

WRRTC MAY 2021 MEETING MINUTES – APPROVED

Wisconsin River Rail Transit Commission Commission Meeting – Friday, May 7th, 2021 at 10:00 am Meeting via Zoom

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

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

Commission met quorum.

Others present for all or some of the meeting:

- Ken Lucht, Roger Schaalma – WSOR - Eileen Brownlee, Julia Potter - BoardmanClark	- Lisa Stern, Teri Beckman, – WisDOT - Alan Anderson – Pink Lady RTC - Mark Opitz – City of Middleton.
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3. Action Item. **Certification of Meeting's Public Notice** – Noticed by Honer.
 - Motion to approve meeting's public notice –Morris/Reiman. Passed Unanimously.
4. Action Item. **Approval of Agenda** – Prepared by Honer.
 - Motion to approve the agenda. Podzilni/Gustina. – Passed Unanimously.
5. Action Item. **Approval of draft April 2021 Meeting Minutes** – Prepared by Honer.
 - Motion to approve the draft April 2021 meeting minutes with minor clarifications and corrections. Cornford/Mace. Passed Unanimously.
6. Updates. **Public Comment** – Time for public comment may be limited by the Chair.
No Public Comment.
7. Updates. **Announcements by Commissioners**
No Announcement by Commissioners.

REPORTS & COMMISSION BUSINESS

8. WRRTC Financial Report – Huttenburg, Treasurer.

Huttenburg reported one bill for payment from Dane County accounting and three receivables (WSOR, Nurtrien Ag, Crawford County). Grant and Sauk County Contributions are outstanding. Ranum stated Grant County has not received the invoice to date. Honer will follow up.

Huttenburg shared the maintenance and capital expenditures for the southern division of WSOR (WRRTC property) which shows almost \$7M was expended by WSOR on the property in 2020. Sweeney asked Brownlee if there is a responsibility to report the maintenance expenditures. Brownlee stated that she does not believe so. Sweeney stated that Jeff presenting this information is a good policy and should continue. Nilson stated the counties are getting great rate of return based on this.

Jeff suggested the Commission have WSOR pay the Illinois Real Estate and Railroad Taxes directly. Huttenburg stated that if WSOR pays these taxes directly it is only two steps. If the Commission pays the bill, it is a six-step process. Brownlee stated that if this happens, WRRTC needs to make sure

WRRTC MAY 2021 MEETING MINUTES – APPROVED

that the State of Illinois is crediting it correctly, rather than it falling through the cracks as has happened in the past. Honer suggested he can provide correspondence and follow up to make sure that WSOR's payments are being credited to the Commission.

- *Motion to approve the Treasurer's Report and payment of two bills. Mace/Storti. Passed Unanimously.*

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

Lucht provided an update on the Janesville Bridge project and stated WSOR had a follow up with the Union Pacific regarding the ownership of bridges to discuss potential joint ownership of the UP's existing bridges that the WSOR utilizes. Lucht considered this progress. Lucht provided an update of a rail customer's investment of a new grain bin on the Fox Lake Subdivision in Zenda. Lucht reported jersey barriers were installed in Sun Prairie to address trespass and encroachment issues. WSOR finds Jersey barriers very effective in managing encroachments and trespass on the right-of-way. Lucht stated WSOR is getting ahead of the Continuous Welded Rail Project on the Prairie Sub. and approaching communities between Woodman and Avoca to consider voluntary closures of light density public crossings. Gustina asked how many carloads per year service the facility in Zenda creates. Lucht stated he does not have the numbers but it is substantial and is likely close to 3-4 million bushels of grain are hauled outbound from the facility. The new facility they are building provides nearly 2 million more bushels of storage capacity. Olson asked about the reconstruction of the Highway 11 crossing in Juda. Schaalma stated the grade crossing and signals at State Hwy 11 in Juda is being replaced and is likely to be reopened in a day or two.

Schaalma reported that Bridge 226 near Fox Lake is complete and Schaalma will be sharing before and after photos in June. Tie installation on the Madison Sub. will take place in June, surfacing will follow. Fourteen at-grade crossings will be done this year by WSOR. CWR and tie plates are scheduled to arrive in June/July for the Waukesha project. Bids were opened for the Reedsburg Sub. of Phase 1 tie project, Fitchburg – Waunakee on the Reedsburg Sub. and the Cottage Grove Sub. The response was competitive and the project also includes 11 grade crossings. Bridge A494 near Bardwell (Fox Lake Sub.) will be kicking off in the coming weeks. WSOR is reconstructing a double track tie deck in Waunakee. The first bridge on the Prairie Sub. bridge project was awarded, just east of Prairie du Chien, and came in under budget. There is one bridge still out for bid on the Prairie Sub. project and the remaining seven bridges of this project are being group together, as they are being replaced with culverts. Schaalma stated WSOR surpassed a three year and million manhour period without a reportable injury.

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

Stern stated the new real estate person will be attending the next meeting. The bureau director and Kim Toller's former position are also being filled. Stern stated WisDOT is looking at the possibility of changing the grant submitted for the Janesville Bridge Project in response to UP's cooperation with addressing the issue. WisDOT is also submitting another grant for the Janesville Bridge in the case of the INFRA project is not selected. It is likely WisDOT will be coming to the Commission in June for another letter of support. Stern is working on a presentation of the recent grant projects. Sweeney extended a standing invitation to the new bureau director.

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

Honer reported the City of Middleton's petition for the Aurora Street Crossing is still an open case and he has not heard anything further from the Office of the Commissioner of Railroads. Honer reported that he has had a good amount of correspondence over the past month, some were directed to WisDOT and others were regarding other railroads properties. He received some correspondence this week regarding the unauthorized use of the Commission owned bridge in Janesville and he followed up with the individual and the City of Janesville Police who informed him that the individual Honer spoke to has had discussions already with the City's Police Department. Honer also responded to requests for information about the potential return of rail on the Richland Center Subdivision.

Honer reported that he is currently working with WisDOT to determine the ownership of a bridge in Walworth County. The bridge is an old wooden humpback bridge that Commissioner Polyock provided historical minutes that indicate the Milwaukee Road sold the bridge to the local township. Honer will continue to work with WisDOT, WSOR, and Walworth County to determine ownership and maintenance responsibilities for this bridge and for other similar bridges

Honer made a site visit to Devil's Lake in Sauk County along with Lucht and Sauk County and WIDNR Staff. The discussion focused on potential solutions to addressing the trespass issue in the park and how the County intends to connect the Great Sauk Trail.

Nilson asked which road in Walworth was being considered. Honer stated it was Hillside Rd Bridge. Ranum asked for clarifications regarding the reinstallation of rail on the Richland Sub. Honer stated he provided information regarding the likely cost of investment to reinstall rail along this corridor and what number of carloads may potentially justify the investment. Lucht added justification for return of rail also includes issues other than carloads. Lucht stated that an individual did a survey of businesses in Richland County in the recent past. Alan Anderson stated the Pine River Trail is primarily utilized for snowmobile trails and encourages discussions.

12. **Discussion and Possible Action on Private Crossing Policy – Honer, Huttenburg.**

Honer provided a report on what is considered a private crossing or a public crossing and the Commission's responsibility has been in the past. Honer stated that much of the report outlines the established process and priorities the Commission currently has. Key outstanding questions include how to monitor and license crossings that are clearly considered private crossings, how to better define the difference between a "farm crossing" and a private crossing, and how to make agreements more attainable for crossing users when appropriate.

Jeff stated there is no definition of what a private crossing is and farm crossings are vaguely defined in state statute. There are 245 crossings on the division, 53 have documented agreements, and it is likely 50% of those agreements are no longer valid due to change in ownership.

Sweeney asked Julia Potter and Eileen Brownlee if it makes sense for the Commission to develop its own policies and then submit those policies to the state legislature asking them to take action at the state level to define and create procedures behind private crossings. Brownlee stated the existing agreements don't necessarily allow WRRTC to push responsibility to the WSOR or WisDOT. Brownlee stated that asking the state legislature is a good idea, but not likely to be effective in this political climate. Sweeney asked if the Commission should offer definitions and submit them to the state in considering the possibility of future legal actions. Brownlee stated that there is some guidance at the state level but it is not entirely clear. Brownlee stated she can try and put something together but whether that can be enforceable is a question. Kevin Potter stated the WRRTC can put together rules, but without authority to enforce people are going to challenge the Commission if there is no law or administrative rules. Kevin Potter believes the Commission and WSOR should work on policy and definitions to submit to the legislature for potential administrative rules or law.

Lucht agreed there is a lack of guidance and would like to see similar guidance from the state similar to Trans 29 guidance regarding the installation of utilities. Lucht stated he provided Honer with comparisons of other Midwest state's definitions of private crossings. Lucht suggests the Commission look at drafting guidance and submitting it to the state legislature for consideration.

Brownlee stated that legislation or administrative rule making is the ideal solution but it takes a long time. There are a lot of stakeholders and the Commission needs to consider its trackage in Illinois. She believes the Commission needs to work on the policy for the near term. Brownlee stated farm crossings and public crossings are well defined, which are both ends of the spectrum, and she suggested the Commission work on defining the middle ground. Julia Potter agreed there needs to be guidance and policy for the near term. Potter stated there were a few minor tweaks and clarifications need to be made to the guidelines distributed by Honer. Potter stated the Commission is only involved with Crossings in Wisconsin due to contractual requirements not due to land ownership or operatorship, Illinois is different. Potter stated the existing operating agreements place the responsibility of the private crossings to be the WRRTC's and any change of that would require a change in all of the grant, land use, and operating agreements. Stern stated WisDOT is in agreement with Brownlee and Potter's position, and believes the current draft is a good start and WisDOT can provide additional guidance.

Nilson stated asking the state legislature to weigh in on this is a bad idea. Nilson stated the railroad needs to have a say because it is their liability and the WRRTC should provide greater guidance because they are responsible. Kevin Potter agrees the Commission needs to put together a strong guidance policy and without case law or administrative rules, special interests will continue to have influence, except it will be in the courts where the Commission has lesser influence. Sweeney stated WSOR needs some guidelines from this Commission for definitions and enforcement. Sweeney suggested starting with defining farm crossings. Julia Potter stated that farm crossings are defined and do not require much work from the Commission. She stated that farm crossings are allowed by state law and if they want anything more than a minimal crossing, a private crossing agreement is required. Mace asked if there is value in seeking definitions rather than trying to write a new code.

Honer commented that both ends of the spectrum are defined for the Commission, farm crossings and public crossings. The Commission's responsibility is to define the middle and set up priorities. Honer stated he would like the Commission to work with WisDOT and WSOR to further define the guidelines. Julia Potter stated the background principle is that private parties are not allowed to trespass on railroad property and if they are allowed to be on railroad property, there needs to be documentation to allow for it. The problem the Commission has run into recently is the Commission attempts to license crossings when it does not have a lot of leverage, so it is important to address this when the Commission has the best ability to address it.

Huttenburg stated the Commission has not recently enforced these issues and having guidelines are not very helpful without enforcement. Julia Potter stated the agreements place responsibility on WSOR for enforcement of trespass. Kannard stated the last application the Commission reviewed was on the Waukesha Sub.; the applicant stated insurance requirements would have cost him \$4-5k a year and he is not in a position to afford that.

Sweeney asked if the Commission is willing to work more on the guidelines and prioritize private crossings where the Commission has leverage. Eileen and Julia agreed that would be a good idea. Mace asked where the Commission is given the authority to enter into agreements with the State and WSOR and if this authority would allow for enforcement. Brownlee stated WRRTC has the authority to compel WSOR to deal with enforcement based on the contact we have with WSOR, and this is provided by the Commission's legal ability to enter into contract. Brownlee stated that Kevin Potter's point of defining trespass is important.

Honer suggested to the Commission that he will work with WSOR, WisDOT, and Julia Potter to refine and work through the draft guidelines and priorities and bring them back to the Commission for another review. Sweeney stated this is a good way to move ahead.

13. Discussion and Possible Action on future in-person Commission meetings – Sweeney, Chair.

Honer stated the results of the poll he sent out, was that the majority of the Commission would like to meet in person. The reason the Commission is not in Dane County following the poll is because the County building is not open for public meetings yet. Honer stated the Commission can hold meetings both in person and by Zoom, but it does come with problems. Honer stated that Brownlee informed him that the Commission should take action if they want to return to in person meetings. Honer also stated that he has the Jefferson County Highway Building reserved for the June Commission meeting. Sweeney asked if a dual meeting can be held in Jefferson. Honer confirmed Zoom will also be available. Mace asked if Sauk County is available for a meeting. Sauk is willing to hold the July meeting. Kannard stated the County Board room is also available in Jefferson County. Storti stated that Iowa County does dual meetings.

WRRTC MAY 2021 MEETING MINUTES – APPROVED

Honer stated that he is happy to provide the dual meeting for the upcoming meetings but would encourage the Commission to consider the return to full in person meetings. Honer stated Zoom offers Commissioners a convenience that wasn't available prior to COVID-19 and so there has been talk of continuing to allow both in-person and zoom meetings. Honer stated he would like the Commission to have a discussion about this issue and if a commitment to being a Commission also involves a commitment to regular in-person meetings.

- *Motion to hold a meeting in Jefferson County Nilson/Morris. Passed Unanimously.*

Cornford stated he was approached by an individual who wants to offer a passenger train between Prairie du Chien and Spring Green. Cornford was advised that individual should contact WSOR.

14. Adjournment.

- *Motion to Adjourn at 11:40 pm – Cornford/Gustina. Passed Unanimously.*