

# **WRRTC FULL COMMISSION NOVEMBER 2014 APPROVED MEETING MINUTES**

## **WISCONSIN RIVER RAIL TRANSIT COMMISSION FULL COMMISSION MEETING - FRIDAY, NOVEMBER 7<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	absent
Dane	Gene Gray, (Treasurer X-Comm)	x	Sauk	Marty Krueger, Alternate	
	Jim Haefs-Fleming	excused		George Johnson	x
	Chris James, Vice Secretary (XComm)	excused		John Miller, Vice Treasurer (XComm)	absent
				Dave Riek	x
Grant	Gary Ranum	x	Walworth	Jerry Grant	x
	Vern Lewison	x		Richard Kuhnke, 2 <sup>nd</sup> Vice Treasurer (XComm)	absent
	Robert Scallon, 1 <sup>st</sup> Vice Chair (XComm)	x		Allan Polyock	x
Iowa	Charles Anderson, Secretary (XComm)	x	Waukesha	Karl Nilson, 4 <sup>th</sup> Vice Chair (XComm)	x
	William G Ladewig	x		Dick Mace	x
	Jack Demby	x		Vacant	
Jefferson	John David	x			
	Laura Payne	x			
	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>• Frank Huntington, Kim Tollers, Roger Larson, WDOT</li> <li>• Alan Anderson, Pink Lady RTC</li> <li>• Bill Henning, Town of Sharon</li> <li>• Jeff Rothe, Town of Sharon Corp Counsel</li> <li>• Kevin Brunner, Walworth Public Works</li> </ul>	<ul style="list-style-type: none"> <li>• Forrest Van Schwartz, Consultant</li> <li>• Eileen Brownlee, Corp Counsel</li> <li>• Jim Matzinger</li> <li>• Troy Maggied, SWWRPC</li> <li>• Paul Wydeven, WisDOT</li> <li>• Sue Lewison, citizen</li> <li>• Richard Brandl, Chair Town of Sharon</li> </ul>
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**3. Action Item.**      **Certification of Meeting's Public Notice** – *Noticed by Penn*

- *Motion to certify posting of meeting – Ladewig/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 comment on item #9 and asked Commissioners to do the same

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

- *Motion to approve October minutes – Anderson/Riek, Passed Unanimously*

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

Sweeney welcomed John David from Jefferson as the newest Commissioner from Jefferson County. John David said he is currently a 2<sup>nd</sup> serving Mayor of Watertown and was looking forward to serving on the Commission and happy to be attending. Frank Huntington introduced David Simon, his new supervisor at WDOT. Simon said he was born and raised in Watertown, expressed regrets at losing Frank Huntington, and said he looked forward to working with the Commission.

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

Mary Penn reported on correspondence she had sent or received since the last meeting. She also distributed articles of interest submitted by Forrest Van Schwartz.

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

Van Schwartz said that this was a good news month for railroads and that he had included with the articles an explanation of the Tiger grant and how the funding of it was distributed.

Karl Nilson reminded the Commission of the Freight Rail Conference coming up next Wednesday and Frank Huntington said anyone wishing to attend should talk to him after the meeting.

**REPORTS & COMMISSION BUSINESS**

**9. Discussion, commendations, and possible action concerning Resolution to honor retiring Frank Huntington, WDOT– Alan Sweeney, Chair**

Sweeney announced he had a resolution honoring Frank Huntington's service to the state and the Commission which he read in its entirety.

- *Motion to approve resolution to honor Frank Huntington with amendment to include non founding counties in language – Nilson/Cornford, Passed Unanimously*

Sweeney invited the Commissioners to comment and commend Huntington's contributions to the Commission. Around the table, Commissioners and staff extended their thanks to him for his service. Huntington in turn thanked the Commission and staff and spoke of his history with the rail transit commissions in southern Wisconsin.

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

- Treasurer's Report for October and Payment of Bills

Jim Matzinger gave his report to the Commission and said 2013 projects were paid and closed out. He noted that the permit revenue was better than budget and therefore they were ahead of budget. There was one check going out to Dane County for accounting services.

- *Motion to approve Treasurer's Report and pay bills – Mace/Anderson, Passed Unanimously*

Matzinger said he still needed to get the audit letter out which required signature from Gene Gray, Treasurer.

- *Motion to initiate the 2014 audit report – Gray/Tietz, Passed Unanimously*

Bill Ladewig asked about the cost of the audit. Matzinger said it was only slightly higher than last years'.

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

Ken Lucht introduced Andy Laurent, a new member of WSOR's marketing group saying that Larent would provide a link between WSOR and Watco. Laurent made a brief introduction. Lucht then distributed a business development flyer that has been developed which highlighted WSOR's productivity.

In term of their 2014 projects, Lucht said that the the Fox Lake Sub had achieved Phase 1 in its Continuous Welded Rail (CWR) project. He said WSOR had chosen a company to install CWR this winter and spring between Janesville and Avalon. In its entirety the project was about \$11.2M dollars. He noted that probably half of the project would be completed next winter. In other projects, he said the Milton Siding was getting utility work done along the 800' siding track. This project should be completed next spring and Lucht said that 80% of the cost was WDOT funding with 20% coming from WSOR.

Lucht told the Commission of the first train to Oregon in September and said that since September 29<sup>th</sup>, WSOR had delivered 17 trains to the redi-mix customer. He said trains had been pushed every other day since opening and that WSOR was managing with calls from people in regard to trains in the community again. Other than that, he said WSOR was working under active traffic conditions

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as work continued on fixing the track including signals and gates. He said WSOR expected the track to be up to Class 2 (25 mph) by next summer and said this was a good public/private partnership.

In new awards, Lucht mentioned that the tie project on the Watertown sub had been granted and hoped that the project specifications would be confirmed by the end of the year. The contract would hopefully go out by January and a contractor awarded in Jefferson and Dane counties. He said this was a high priority for WSOR as up to this point they were operating at 10 mph which was not very good. Lucht said hopefully increased speeds would bring in more customers on that sub.

Ladewig asked about volumes amounts of freight to Reedsburg. Lucht said he did not know exact numbers but suggested about 4,000 – 5,000 cars. He clarified that there was no frac sand being hauled from Reedsburg and emphasized the rumor that frac sand would be hauled was completely false. He said WSOR does not buy land for mining and WSOR saw no demand for frac sand from Reedsburg. Ladewig suggested WSOR issue a press release to media to make this clear. Lucht said the entire Sauk County Board was informed of this at a previous meeting. Dave Riek said WSOR did not haul frac sand out of Reedsburg but did haul sand through the Prairie sub with most going north. Lucht said sometimes WSOR did haul sand to Janesville and said sand leaking out cars was a growing issue in the industry but since WSOR did not invest in rail cars, leaking cars was a little out of their control. He said cars leaked other commodities such as grain as well which led to track maintenance but not safety issues. He said WSOR encouraged every car owner to tighten up their chutes.

Dick Mace asked for an update on the bridge on the Fox Lake Sub. Lucht said WSOR legal counsel was still working on the issue and would update the Commission when he knew more.

Sweeney asked about proposed quiet zone in the City of Fitchburg. Lucht said the City had pursued a quiet zone about a year ago and on the surface it looked eligible. However the City had made some road proposals in the meantime which meant a quiet zone could not be put in. The road would have to be built first before a quiet zone could be established. Lucht said that yesterday the City said it did not have the money for the proposed road way and it was not in their budget. Realistically, Lucht said it would probably be a few years before a quiet zone could be approved. Lucht noted there was also a state process controlled by the OCR in regard to quiet zones but right now there was no money for it.

Lucht lastly spoke of the WSOR/WATCO business development, referring the Commissioners to his handout, which highlighted the projects and jobs created in the past few years and what was upcoming. He said about half the industries in the handout were in the WRRTC area and he talked about the products that would be coming in on WRRTC track. He said that WSOR announced more freight was going on the railroad and there was less highway freight. He said that WSOR in the past few years had created about 580 new jobs with more coming in the future. Lucht also said there was increased private investment anticipated. He said there were about 12 new businesses looking to find a place in WSOR, saying WSOR had been having some initial success with new their new public relations.

In other changes at WSOR, Lucht said that Wato was reorganizing this region and it might be that WSOR would be an anchor for a new region with the new regional office possibly being located in Madison. With this restructuring a press release would be forthcoming. He said WSOR would most likely be in the “family” of other railroads’ in the region that were similar in size.

Ladewig asked about an additional site proposed in the handout and Lucht said that would be in the northern division.

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

Frank Huntinton said that the upcoming Freight Conference was next week and encouraged people to attend.

On new projects, he said WDOT had announced new grants and loans, mentioning the Watertown line in particular. He said there were other projects awarded, particularly for bridge work and said there were millions of dollars being requested for bridges currently.

Huntington said that the STB had approved the Reedsburg acquisition and said the next 30 days would be busy to close that. He said he recalled the Commission approving the agreements earlier in the year. Penn confirmed they had. Huntington said there might be some necessary action needed on the part of the Commission in December and therefore might be a need for a special meeting.

Ladewig said that Jefferson County might not be up to speed on the Reedsburg purchase but commissioners confirmed that there had been representation from Jefferson County at the January 2014 meeting. Huntington said in terms of closing the deal, there were some agreements that needed to be signed and he was not sure if there needed to be a meeting for signing, alerting officers that they might need to come to a meeting for such. Eileen Brownlee said that would probably be necessary as there needed to be notarization.

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Sweeney said the minutes of past meetings explaining the Commission's actions related to the acquisition were available on the website.

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

Penn said that she had received early notice from WSOR of holiday excursions on the line. Huntington said WDOT still needed to issue permits for those trips. Penn also handed out the 2015 meeting schedule, noting that the September meeting was adjusted to accommodate the Labor Day holiday weekend. She next handed out an information sheet from Wisconsin Manufacturers and Commerce listing the various RTCs in the state which also included a map on the other side.

### 14. WRRTC 2014 Election of 3<sup>rd</sup> Vice Chair

Sweeney opened the floor for nominations.

#### WRRTC 2014 Election of 3<sup>rd</sup> Vice Chair

Position	Nominee	Nomination (First / Seconded)	Motion to close the nominations and the secretary be instructed to cast a unanimous ballot
3 <sup>rd</sup> Vice Chair	Augie Tietz	Nilson/Anderson	Cornford/Grant, Passed Unanimously

### 15. Consideration and Possible Action on WSOR request for Written Approval for Proposed Railroad Capacity Expansion and Community Improvement Project (Alternative Plan) – Ken Lucht, WSOR

Ken Lucht distributed a map showing the site and said this was a follow up to the Commission's past approval for the expansion project in Prairie du Chien. He said in the last few months there had been a lot of public input and said in working with the WDNR and Army Corp, WSOR had done their due diligence in regard to wetlands. He said that since the Commission took action, a landowner had come forward to sell 2 parcels outside the wetland designation that would lead to the alternative Site 4. He said major highlights were that it was the same design, but shifted 500' and capacity would change slightly. Only .15 acres of wetland would be impacted down from 1.58 acres, with the WDNR very happy with the change. The original proposal had had no interest with local landowners but that had changed. Lucht said WSOR had acquired private land that would put the new building completely out of the floodplain so there would no flooding impact. The railroad yard would be up and out of the flood zone, though the total track would have 252' less track than originally proposed. He said the City Plan Commission would be rezoning the land to accommodate the spur track and that currently these parcels were zoned multi-residential but before that were industrial. Lucht said there was no market to build residential which was why the landowner decided to sell. He said WSOR would seek a rezone to accommodate the new track and building which the City would have to confirm. Lucht said he did not know if the Commission needed to take action today but this was an action item if need be. In summing up, Lucht said not much changed in the ROW. The big difference was the new site being almost completely out of the wetlands and flood plain and rezoning the two parcels. Brownlee said she did not think the Commission needed to take any action.

- Motion to approve site 4 as submitted Nov. 7, 2014 – Nilson/Rocksford, Passed Unanimously

Ladewig asked Lucht whether the building was being paid for by the customer. Lucht said the building would be paid for by WSOR and would be located entirely on private property. Augie Tietz asked for the cost of the land. Lucht said "they don't even tell me that!". Tom Cornford asked how many acres the new parcels were. Lucht thought about 30 to 40 acres and said in order to take it out of the wetland they had some space. Gary Ranum asked about the ROW. Lucht said it would be out of the ROW on private property now. Ladewig asked for clarification on the map and where the properties were located.

### 16. Discussion in regard to ownership of Peters Road Bridge, Town of Sharon, Walworth County – Alan Sweeney, WRRTC Chair

Sweeney said he had asked for this to be back on the agenda out of respect to the Town of Sharon and Walworth County with counsel present. He asked Jeff Rothe, Town of Sharon Corp Counsel to speak. Rothe passed out a packet to the Commission so that there would be a full record, along with the WRRTC minutes from September. He summarized the issue, noting that the bridge was in the Town, the award of the bridge originally was made to the Commission and therefore the belonged to the Commission with the maintenance responsibility to the railroad i.e. WSOR. With the bridge closed as a danger and a hazard, there was a long detour locally which was very inconvenient for the Town and local residents. He said he had been asked to file a complaint with the OCR with a request that the bridge be repaired. He acknowledged there was no money in the budget to do this but said the Town wanted action in the form of repair, replacement or cut down to grade and said it was very important that something be done. He said his packet gave the history of the bridge including reports that indicated the bridge should be replaced and said the bridge had been rated less than 50 now. Rothe said the Town was seeking assistance in having the bridge replaced. Rich Barndl said the Town was not allowed to apply for State funds because the Town did not own it. The Town needed a decision as to who owned it so the bridge could get into the fund program. He suggested that in the meantime the railings be fixed so the bridge could be opened for use.

Allan Polyock said it looked like according to the handout, the Town did not own the bridge but the Commission owned it. Rothe said according to state statute the owner was responsible for fixing the bridge. Polyock asked if the Town could apply for a loan or grant up to \$250K for the Town to make the bridge into an at-grade crossing. Brandl said in order to take the bridge out, it would have to go before the OCR and WRRTC would have to make that application. Huntington commented that taking out the bridge and replacing at-grade would be probably as much money as a new bridge. He said the bigger issue was how the local match would be handled and the timing: if it were under the local bridge replacement program, it would be a couple of years before it got replaced.

Sweeney asked Huntington for a brief history on the 5 Corners Bridge on the PRTC. Huntington described this similar situation which was under the bridge replacement program with the only major difference being that the bridge was still open. He said he was not sure exactly of the share but believed it was a 3-way split. He said it certainly seemed like the WRRTC owned the bridge with the funding responsibility for it passed onto the railroad. Anderson asked Brownlee if she had read the statute that had been distributed by Rothe. Anderson asked for clarification on the type of bridge. Brownlee said if there was a dispute on a bridge or structure or even a crossing, that was an issue via petition to go before OCR. She said that one of the duties of the OCR was to “divvy out the cost” for repair or replacement. Brownlee said the statute did not specifically say this was a railroad expense. In most circumstances the Office of Commission of Railroads would allocate the cost to the railroad. What was unique in this situation, was that she was not aware of any case where it was brought to the WRRTC. She said she had been unable to find any record of this exact situation in her Commission records. She said that the deed she found was to the State of Wisconsin and did not know if it had been transferred to the WRRTC. Even if it were not transferred, the Commission by virtue of the Grant Agreement had agreed to be responsible. In turn, the obligation was passed to the operator (WSOR) through the Operating Agreement. While ownership is relevant, she did not think that was so pertinent: the Agreements had more relevance to this situation. Brownlee said there was a deed to WDOT in the packet, and there were documents she had found related to a bill of sale to the Commission but she was unable to find bill of sale itself.

Ladewig asked if the bridge ownership could transfer to the Town. By doing so, he said, the Town could ask for funding from the State. He said someone needed standing to ask for money but if the ownership could be transferred, then the Town could be responsible. Ranum asked about the contract with WSOR in regard to bridges. He asked if bridges carrying cars were treated the same as train bridges. Brownlee said typically regardless of the situation they were treated the same. She said she had tried to find the historic record when Walworth County was developing rail in the 1850's. Sweeney asked if the 5 Corners Bridge process could be mirrored as a solution. Rothe said the Commission's documentation says they were the responsible party and the Town did not have the money to do this which was why he had filed the complaint with the OCR. He said this was not unique to Sharon and this would happen in other places.

Sweeney again asked Huntington if the 5 Corners Bridge could be used as an example. Huntington said the difference was the willingness of the town and county to supply the local match. He said what he was hearing was that the Town was not willing to do that: it was the railroad's responsibility. Rothe confirmed that was the Towns' position because they did not have the funding. Polyock reiterated it was the railroad's responsibility to maintain the bridge and suggested installing new railings if that would “get it by”. He said he did not think it would take a million to get an at-grade crossing. Rothe confirmed but he could not quote figures. Polyock said his town had just gotten a bridge for \$200,000 and knew what “you got for that”. Jerry Grant said it would be nice to get this speeded up as the road closure was impacting local health and safety and it was very important to get something done. Gray asked if school buses used it. Brandl said he was assuming they had been but said the Town had notified the school districts and that the new weight limit was 16 tons.

Lucht said on behalf of WSOR, they have known about these situations in the past. Past inspections had just noted the road surface but last April they looked at the surface below and it was much worse: some pick-up trucks crossing during inspection caused the bridge to visibly flex. He mentioned the sill plate and the beams, saying there were structural issues and the bridge had to be completely replaced. The bridge railings could not just be replaced. A crash through the railing could cause the whole bridge to collapse. He said WSOR was a team player and they believed there was a tremendous public benefit to keep bridges intact. He said they did not want greater liability, giving the towns of Clarno and Bradford as examples of those towns participating with a local match. Lucht said that was a model that could be used. He said WSOR wanted to be player but “not the only player”. He repeated that the bridge was structural defective and had been overloaded with traffic for decades and decades. He said WSOR could not even install a crash worthy rail system on a the bridge in its current condition. Lucht said on some township roads, asphalt had been layered over bridges that were not designed for it. He assured the Commission that WSOR wanted to be at the table.

Brandl said the State re-inspected the bridge in August and an engineer's report refuted a WSOR report. The August inspection did not find the structural deterioration. Brandl said a railing did not have to be crash worthy as the bridge was grandfathered in. Kevin Brunner of Walworth Public Works Department said the bridge had been in a failed state for years but in the last 2 years, had had its rating drop from 56 to 43.1. He said the bridge had deteriorated quickly and the County wanted to work with the railroad and the

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Town and apply for funding on the next award cycle but on their part, the County wanted the ownership issue settled. He pointed out that even if the County could get funding it would be 5 or 6 years before it could be replaced. He acknowledged that the Town wanted the road open as soon as possible and said the bridge's grandfather status would allow existing railings to be replaced based on the original design. Brunner said the County would like everyone to get together for an interim and long term solution. The County would be willing to look at funding issues as noted in the discussion about the 5 Corners Bridge. He said this was a statewide issue and there was not enough funding currently to address the situation.

Sweeney said that simply put there was an argument to "put tires on an old pick-up truck" and when one party said they would not help pay for repair the bridge but was willing to talk about contributing to the local match, the issue could not be resolved today. He said this issue would be on future Commission agendas but if there was willingness to think alike, he believed a solution could be found. Grant asked if there had been bids sought to replace the bridge vs. an at-grade crossing. Sweeney said that was the question: would it meet the local match. Grant said if the wait was 2 to 3 years, that was too long.

Anderson suggested the railroad put on the railing with the Township becoming the owner. Then the Town would have an open bridge and if the Town could accept a quit claim deed for a \$1, they would be the owners. Sweeney questioned the liability in that situation. Brownlee said there were some things you could not assign away. Laura Payne asked if the railroad would be willing to take on that liability or would the Town take liability rather than the railroad, to open the bridge with new rails. Lucht did not give an answer to that. He said from a liability and safety standpoint, the bridge had been recommended to be closed. Lucht said if the Town owned the bridge it could expedite a solution.

Sweeney asked Brownlee how to proceed from here. Brownlee said a short term solution seemed to benefit the Town vs. the State, the railroad or the Commission. The question was who paid for that temporary solution. She then said the long-term solution would involve the OCR as they would have to approve any replacement or new crossing. She repeated that right now the short term benefit was to the Town. Sweeney said the discussion really needed to take place between the Town and WSOR. Brownlee said she did not see a problem with WDOT and WRRTC being involved as well. Ladewig asked about a credit match to the WSOR if they replaced the railings, with the Town taking responsibility for safety in return. Brownlee said an indemnification would not be a bad idea but as far as a repayment, some of that might depend on the grant sought. She said if the grant did not include reimbursement for prior work then she did not know if that would be something available depending on the funding source. She said you would have to be very careful on the grant application. Mace said whoever applied for it, they should know what the terms would be if a grant were awarded. Huntington said he was not quite sure but his understanding was that it would be at least 2 or 3 years due to the back log even if it were awarded. Brunner said the County Highway Commission could apply and there were a lot of bridges needing work in Walworth County currently. He said he thought applications were due in the beginning of the year but agreed that it could be years before a new bridge. He said there were some other county bridges where this situation was going on. Alan Anderson said the ownership should be moved to the Town but to him, there seemed to be a disagreement between a consulting engineer and the railroad engineer. With a 5 to 6 year wait, to him the engineers needed to come to resolution.

Rothe agreed that the Town wanted action to open the bridge and that was the mission. Sweeney said this would be back on the December agenda and there would be interim discussions and assured the Commissioners there would be more talk. He hoped the railroad, the Town, and Walworth County would continue to work together.

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

- *Motion to adjourn at 11:47 AM – Lewison/Rocksford, Passed Unanimously*