

WRRTC SEPTEMBER 2021 MEETING MINUTES – APPROVED

**Wisconsin River Rail Transit Commission
Commission Meeting – Friday, September 10, 2021 at 10:00 am
Via ZOOM**

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

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

Commission met quorum.

Others present for all or some of the meeting:

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| <ul style="list-style-type: none"> • Ken Lucht, Roger Schaalma – <i>WSOR</i> • <i>Larry Bechler, Mark Opitz – City of Middleton</i> • Jim Hurley – <i>Town of Linn</i> | <ul style="list-style-type: none"> • Francis Schlefout, Todd Wojciuk, Lisa Stern, Teri Beckman – <i>WisDOT</i> • Alan Anderson – <i>Pink Lady RTC</i> • Eileen Brownlee – <i>Commission Counsel.</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 – Scallon/Nilson. Passed Unanimously.*
4. Action Item. **Approval of Amended Agenda – Prepared by Honer.**
 - o *Motion to approve the amended agenda. Podzilni/Gustina. – Passed Unanimously.*
5. Action Item. **Approval of draft August 2021 Meeting Minutes – Prepared by Honer.**
 - o *Motion to approve the draft August 2021 meeting minutes. Storti/Mace. Passed Unanimously.*
6. Updates. **Public Comment – Time for public comment may be limited by the Chair.**
Mark Opitz and Larry Bechler asked if they can provide comments during item 17. Sweeney stated they can.

7. Updates. **Announcements by Commissioners**

REPORTS & COMMISSION BUSINESS

8. **WRRTC Financial Report – Huttenburg, Treasurer.**
Huttenburg stated two financial reports were sent out, one initially and then a revised statement. Huttenburg stated that he will be presenting the original and following up with the Local Government Investment fund to determine the issue for why a revision was sent out. Huttenburg stated there was one bill reflected and no income. Huttenburg stated that there is one bill for BoardmanClark bill for \$3,860.
 - o *Motion to approve the Treasurer’s Report and payment of bills. Anderson/Kannard. Passed Unanimously.*
9. **Wisconsin & Southern Railroad’s Report on Operations – Ken Lucht, Roger Schaalma – WSOR**
Lucht reported WSOR has made contact with adjacent landowners in North Freedom who were utilizing the railroad right-of-way with good response so far. WSOR was proud to support the Walworth County Fair. Lucht stated he will be giving a presentation to the Rock County Board in September, and any county that would like a presentation should reach out to him.

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Schaalma reported the CWR project on the Waukesha Sub. is going better than expected with 4 of 12 miles installed and the remaining North Prairie to Waukesha section will take place over the next few weeks. Full completion is expected this year. The Reedsburg Sub. has ten grade crossings, also expected to be completed this year. WSOR is working on ballast on the Cottage Grove section of the Reedsburg Sub. project. Bids were recently opened for seven bridges on the west end of the Prairie Sub. Bids came in \$700k under budget. Bridge A-494 near Bardwell on the Fox Lake Sub. is complete. WSOR is still awaiting the grant agreement finalization. Larger maintenance projects and major tie work is done for the year. Hilltop Rd. crossing in Milton is expected for October. The geometry car recently went over the system and there were no major issues. Brush spraying is scheduled for next week.

Storti said she was able to see the CWR shipment and said it was impressive. Alan Anderson asked if WSOR knows when the Merrimac bridge is expected to be completed. Roger stated that WSOR believes it to be a two-year project. Honer asked what is holding up the Merrimac Bridge grant agreement. Lisa Stern stated the grant is awaiting the Federal Rail Administration (FRA) to approve legal language.

10. **WisDOT Report – Lisa Stern, WisDOT.**

Stern stated WisDOT is seeking to apply for another grant (CRISI) for the Janesville Bridge project. Stern stated FRA reached out regarding this and that is a good sign for the project. WisDOT is working on the FRPP grant agreements with WSOR. WisDOT is looking to undertake a study on pedestrian trespassing prevention. Stern stated that work is ongoing to finalize the railroad street closing in Eagle.

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

Honer reported that Commissioners, WisDOT, WSOR, and Commission Counsel meet to continue discussions on private crossing issues. Honer expects an MOU to be on the agenda in October that outlines WRRTC, WSOR, and WisDOT responsibilities regarding private crossings and farm crossings. Honer also meet with WisDOT and WSOR to discuss ongoing property issues.

12. **Discussion on Offer-to-Use Agreement and Possible Property Sale in Edgerton. – Todd Wojciuk, WisDOT/ Peter Burno / Ken Lucht, WSOR.**

Wojciuk stated that Mr. Burno was not able to attend the meeting. Burno approached WisDOT for the sale of land underneath the building he owns, acquire additional property for a parking lot, offer better drainage, and fencing from the railroad. Stern stated that all of the land that Mr. Burno is seeking to acquire is outside of 33'. Stern stated that WisDOT will be offering to sell the property to WSOR and WRRTC, but because the property is outside of 33', WisDOT does not need Commission approval for the sale. Wojciuk stated the site is being operated as a community food pantry and thrift store. WisDOT does look at the proposal to see if the site can be used for future railroad development. Currently there is trespassing taking place here and Mr. Burno's request may be able to address this.

Lucht stated historically the parties have looked for alternatives. In this case, what alternatives does Mr. Burno have for alternative parking areas. Lucht stated that Mr. Burno has approximately 4 acres directly adjacent to the property. Lucht stated the spur that is just east of his building is currently not able to be used by WSOR because it is covered with gravel. the Commission. Lucht stated the request to purchase the property underneath the building is a reasonable request but does not believe there is a compelling reason for WisDOT to sell the land underneath Mr. Burno's building. The other issue is trespassing. Lucht stated that WSOR has known about this trespassing for many years and that WisDOT and Mr. Burno have been in conversations about the areas. WSOR is able to install a delination to keep people from parking in the right-of-way. Lucht stated the parking lot will restrict the vision triangle for cars on the highway. WSOR's biggest concern about the parking lot is the vehicles parking within the vision triangle. Lucht stated trains are going 40 mph and there is a slight curve on the track. WSOR believes the vision triangle needs to be preserved. Lucht also said that WSOR would like to see "track 1," the easement spur on the handouts, to be addressed by asking Mr. Burno to remove the installed gravel and not allowing people to park in this area. Lucht selling or leasing land within a vision triangle of a state highway where the train goes 40 mph is not a good precedent, especially wen Mr. Burno has alternative areas for parking.

Charles Anderson asked if Track one, south of Mr. Burno's building, is owned by the commission. Lucht confirmed. Anderson asked if there are lights and gates on the Track one highway crossing. Stern stated Track one does not have lights and gates. Lucht stated it is not in use right now because of the gravel that was placed in the easement. Stern stated the benefit of Mr. Burnow's proposal would help address the issue of gravel and delineate the side track. Brownlee stated that a lot of buildings were placed on railroad property prior to state ownership. Those buildings are considered personal property and not real estate. Mace asked if there is currently a lease agreement for Mr. Burno's building. Stern stated WisDOT has an offer-to-use agreement for the building existing on WisDOT property, but there is not an offer-to-use agreement for the area Mr. Burno is seeking to purchase for a parking lot.

Gustina stated, as a former railroad engineer, most people do not understand that trains do not stop in the same manner as cars. Stern stated that the crossing is protected by lights and gates and is as safe as any other highway crossing. Stern stated that the proposal being presented will actually improve the current conditions of the area.

Lucht asked if vision triangles can be considered railroad use. Stern stated that vision triangles are for roadway traffic. Brownlee agreed with Stern and added that she does not want to see vision triangles be the responsibility or liability of WisDOT, WRRTC, or WSOR. Brownlee stated that the proposal is outside of the 33' corridor, so the Commission has no authority to approve or disapprove as WisDOT is free to sell land outside of 33' without Commission approval. Brownlee also stated that WisDOT is required to offer that right-of-way for purchase to the Commission and WSOR. Brownlee asked Lucht if WSOR is considering purchasing the property. Lucht stated WSOR is considering purchasing the property.

Mace asked where the vision triangle is. Stern stated that the vision triangle is relative to the speed of the railroad, in this case 40mph which is 450 ft down the track. The majority of vision triangle is blocked by the building so efforts would be made to preserve the vision triangle that still exists. Mace asked how the vision triangle can be preserved. Stern stated that is possible WisDOT will not sell that portion, or restrict that property.

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13. Discussion and Action on Utility Permit Application by We-Energies in the City of Waukesha, WI – Honer, Admin.

Honer reported he received the permit and permit application fees. Brent Marsh, WSOR Project Engineer has reviewed the permit and approved its installation. The installation is a parallel installation to help power WSOR facilities on the small section of Right-of-Way the WRRTC owns at the end of the Waukesha Sub. The Commission is listed as additional insured as well as WSOR and WisDOT.

- o *Motion to approve We-Energies Utility Permit. Mace/Nilson. Passed Unanimously.*

14. Discussion and Possible Action on Request by Town of Linn, regarding the sale of Hillside Rd Bridge – Honer, Admin.

The Town of Linn, Walworth County and WisDOT believe WRRTC is the owner of the Hillside Rd bridge. Commission Counsel advises the WRRTC does not agree to the bridge ownership as the bridge is an established township road and public right-of-way. In order to allow the Town of Linn to apply for state road aids to undertake repairs to the bridge, the bridge needs to be under township ownership according to WisDOT. The Town of Linn drafted a formal request for ownership letter and a legal description. With Counsel assistance, Honer drafted the bill of sale. There are some issues yet to be worked out but Counsel has advised the Commission can move forward with the sale. Brownlee stated this is about the third bridge that has come to the Commission's attention, the others were handled in a similar manner.

- o *Motion to approve the sale of the Bridge. Kannard/Storti. Passed Unanimously.*

15. Discussion and Action on Attachment 14 to Operating Agreement – Honer, Admin.

Honer reported the Commission updates its operating agreement on a regular basis to reflect the change in rent as the Commission and WSOR agreed to as part of 2022 budget discussions.

- o *Motion to approve Draft Attachment 14. Nilson/Anderson. Passed Unanimously.*

16. Discussion and Possible Action on WRRTC Meeting Schedule – Susan Storti, Iowa County.

Storti clarified the Commission charter allows the Commission to set the next schedule. Storti suggested the Commission only meet quarterly beginning in 2022. Storti stated that much of what the Commission does, can be handled by the executive committee.

Nilson stated that the executive committee meet every month and the full commission meet quarterly in the past and he asked Eileen to comment on why this ended. Brownlee stated the executive committee can only make recommendations to the full commission and cannot take actions that bind the Commission. Brownlee stated the schedule that it did not like the executive committee regular meeting structure ended because the Commission did not necessarily like that structure and changed it several years ago. Issues happened where members who were not part of the executive committee wanted to attend the executive committee and this was creating a quorum of the full commission that was not posted. Mace stated the Commission was also having issues addressing the timely issues that come before the Commission. These would put the Commission "behind the 8-ball" and created delays to contractors and others. The Commission had a long discussion regarding not wanting to put these delays on partners and others and decided to move towards monthly meetings.

Storti asked what is wrong with authorizing the executive committee to pay the bills? She believes they are standard bills and the utility permits are also fairly standardized. Charles Anderson stated he feels very involved and knowledgeable about the Commission. He believes monthly meetings help keep commissioners up-to-date and educated on how the rail system and public-private partnership works. Reimann feels if the Commission went to quarterly meeting structure, the Commission would lose control and interest. Podzielni stated that this is his first term as a commissioner and feels the in-person monthly meeting to be very valuable.

- o *Motion to maintain current schedule and seek out location in Madison. Nilson/Gustina. Passed. Storti Opposed.*

17. Discussion and Possible Action on Middleton Center Pedestrian Crossing. – Honer, Admin.

Honer reported he was copied on a letter from the City of Middleton's attorney to the Office of the Commissioner of Railroads. The letter outlines that the Wisconsin Circuit Court remanded the case of the Aurora Street Crossing back to the OCR for review, requested the OCR take action on the crossing, stated the City of Middleton updated its easement for the approaches to the crossing, and requested that the concrete barricades placed by WRRTC and WSOR be removed. Honer stated that the OCR has not reviewed the petition that was remanded back to them, so the crossing remains a private crossing without an agreement. Commission counsel has advised that until the OCR makes a determination, there is not much for the Commission to do.

Brownlee stated that she does not believe it a private crossing and that it may be considered a public crossing at the moment. Brownlee stated that the public crossing was retained for pedestrian purposes in 1981. The City sold the approaches to the crossing to a private party later on and the OCR took the position that cause the crossing to become private. The Dane County Circuit Court stated that they do not believe there is an automatic change, rather a hearing is required. So the Circuit court remanded the decision back to the OCR to make a decision that includes an opportunity for the City of Middleton to be heard. Brownlee stated that things are in limbo until the OCR schedules a hearing, but the last determination was in 1981 which determined the crossing public.

Larry Bechler stated he agrees with Brownlee. Bechler stated that the City of Middleton has a permanent easement that requires the City to maintain the crossing. The City of Middleton is interested in public safety and is in favor of reasonable fencing but nothing that stops the access of the public. Brownlee stated that it is a public crossing issue for the OCR at the moment. Lucht stated the barriers are in place because they current crossing does meet any type of crossing standards and the crossing is very unsafe. Lucht stated there is no fence here, which is causing a trespassing issue where residents are using the right-of-way as dog park. Mark Opitz stated the City is in favor of having the fence installed. Opitz stated that he does not understand the difference between the existing crossing and other existing crossings.

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Huttenburg stated that he visits this location regularly and it is unsafe and if the City was interested in safety that would get the developer to build the fence as they are supposed to. Huttenburg stated that it is a canyon where people are walking their dogs. Huttenburg stated that the City should have the developer comply with the fencing requirement. Honer stated that because of the development on both sides of the right-of-way and the public crossing, residents are being funneled into the tunnel of the railroad corridor as a recreation area and it is very unsafe. Honer stated that it would be safer if residents used the established public crossing that is 300 ft away from the Aurora St. crossing. Opitz stated that he will convey to the developer in strong language that fencing needs to be established.

Attorney Bechler stated the entire topic is within the jurisdiction of the OCR and the City will do everything the Commissioner requires with the exception of putting up a locked gate. The City would like the public crossing to remain.

18. **Adjournment.**

- *Motion to Adjourn at 11:45 am – Gustina/Nilson. Passed Unanimously.*