Review of a Proposal to Transfer New York State's Belleayre Mountain Ski Center to a Public Authority

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"'Authority' 3. A governmental agency or corporation that administers a public enterprise <transit enterprise>" (Black's Law Dictionary, 7th ed.).

"Authority bond - bond issued by and payable from the revenue of a government agency or a corporation formed to administer a revenue-producing public enterprise.... Because **an authority usually has no source of revenue other than charges for the facility it operates**, its bonds have the characteristics of revenue bonds. The difference is that **bondholder protections may be incorporated in the authority bond contract** as well as in the legislation that created the authority" (Dictionary of Finance and Investment Terms, 2nd ed., emphasis added).

"Further, the [ORDA] Board may make, amend alter, suspend or repeal the By-Laws of the AUTHORITY undertake or obtain plans surveys analyses and studies necessary or appropriate to conduct the operations of the AUTHORITY **and to do all things necessary or desirable to carry out the purposes of the AUTHORITY"** (By-laws of the Olympic Regional Development Authority, Section 5, emphasis and material in brackets added).

"The choice is actually simple. Keep operating at a loss until someone finally pulls the plug ***or determine how to make a public private partnership work***" (CWC proposal, p. 1, emphasis and italics added).

Overview

The Catskills Watershed Corporation (CWC) has recently floated a proposal to transfer the State-owned and Department of Environmental Conservation (DEC)-operated Belleayre Mountain Ski Center ("BMSC, or "the ski center") to a public authority. Details of CWC's proposal are found in an undated and otherwise untitled Executive Summary ("CWC's proposal", or "the proposal") attributed to "Belleayre committee members".

The proposal summarily dismisses continuing BMSC's current operating structure. Rather, it proposes removing BMSC from DEC and transferring it to a newly created public authority, ostensibly to rescue the ski center from what it asserts to be its forthcoming and inevitable closure.

A public authority is a type of corporation that is delegated with certain State powers, including tax-exempt borrowing authority. A State authority has a governing Board that is typically appointed by the Governor, the Legislature, and/or other designated officials. Like other corporations, an authority can enter into contracts, sue and be sued, acquire, operate, and dispose of property, and conduct business as it sees fit.

The Olympic Regional Development Authority (ORDA) is the likely prototype were BMSC to be transferred to a public authority. ORDA operates the Gore and Whiteface ski areas and other winter sports facilities in the Lake Placid area. As cited above, a broad delegation from the State empowers ORDA ***"to do all things necessary or desirable"*** to carry out its purposes.

Contrary to usual practice, ORDA does not rely solely on its own self-generated revenue. In FY 2010, it received over $12 million in capital and operating subsidies.[1] Despite the ability to issue debt in its own name, ORDA appears to be heavily dependent upon State and local appropriations for its capital improvements.

The public authority envisioned by CWC comes at a time when the proposed Crossroads/Belleayre resort real estate development, and a related Unit Management Plan (UMP) that would expand and physically merge BMSC with the resort, are being considered by DEC. Subject to approval, $10 to $20 millions (or more) of State funds could be required to implement the UMP.

Not un-relatedly, CWC anticipates the proposed authority to form a public-private partnership to develop a privately-owned ski village at BMSC's base area and along its slopes.

Summary

- BMSC's and the Route 28 corridor's future can best be secured by maintaining the ski center's current operating structure managed consistent with utility-type cost-of-service principles.[2]

- The $6.0 million State appropriation proposed for an authority-operated ski center would generate substantially the same benefits per BMSC's current operating structure.

- In late 2010, the State initiated efforts to place BMSC on a more financially sound path by returning its staffing profile to that which existed for several years up to 2008, during which time BMSC realized its greatest gains in skier visits.

- Presuming it accurately represents BMSC's actual 2010 income and expenses, and after considering recently announced staffing changes, CWC's proforma indicates DEC could

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[1]In FY 2010, ORDA received about $12.6 million in operating and capital subsidies from the State, the Empire State Development corporation (ESD), and the Town of N. Elba.

[2]Cost-of-service principles establish user rates and fees based on recovering the cost of service from the users of a facility. Rates and fees (lift tickets, concessionaire, and other facility charges) might also incorporate a rate of return (ROR) on BMSC's capital improvements. Revenue from a ROR could be returned to the State's general fund, or deposited into a special capital reserve fund for future facility improvements at BMSC.

achieve break-even by increasing the ski center's average revenue per skier by between about $4.40 to $6.00.[3] This could be achieved through a combination of lift ticket, concession, facility rental and other fees, and a reduction in the number of free tickets.

The foregoing would avoid additional overhead, administrative, insurance, and operating costs an authority-structure would impose. It would also address concerns of nearby privately-owned Windham and Hunter ski areas – concerns that have long-stymied the Catskill's ski areas from engaging in cooperative marketing efforts that would be of benefit to all concerned.

ORDA's continuing need for substantial State (and local) appropriations since its inception demonstrates that an authority-structure would not place BMSC on a sound, self-sustaining, financial footing. Were this the case, CWC's proposed authority would not require $6.0 million in State appropriations at its inception as CWC's proposal requires.[4]

An Authority – the Wrong Solution for a Problem That Does Not Exist

The premise for removing BMSC from DEC is that the ski center faces an existential threat. Specifically:

> *"...**without a change in operational structure, Belleayre is not going to be viable** and eventually will lose so much money that a complete closure will be forced. **It is not a question of if – but when Belleayre will be closed**"* (CWC proposal, p. 1; italics and emphasis added).

One would expect such a claim – with its attendant consequences for those who are employed at BMSC, and for the residents, businesses and property owners in the Route 28 corridor – to be supported by compelling evidence that Bellearye's demise is a foregone conclusion.

Were this the case one would expect BMSC to not only be losing market share, but to have also exhausted its options to improve its financial performance. Neither are in evidence. BMSC's skier-

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[3]It is not evident if CWC's "2010" proforma figure reflects actual revenue and operations at recent level of skier visits, or modified revenue and/or operations at recent or 225,000 skier visits. Were CWC's "2010"proforma to accurately reflect BMSC's actual performance and the impact of recently announced staffing changes, average skier revenue would need to increase by about $7.00 to $9.00 (depending upon the number of skiers) to achieve break-even. A more precise estimate of the actual amount of average skier revenue to achieve break-even under the current operating structure would require access to key inputs and data CWC used – but does not cite – to develop the two proformas.

[4]Consisting of $5.0 million for unspecified facility improvements, and another $1.0 million in "working capital line" for which no budget or explanation is offered.

days have increased substantially from the late 1990's – from 84,000 in 1998/99 to 169,000 in 2009/10, peaking at about 181,000 in 07/08 just before the onset of the recession. During this time BMSC's rolling three-year average skier visits increased from about 111,000 to 168,500.[5]

Over the last several years BMSC's three-year rolling average skier visits have remained relatively stable despite a decline in 2006/07 (which may have been weather and/or gasoline price-related), followed soon thereafter by the most serious economic downturn since the 1930's.

Going forward, BMSC's staffing costs can be expected to decline due to recently-announced cutbacks by DEC that would return the ski center to the staffing profile it had about three years ago. There is also substantial room for improvement on the revenue side. It has recently been reported that BMSC offers about five times as many free tickets as other nearby resorts.[6] Furthermore, its regular price-tickets are up to 20 percent lower.

The foregoing demonstrates that an improved financial performance does not require a change in BMSC's operating structure. BMSC's skier data, together with prospective and potential improvements in its financial performance, cannot be reconciled with the existential crisis CWC's proposal depicts.

CWC's Proforma

CWC's proposal includes a side-by-side "Proforma Statement of Income" of BMSC's financial performance for "2010", and what it might look like consistent with an authority structure.[7] Key inputs, data, and assumptions behind the proformas are missing. Lacking these data, the proformas are unsuitable for decision-making purposes. For example, they may not present an apple to apples comparison as BMSC attracted about170,000 skier visits in 2010, while the proposed authority-structure proforma is based on 225,000 skier visits. It may be that BMSC's "2010" proforma has not been adjusted to fully reflect a change in its staffing profile that would substantially lower its salary-related costs.

And, as will be shown, CWC's authority-structure proforma does not appear to reflect a realistic

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[5]A three-year rolling average smooths out weather, cost of gasoline, and other factors that can affect skier visits over a single season.

[6]Nearing, B. "*Blizzard of free state ski lift tickets buries two private Catskills Centers*", Times Union newspaper, December 8, 2010, online ed.). Roughly 10 to 13 percent of BMSC's skiers appear to ski for free.

[7]CWC's proforma shows current BMSC operations to generate a loss of \$1.6 million, while an authority structure is shown to generate a gain of \$0.847 million. CWS's proforma is poorly documented and it is unclear what assumptions underlie some of its figures.

business case. Even were it to be so, virtually all of the improvement it shows (excepting some payroll-related savings as a result of escaping DEC's pay scales for some positions) would accrue to BMSC under DEC's continued operation and management.

Although the authority proforma is based on a 32 percent increase in skier visits, CWC's proposal shows the ski centers's payroll-related costs (salaries and fringe) would fall by 43 percent, its associated maintenance and operation costs (e.g., utilities, repairs, supplies and equipment, patrol, grooming, gasoline, snow-making) would increase by less than 5 percent, and its insurance cost would be a small fraction of the reported industry standard.[8]

CWC shows its authority-structure to accomplish these results after incurring $550,000 in annual debt amortization costs, while omitting any authority-related administrative, payroll, maintenance, legal, accounting, audit, marketing, travel, contractual, or office-related costs.[9]

On the revenue side, the $0.98 million improvement in proforma gross profit has everything to do with the assumed 32 percent increase in skier visits (and possibly greater assumed revenue per skier visit), and nothing to do with an authority structure.

Despite CWC's obscured proformas, an authority-structure will not place BMSC on a financially sound footing. ORDA's experience is instructive. In FY 2010, for every two dollars of earned operating revenue, it obtained one dollar in capital and operating subsidies from State and local government appropriations.[10] Were the prospects for an authority-operated BMSC to differ substantially from ORDA's experience, the proposed authority would also not require an initial $6 million capital injection from the State as CWC proposes. Rather, it could seek to obtain capital funds through its own borrowing authority and to raise "working capital" through user fees or a line of credit from a private lender.

In the event the proposed authority fails to meet CWC's proforma (or its public-private partnership fails to perform as anticipated or to raise sufficient equity or financing) the authority might be unable

[8]___, Insurance Journal, May 23, 2005.

[9]ORDA, for example, incurred marketing expense of about $1.0 million in FY 2010 and 2009; ORDA Financial Report, March, 2010.

[10]In FY 2010, ORDA obtained $12.58 million from government subsidies/payments consisting of : $6.71 million in operating subsidies from the State of New York and $0.90 million from the Town of N. Elba. It obtained an additional $2.56 million in capital subsidies from the State of New York, and $2.45 million from the Empire State Development Corporation. In 2009, ORDA obtained $15.5 million in operating and capital subsidies from these same sources. See: http://www.orda.org/newsite/about/pdf/fsfinal09.pdf, p. B2. In FY 2009, it received $18.02 million in State and local subsidies. Recently, some State Legislators have proposed discontinuing State appropriations to ORDA.

to repay the $6.0 million appropriation it seeks from the State, and could require yet additional State appropriations or subsidies. Should this occur, the authority need only offer the same rationale CWC offers for State and local government appropriations to ORDA:

> "Provided one understands that over the long term the investment generates major economic activity and that siting of ***BMSC*** ~~Olympic Training facilities~~ has economic as well as quality of life benefits the appropriations can be justified" (CWC proposal, p. 5, *"BMSC"* and strikeout font added).

Authority Would Effectively Merge BMSC and the Proposed Crossroads Resort

BMSC's proforma "2010" operating loss (as portrayed by CWC's proposal) can be reduced or eliminated by previously announced changes to its staffing profile and increases in user and skier-generated revenue, neither of which require a change in its operating structure.

An authority would create a separate accounting entity, but as ORDA's experience demonstrates, this does not assure its being operated on a break-even basis and would not alleviate the need for initial or continued State appropriations.

Were it to generate a positive net income an authority-operated BMSC might retain earnings and apply these to future capital improvements, although there is no assurance of this. However, this could be accomplished *and assured* by the Legislature creating a self-sustaining special capital fund for the DEC-operated ski center funded from ticket sales or other facility-generated revenue.

Which raises the question of "What would an authority accomplish?"

CWC's proposal comes at a time when DEC is in the midst of considering a SDEIS and related UMP for the State-owned ski center that would physically merge it with the proposed Crossroads/Belleayre resort. The proposed resort is a privately-owned real estate development that would include two large hotels totaling 370 rooms, a golf course, convention facilities, spa, retail, restaurants, and 260 "vacation" (whole and fractional ownership) units adjacent to BMSC's base area, and extending along its slopes.

CWC's proposal refers to the need for a ski "village"-type development at BMSC, and links the village to avoiding the time when:

> **"...someone finally pulls the plug or determine[s] how to make a public-private partnership work"** (CWC proposal, p. 1, emphasis and brackets added).

The reference to a "public-private partnership" helps to answer the foregoing question. A public authority is not a public-private partnership. But it can be the "public" part of one. CWC's proposal leaves little doubt as to what the public-private partnership would accomplish:

"**Belleayre also suffers from the lack of a Village that is considered part of the Ski Center**" (CWC proposal, p. 3, bold added).

Once BMSC is placed under the auspices of an authority, the Crossroads/Belleayre resort (or its principals, successors, or subsidiaries) can partner with an authority through a number of potential mechanisms. These might be operational, managerial, and/or financial. A partnership could take the form of a permit, license or concessionaire arrangement, contract management, an interlocking board of directors, an operating/marketing agreement, a joint venture or special purpose LLC, or whatever the authority determines to be "necessary or desirable", subject to Constitutional or legislative restrictions.

The prospect of placing BMSC at the center of a public-private partnership poses serious issues for its future and that of the residents, businesses, and property owners in the Route 28 corridor, and the Catskills region. For example, CWC's proposal indicates the authority would seek to increase skier visits to BMSC from about 170,000 at present to 225,000, and ultimately to 390,000.

Consistent with data for Gore, Whiteface, and Belleayre, end-of-season reports published by the National Ski Areas Association (Kottke) show skier visits in the Northeast region to be essentially unchanged from 2004/05 to 2009/10. CWC's observation that Plattekill "...catches the overflow from Belleayre" (CWC proposal, p. 3) makes it clear that much of the increase in BMSC's skier visits would be drawn from Plattekill.[11] CWC's proposal could cause Plattekill's demise since at 225,000 skier visits, there would be little "overflow" from BMSC for Plattekill to catch. At 390,000 skier visits, Windham and Hunter's survival would be at risk.

The public-private partnership envisioned by CWC would have incentive to offer less favorable terms for lift ticket/lodging/rental packages to off-site establishments placing them at a serious competitive disadvantage. The Crossroads/Belleayre resort would be in a favored position to offer discounted golf/hotel/spa/dining packages to BMSC patrons purchased at BMSC's ticket windows, or from the authority or the resort web sites, or those of selected vendors. Access to BMSC's internal marketing and patron data could enable Crossroads/Belleayre resort to limit or restrict competition such that investment in lodging or other off-site facilities would be inhibited and the income of existing lodging establishments, and other area businesses and property owners is negatively affected.

Perhaps most significantly, partnering with a State-chartered authority would provide Crossroads/Belleayre resort the potential means to off-load to the authority (and ultimately to the State) some of the burden and associated risk of financing tens of millions of dollars for its on- and off-site sewer, water, storm water, drainage, interior roads, and related costs.

[11]Some would be drawn from other existing ski areas in the Catskills and elsewhere in State, including ORDA-operated Gore and Whiteface.

Further investigation of these issues is beyond the scope of this Report. They are best addressed through DEC's SDEIS and/or its Unit Management Plan (UMP) process, both of which are actively under consideration at this time.[12] However, scoping for these documents does not consider or anticipate the effective merger of BMSC and Crossroads/Belleayre resort through the agency of an authority-sponsored public-private partnership.

Conclusion

The only intrinsic operational advantage an authority-structure offers over the ski center's current operating structure is its ability to escape State/DEC salary schedules, should it be exempt from them. Any such savings would be offset by increased authority-related costs for overhead, administration, and insurance, and the need to offer higher compensation packages for key executive positions.

BMSC's future is best secured by continued DEC operation based on cost-of-service principles. A self-sustaining source of capital funds can be assured by the Legislature establishing a special fund in which a percentage of BMSC's user fee revenues would be deposited. These funds could be used to pay for future BMSC facility improvements or to secure revenue bonds or other financing for that purpose.

An authority-structure would create a vehicle (CWC's anticipated public-private partnership) with the potential to transfer responsibility for tens of millions of dollars of resort-related capital formation and risk of its under-performance or failure to the authority, and ultimately to the State.

In addition to imposing significant annual administrative and insurance costs, an authority would expose the State to significant risk of a potentially costly bailout to rescue the authority and/or the ski center. Such a bailout might be several times over the amount of State support provided to BMSC in FY 2010.

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[12]The author(s) of CWC's proposal are apparently privy to knowledge of certain elements of the UMP that CWC's proposal says are "reportedly utilized in a Unit Management Plan for Belleayre **that has not been released...**" (CWC proposal, p. 4, emphasis added).

About the Author

Mr. Michael Siegel is the Principal of Public and Environmental Finance Consultants. He has over 32 years of experience in state and local government finance, fiscal and regional impact analysis, utility rates and fees, and demand forecasting. His clients include federal, state, and local governments and agencies, public utilities and authorities, economic development corporations, land owners, and not-for-profits.

Mr. Siegel is the former Assistant Director of the Government Finance Officer's Association, and also headed the State of Maryland's Office of Commercial Revitalization and its Main Street Program. Earlier in his career he was a regional impact specialist for the Colorado West Area Council of Governments, and analyzed the local and regional impact of U.S. Air Force and Navy bases.

Recent projects include a study of the proposed reversion in corporate status of the City of Bedford, Virginia on Bedford County; analyses of the local impact of Walmart supercenters; a revenue enhancement strategy for Clarke County, Virginia; local and regional impact analysis of a large resort-casino proposed to be located outside Gettysburg, Pennsylvania, including retrospective analysis of four casinos in Vicksburg, Mississippi; a feasibility and fiscal impact analysis of the redevelopment of the NSA's former Vint Hill Station in Fauquier County, Virginia; a retail rate and tariff study for the Dhaka (Bangladesh) Electric Service Corporation; and, development of a county-level fiscal impact model for Shelby County (Memphis), Tennessee.