

Saskatchewan Municipal Best Practice

Torch River Rail Project

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Project Date: February 2007 (ongoing)

THE PRACTICE

The Town of Nipawin, Town of Choiceland, Village of White Fox and RM of Torch River No. 40 partnered together to operate the Torch River rail line. This was the first time in Canadian history that a rail line has been saved after the Canadian Transportation Act process for discontinuance has been completed.

THE PROCESS

When the elevator system shifted in the early 1990's, from community based loading facilities to the terminal system, the White Fox subdivision saw a dramatic drop in rail cars. Once the closures of the elevators at Choiceland, White Fox and Nipawin were completed, producers in the area sought alternate modes of transporting grain: traditional grain trucks, semi-hauling and producer cars.

A group of producers from the Choiceland through Nipawin region ordered producer cars to ship onboard grains to port. This system was under-utilized due to transportation incentives from the large grain companies and difficulty and predictability in securing grain cars. On August 19, 2004, Canadian Pacific Railway (CPR), in accordance with the *Canada Transportation Act*, added the White Fox Subdivision to its three-year network plan for discontinuance.

In 2006, a local group of producers through an informal committee, the White Fox Subdivision Committee, attempted to negotiate an offer to purchase the line from (CPR). The attempts to enter into an offer to purchase were unsuccessful due to a poorly structured offer and lack of a viable business plan.

On December 8, 2006, CPR gave notification to the Province of Saskatchewan that no sale of the line for continued operations resulted from the advertising as required by the *Canada Transportation Act*. Thus, the opportunity to purchase the line was offered to the Province of Saskatchewan for a thirty (30) day period and subsequently to the area municipalities for an additional one month, expiring on February 6, 2007.

Formation of the Public-Private Partnership

As municipalities, the Town of Nipawin, Town of Choiceland, Village of White Fox and RM of Torch River met in early January 2007 to discuss the options for retaining the rail line. At this time it was agreed that the RM of Torch River would take the lead in the purchase process. Unfortunately, even after a very positive rate-payers meeting, the RM Council defeated a motion to purchase the subdivision, as they would have had to accept to purchase the line from CPR without knowledge of the purchase price. The RM could not accept this risk and agree to the purchase without a number by which to base their purchase decision.

On February 6 (the last day of the CTA purchase process), the RM Administrator contacted the Nipawin Economic Development Department to see if there were any options to still secure the line. Sherry Michalyca, Economic Development Officer, sent a letter on behalf of the Town of Nipawin to CPR requesting a two week extension in order to put together an offer to purchase. As well as requesting the extension, she contacted the Canadian Transportation Agency (CTA) to review any options. She was informed that the process as regulated by the Canada Transportation Act concluded at 5:00 p.m. that day. CPR denied the Town of Nipawin request for an extension. **Any negotiations between CPR and the municipality would take place outside of the CTA process, and in the case of purchasing a shortline rail, this has never been successful in Canadian history.**

A formal request was made to the CTA, by the Town of Nipawin for mediation. The CTA agreed to mediate on behalf the Town of Nipawin and CPR, only if both parties were willing participants. An appeal was also made to the Deputy Minister of Highways to lobby CPR on our behalf. Unfortunately, the request from the Town of Nipawin to negotiate outside of the process was also denied by CPR. CPR needed a clear indication that our attempts to purchase the line were not a rehash of old offers and plans; they needed confidence that this was a serious legitimate negotiation.

At the same time as the requests to CPR, Town of Nipawin Council supported and directed the completion of a purchase plan and business plan by their Economic Development Officer. The process of securing municipal partners and confirming pledges private investors took place. The original White Fox Sub-division Committee was invited to work with the municipalities in formulating an extensive business plan. The municipalities agreed to work together along with the producers of the area and a letter offering to purchase the White Fox subdivision was sent to CPR.

On the third attempt to enter into negotiations with CPR, the Town of Nipawin was fortunate to find a corporate ally for the retention of the rail line. Shore Gold, Saskatchewan's primary diamond exploration company, sent a letter to the Canadian Transportation Agency outlining that a key component to the viability of a potential future diamond mine is the proximity of all infrastructure that assists in enhancing the economics of exploiting the kimberlite bodies. **After the third try, CPR now agreed to talk through the CTA mediator.**

Offer to Purchase

The following steps were completed:

- EDO went to Ottawa to meet with CTA mediator. First formal offer to purchase was drafted.
- Confidentiality agreements were signed between CPR and three municipalities: Town of Nipawin, Town of Choiceland and Village of White Fox;
- With legal assistance, a numbered company was formed by the Economic Development Department to make the initial offering;
- Several offers and counter offers, set the stage for the purchase agreements;
- Liability issues were addressed; and
- The numbered company's revised and countered offer to purchase was concluded by mid April.

Formation of Torch River Rail Inc.

The following steps were completed by the Nipawin Economic Development Department with municipal and private partners:

- The numbered company was formally changed to the named company "Torch River Rail Inc." in July, 2007.
- Torch River Rail Inc. prepared a share offering under the following corporate structure:
Torch River Rail Inc. has been incorporated under *The Business Corporations Act* (Saskatchewan). The Corporation is now a valid and subsisting Corporation under the laws of the Province of Saskatchewan and registered to carry on business in the Province of Saskatchewan.

Torch River Rail Inc. will operate as a "private corporation". A plan for local shareholder investment was arranged with the appropriate legal council and accounting advice.

- A total of 46 shareholders, including four municipalities, raised the appropriate equity along with financing, to purchase the rail line, locomotive, and all necessary startup assets needed to start the operation of the short-line. **This totaled just over \$ 1.2 million.**
- The Nipawin Economic Development Department, on behalf of the Town of Nipawin mediation agreement with the CTA and the newly formed Torch River Rail Inc. negotiated the following contracts with CPR:
 - Asset Purchase Agreement
 - Haulage and Exchange Agreement
 - Trackage Agreement
 - Assumption Agreement
- A formal "Safety Plan" as required by the Province of Saskatchewan to operate a rail line was completed.
- The sale process was completed in December, 2007, with the formal news release announcement taking place April, 2008.

THE RESULTS

The Torch River Railway is dedicated to promote and maintain a short-line railway through providing a service to producers and contracts to transport goods from Choiceland to Nipawin. Through this mission, Torch River Rail Inc. will hold high to the principles of community development, serving the agricultural producer and building a linkage of transportation for commodities from central and northern Saskatchewan.

Keys to Success

Based on our research, the following are some key indicators for success of the Torch River Rail:

1. Our business philosophy of collaboration and community development. Strategically placed as the only north-south line on the east side of Saskatchewan positioned north of the Saskatchewan River system.
2. Recruiting an experienced team of former rail employees to join this team as either investors or contracted service providers.
3. New and emerging opportunities to service the transportation needs of the forestry, mining, and sand/aggregate industries.

The first annual meeting of the new company was held in February, 2008 and a five member managing board of directors was established. The official opening and ribbon cutting took place in July, 2008, after the arrival of the locomotive. The business plan projected 135 cars in the first year....to date the rail line has hauled over 300 cars and will exceed 500 in the first year of operation. Torch River Rail has become the major supplier for table cereal oats in the Chicago market. Torch River Rail has also build a loading facility in Choiceland and has purchased a shop and offices. Six engineers have been trained and operate the equipment. Track maintenance is all provided locally. Thus far in eight months of operations income to the company, income and savings to the producers has totaled over \$1 million. This business success has been a true public-private partnership and a major infrastructure/business retention and expansion project for the Nipawin-Choiceland Region.

LESSONS LEARNED

Explore your options and partner with other municipalities and private corporations for best results. You can accomplish more if everyone works towards the same goals together.