

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

1. 10: 02 AM **Call to Order** – *Bob Scallon, 1st Vice-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
				Alan Sweeney, <i>Chair</i>	excused
Dane	Gene Gray, <i>Treasurer</i>	x	Sauk	Terry Thomas	X
	Jim Haefs-Fleming (leaving 11:15 AM)	X		Marty Krueger, Alternate	excused
	Chris James, <i>Vice Secretary</i>	x		John Deitrich	excused
Grant	Gary Ranum	X	Walworth	Scott Alexander	X
	Vern Lewison	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>	excused	Waukesha	Richard Kuhnke, <i>2nd Vice Treasurer</i>	absent
	William G Ladewig	X		Allan Polyock	excused
	Jack Demby	x		Karl Nilson, <i>4th Vice Chair</i>	x
Jefferson	John David	absent		Dick Mace	x
	Laura Payne	x		Richard Morris	x
	Augie Tietz, <i>3rd Vice Chair</i>	x			

Commission met quorum.

Others present for all or some of the meeting:

<ul style="list-style-type: none"> • Mary Penn, WRRTC Administrator • Roger Schaalma, WSOR • Jim Matzinger, WRRTC Acct. 	<ul style="list-style-type: none"> • Kim Tollers, Rich Kedzior, WisDOT • Forrest Van Schwartz • Alan Anderson, Pink Lady RTC
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3. Action Item. **Certification of Meeting’s Public Notice** – *Noticed by Penn*
 - *Motion to approve posting of meeting – Ladewig/Thomas, Passed Unanimously*
4. Action Item. **Approval of March Agenda** – *Prepared by Penn*
 - *Motion to approve March agenda – Alexander/Ladewig, Passed Unanimously*
5. Action Item. **Approval of draft February 2016 Meeting Minutes**– *Prepared by Penn*
 - *Motion to approve draft February meeting minutes with corrections – Gustina/Mace, Passed Unanimously*

Minor corrections were submitted by Ranum, Mace, and Nitschke.

6. Updates. **Public Comment** – *Time for public comment may be limited by the Chair*
 Dick Mace mentioned that the April issue of Trains had an eight page article about WATCO and a description of their lines. He said WSOR was the second largest WATCO subsidiary. He suggested Mary Penn print out and distribute the article pdf to the Commission. Mace also said the February Trains issue had an article about welded rail which had a lot of good information. He recommended the Commission read it after he investigated whether he could get permission to distribute it. Gary Ranum said you could find a lot of information on welded rail on the internet; there were a lot of videos on it available.

7. Updates. **Announcements by Commissioners** – *No Discussion Permitted*
 Karl Nilson welcomed Mr. Scallon as Chair and complimented him on his great job. Mr. Scallon responded graciously.

REPORTS & COMMISSION BUSINESS

8. **WRRTC Financial Report** – *Jim Matzinger, Dane County CPA / WRRTC Accountant*
 - *Motion to approve the TR and payment of bills –Gustina/Mace, Passed Unanimously*

Jim Matzinger presented the Treasurer’s Report. He said he had run the year-end report again and said everything worked out just fine with \$1091.00 more than budgeted. With all bills in, 2015 would be closed out. For 2016 Matzinger said there was not much activity yet other than counties being billed. He said no 2015 or 2016 project money had been spent yet but would be, once bridge projects were billed. He said the Commission had not

received the second year-end report. There was discussion on whether the Commission needed to approve the December financials again. Mace clarified what was being asked for approval. Matzinger said he would resend the financials the next meeting but the Commission was in good shape financially. He then listed three checks for the month, including the 2015 fourth quarter SWWRPC staff Services, 2015 fourth quarter accounting services, and payment for the 2014 Audit.

9. Discussion and Possible Action Preauthorizing Payment of Illinois Taxes In Order To Avoid Possible Late Fees – Jim Matzinger, WRRTC Accounting

- *Motion to authorize the WRRTC Treasurer to pay Illinois taxes in Lake and McHenry counties upon receipt of tax bill in order to avoid possible late fees – Nilson/Thomas, Passed Unanimously*

Matzinger explained the issue, about bills being sent to Penn and received late with a short window of time to pay. This created a need for him to have authorization to pay the taxes without meeting with the Commission prior. Jack Demby asked how they were missed. Matzinger said they seemed to go into the mail at the last possible date. He said Penn was working on getting the correct addresses to the respective county treasurer's offices. Penn said the Commission had granted this authorization before. Nilson said Matzinger and the Treasurer should be able to act when they needed to.

Mace asked if the WRRTC paid taxes on Commission property in Wisconsin. Kim Tollers said Wisconsin Statutes explained why property purchased by the State made it so the WRRTC did not pay taxes on the Wisconsin property. She said the WRRTC was not obligated to pay taxes, adding that the WRRTC was not the property owner: the State owned the property. In Illinois, the WRRTC owned the ROW property and therefore needed to pay the taxes. Nilson said the State of Wisconsin could not own property outside of the State and the operator (WSOR) paid the taxes. Bill Ladewig said he wondered whether or not to send a letter stating that the Commission was paying under protest if there were ever a change in state law. Forrest Van Schwartz said the WRRTC was the property owner in Illinois and must pay taxes in Illinois: there was no Wisconsin sovereignty. Ladewig said Illinois did not own property in Wisconsin. Van Schwartz acknowledged that this was a very unique situation. Ladewig asked if state sovereignty could tax another, adding that this would be an issue someday.

Matzinger explained the Commission's tax process as it occurred. Ladewig commented that there was a significant amount of tax owed. The Commission discussed the tax situation. Nilson asked Ladewig about "paying under protest" and if that might "light any fires". Ladewig said no. Nilson said the tax dollars paid was reimbursed by WSOR. Ladewig said he understood.

Rich Kedzior said he owned property in IL and the Commission paid property tax to the counties just like any other Illinois property owner. He said he knew that Illinois was very serious about taxing the type of property use of the property and gave the Catholic Church in Chicago as an example based on use. He said the State cared about the commercial use.

Van Schwartz said there were Illinois Supreme Court decisions that made this a "done deal". Demby said one state was paying another state. Tollers clarified who paid. Demby said the WRRTC was a governmental entity and asked why such a governmental entity was being taxed. Van Schwartz said this was moot and was not going to "come to a head". Nilson said the WRRTC's claim was that the Commission had title to the land and the State of Illinois did not care who "we were". He said he was concerned with paying "under protest: and he would rather let "sleeping dogs lie".

Gene Gray asked how many Illinois counties the WRRTC owned property in. Penn confirmed it was Lake and McHenry. Gray asked the motion to include the names of the two counties.

10. Wisconsin & Southern Railroad's Report on Operations – Roger Schaalma, WSOR

Roger Schaalma said the weather was loosening things up and hopefully as the weather warmed they could get to work. He said bids were going out next week for various projects, saying two Prairie sub crossings would begin soon and also noted that one of the Illinois bridge projects presented last month on the Fox Lake Sub was almost complete with the other two about to begin with completion in June. He said the Phase 1 of the Spring Green Bridge project was due to begin in later summer, as well as the rail project in Waukesha coming west to Palmyra. He said the Watertown phase would be Madison to Marshall with next year to finish. This would give a Class 2 sub from Madison to Watertown.

Chris James said they had just finished the tree clearing work on the Madison Sub. Scott Alexander asked about the State legislative effort in and the legislative effort to pay for the Peters Road Bridge. The Commission clarified it was in Walworth County. Schaalma said he had not heard anything. Kedzior said it died in Committee.

Nilson asked Schaalma about trespassing issues. Schaalma said WSOR addressed it daily, particularly in places like Devil's Lake. With people wearing ear buds while walking on the track, it made it even worse. He said WSOR had to call the police for a person who put a sign on a tank car, which caused a great deal of complications for WSOR.

11. WDOT Report – Kim Tollers, WDOT

Kim Tollers announced the draft of the trail agreement in the Village of Mazomanie was ready to be signed and moved forward. She then asked the Commission if they would be interested in receiving an "orientation" packet to educate them on the history and processes of the WRRTC. Tollers said she and Penn could work together to prepare such a packet to have available to new RTC commissioners, orienting them to rail and the RTC. Mace said it was a great idea, adding that he certainly did not know much about the RTC when he came on board and he supported the idea and offered to help. Tollers said this could be for both old and new members, saying the Commission seemed to repeat history and this packet could be a way to alleviate that. Scallon recommend Tollers and Penn do that, adding that this did not need a motion. He then thanked Tollers for bringing the big 2016 railroad maps for distribution before the meeting.

Rich Kedzior distributed a handout with some estimates of carloads. He explained he wanted to share the data with them to show the health of their system compared to other systems. He said this data showed both origin and destination and a rough approximation of loads. Kedzior said carloads were a good metric for indicating the business health of the line, roughly as a proxy for railroad revenue. The data was from 2012 to 2014 roughly, as he did not have complete data.

Nilson asked for clarification. Kedzior said the origin/destination traffic showed business activity on a particular segment. Van Schwartz explained the difference in overhead traffic versus thru traffic and the Commission discussed the data at more length. Kedzior said if anyone had questions he could update the chart. Gray asked about the time period used and Kedzior explained he used a whole calendar year if he had data for it. He explained the “rule of 100” which was often used for shortline railroads. He said it was a pretty good metric because if you were a shortline railroad and there were more than a 100 carloads per mile per year, that was doing pretty good business.

Ranum said this was basically a density measurement. Van Schwartz said density in an overall fashion was a decent measure but added that a better measure was loaded ton miles. He said those were available for big railroad companies but WSOR might not wish to reveal that information.

Demby asked Kedzior about the Merrimac Bridge. Kedzior said Dave Simon would have more information on this issue and would talk about it at the future meetings. Schaalma said WSOR had completed ratings on it and found out they needed less repairs than previously thought. He said since the ratings were in, WSOR had a “far better” solution than they had thought.

Returning to Kedzior’s handout, Nilson asked about the Madison sub having higher numbers. Kedzior explained how he had gotten the figures. Ranum explained the carloads per mile per year. Van Schwartz said if you considered density, you hoped the revenue was accurately assessed. Nilson asked who would use this data. Schaalma said he could use it for capital planning and track maintenance. He said from a track maintenance perspective, this showed WSOR what subs were getting the most use. Van Schwartz said this was also useful for revenue planning. Kedzior said the WRTC might be able to use this information when making capital priorities.

12. WRTC Correspondence/Communications and Administrator’s Report – Mary Penn, WRTC Admin.

Penn listed the correspondence of the past month, including a letter from Eileen Brownlee reassuring the Commission that her rates would not change, even if another attorney from her new firm were to do work for them. Ladewig expressed his satisfaction at hearing this.

Penn next updated the Commission on her administrative activities since the last meeting.

13. Discussion and Possible Action in Opposition to AB-876/SB-734 related to authorizing pedestrians to cross any railroad track anytime and anywhere throughout the State of Wisconsin. Action also includes sending Letter of Opposition to Governor and Members of the State Senate – Ken Lucht, WSOR

- *Motion to sign letter of opposition and send to the Governor and Senators – Ladewig/Gray, Passed Unanimously*

Penn explained that Ken Lucht had forwarded all the information about this agenda item so the Commissioners could be fully informed as Lucht had been unable to attend this month’s meeting. Van Schwartz said since this was put on the agenda, he had done some research on the issue. He said this had been tried before and he advised the Commission to oppose it. In at least three other states with identical legislatures, it had never gotten to the governor’s office because it was a taking of private property. He said he had talked to other railroads and said until this calmed down, BNSF was not ticketing but they were patrolling. He said trespassers were a clear and present danger. In one state where similar legislation went through, Van Schwartz said the first legal challenge found it to be unconstitutional and advised the Commission to do everything to fight this.

Tollers said from WisDOT’s perspective there were clear safety issues: Rail and Harbors were absolutely opposed to this. She added that she had heard WisDNR personnel could not comment on it, as it was at an agency level at this point. She said at its very heart it was a private property issue. However, she advised the Commission that they consider their language carefully as they needed to consider that the State also owned track.

Demby said the legislator’s he had talked to were pretty ambivalent. He said they were not really considering the safety of the issue. Ladewig asked Van Schwartz if federal law preempted trespassing. Van Schwartz said yes. Ladewig said he could not understand this going forward. Van Schwartz said 90% of WSOR-used track was owned by the State and various commissions and state law trumped this legislation as far as basic trespassing law was in Wisconsin. This new legislation could not wipe out all previous trespassing laws in the State because other laws were still in effect. Tollers said you could not make a law for public use of private property. However, Tollers reminded the Commission that WSOR operated on publicly owned track and they could make law to regulate public property. Nilson said it was rented to the railroad and WSOR could post their rented property. Nilson said this would never hold up and insurance would “kill you”. Tollers said she did not disagree but this was a back door to work this in for one railroad in the State for political purposes. Van Schwartz said the other thing was this legislation had no release of liability for the railroad: there was nothing protecting the railroad from liability. Tollers said this had big implications for Devil’s Lake State Park.

Laurie Payne asked what the issue was with Devil’s Lake. Tollers explained how the line ran through the park, hugging the bluff with a space between the bluff and lake that was an unofficial trail for Park users of the Park. If the State passed this law they could not prohibit trespassing because it would be all public property. With a million people coming into the Park a year, there was a lot of trespassing. Demby asked if they could fence it. Alan Anderson said Devil’s Lake had been a problem for a long time with about 50,000 people trespassing yearly. He said the State owned the track and in the past there had been an effort to post it. He said the real solution was to have a fence and a path, with the WDNR and WisDOT working together. Anderson said if this law passed, it (trespassing) would be legal to do, adding that it was an “accident waiting to happen”.

Nilson said if it was made legal there would be an increase in foot traffic. Van Schwartz said the legislation had passed the Assembly. With Republicans controlling the Senate, if the Governor said it was dead, it was dead. Mace asked where the legislation was at present and Van Schwartz said he believed it was not out of committee yet.

14. Update on Illinois counties tax billing process – Mary Penn, WRRTC Admin.

Penn updated the Commission on the progress she had made to date to improve the Illinois tax billing process, including the amounts of the various tax bills. Ladewig questioned the process if procedures were followed. Tollers said the operating agreement required taxes be paid. There was discussion on the situation and the possibility of whether to have the WSOR pay all the taxes directly, rather than have them go through the Commission (Penn and Matzinger) first.

Matzinger asked what the WRRTC had paid in the past year. There was discussion about who was paying and how much. Penn said she would keep the Commission updated on the issue. Ladewig said if there were only two counties, the taxes should just go to WSOR. Mace said if the Commission did that, then the Commission would have to send a change of address to those counties if the operating agreement was ever broken. Tollers said the problem of multiple addresses for state property was a very common problem at WisDOT.

Scallan related a story to entertain the Committee in celebration of his one day in command of the Commission.

15. Action Item. Adjournment

- Motion to adjourn at 11:25 AM – Gustina/Nitschke, Passed Unanimously