

WRRTC FULL COMMISSION APPROVED MAY 2015 MEETING MINUTES
WISCONSIN RIVER RAIL TRANSIT COMMISSION
FULL COMMISSION MEETING - FRIDAY, MAY 8TH, 2015 @ 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)	excused	Rock	Ben Coopman, Alternate	
	Rocky Rocksford			Wayne Gustina	x
				Alan Sweeney, Chair	x
				Terry Thomas	x
Dane	Gene Gray, (Treasurer X-Comm)	x	Sauk	Marty Krueger, Alternate	x
	Jim Haefs-Fleming	excused		John Deitrich	
	Chris James, Vice Secretary (XComm)	x		John Miller, Vice Treasurer (XComm)	x
				Dave Riek	x
Grant	Gary Ranum	x	Walworth	Kevin Brunner	x
	Vern Lewison	x		Richard Kuhnke, 2 nd Vice Treasurer (XComm)	
	Robert Scallon, 1 st Vice Chair (XComm)	x		Allan Polyock	x
Iowa	Charles Anderson, Secretary (XComm)	x	Waukesha	Karl Nilson, 4 th Vice Chair (XComm)	x
	William G Ladewig	x		Dick Mace	x
	Jack Demby	x		Carl Pettis	x
Jefferson	John David	x			
	Laura Payne	x			
	Augie Tietz (3 rd Vice Chair XComm)	x			

Commission met quorum.

Others present for all or some of the meeting:

<ul style="list-style-type: none"> • Mary Penn, WRRTC Administrator • Ken Lucht, Roger Schaalma WSOR • Kim Tollers, WDOT 	<ul style="list-style-type: none"> • Curt, Clarence and Sharon Johnson • 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 – Mace/Riek, Passed Unanimously*
4. Action Item. **Approval of Agenda** – *Prepared by Penn*
 - *Motion to approve agenda – Nilson/Gustina, Passed Unanimously*
5. Action Item. **Approval of April 2015 Meeting Minutes**– *Prepared by Penn*
 - *Motion to approve April minutes with corrections – Ranum/Anderson, Passed Unanimously*

Gary Ranum had one correction. Dick Mace asked about the issue with Full Commission minutes being approved by the Executive Committee. Alan Sweeney said this would be covered later in the meeting.

6. Updates. **Public Comment** – *Time for public comment may be limited by the Chair*
There were no public comments.

7. Updates. **Correspondence & Communications** – *Discussion may be limited by the Chair*
Penn distributed one article submitted by Forrest Van Schwartz and gave a list of the correspondence she had addressed in the past month.

8. Updates. **Announcements by Commissioners** – *No Discussion Permitted*
Gene Gray said there was an interesting article in a rail magazine about railroads to the Mississippi. Sweeney introduced Carl Pettis as a new commissioner for Waukesha County.

REPORTS & COMMISSION BUSINESS

9. **WRRTC Financial Report** – *Jim Matzinger, Dane County CPA / WRRTC Accountant*
 - *Motion to approve the Treasurer’s Report and pay bills – Anderson/Gustina, Passed Unanimously*

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Gene Gray gave the treasurer's report and listed two bills to be paid, one of which was for \$252,000 (check #1284) for the entire 2014 allocation to WSOR. Gray said this had come in after the treasurer's report had been generated. Allan Polyock asked about Crawford County's \$7,000 for bad debt. Ranum asked about contributions from other counties that had not submitted yet.

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

- Update on Monthly Maintenance Activities
- Update on Capital Projects
- Update on Business Development
- Other Continuing Issues/ Topics

Ken Lucht said that Roger Schaalma was also attending to help answer any questions that might come up. On monthly maintenance activities, Lucht said that essentially the work was the same as reported last month. He spoke briefly about a grain train derailment saying it had been due to a broken rail under the train and was the type of break that could not be detected by the rail detector despite the fact that that track had been inspected just a few days before. The track was back in service in 12-18 hours and due to this spill there had been some road crossings closed. Lucht noted that some product and equipment were lost in the accident. He added that this area of track was due for Continuous Welded Rail (CWR) but the job had not yet gone out to bid.

In Capital Projects, Lucht said the Fox Lake CWR project was ongoing and the Milton siding was almost done. Schaalma said that the CWR project on the Fox Lake sub had seven miles completed between Avalon and Janesville. The remaining section work was awarded that week and hopefully the work would be done this summer. Lucht said final inspection of the Milton siding was today and hopefully would be in service next week.

On bridges, Lucht said six bridges across the Rock River were getting major work done as "part and parcel with the CWR" work. On the Prairie sub there was ongoing work on the bridge at Wauzeka. There was another completed bridge replacement on the Blue River and another large bridge project near Lone Rock.

Some new projects Lucht reported on included the Waukesha project (15 crossings) as part of the 1st phase of CWR work including three bridges, a tie project on the Watertown sub, and new bridge projects on the Prairie sub. Schaalma said the Oregon spur rehab work was being completed including six upgrading crossing signals on this spur;

Lucht said WSOR had a major project between Plymouth and Kohler. On the Prairie sub, Lucht said the transloading and accessory yard off of St. Feriole Island was ongoing, with track work begun last week and they hoped it would be in service soon. He said this was a "growth" project completely privately funded.

Schaalma said there was extensive bridge repair on the Woodman Bridge and WSOR was in the engineering phase for the Spring Green Bridge. He said that Lone Rock's bridge was still in good shape. When asked about the rail condition on the Prairie sub, Lucht and Schaalma confirmed it was 85 or 90 lb. rail in need of replacement.

Gray asked about mileage and ties on the Watertown sub which was being rehabbed. Schaalma said there were 43,000 ties (about 1600 a mile) and hopefully the track would be up to Class 2 by next year.

Augie Tietz asked about the crossings on the Watertown sub. Schaalma said those bridges would hopefully be started this year but construction may not start until late in the year or early next year.

Bill Ladewig asked Lucht about insurance for the grain spill on the Fox Lake Sub, asking if the insurance money was replenished after being used which Lucht confirmed.

Sweeney asked if downtown Edgertown was getting an update and Schaalma said that work would begin in September.

When asked again about the grain derailment on the Fox Lake sub, Schaalma said the broken rail had tested out in October last year, adding that the 90lb. rail was showing the amount of tonnage caused the break. Karl Nilson asked about the type of fracture. Schaalma said it was not picked up and Nilson agreed those breaks were hard to find.

Lucht next spoke about the State budget and noted his appreciation for the WRRTC's support for the projected budget. He said the committee had not voted yet and there was talk about cutting the budget down more. He said about five different options were being discussed. Lucht said WSOR was very concerned as one of the options was to eliminate the FRRPP program altogether. Also, Harbor funding was not supported by the Governor and there was talk that the FRRPP cut would go to Harbors. Lucht said WSOR thought it shortsighted to cut funding and spoke of back logged projects equaling \$100M. As it stood, there was a risk of losing funding and he said WSOR was hoping the program would be preserved at \$43M. He asked the Commissioners to meet or contact their representatives and said if the Commissioners wanted to meet with their representatives, he would help set up meetings.

Lucht then distributed the latest WSOR map. He said he was working on updating the system and tonnage maps for them as he had mentioned at a past meeting.

Lastly, he spoke about private crossings and said there were numerous private crossings "out there" that were not legal and not permitted and said Schaalma was working with landowners to find agreements. He said private crossing permits were required to make them legal which protected

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WSOR from liability. He said WSOR wanted to have a conversation about how the Commission could pursue the correction of private crossings adding there were a number of them. He said WSOR would be happy to partner “with you” to make the crossings legal. Schaalma said doing track rehab was a good time to upgrade and legalize crossings and said he had made a small list of crossings in the rehab zone. John Miller said the cost of the upgrade was a point. Schaalma said when the track was rehabbed was the time to do crossings because then the landowner would only take on the maintenance.

Eileen Brownlee spoke about crossings and about the public’s ignorance of them. She recommended a discussion on crossings be on the next agenda. Dick Mace asked if individual crossings needed to be on the agenda. Brownlee said a general conversation on private crossings needed to be on an agenda so the public could know. Sweeney asked how the question could lead to an agenda item. There was more discussion on how the issue of crossings came to the Commission. Mace asked if there was any 20 year situation where if there was a long standing crossing... he was cut off as this was the issue of discussion at hand. Sweeney said if there was some action needed, it had to be as a separate action item. Brownlee said crossings needed to be addressed on a “global” level. Sweeney said they needed to “set policy”. Lucht said WSOR was not looking for action today and this could be on a future agenda. Miller said he would like to see an email or given a general idea of what issues crossings involved before the meeting. Nilson said anything could be put on a future agenda during a meeting. Brownlee agreed.

11. WDOT Report–Kim Tollers, WDOT

Kim Tollers said she had no news about the budget but added that Dave Simon had convinced Frank Huntington to return to WDOT for 10 hrs. per week.

12. WRRTC Administrator’s Report – Mary Penn, WRRTC Admin.

Penn gave her report, listing her administrative actions of the past month.

13. Discussion and Possible Action on Application for an At-Grade Private Rail Crossing at 2428 ST Hwy 133, Avoca, WI – Curt Johnson, Atty.

- *Motion to approve application for Clarence and Sharon Johnson At-Grade Private Crossing at 2428 ST Hwy 133, Avoca, WI – Thomas/Nilson, Passed Unanimously*

Curt Johnson introduced himself while Penn distributed an image of the crossing in question. Mr. Johnson explained that in doing the title work for a new house, the family discovered there was some WDOT owned property that ran through their property. The Johnsons were looking for an active, updated crossing (there is presently a crossing there) as they are looking to the future when they might add a residence. Therefore, the crossing would potentially serve two residences but would probably just be for the Johnson’s for now. Johnson explained the crossing had long been maintained and this permit would enable them to have all the documents up to date. Scallon asked about the location of the crossing. Johnson said it was in Clyde Township and added that there was no documented easement. Schaalma said he had looked at it and said he did not think WSOR would have any objection. Lucht said WSOR did have a Federal Railroad Administration (FRA) number in their database and said there were two public crossings. Johnson said a public road was west of the proposed crossing. On the east side there was a public WDNR crossing and said it looked like there was a parking area. Schaalma said that the west crossing looked to only serve one home. Johnson said they had found out that about 40 years ago, farmers sold their driveways to the County as a way to increase mileage to get more funding. Mace asked about the east crossing on the image if it were used. Johnson said it had been there for a long time and said they use the crossing now. Johnson also indicted a quarter section line on the image. Lucht said all private crossings were approved by the WRRTC. Tollers said this crossing may have had an agreement at one time but there was no agreement on record. Mace asked if the fact that it was a long-standing crossing gave the landowners “any rights”. Brownlee said that would be arguable but understood why the landowner would “want it on paper” in order to satisfy the bank (for loan purposes). Polyock said there could not be any landlocked sites and the Town would be responsible for putting in the road if the WRRTC did not grant the permit. Brownlee agreed. Tollers said that crossing had been documented by the FRA. Ranum spoke to the issue of land locking and real estate. Brownlee said there was law that you could not sell a landlocked parcel but noted most counties have laws that said you cannot create a landlocked parcel. Mrs. Johnson said that if people needed to get a permit, the \$500 fee might be an issue for other landowners. Johnson also asked if this could act as an easement rather than an agreement tied to the landowner, not the land. Brownlee said she had recommended against this. Jack Demby asked who maintained the crossing. Brownlee said it was the property owner, and if maintenance of the drive was not met, the permit could be revoked. Nilson said farmers were our friends and without them there would be no need for railroads, adding that he called for the question.

14. Discussion and Possible Action on WRRTC 2015 & 2016 Capital Plan to fund TIGER improvements if awarded by USDOT – Ken Lucht, WSOR

- *Motion to approve the WRRTC 2015 & 2016 Capital Plan funding of TIGER VII improvements if awarded by USDOT – Mace/Tietz, Passed Unanimously*

Lucht presented WSOR’s 2015 and 2016 Capital Plan to the Commission, along with the updated WSOR map, noting he planned on displaying this new map permanently in the meeting space, particularly for new commissioners. He led the Commissioners through projects and their status, saying there was a lot of traffic on the Prairie sub and that WSOR had some very aggressive applications for funding submitted. He noted that the Prairie sub was very long, over 100 miles and said it took 10 hrs. to get from Prairie du Chien to Madison. He said that until 2005-06, there were not many customers on this sub but it was different today: WSOR considered this a main line track.

He shared a visual showing rail cross sections to illustrate the different weight of rail and their wear. He showed how an 85 lb. rail was now 74 lb. through wear. In Spring Green it was 79 lb. in wear and this was why CWR installation was so important on this sub. Lucht said right now WSOR had an application in for a Phase 1 CWR project from Prairie du Chien to Wauzeka and a 2014 submitted tie project between Lone Rock and Bridgeport for 36,000 ties to secure the line to continue to operate at a Class 2 standard. Lucht said the Commission had not approved their allocation yet but was asking that their allocation be dedicated to this work. He walked the Commission through the TIGER VI project work area and said that June 4th, 2015, a \$24.9 M allocation request would be made for 36 miles of the Prairie sub. He said \$16 M of this project was rail replacement which would run from Madison to Spring Green, including new ties, switches, and crossings. Lucht said there was high competition for TIGER VI funding

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and if the allocation were added to the application, it would add leverage to it. Lucht said the Mayor of Madison had written a letter of support for the project and he talked about the local match of \$2.5M dollars of the local match from WSOR and WRRTC, as well as listing other sources of funding. For local matches, \$250,000 per year for 2015 was being requested. Lucht said that the WRRTC had \$259,000 available for projects this year and said WSOR would ask the same amount for next year, so over this proposal was requesting \$500,000 and no more.

Lucht shared an example of WSOR using BNSF engines for WSOR customers and WSOR's ability to return trains within 55 hrs. Lucht said WSOR was right at the 55 hour threshold and hoped to accept more of this kind of business but to do so WSOR needed to make sure they could do improvements to run in a timely manner.

Lucht then talked about how applications were graded and said right now the application was rated very highly. He said this was an improved application from last year and that WSOR had worked to improve it to make it more competitive. He repeated that June 5th was the deadline for applying and said Iowa County and WRRTC were the co-sponsors. He said WSOR had reached out to get letters of support which would be accepted up to May 15th. Lucht said if this project were not funded, WSOR would most likely come back in the fall to apply for a state grant for CWR on this sub.

Charles Anderson asked about siding and switch replacements and why BNSF was using WRRTC tracks. Lucht said there were no sidings in this project, just switches to be rebuilt to today's standards. He said these were just mainline improvements: siding improvements were up to customers. Lucht said BNSF had an agreement with WSOR to leave power hooked up to engines which made economic sense as unhooking engines took a lot of time and effort. It made more sense to accept BNSF power and WSOR crews to shuttle trains back and forth.

Dave Riek asked where the project stopped and Lucht said it stopped right east of Spring Green and did not cross the river. He said WSOR had applied for a state grant for the bridge at Spring Green.

Nilson asked about the project scope and description and if WSOR would hire outside if awarded. Lucht said since these were Federal funds, WSOR would need to go out for competitive bids. Nilson then said it made sense to have agreements with BNSF. He also asked about couplers. Schaalma said depending on which direction the train was going, the leading engines pulled and back engines braked. Alan Anderson asked if WSOR got the grant, would the State cut their budget of \$43M. Lucht said in the past, the State had set money aside for bonding to protect the grant funding but as of this year, the bonding authority had been set aside.

Tietz said assuming this passed, what other capital projects would the WRRTC fund. Lucht said if the Commission funded this, the Commission would not be funding any other capital projects until 2017. Ladewig asked if there were any type of bridge emergency work and how would WSOR fund those projects. Tollers said she did not know how to respond to that. Lucht said FRIPP and FRRPP were the programs in that case. He said the Commission had a "rainy day" fund and noted this request was for money just for projects. Kevin Brunner asked when this could be granted and how the counties could help. Lucht said there was not a lot of time but if any county wanted a support letter template he would be happy to share it with them.

Gray asked if these tracks would allow for passenger excursion trains. Lucht said they could run at 35 mph. Schaalma confirmed they could run up to 40 mph.

Ranum asked if Lucht could supply all the member counties with a draft support letter.

Polyock asked about the 55 hr. run and the number of cars and if there was a minimum. Lucht said these runs were always unit trains, 110 cars. Scallon also asked about the 55 hrs. Lucht said if WSOR went over the time, they had to pay a penalty.

15. Discussion and Possible Action to approve WRRTC letter of support for the 2015 TIGER VII application – Ken Lucht, WSOR

- *Motion to approve WRRTC letter of support for the 2015 TIGER VII application with the addition of – Thomas/Mace, PA*

Lucht said the WRRTC letter had to be rewritten to reflect the funding request just addressed in item 14, as Sweeney asked if that action had not already been approved. Miller said that he thought it might hold more weight if all the counties were included to show a commitment on their part. Chris James asked if the money was capped and what would happen if the project went over budget. Lucht said that the WRRTC funding was capped at \$500,000. There was discussion about adding the county funding information and Lucht said a county support letter could reference the WRRTC support letter.

16. Discussion and Possible Action in regard to GM Plant proposed crossing, Janesville, WI – Eileen Brownlee, Corp. Counsel

Brownlee said GM had made a request for a private, industrial crossing which had been approved and Penn had sent them a crossing agreement. She said GM had been asking for some changes to the permit, particularly changes requested for time crossings. She said GM would like to have something in the permit so the crossing could be open for 10 to 15 minutes at a time, rather closing the gate immediately after use. There was also a question of a request for an insurance policy in the agreement and thirdly, the agreement said the WRRTC required indemnification of the WSOR and WRRTC personnel for any intentional acts. She said she did not recommend the Commission do anything today and said she understood why WSOR did not want the gates open. Brownlee said she had shared this information with the GM attorney. She also said she was sure the Commission had never requested an insurance policy unless it were entitled via litigation. In regard to the request for indemnification for intentional acts by WSOR or WRRTC personnel, she said personally she believed that would be thrown out by a court. According to the WRRTC's agreement, GM would have to pay for WRRTC actions. Brownlee said the agreement's insurance language needed to be reworked. She said she was using this item to start a discussion about the Commission's permit and agreement language as there had been other crossing questions that had come up.

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Terry Thomas said GM could have the gate be automatic. Demby asked for clarification. Brownlee said she wanted to change the language to not penalize GM for WRRTC or WSOR representatives committing deliberate damage to the crossing.

Mace asked if GM had paid a fee, did they not deserve an answer. Brownlee said there was no time limit on the granting of a permit.

Lucht said this part of the track included part of the CWR track project in Janesville and the rehab project had prompted the crossing. He said GM had already agreed to redo the crossing so by October or September, the crossing would be reworked. He said GM had been contacting WOSR as well. Brownlee said the dispute is on the language of the agreement.

No action was taken.

17. Discussion regarding culverts and drainage issues on Fox Lake Sub – Allan Polyock, Commissioner, Walworth County

Polyock said that he had had conversations with some landowner's doing drainage work on a culvert and the issue had not been addressed. He said he thought the railroad should fix the drainage problem and be done with it. He said everything had been fixed to the ROW and now the landowners were asking the railroad to fix within the ROW. Schaalma said that he knew the locations and said it was a drain tile leading into a 30' collapsing culvert. He said drainage had changed a lot so there was a 30" culvert ordered and WSOR would be repairing the culvert, hopefully within a month. On the second location, the drain tile was laid under the railroad at some point in the past and the caved-in tile was lower than the existing culvert. To repair the situation, the culvert (which is in good condition) would have to be lowered. He said WSOR had asked the landowner if the tile was permanent and they did not have an answer yet. Schaalma said there was a very good culvert in this location but it was not at the level the landowner wanted.

18. Discussion and Possible Action on amending 2015 budget to adjust legal expenditure amount – Alan Sweeney, Chair

Sweeney said in the interest of time, the Commission would postpone this item for another meeting.

19. Discussion and Possible Action on defining and clarifying Executive Committee's role and responsibilities within the WRRTC –

Alan Sweeney, Chair, Eileen Brownlee, Corp. Counsel

- *Motion to meet as a full commission every month while a definition of the roles and responsibilities of the Executive Committee is determined – Nilson/Lewison, All in Favor: Gray, James, Ranum, Lewison, Scallon, Anderson, Ladewig, Demby, David, Payne, Tietz, Gustina, Sweeney, Thomas, Krueger, Deitrich, Miller, Riek, Brunner, Nilson, Mace. Opposed: Polyock, Pettis*

Sweeney said this all began with a question from Dick Mace at a previous meeting. Brownlee said this led back to the beginning of the Commission and gave some history of it and its relationship with its executive committee. She said in the past the Commission was very large at one time and did its own rehab and employed a great number of people. The Executive Committee ran the day-to-day business of the Commission then. She said as the Commission evolved away from having employees, it contracted out more of its work. The Executive Committee acted to approve small projects as needed and functioned pretty much on its own although major projects were approved by the Full Commission. Nowadays, WSOR handled its own contracts, the Commission handled finances, appropriated its funds and approved crossing permits and other activities on its property (including its own property such as the Oregon spur). At this point, she said the Commission needed to decide if they wanted to continue to use an Executive Committee and if not, then the Full Commission would need to meet every month. If the Full Commission still needed the Executive Committee, then the Commission needed to explain what the Executive Committee's function was. If its function was just advisory, then the question was "why, what is the point" of having a merely advisory committee. She gave a county example of actions done without full board approval and said all the law said is that if functions were delegated to an executive committee they must be precise. She said the Commission could delegate private crossing permits to the Executive Committee, and/or spend up to a certain dollar amount. She said she could not find in the record documentation of what the function of the Executive Committee was and said again as the Commission's function had evolved, so had the Executive Committee function changed as well. Brownlee noted that the charter could create by-laws and rules and said if the Commission saw a value to an executive committee, it would be well worth some time to create some policies to define its role. It would need to be approved by a majority of the Commission. Right now, she did not know if the executive committee accomplished anything. Nilson said it did accomplish things and said that a full commission meeting every month could make it difficult to achieve quorum, based on the far-flung nature of the counties. Brownlee agreed with that, saying there was some practical value to an executive committee as long as the function was clear. If the Commission wanted to be part of every decision, then the remaining conversation needed to be about establishing a by-law committee.

Sweeney asked about quorum. Nilson said whatever the executive committee did, the full commission would approve. Sweeney said a controversial vote would be 1 vote per county. Brownlee said that nobody really knew where the delineations of the commission and the executive committee were concerned. Sweeney said in order to expedite the discussion, he would ask the Commission what they thought.

Mace said that everyone seemed to imply a monthly meeting. Brownlee said that was in the charter. Mace asked if the charter could be amended. Brownlee said yes but would require approval by all the member counties. Mace said at executive committee meetings, commissioners (not officers) were voting. Ranum said he had come to all the meetings and at times he been hard pressed to tell the difference between officers and non-officers. He noted that last month's meeting was the first time the executive committee had been called in the minutes. In the past the Full Commission had been called in the roll. He noted the roll was getting bigger and noted there was a lot of participation at executive committee meetings and to have all the meetings be full commission meetings would be a lot of effort, with only one representative per county.

Nilson suggested to go to a full commission meeting every month and see how that worked. Polyock said he did not want to attend every month. Nilson said that was a point well taken. Dave Riek said he favored meeting as a full commission every month. Sweeney said there was a lot more going on with busier agendas to try to fit in two hours and it was a challenge. Nilson said the railroad was getting busier too. Brownlee said if the executive committee was just advisory, it was frustrating for the railroad and for Corporation Counsel. Polyock said to leave it as status quo and legitimize the executive committee's duties.

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Gray asked what would the quorum be. Brownlee said it would be 51%. Mace said 15 bodies. Sweeney and Nilson asked what an executive committee needed. Ranum asked if this fell into the purview of the agenda item. Brownlee said yes. Miller said he believed the executive committee discussion should be included in the motion. Nilson said he did not think they would have trouble with quorum.

20. Action Item. **Adjournment**

- *Motion to adjourn at 12:04 PM – , Thomas/Gustina, Passed Unanimously*