

**WRRTC EXECUTIVE COMMITTEE APPROVED OCTOBER 2014 MEETING MINUTES**

WISCONSIN RIVER RAIL TRANSIT COMMISSION  
 EXECUTIVE COMMITTEE MEETING - FRIDAY, OCTOBER 10<sup>TH</sup>, 2014 @ 10AM  
 DANE COUNTY HWY GARAGE, 2302 FISH HATCHERY RD, MADISON, WI

1. 10: 00 AM      **Call to Order** – *Alan Sweeney, Chair*

2. Roll Call.      **Establishment of Quorum** – *Mary Penn*

Crawford	Tom Cornford, (2nd Vice Chair XComm)	x	Rock	Ben Coopman, Alternate	
	Rocky Rocksford	x		Wayne Gustina	x
				Alan Sweeney, Chair	x
				Terry Thomas	x
Dane	Gene Gray, (Treasurer X-Comm)	x	Sauk	Marty Krueger, Alternate	
	Jim Haefs-Fleming	x		George Johnson	
	Chris James, Vice Secretary (XComm)	x		John Miller, Vice Treasurer (XComm)	x
				Dave Riek	
Grant	Gary Ranum	x	Walworth	Jerry Grant	
	Vern Lewison	excused		Richard Kuhnke, 2 <sup>nd</sup> Vice Treasurer (XComm)	excused
	Robert Scallon, 1 <sup>st</sup> Vice Chair (XComm)	x		Allan Polyock	
Iowa	Charles Anderson, Secretary (XComm)	x	Waukesha	Karl Nilson, 4 <sup>th</sup> Vice Chair (XComm)	x
	William G Ladewig			Dick Mace	
	Jack Demby			Vacant	
Jefferson	Vacant 3 <sup>rd</sup> Vice Chair (XComm)				
	Laura Payne				
	Augie Tietz	x			

Commission met quorum.

**Others present for all or some of the meeting:**

<ul style="list-style-type: none"> <li>• Mary Penn, WRRTC Administrator</li> <li>• Ken Lucht, WSOR</li> <li>• Kim Tollers, WDOT</li> <li>• Roger Larson, WDOT</li> <li>• Richard Brandl, Town of Sharon</li> <li>• Alan Anderson, Pink Lady RTC</li> </ul>	<ul style="list-style-type: none"> <li>• Bill Henning, Town of Sharon</li> <li>• Mike Cary, Town of Sharon</li> <li>• Stew Hebel, GM</li> <li>• Nona Hill, All Aboard Wisconsin</li> <li>• Clark Johnson, Iowa Pacific Holdings</li> </ul>
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3. Action Item.      **Certification of Meeting’s Public Notice** – *Noticed by Penn*

- *Motion to certify posting of meeting – Anderson/Cornford, Passed Unanimously*

4. Action Item.      **Approval of Agenda** – *Prepared by Penn*

- *Motion to approve agenda – Nilson/Gustina, Passed Unanimously*

Alan Sweeney said he would reserve the right to fit Jim Matzinger’s report into the meeting when Matzinger’s computer issues could be resolved.

5. Action Item.      **Approval of draft September Meeting Minutes**– *Prepared by Penn*

- *Motion to approve September minutes with corrections – Gustina/James, Passed Unanimously*

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Gary Ranum made a correction to the first line of the 5<sup>th</sup> full paragraph on page 4 and also asked that a time given for his leaving the meeting be removed, a mistake from the previous month's minutes.

### **6. Updates. Public Comment – Time for public comment may be limited by the Chair**

Sweeney asked the members of the public to introduce themselves which they did. Sweeney then asked if any of them had any comments, noting that there were agenda items coming up that would be perhaps address visitor's concerns.

### **7. Updates. Correspondence & Communications – Discussion may be limited by the Chair**

Forrest Van Schwartz' hand outs were distributed while Penn listed the correspondence she had sent or received in the preceding month.

Terry Thomas said that Ken Lucht had given the Rock County Board an update and Thomas thanked Lucht for his efforts. Sweeney said it was important for Lucht to speak to the counties.

### **8. Updates. Announcements by Commissioners – No discussion permitted**

Karl Nilson said the model Train Fest was coming up in November in Milwaukee. John Miller said he had attended the Great Sauk Trail event and that he had brought up the issue of trail safety in conjunction with active rail. Miller said his and Dave Rieks opinion was that WSOR should do all they could to prevent trespass on the track as trespass pressure would going only be going up. Augie Tietz said that Jefferson County had chosen a Major John David from Watertown to replace Mo Hansen and he would be coming to the next meeting. Sweeney asked for confirmation on the Freight Rail Conference date.

## REPORTS & COMMISSION BUSINESS

### **9. WRRTC Financial Report – Jim Matzinger, Dane County CPA / WRRTC Accountant**

When the meeting came to Item 9, Matzinger was not yet available so the Committee moved to item 10. When the Committee reconvened at 11:29 AM following a break at 11:18 AM, Matzinger gave the Treasurer's Report, saying that the notable thing this month was they had paid off the 2013 projects which therefore closed out the continuous welded rail on the Fox Lake sub project. He also said there were no bills this month. Matzinger then asked when 2014 projects would be billed and Lucht said probably in the spring.

Tom Cornford asked about the excess county contribution paid. Sweeney said that the previous evening Rock County had had a budget presentation and asked the Committee about their county's budget discussions. Anderson said Iowa would have their meeting next Tuesday. Ranum asked about a state statute relating to budgeting. Tietz said that Jefferson County had not done their budget yet.

- *Motion to approve the Treasurer's Report – Gray/Gustina, Passed Unanimously*

### **10. Discussion and Possible Action on Feasibility of Generating and Distributing Treasurer's Reports for Meeting Packet Mailing – Gene Gray, WRRTC Treasurer, Jim Matzinger, WRRTC Accountant**

Sweeney said he had asked about this agenda item because he liked to get financial information prior to the meeting. He asked Matzinger said because the WRRTC met at the beginning of the month the past month was closed and it would not affect the next month's Treasurer's Report and was fine with emailing the report to Penn. There was no discussion.

- *Motion to have Jim Matzinger generate Treasurer Reports prior to meeting mail out for distribution – Thomas/Ranum, Passed Unanimously*

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

Ken Lucht began his report by saying WSOR had new customers and that they had broken ground on the new Milton siding. This would relieve a big bottleneck and the project should be done by the end of the year. Also in Rock County, Lucht said the CWR project had been awarded to a company and this project should be done this fall. He said that there would be a lot of work on the south side of Janesville.

On bridges, Lucht said there were three replacements underway: Wauzeka, Lone Rock, and Reedsburg. He thanked WDOT on their help in replacing these old bridges. Next, he said the detection car was out determining defects. Lucht said it had been pretty successful and they were not finding many defects. Only a couple were found on the Oregon line. The Waukesha line had over 200. He said that sub was listed for tie replacement and hoped that this would be one of the projects awarded this year, noting that this line took WSOR from CN in Waukesha to Milton and saw about 3-4 trains a day at roughly 10mph.

Lucht said a geometry car had been out to check rail profiles (jointed and CWR). There had been some questions about the wearing of CWR but the company doing the work found that the CWR laid in the last 5 years had little to no wear. He said these were on lines

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where trains were running at 40 mph and the CWR would probably give about 10 to 15 years of service, adding that the WRRTC's "investment was paying off".

On the Oregon sub, Lucht said WSOR had been able to get temporary operating rights to provide service to the customer in Oregon until permanent rights could be granted. On September 29<sup>th</sup>, Lycon made its first run of product. Their service would be seasonal. Lucht said they had had to put in some ties and ballast to get the track to 10mph but at this time there was basic service for the customer.

Lastly, there was a new business in Janesville (Universal Forest Products) and another on the Elk Horn sub which was also a forest product customer. Lucht said these were additional to the new Oregon customer, Lycon.

Ranum asked about the bridges on the Prairie sub and the bridge timeline. Lucht said those bridges (Wauzeka, Lone Rock and Blue River) were under construction and should be completed by next year. He said this did not include the big bridge over the Wisconsin River. Tietz asked about the Watertown sub. Lucht said he expected that award to be made very soon. Tietz also asked about a malt customer in Waterloo. Lucht said he thought WDOT would discuss this in their report. Ranum asked about Lycon and its product and Lucht said this was a purely local concrete business. Nilson said the Lycon facility was brand new and very, very nice.

Gene Gray asked Lucht about grain and the grain traffic and how 2014 compared to 2013. Lucht said it was pretty much stable between the years, saying that in 2013 grain slowed down as had happened again this year. Lucht said grain was moving about 4 months ago as farmers were sitting on grain waiting for prices to go up.

Sweeney asked Lucht about the Nippersink Bridge in Illinois. Lucht said that the ILDNR was blocking WSOR from repairing the bridge. He said WSOR's legal counsel was determining maintenance vs replacement of a bridge and trying to keep it under the interpretation of a maintenance item. He said the legal team was reaching out to those involved in the environmental areas and said WSOR engineers were getting anxious about the bridge. Lucht said that once there was some resolution he would bring it to the Commission. Lucht said ILDOT was not involved and ILDNR said that WSOR cannot reconstruct the bridge as proposed as ILDNR wanted the bridge reconstructed to be 10' above the current level. As there are public crossings nearby they would have to be lifted as well. Lucht said there was also a nearby Metra station which would have to be raised too. All this would be necessary to "feather in" the bridge. He said WSOR was looking at a preemption to move commerce across state lines and at all other options at this time.

Sweeney asked Lucht about the siding at Milton and if that was contracted. Lucht said it was and this was also true for the Oregon line although Lucht said to get the work started, WSOR was able to do the brushing, saving them about \$80,000. Lucht WSOR would also be doing the ballast but contractors would do the rest.

### **12. WDOT Report**— *Frank Huntington, Kim Tollers, WDOT*

Kim Tollers said the award list had been sent to the Governor's Office and WDOT was waiting for approvals. She said WDOT was not aware of when those would be approved. She had just talked to Marty Morin and he said he did not think there would be any potential political delays. On the Reedsburg acquisition, Tollers said WDOT continued to wait for word from the STB. Tollers reminded the Committee that the TIGER Grant was turned down and there was confirmation on the email that went out to that end.

Tietz asked some questions about the FRIPP and FRPP programs. Sweeney, Nilson, and Tollers explained the programs and Nilson asked if WSOR would continue to apply. Lucht said there would be a debriefing on this but WDOT had been the applicant, adding that "it stung pretty hard this time" with Wisconsin only getting \$300,000 for a study in Madison after five attempts to get funding. He said WSOR would get more information on the debriefing and which would inform whether or not WSOR would pursue a TIGER Grant in the future. Van Schwartz said there were \$9.3 billion in requests for limited dollars. Gray asked how many TIGER Grants WSOR had applied for over the years. Tollers said that WRRTC had applied four times with WDOT applying for the first time this year.

Roger Larson noted that Fitchburg had done all its work in regard to the Oregon sub but there were still some signage that needed to be addressed on the line.

### **13. WRRTC Administrator's Report** — *Mary Penn, WRRTC Admin.*

Penn gave her report, noting that with Mo Hansen's resignation, elections would be held at the Full Commission meeting in November for the 3<sup>rd</sup> Vice Chair position. She reminded Sweeney and Charles Anderson that they would need to give their signatures to the line sale agreements after the meeting and that the 2013 WRRTC audit should be ready for the November meeting. She also said she had been working with Stew Hebel from GM on a private crossing agreement. Lastly, Penn handed out a packet of information about a

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proposed project by the Great Lakes Basin RR to create a rail line that would by-pass Chicago and asked the Commission if they would want someone from that organization to come and speak to them sometime about the project.

### **14. Discussion and Possible Action for At-Grade Private Rail Crossing at GM – Janesville Assembly, Janesville, WI – Stew Hebel, Facility Site Manager, GMVM - Janesville Assembly**

Stew Hebel distributed a map of the crossing location, saying he would get approval from WSOR in regard to the crossing standards for CWR crossings through the Janesville plant. He gave the background on the crossings at the plant site, noting the crossing at question was one for which there was no crossing agreement that could be found either at GM, WRRTC, or WDOT to which Penn and Tollers concurred. Therefore he was asking for a new agreement.

Sweeney asked if the crossing were private. Penn said the application and fee had been submitted.

- *Motion to approve - Nilson/Thomas, Passed Unanimously*

Lucht said WSOR would be making sure that the crossing met their engineering standards. Nilson then asked if WSOR would take some sharp curves out of the line and if that would affect the proposed crossing but Lucht said it would not.

### **15. Discussion and Possible Action Confirming WDOT Permit for October 11, 2014 WSOR Special Passenger Excursion Train – Ken Lucht, WSOR, Frank Huntington, WDOT**

Penn gave background on the item saying there had been some confusion as to whether WRRTC needed to give approval on excursion but said that it was understood now that WDOT issued the permit and therefore she would notify the Commission of excursions only as part of her administrative report rather than as action item. No action was taken.

### **16. Discussion and Possible Action on Joint Response Letter to Office of Commission of Railroads (OCR) from WRRTC and WSOR in regard to Town of Sharon Sept. 10<sup>th</sup>, 2014 Letter to OCR on Peters Road Bridge – Alan Sweeney, WRRTC Chair**

Penn distributed a collection of correspondence and a timeline on the issue. Sweeney said that this was on the agenda by his request. He mentioned Frank Huntington's comments from last month's meeting, saying he had concerns about the ownership of the bridge and whether it would set precedent which could create issues in the future. Sweeney asked Tollers and Larson to comment. Tollers said there were no new developments and that Huntington was the lead, as he had been the one having the discussion before. The timeline was reviewed to give some background on the issue. Sweeney said there was a bill from the Town of Sharon that needed to be taken care of and was looking for ideas from the Committee on how to address this, suggesting they could send a check with some sort of note or disclaimer on bridge ownership. Nilson suggested Eileen Brownlee send a letter with the check and Anderson asked if it had been determined if WRRTC actually owned the bridge. If they did not, why would the WRRTC pay to make the bridge safe. Larson said it was the responsibility for the railroad to maintain the bridge to be safe. Anderson asked if WDOT was 80% owner of the bridge. Lucht said the purchase of the Old Milwaukee Road by the State was a grey area, saying it was presumed that the bridges came with the transaction but there was no documentation to prove ownership. The Commission had not bought the bridges. The question was if ownership of these humpbacked bridges came with the WRRTC's ownership. Lucht suggested that Brownlee investigate. Nilson said you could argue the Town had been driving over the roads for 100 years, thereby making it the Towns' bridge. He said, requestion to be on record, that there was no evidence the WRRTC did own them and unless the Commission owned them, they were not going to fix them.

Ranum said counties had bridge maintenance funds that they could levy to raise funds for bridges. Keeping bridge maintenance up was important enough to not restrict money to levy limits. He asked if those county funds could be used for anything other than county/state roads, could they be used for town roads/bridges and if so, there was a potential funding source. Miller said the way the discussion was going it seemed that a compromise was unlikely. Sweeney said that part of the problem was the correspondence from the Attorney's letter received after the September meeting. Sweeney said he had gotten personal correspondence from the Attorney and the letter clearly said the bridge belonged to the Countys of Rock and Walworth which baffled Sweeney.

Gray said it sounded like there were other bridges like this and asked what was happening with them and their history: what was out there. Sweeney said that was the question of the day. Lucht said it was "all over the map" and most of the 25 bridges like this in the state were owned by Class 1 railroads. He said the townships and counties had banded together to accept ownership. Lucht said WSOR did participate in replacement funding on projects like this, noting there were cooperative relationships in the Town of Clarno, the Town of Jefferson, and Green County, saying there was an agreement under consideration. He added that the it was presumed that the bridge was publically owned. He said WSOR wanted to work with countys and towns to preserve the crossing. He gave another example of a county working with a township as roadway authorities to apply in partnership to apply for bridge replacement funding, saying this was a private/public partnership. He said WSOR was involved because they did not want the bridge to collapse on the line.

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Sweeney asked Lucht about the funding in the Green County example. Lucht said 80% was administered by WDOT from the Feds, the other 20% was the County paid a quarter and the towns split a quarter with WSOR paying quarter of the 20% match.

Nilson said that one of the reasons they were reluctant to fix these bridges was their engineering. He wanted to see the bridges stay open but that it was probably \$1 million to replace a bridge up to code and listed out the potential cost to partners. He said he did not think there was anything the Commission could do today but suggested the Chair and Corp Counsel continue to work on the issue.

- *Motion to empower the Chair and Corp Counsel to work with WSOR and other concerned parties on the Peters Road Bridge issue – Nilson/Scallon, Passed Unanimously*

Rich Brandl said that last month Huntington had said that this was a state owned bridge. Brandl said another WDOT person had also said the WRRTC owned the bridge. Brandl asked Sweeney if he had gotten a copy of the damages from the register of deeds that had been emailed and Sweeney said yes. Brandl said that in 1980 there had been action that spoke to the ownership of the bridge, mentioning a 13.5 mile stretch of track and ties. He said this agreement said the State of Wisconsin owned the line. Scallon asked how many bridges like this were in the their territory. Lucht said there are only 6 in the WRRTC area.

Lucht recommended that WRRTC join with WSOR to respond to the OCR by a joint letter and said that the letter would be a good answer to the Town of Sharon and Walworth County's concerns. He said the OCR had not heard anything yet and invited WRRTC to join WSOR to respond to the Attorney's letter. He said if WRRTC did not want to join, then WSOR would still be replying to the letter on its own. Sweeney said the bill for bridge closing costs sent to the Commission was \$2780.88. This included signs/barricades but Brandl said labor was not included. Sweeney said the WRRTC needed some direction from Corp Counsel and WDOT counsel since the Town of Sharon was saying the State owned it but the bridge was on the WRRTC's desk. He said it was not this Commission's responsibility to pay for the bridge if it were not its bridge. Sweeney said the Commission could pursue the issue via the motion. Alan Anderson commented on the potential cost of the bridge if the Town applied.

Ranum said there were some players at the table today, somebody who was eligible to apply for federal grants, and whoever was eligible to apply, needed to be the property owner. He said this Commission was saying they did not own it. He asked if there were some preemptive way via quit claim on the property, not the ROW of the railroad but the approaches and bridge itself without having the effort be a de facto claiming of the property. Tollers said this was exactly how Dodge County addressed a similar bridge. Dodge bought all the bridges from the railroad and then applied for bridge replacement funds, adding that the State itself was ineligible to apply. Some other municipal entity had to claim ownership. She said Dodge provided the model. Miller said that would provide a legal precedent, saying Brownlee could reference that. Sweeney said Brownlee was not here today and the message needed to be clear from the Commission to WDOT that WRRTC needed some opinion from them on the way to go. He said WRRTC could not pay \$1M for a bridge replacement. Nilson said his motion allowed seeking corporate counsel's input. He recommended the Commission not pay the bill, repeating that he did not think the WRRTC was responsible for the closure costs. Until ownership was proved, there was no reason to pay. Nilson said the goal was not to have the WRRTC end up owning the bridge and as far as precedent was concerned, precedent was set on appeal: just because Dodge county did something, did not mean anything.

In regard to Lucht's request for a joint letter with WSOR and WRRTC as a viable option and someone making the motion, Sweeney said the request on this action would address the agenda item.

- *Motion to empower the Chair work with Corp Counsel and WSOR to write a joint response letter to OCR – Ranum/Thomas, Passed Unanimously*

Scallon asked if WSOR's attorney could work with Brownlee on the letter. Anderson asked to be copied on the letter and suggested that maybe the Commission could be emailed a copy when the letter was ready to mail.

Sweeney said out of fairness to the reps from the Town of Sharon, he said they had heard Nilson's opinion on the bill. Anderson said if they paid one dime they would be admitting liability and advised care in proceeding. Sweeney agreed. Sweeney said this would be on the next meeting's agenda and asked Tollers, Larson, and Huntinton to confer with Brownlee, Sweeney and Penn as soon as possible to get the issue resolved. Thomas recommended that Brownlee come to the next meeting.

Sweeney called a break at 11:18 AM – meeting reconvened at 11:29 AM. At this time the Commission returned to item 9 for the Treasurer's Report.

### **17. Action Item. Adjournment**

- *Motion to adjourn at 11:36AM – Scallon/Cornford, Passed Unanimously*