

Introduction to AVICC Review of Island Corridor Foundation

September 12, 2016

What I will cover:

1. The Assignment
2. Methodology
3. Context
4. Island Corridor Foundation Structure
5. Governance Review
6. Financial Review
7. Summary and Conclusions

1) The Assignment

- Successful resolution at convention to conduct a financial and governance review of the Island Corridor Foundation (ICF)
- Assignment to:
 - Clarify and confirm issues
 - Review current bylaws and system structure
 - Conduct high level review of ICF budget and financial statements
 - Determine if performance and accomplishments are reasonable and meeting owners' expectations

2) Methodology

- Interviewed all RD Board Members who wished to be interviewed: approximately 40 interviews conducted
- Interviewed CEO and Chair of ICF
- Meeting with Senior Provincial Official re New Regulation
- Document Review:
 - ICF website material
 - AGM minutes
 - Board Meeting Notes
 - ICF Bylaws
 - ICF 2016 Budget and 2015 Financial Statements
 - Schlenker v. Torgrimson decision
 - Legal opinion sought from Stewart McDannold Stuart

- Intent of review was to make recommendations that would improve the relationship between the Regional Districts and the ICF
- ICF never comfortable with the process
- Requests for basic information only partially answered
- ICF considered many questions to be administrative in nature and not the business of Regional Districts
- Different interpretations of 2 hour meeting
- Report references areas where reasonable assumptions were made to draw a conclusion even though all the information wasn't available or obtained

3) Context

- Rail America announces they intend to leave Vancouver Island by 2003
- Vancouver Island Rail Corporation approaches AVICC with proposal for a P3 with RDs and FNs
- AVICC commissions report from Meyers Norris Penny to evaluate best options and major risks for municipalities
- Current structure is largely based on their recommendations. MNP report had numerous recommendations to prepare a business plan

4) ICF Structure

- 5 Regional Districts, 8 First Nation groups supporting nominees to the Board (14 FNs on the corridor), 2 members at large
- Each entity puts forward a nominee to the Board of Directors and appoints a designated representative
- The designated reps make up the Members Committee which primarily attends the AGM representing the members and appoints the Directors to the Board. Can call other meetings
- Administratively Board contracts to Granneke Management and Consulting Services for management services

5) Governance Review

- 3 primary objectives of current structure:
 - Limit financial exposure and liability
 - Limit political interference
 - Take advantage of charitable status-tax receipt
- Board of Directors appointed from RD Board Members
- *Recommendation #1: That the ICF Board appoint members at large from the public based on a strategic evaluation of skill sets that will provide added value to the Board.*
- *Recommendation #2: That in the future Regional District Boards consider nominating Board Members to the ICF Board from the community based on specific skill set requirements.*

- Four themes of issues raised from interviews:
 1. Communication and transparency
 2. Loss of trust
 3. Lack of effort by Regional District Board members to become informed
 4. Lack of basic corporate planning and performance monitoring tools

Communication and Transparency Issues

- Initial communication issues and lack of transparency particularly with regard to business case has hurt ICF's reputation
- Recent initiatives have improved things somewhat but the damage has been done for many people
- The attitude of statutorily being an independent body with no legal requirement for transparency has hurt the Board: no reason found to be as insular as they have been in the past

- Recommendation #3: That the ICF Board amend section 4.1 of its bylaw to allow the public to attend the Annual General Meeting.
- Recommendation #4: That the ICF Board amend its bylaw to designate a portion of each regular meeting as open to the public.
- Recommendation #5: That the ICF schedule one regular, annual, presentation to the five Regional District Boards focusing on past year accomplishments and objectives for the coming year.

- Recommendation #6: That the AVICC schedule a regular session at their annual convention for ICF to hold a workshop that provides a business plan update and progress report, allows for a Q and A session to the Board of Directors and senior staff and incorporates interactive small group sessions where the ICF Board can receive input on specific topics/issues.
- Recommendation #7: That the ICF structure its Board agendas and minutes to allow for public, non-confidential portions of the minutes to be posted on their website and that section 7.7(c) of the bylaws be amended to allow for such distribution.
- Recommendation #8: That the FAQ section of the website be expanded and updated on a regular basis.

- RD Board members expect to hear updates from their representatives on various Boards
- Schlenker v Torgrimson decision makes ICF Board members cautious
- New provincial regulation attempts to provide relief
- Legal opinion from Stewart McDannold Stuart
 - New regulation does provide relief for RD Directors
 - While Board members must be cautious they can speak on ICF issues with the Boards they represent: develop a code of conduct/policy for Board Members

- Recommendation #9: *That the Regional Districts use the wording “that (appointee) be confirmed and ratified as the (specific) Regional District’s nominee to be appointed to the ICF Board”.*
- Recommendation # 10: *That ICF provide Board members with clear policy guidelines (code of conduct), based on the attached legal opinion, indicating the range of matters about which they can communicate to their Regional District Boards.*

Loss of Trust

- A recurring theme in the interviews of a lack of trust and loss of credibility of the CEO and by association the ICF Board
- Members point to raised expectations not being fulfilled, announcements of agreements not achieved, regularly over promising and under delivering
- Bottom line for many is that there is no train running on Vancouver Island
- CEO a lightning rod for a number of reasons including salary, lack of performance, violation of federal lobbying regulations and a controlling/non-transparent approach

- In fairness there has been progress in some areas of a complex file
- These achievements, however, have not been communicated enough to RD Boards over the years
- Recommendation #11: *That a regular agenda item for an ICF Update be placed on Regional District Board agendas along with the ICF Board Meeting Notes when available.*

Lack of effort by RD members to keep informed

- Interviewed many Board Members who were unaware of basic information that is available on the ICF website, pamphlets or meeting notes
- Board members have a personal responsibility to make themselves aware of information that is readily available

Lack of basic Corporate Planning and Performance Monitoring Tools

- Lack of confidence and trust, largely because of the lack of transparency on the true viability of rail
- No public business case or plan to support rail is available: distinction between ICF and Southern business plans
- FAQ section on website refers to a 2014 business plan with current updates but it is not available
- ICF must be responsible to produce a viable business plan if they continue to expend time and resources pursuing rail

- The long term vision for the corridor must also be more clearly articulated.
- Possible role for the Member Representatives to be more engaged by recommending a Strategic Plan to the ICF Board. Would need a legal opinion to ensure charitable status liability is not jeopardized.
- Recommendation #12: *That ICF, with input from all stakeholders, develop a long term strategic plan to be reviewed annually and updated every three years and made public on the ICF website.*

- Recommendation #13: That ICF seek a legal opinion about expanding the role of the Member Representatives to direct the process of developing a strategic plan for recommendation to the ICF Board.
- Recommendation #14: That ICF make public a comprehensive business plan that addresses the strategic priorities of the ICF and the key components required to achieving a viable rail service on Vancouver Island.
- Recommendation #15: That a review and update of the business plan be conducted annually and reported to the members at the Annual General Meeting.

- The performance of the CEO was a consistent topic of discussion during the interviews
- Best practices suggest the need for an annual review based on measureable achievements in the strategic and business plans set annually by the Board
- *Recommendation #16: That the CEO's annual performance review include an evaluation of progress toward measureable benchmarks in the strategic focus areas and business plan objectives set annually by the Board of Directors of the ICF.*

6) Financial Review

- Notes from the 2015 Financial Statement highlighted for attention:
 - Current assets are insufficient to cover current liabilities
 - CIBC debt is secured by a first charge over all property owned by ICF
 - Current loan from SRVI is secured by a promissory note and a second charge over all ICF assets
 - Some interest rate risk as ICF debt has floating rates for interest
- Likely very few RD Board members are aware of the financial position ICF is in.

- Recommendation #17: *That the ICF Board insure the business plan includes a strategy to address the financial issues noted in the 2015 Notes to the Financial Statement.*
- Billing of crossing maintenance is done directly to municipalities by SRVI raising concern re oversight of costs.
- Recommendation #18: *That all financial transactions for line and crossing maintenance be shown in the annual budget as revenue and expense amounts and billing be managed by the ICF.*

- It is recognized that ICF must walk a fine line to insure charitable status and liability risk is kept to a minimum.
- The need for transparency and accountability must be weighed against this risk and maximized whenever and wherever possible.

7) Summary and Conclusion

- Current structure is appropriate but a more open and transparent style within this structure must be implemented
- A legal opinion has confirmed the new Provincial Regulation on Conflict of Interest Exceptions does apply to ICF Board Members representing Regional Districts
- Legal opinion also clarifies the ability for RD Board members to be more open in reporting on the activities of the ICF Board: need Code of Conduct or policy
- Poor communication early on, over promising and under delivering, and a lack of transparency on the business case for rail has resulted in a diminishing level of support among RD Board members for the ICF

- Significant majority of interviewees point to the CEO as being the primary reason for their loss of trust, confidence and negative attitude towards the ICF
- Recent efforts to improve communication have been positive but appear to be too late
- Progress has been made toward securing rail on Vancouver Island but there is still frustration that it hasn't been realized to date.
- Strong need for the ICF to develop a public strategic plan for the corridor and a business plan supporting the viability of rail on Vancouver Island.

Final Thought

- A number of tough questions and difficult issues remain but they should be addressed through the ICF Board representatives who need to be assertive and forthright in dealing with RD concerns.