2022 projects. Polyock asked about taxes owed by the Commission in Illinois. Huttenburg explained the Commission is responsible and WSOR pays property tax in both counties and pays an additional railroad tax in one of the counties.

- o *Motion to approve the Treasurer’s Report and payment of bills. Anderson/Burchill. Passed Unanimously.*

10. Wisconsin & Southern Railroad’s Report on Operations – WSOR

No report.

11. WisDOT Report – Stern - WisDOT.

WSOR is reviewing the grant agreement for the Merrimac Bridge, and things are moving ahead to ensure an August let. There are discussions ongoing between WSOR and UP regarding the Janesville Bridge project. Signs were posted on the railroad corridor in Middleton at the Aurora St. Crossing. Stern stated the I-39 beltline environmental study is underway, and includes the WRRTC corridor crossings, additionally the WI-51 study has also begun which also includes a WRRTC crossing. WisDOT asked for a grade separation to be considered on the study. There is an OCR hearing for Pleasant View Rd. crossing in Middleton. Stern stated there was a productive meeting regarding the Boscobel Borden Rd. crossing and expects a good resolution that would involve the proposed path going underneath a bridge. Ranum and Mace asked for clarification on the Borden Rd. Crossing. Stern explained that there were two conflicting projects, one to close the Borden Rd. railroad crossing and another to utilize the crossing for a bike/pedestrian trail. Ranum clarified the expected conclusion will allow the trail to continue and the Borden Rd. crossing will close as a public crossing.

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

Honer explained that much of his work over the past month was related to previously approved private crossing and working with WSOR to determine insurance requirement availability. Honer explained that the Commission’s insurance agent has provided guidance on why private crossing applicants are unable to secure insurance that meets the standards as outlined in the current private crossing agreement. Honer explained there is little purpose in the Commission requiring insurance that cannot be obtained and that likely does not cover what we are asking for. Honer stated he has not seen evidence in the form of a policy that provides evidence of insurance to the level the existing private crossing agreement requires. WSOR was to provide evidence of this insurance but has not been able to do so since November.

Anderson asked for additional information on the insurance. Honer explained that one of the issues insurance agents have mentioned is that they do not want to list Watco, WSOR, WRRTC, and WisDOT as additional insured. Honer also explained there is a standard endorsement for work within 50’ of the railroad tracks and these usually have a date and location associated with them, but there is not a standard endorsement for a private crossing.

13. Possible Action on Utility Permit for a sanitary sewer in the City of Fitchburg - Honer, Admin.

Honer stated Brent Marsh, WSOR Engineer, reviewed the permit and it meets the requirements of utility installation on the rail corridor.

- o *Motion to approve the utility permit as presented by the City of Fitchburg. Mace/Anderson. Approved Unanimously.*

14. Possible Action on Private Crossing License with Middleton Center Ph3. - Honer, Admin.

At the June 5, 2020, WRRTC meeting, the Commission approved a private crossing agreement with Middleton Center PH3 for a private pedestrian crossing. The conditions of that crossing included it being limited to Middleton Center renters and employees only and that it would be subject to the conditions that were part of an Offer-to-use agreement between Middleton Center PH3 and WisDOT.

Since the WRRTC approval, the City of Middleton contested the crossing being considered a private crossing. The crossing is currently considered a public crossing with the OCR likely to be scheduling a hearing on the status of the crossing in the coming months. Middleton Center PH3 has not yet signed the private crossing agreement, a private crossing has not been constructed to any recognized standards, and trespass continues to take place on the rail right of way by both renters and employees/contractors of PH3. According to the terms of the agreement, the Crossing agreement has expired. Honer stated that he spoke with the Commission's counsel and it was recommended that the Commission take action to end the private crossing agreement with Middleton Center at this time and if the OCR determines the crossing is a private crossing, the Commission can reconsider the situation if Middleton Center wishes to apply for a private crossing again.

- o *Motion to revoke the private crossing for Middleton Center PH3. Huttenburg/Kannard. Passed Unanimously.*

15. Discussion and Action on communication regarding Belden, Ill. Offer-to-use. - Honer, Admin.

In Belden Illinois, the WRRTC has an offer-to-use agreement with Nutrien Ag. Services for several buildings built partially on the railroad corridor. Nutrien sold the buildings and its own real estate to a neighboring property owner. According to the agreement with Nutrien, Nutrien is not allowed to assign or transfer its agreement with WRRTC. In 2021, the WRRTC proposed an agreement with the then proposed buyer, now owner, of the Nutrien property. The proposed buyer rejected the conditions of the agreement and proceeded to purchase the property and buildings from Nutrien. The current status is that Nutrien has breached its contract with the WRRTC and is subject to daily fines for the encroachment of the buildings onto WRRTC property, and the purchaser of the property has rejected the conditions of the agreement that the WRRTC has presented.

Honer stated he would suggest the Commission take action to have Commission Counsel send a letter to Nutrien advising them of their breach of the agreement and the amount of fines they are subject to. Additionally, to send an agreement to the purchaser of Nutrien's property advising that the WRRTC has an agreement with Nutrien that allows for the clearance of the WRRTC's property, including the removal of the building, but the purchaser may enter into the proposed agreement within 60 days. Honer stated that Nutrien is subject to over \$18k in fines for not removing the buildings.

Polyock stated he would be in favor of the buildings being allowed to stay and the Commission getting out of the agreement with Nutrien. Huttenburg stated this is a difficult situation because it would cost the Commission a lot of money to go to court to have the buildings removed. Sweeney stated the Commission has an agreement with Nutrien, which would provide clear guidance on the issue. Potter stated that he thinks it is worthwhile to have Eileen send a letter outlining the situation, requesting a resolution, and identifying the Commission's recourse.

Polyock clarified the extent of encroachment. The buildings encroach less than 15' into the Commission's property. Stanek asked if he knew the value of the property. Honer stated he didn't know. Mace asked the use of the property. Honer explained that the buildings were built as they exist now to be used as a railroad customer and that was the intended purpose of the buildings. The current owner purchased the buildings because he wanted to control who his neighbor was but is not a railroad customer. Honer explained that what is being proposed is not a common occurrence on the railroad, where the new owner will essentially act as a landlord to the rail customer, leasing property to another party. This isn't common and has created a complicated situation.

- o *Motion to instruct Eileen to send a letter. Potter/Stanek. Motion withdrew.*
- o *Motion to instruct Eileen to send a demand letter to Nutrien and Popenhagen (new adjacent landowner). Huttenburg/Stanek. Passed Unanimously.*

Ranum stated the best situation is to have a rail customer in the buildings, and would like to see the letters indicate that the Commission would like to see a rail customer.

16. Discussion and Possible Action on WRRTC Leases and Offers-to-Use – Huttenburg, Treasurer.

Huttenburg explained that he gathered the current leases and agreements the Commission has with other parties. Huttenburg reviewed these agreements based on when they were written, if they have the provision to raise the rent, and what the rent would be if it was adjusted to today's cost of living.

Huttenburg explained the Nutrien Offer-to-Use, the Kinder Morgan Lease for a gas pipeline (not subject to review), the Nicor lease (subject to review every five years) would be worth \$200 today.

Huttenburg stated that if the Commission raises rent, it should send a 60–90-day notice. Sweeney asked if this could be done. Honer explained that invoices are sent out the first part of the year and could send out a notice this year ahead of invoicing.

Polyock asked about other lease agreements the Commission may have. Honer explained that the Commission only collects rent from agreements on WRRTC-owned land. Mace asked if the Commission is up to date on the agreements. Huttenburg stated that all agreements are up-to-date. Ranum asked why the Commission would own land in Wisconsin. Stern stated that she is not aware of how it played out but likely was because WisDOT was not interested in acquiring the land.

17. Discussion and Action on acknowledgement of 2021 Audit – Honer, Admin.

Honer explained the audit communications and that although the language has changed there is nothing new in this year's audit. The auditors regularly bring to the attention of the Commission that it does not have professionally (CPA) administered financials and that it does not account for its long-term assets. The auditing of the long-term assets was to remove from the Commission's agreement with the Auditors several years ago because it was not being done effectively based on just the Commission's capital contributions. An accurate reflection of the long-term assets would involve a fairly in depth look into the maintenance and capital reports as well as the WisDOT/WSOR FRPP agreements. The Commission did not see a need to undertake this effort.

- *Motion to acknowledge the 2021 audit. Polyock/Kannard. Approved Unanimously.*

18. Adjournment.

- *Motion to Adjourn at 11:18 am. Orr/Sweeney. Passed Unanimously.*