

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF COMMERCE

In the Matter of the Application
Filed by North Shore Bank of
Commerce, Duluth, Minnesota, St.
Louis County, to Establish a
Detached Facility at 1600 Miller
Trunk Highway in Duluth.

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before
Administrative Law
Judge Phyllis A. Reha on July 24 and 25, 1989, at the Government
Services
Center, 320 West Second Street, Duluth, Minnesota.

Carol M. Person, Attorney at Law, Fryberger, Buchanan, Smith &
Frederick,
P.A., 700 Lonsdale Building, Duluth, Minnesota 55802, appeared on behalf
of the
Applicant, North Shore Bank of Commerce. Bruce E. Coleman, Attorney
at Law,
510 Meierhoff Building, 325 Lake Avenue South, Duluth, Minnesota
55802,
appeared on behalf of the Objector, Republic Bank, Inc. The record
closed on
September 11, 1989.

This Report is a recommendation, Not a final decision. The
Commissioner
of the Minnesota Department of Commerce will make the final decision
after a
review of the record which may adopt, reject or modify the Findings of
Fact,
Conclusions, and Recommendations contained herein. Pursuant to Minn.
Stat.
14.61, the final decision of the Commissioner shall not be made until
this
Report has been made available to the parties to the proceeding for at
least
ten days. An opportunity must be afforded to each party adversely
affected by
this Report to file exceptions and present argument to the
Commissioner.
Parties should contact Michael A. Hatch, Commissioner, Minnesota
Department of
Commerce, 500 Metro Square Building, St. Paul, Minnesota 55101, to
ascertain
the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUES

The issues presented in this matter are:

(1) Whether the Applicant bank meets current industry standards of capital adequacy, management quality, and asset condition;

(2) Whether the establishment of the proposed detached facility will improve the quality or increase the availability of banking services in the community to be served; and

(3) Whether the establishment of the proposed detached facility will have an undue adverse effect upon the solvency of existing financial institutions in the community to be served. Minn. Stat. 47.54, subd. 2 .

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural History

1. On March 27, 1989, the Department of Commerce received from North Shore Bank of Commerce, 131 West Superior Street, Duluth, Minnesota, an application to establish a detached facility in the Miller Hill Mail, 1600 Miller Trunk Highway, in Duluth. The application was formally filed on May 3, 1989.

2. On May 9, 1989, notice of the application was published in the Duluth News-Tribune. Copies of the notice were also sent by certified mail, return receipt requested, to the banks located within a 3-mile radius of the proposed facility.

3. By letter dated May 24, 1989, Republic Bank, Inc., 4929 Decker Road, Duluth, Minnesota, objected to the application and requested that an administrative hearing be held.

4. On June 13, 1989, the Commissioner of Commerce issued a Notice of and order for Hearing directing that a contested case hearing be held, pursuant to the Administrative Procedure Act, Minn. Stat. 14.01 - 14.69, commencing on July 24, 1989.

5. On June 22, 1989, the Notice of and Order for Hearing was published in the Duluth News-Tribune.

6. On July 24 and 25, 1989, the hearing in this matter was held at the Government Services Center in Duluth.

North Shore Bank of Commerce

7. North Shore Bank of Commerce (North Shore Bank or North Shore), is located at 131 West Superior Street in Duluth, with detached facilities at 4801 East Superior Street and 17 West Calvary Road. (Tr. 18; Jurisdictional Ex. A). In 1988, it had approximately \$56 million in deposits, about 7% of the market share held by commercial banks in the Duluth area. (Tr. 19, 88). Over 95% of its loan portfolio is invested in the immediate Duluth trade area. (Tr. 22).

8. The principal shareholder in North Shore Bank is North Shore Financial Corporation, a bank holding company that is also the principal shareholder in Airport State Bank. The Lewis family, which has been involved in Duluth banking for over 70 years, is the principle shareholder in North

Shore Financial Corporation. Members of the family also have a majority interest in Park State Bank. (Tr. 13-18). All of the banks in which the Lewis family has some ownership interest collectively account for something less than 10% of the market share of commercial banks in the area. (Tr. 20).

Miller Hill Mall

9. The Miller Hill Mall is located at 1600 Miller Trunk Highway, at the intersection of Miller Trunk Highway and Decker Road and Trinity Road in Duluth. The Mall was built in 1974 and expanded in 1987. (Tr. 35-36, 47-48). In roughly 800,000 square feet of retail space, it has approximately 104 to 110 stores, with few current vacancies. (Tr. 37-38). Stores in the Mall have between 1500 and 3000 employees, the number increasing with seasonal retail activity. (Tr. 40). The Mall is doing very well financially; its sales per square foot have been excellent. (Tr. 41). In 1988, about 9.8 million people entered the Mall, and its stores made approximately \$165 million in sales. Both the number of visitors and the volume of sales are expected to increase in 1989. (Tr. 42-43). The Mall has become the focus of retail activity in Duluth and draws customers from northeastern Minnesota, the Canadian border area, northern Wisconsin, and northern Michigan. By industry standards, it is considered a "super-regional" Mall. (Tr. 7, 38-39, 41, 262; Applicant's Ex. 1).

10. A considerable amount of new commercial and industrial development, new retail activity, and increased customer traffic is present in the area surrounding the Mall. (Tr. 111-113, 127-128; Applicant's Exs. 9, 9A, 10, IOA).

11. The Miller Hill Mall is owned and managed by Melvin Simon & Associates, based in Indianapolis, Indiana. The firm is the country's largest manager of shopping centers, currently managing more than 70 enclosed malls and 25-30 other shopping centers. (Tr. 34-35).

12. The Miller Hill Mall presently has no bank or other banking facility, such as a night depository or automatic teller machine (ATM). (Tr. 48, 50).

The Proposed Detached Facility

13. North Shore Bank has applied for approval for a detached facility inside the Miller Hill Mall. The proposed facility would be a full-service bank that would accept deposits, make loans, cash checks, have ATM services, and provide coin and currency, including exchanging Canadian currency. (Tr. 26-27, 90; Jurisdictional Ex. A). The bank proposed that Renae Switzer, a bank employee since 1982, with experience in all phases of banking, manage the facility. She would have a staff of 2 full-time tellers and one part-time teller, the number of employees being dependent upon the volume of business. (Tr. 89; Jurisdictional Ex. A). North Shore Bank has entered into an agreement to lease an approximately 510 square foot space in the Mall. The lease is subject to approval by the applicable regulatory agencies, including the Department of Commerce, and North Shore Bank may terminate the lease if such approval is not obtained. (Tr. 65, 89; Jurisdictional Ex. B).

Republic Bank

14. Republic Bank, Inc. (Republic Bank or Republic) is located at 4929 Decker Road in Duluth and has a major detached facility at 306 West Superior Street. It is a local bank and is one of the fastest growing banks in the Duluth area. It had deposits of about \$6.3 million in 1984 and deposits of nearly \$29 million in mid-1989. (Tr. 24, 131, 258-259, 261). Republic Bank's Decker Road facility is a full-service bank that accepts deposits, makes loans, cashes checks, and provides coin and currency. It also has drive-through facilities. It does not have an ATM. (Tr. 28-29, 192). The bank is about two to three city blocks, or a tenth of a mile, from the Miller Hill Mall. (Tr. 26; Jurisdictional Ex. A, p. 8). Republic Bank is owned by Jeno Paulucci. (Tr. 263).

Other Banks in the Area

15. With reference to the site of the proposed detached facility, Norwest Bank has a branch about a half mile away, a main office about four miles away, and another branch about six miles away. Airport Bank is about one mile away. First Bank North has a branch about two miles away and a main office and another branch both about four miles away. In addition to its Decker Road facility, Republic Bank has a branch about four miles away. Other financial institutions, including a branch of Midwest Federal Savings and Loan Association, are also in the general area. (Tr. 57-58, 91; Jurisdictional Ex. A, p. 8 and Ex. B). Automatic teller machines are located in the Target parking lot and adjacent to K-Mart, both about a half mile or less from the Mall. (Tr. 68-69).

Capital Adequacy, Management Quality, and Asset Condition

16. North Shore Bank has total deposits of approximately \$56 million, it has had positive net income for at least the last five years, and it has an acceptable capital-asset ratio. (Tr. 22, 88, 132-133; Applicant's Ex. 7, Table 11).

17. North Shore Bank's asset quality has greatly increased over the past five years. The Bank's liquidity is excellent, and its earnings, while slightly lower than those of peer group banks in 1988, are improving. (Tr. 173, 208).

18. The competence of the management of North Shore Bank is more than adequate. (Tr. 173).

Quality and Availability of Banking Services

19. The Mall's tenant stores and their customers have made numerous requests for, and inquiries concerning, the availability of a banking facility, and particularly an ATM, in the Mall. (Tr. 51-52).

20. Customers have made inquiries as to where they can obtain cash from a ATM, cash checks, and exchange currency. (Tr. 68, 71). They have not asked Mall management where they can make deposits or obtain loans. (Tr. 71).

21. Most Mall stores discourage the use of checks as a form of payment, and customers are displeased particularly in cold weather. when informed that they have to go outside the Mall to cash a check. (Tr. 49, 69-70).

22. Tenants have expressed concern about having to carry deposits with them to their cars when they leave the Mall at night or early in the morning. (Tr. 51, 59). They are also interested in being able to obtain coin and currency. (Tr. 71).

23. It is inconvenient for customers, especially in inclement weather, to have to go outside the Mall to cash checks, obtain cash from ATM, or exchange foreign currency. It is also inconvenient for merchants to have to leave the premises to make deposits or to obtain additional coin and currency.

24. Convenience is a factor in the quality of banking service. There is a qualitative difference between being able to obtain a service within the Mall and having to leave the building and travel, even a short distance, to another location to obtain it.

25. It is important to the success of the Mall that its management respond to requests for services from tenants and customers. The availability and convenience of a variety of services tends to induce customers to stay in the Mall longer and to shop more. (Tr. 50, 55-56).

26. Tenants of the Mall may have an additional sense of security in being able to make deposits without leaving the Mall, particularly at odd hours. (Tr. 27-28).

27. Tenants have expressed little interest in the availability of loan services in the Mall. However, of the approximately 100 retail stores, there are probably a significant number who would have occasion to borrow funds at the proposed facility. (Tr. 202).

28. North Shore Bank's lease agreement does not require that the facility be open longer hours than North Shore's facility at 131 West Superior Street.

However, the proposed facility may be open for business longer hours than most banks. (Jurisdictional Ex. B, p. 8; Tr. 67, 157, 256).

29. Competition among banks tends to improve the quality of banking services to consumers and to cause banks to operate more efficiently.

The offering of many of the same types of services by two competing banks does not necessarily make the quality of the service the same.

30. The proposed facility would add to the convenience of tenant stores, their employees, and their customers by providing them with an alternative facility at which they could obtain a variety of banking services.

Undue Adverse Effect Upon Solvency

31. While the population of the Duluth area decreased significantly in the 1970s and 1980s, the number of households, which tends to be the unit opening bank accounts, increased by about 3,184 in the 1970s and decreased by

only about 80 in the 1980s. (Tr. 115-117; Applicant's Ex. 7, Tables 3 and 7).

32. Employment in the Duluth area has increased each year since 1983, with the exception of 1988, and household incomes have been increasing. (Tr. 119, 122-123; Applicant's Ex. 7, Tables 3 and 7).

33. Studies of regional economic activity indicate that Duluth is recovering or has recovered from its recession in the early 1980s and that employment and bank deposits are expected to increase. (Tr. 125-127; Applicant's Ex. 11).

34. Bank deposits in the area have grown from about \$552 million in 1983 to about \$692 million in 1988. (Tr. 130; Applicant's Ex. 7, Table 10).

35. All nine banks in the area have had an increase in deposits over the last five years, and all, with the exception of First Bank North-Duluth, have had an increase in loans over that period. (Tr. 134; Applicant's Ex. 7, Table 10).

36. With only three exceptions concerning individual banks in particular years, all nine banks in the area have had positive net income for each of the last five years. (Tr. 132; Applicant's Ex. 7, Table 11).

37. The amount of annual new savings potential in the Duluth area has been reasonably projected to be \$40.17 million in 1988, \$42.76 million in 1989, \$45.31 million in 1990, and \$49.55 million in 1991. (Tr. 135-140; Applicant's Ex. 7, Table 17).

38. North Shore Bank projects that the proposed facility will have approximately \$3 million in deposits by the end of the third year, based on its estimate that it will obtain about 50% of the Mall's business accounts and about 30% of the accounts of Mall employees. (Tr. 90, 94-95; Jurisdictional Ex. A, p. 6).

39. North Shore projects expenses for the facility of \$150,800 the first year, \$179,700 the second, and \$206,000 the third. (Tr. 99-101; Jurisdictional

Ex. A, p. 7). It estimates that the facility will have, for the three years respectively, a \$41,000 loss, a \$29,000 profit, and a \$77,000 profit. (Tr. 311-318, Objector's Ex. 3).

40. All projections are inherently uncertain and involve a degree of business judgment. While North Shore's deposit projections may be somewhat high and its expense projections somewhat low, the projections are nevertheless reasonable.

41. A sufficient market exists for a proposed facility with \$3 million in deposits after three years.

42. Sixty-seven Mall businesses have accounts at Republic Bank. The average balance in the accounts is about \$4,900 and total is roughly \$308,000 to \$330,000. (Tr. 226-227, 237, 305-306).

43. The deposits of the proposed facility would most likely come from a number of sources, including the overall growth of business in the Mall and surrounding area, to some extent from accounts presently held by Republic Bank and to a lesser extent from accounts currently held by other banks and financial institutions. The deposits would not come from any single financial Institution, including Republic Bank, in any quantity that would constitute a significant threat to solvency. (Tr. 189-190).

44. The proposed facility would not cause North Shore Bank or Republic Bank to become insolvent. (Tr. 260, 327-328). Neither would the proposed facility constitute a significant threat to the continued solvency of either bank.

45. Republic Bank would not suffer a severe or substantial adverse effect from the proposed facility, though it would very probably lose a portion of its Mall accounts. (Tr. 183, 187).

46. Any adverse effect upon Republic Bank could be mitigated by competitive steps taken in response to the new facility. (Tr. 149, 183, 185, 189, 194).

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Department of Commerce have jurisdiction over this matter pursuant to Minn. Stat. 47.54, subd. 3 and 14.57 (1988).

2. Proper notice of the hearing on the application was timely given, all relevant substantive and procedural requirements of law or rule have been fulfilled, and the matter is properly before the Administrative Law Judge.

3. North Shore Bank of Commerce meets current industry standards of capital adequacy, management quality, and asset condition.

4. The establishment of the proposed detached facility in the Miller Hill Mall will both improve the quality and increase the availability of banking services in the Duluth area.

5. In view of the growth of bank deposits in the Duluth area, the general profitability of the banks in the area, and the substantial new savings potential expected in the area, the proposed facility in Miller Hill Mall would not have an undue adverse effect upon the solvency of North Shore Bank, Republic Bank, or other financial institutions in the Duluth area.

6. Any Finding of Fact more properly termed a Conclusion, and any Conclusion more properly termed a Finding a Fact, is hereby adopted as such.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the application of North Shore Bank of Commerce to establish a detached facility at 1600 Miller Trunk Highway in Duluth be GRANTED.

Dated: October 13th 1989.

PHYLLIS A. REHA
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Court Reported. Jeffrey J. Watczak. Two Volumes.

MEMORANDUM

A bank applying for approval of a proposed detached facility must establish that (a) the applicant bank meets current industry standards of capital adequacy, management quality, and asset condition; (b) the establishment of the proposed detached facility will improve the quality or increase the availability of banking services in the community to be served; and (c) the establishment of the proposed detached facility will not have an undue adverse effect upon the solvency of existing financial institutions in the community to be served. Minn. Stat. 47.54, subd. 2. At the hearing in this matter, North Shore Bank had the burden of proving those facts by a preponderance of the evidence. Minn. Rule 1400.7300, subp. 5. It has done so.

Capital Adequacy, Management Quality, and Asset Condition

North Shore Bank presented the testimony of Dr. Douglas Austin, Professor

Emeritus in the Department of Finance at the University of Toledo.
He is an expert in the banking field, an attorney, and a member of Austin Associates, a financial institution consulting firm. Since 1967, he has been involved in some capacity in approximately 300 branch banking applications and has testified as a banking expert on many occasions. Dr. Austin reviewed North Shore's application, Republic's objection, Duluth business indicators, the Sheshunoff bank performance report, FDIC reports, uniform banks performance

reports on North Shore and Republic Bank, Republic's 1986 application for a detached facility in downtown Duluth, tables on the historical performance of banks and savings and loans in the Duluth market provided by the Maxfield Research Group, the directors' examination reports of North Shore Bank and its financial statements and historical performance data. Based on this review and analysis, Dr. Austin concluded that North Shore Bank meets current industry standards of capital adequacy, management quality, and asset condition.

The Administrative Law Judge finds Dr. Austin's testimony on this issue to be credible and persuasive. His expert opinion that North Shore Bank meets the statutory test was not rebutted. The Applicant has met its burden of proof to establish the first statutory requirement.

Quality and Availability of Banking Services in the Community to be Served

As the Findings of this Report reflect, the Miller Hill Mall has no banking services even though it is the financial focal point of Duluth retail shopping and is essentially a city in itself, with approximately 100 stores, 2000 employees, and nine million visitors annually. (Tr. 174-175, 178-179). Although Republic Bank is located only one-tenth of a mile away from the Miller Hill Mall, it is a freestanding facility and is not located inside the Mall itself. Republic Bank is not as convenient nor as secure or safe for customers as would be a bank located inside the Mall. A facility within the Mall would assist store owners, employees and customers by providing a competitive alternative, offering a full range of banking services. It would offer more convenience and security to its customers than facilities, such as Republic Bank, outside the Mall. It would also provide a service to the businesses by helping to induce customers to stay in the Mall. There is a qualitative difference between being able to obtain a service within the Mall and having to leave the building and travel, even a short distance, to another location to obtain it. Furthermore, the competition among the banks would improve the

degree of services to customers and is part of meeting their needs and conveniences.

Although Republic attempted to argue that the opening of the detached facility would not improve the quality or increase the availability of banking services in Duluth, it did so by arguing that the banking services North Shore proposed to offer were already available at Republic Bank.

It did not rebut the fact that convenience and safety will be better served by a location of a banking facility within the Mall. In an effort to establish that the location of banking facilities within the Mall would not improve the quality and availability of banking services, Republic Bank presented the testimony of Dr. Richard Sielaff. Dr. Sielaff has been a professor of marketing at the University of Minnesota Duluth for many years and is the president of the Rockwood Research Corporation, a market research business in Duluth. (Tr. 267-268). While he does not have banking experience, he has prepared reports for banks in the area. (Tr. 277). Dr. Sielaff testified concerning the results of a survey taken of store managers at the Mall to attempt to determine the level of satisfaction with bank services presently being provided in the area. (Tr. 270; Objector's Ex. 4, p. 1). In preparing the questionnaire used, he focused on the present situation. He did not ask store managers whether they would like to have a bank with in the Mall. (Tr. 290). A review of the survey results will show that a very large proportion of the responses received

fell within the "uncertain" category. Other responses provide some support for making check-cashing services available in the Mall. With respect to ATMs, Dr. Sielaff's question was not particularly helpful, as it did not ask generally about the convenience, efficiency or desirability of having ATM services in the Mall. Instead, the question assumed that an ATM would be installed, and essentially sought an expression of preference that it be operated by the bank in which the responding store presently had an account. It seems unsurprising, in view of the way the survey was conducted and in the absence of an explanation of ATM networks, that nearly all of the managers indicated that it would be "very efficient and desirable" for them if their present bank operated the ATM. (Table 4). Despite the difficulties with the question regarding ATMs, the responses to the ATM question do seem to reflect general support among store managers for having an ATM in the Mall. (Tr. 276, 291). The survey did not include a question concerning convenience in obtaining coin and currency, though Dr. Sielaff refers to that subject, along with making deposits, as a primary concern of managers. (Objector's Ex. 4, p. 1). Considered as a whole, the survey does not provide firm support for a conclusion that store managers are generally satisfied with presently available banking services. To the contrary, it indicates considerable interest in having at least some bank services, such as check cashing and ATM services, available in the Mall.

On the basis of the testimony and evidence presented at the hearing, the Administrative Law Judge has concluded that the Applicant has met its burden to establish the second statutory criteria that the proposed detached facility will improve the quality or increase the availability of banking services in the community. The facility within the Mall will add to the quality and nature of banking services by giving consumers the choice of an additional facility at which to transact business. It will add convenience for the stores in the Mall, their employees and those who shop there.

Effect Upon Solvency of Existing Financial Institutions in the Community

The Minnesota courts have not yet addressed the issue of what is contemplated by the term "solvency" in the context of Minn. Stat. 47.52.

However, Minnesota law has long defined "insolvency", as applied to a bank or merchant, to mean inability to pay one's debts in the ordinary course of business. Daniels v. Palmer, 35 Minn. 347, 29 N.W. 162 (1886); Williamson v. Hatch, 55 Minn. 334, 57 N.W. 56 (1893); In v. Bissell, 57 Minn. 78, 58 N.W. 828 (1894).

The issue of what is meant by the term "solvency" is usually addressed in the context of an employee's knowledge' of the financial condition of the bank and the bank's potential liability for misrepresenting the bank's financial condition. Since it is the bank's condition and ability to honor its liabilities which is the issue in those types of cases, the definition of insolvency in those contexts is equally applicable in the instant context.

The parties basically agree that the term "solvency" means the ability to pay debts as they become due in the ordinary course of business. However, they disagree as to the meaning of "undue adverse effect" in the requirement that "the establishment of the proposed detached facility will not have an undue

adverse effect upon the solvency of existing financial institutions". Minn. Stat. 47.54, subd. 2.

Republic Bank maintains that "undue" essentially means in the future or "not yet due", and that a proposed facility fails to satisfy the statutory requirement if it would weaken another bank or lessen its ability to pay its debts. Republic maintains that, by taking its customers, specifically the projected 50% of its Mail business accounts, North Shore would obviously weaken Republic to some extent and make it less able than it otherwise would be to pay its debts in the ordinary course, a condition continuing into the future. It argues, therefore, that North Shore has not satisfied the statutory requirement. (Objector's Memorandum, pp. 10-12).

The Administrative Law Judge believes that Republic's reading of the provision is strained. While proof of imminent insolvency is not required, Republic's proposed standard would require too little. Although there has been no judicial interpretation of the requirement, it must be read in accord with general principles of statutory construction.

A statute is to be construed according to the legislative intent, which is to be sought in the language used, in light of the subject matter, the purpose of the statute, the occasion and necessity for the law, and the consequences of a particular interpretation.

State v. Olson, 325 N.W.2d 13 (Minn. 1982), quoting Gudnosky v. Bislow, 251 Minn. 496, 498 N.W.2d 847, 850 (1958).

It is apparent that the basic purpose of the statute, in permitting banks to establish detached facilities, is to increase the availability of banking services to the public and to improve the quality of those services by fostering competition. The establishment of any new detached facility will often have some adverse effect upon another financial institution by taking some business away from it. But that sort of probable adverse effect is not enough to offend the statute. There must be an "undue" adverse effect on the

solvency of an existing institution. Although the term "undue" has not been recently addressed in Minnesota case law, it has been defined previously in judicial contexts. It has been defined as "disproportioned", "excessive", "disproportionate", "inordinate", "more than necessary", "unreasonable", "unworthy", "not proper". "Undue" has been held to be synonymous with "unreasonable." See, 90 C.J.S. p. 1037, notes 27, 28, 29, 30, 31, 32, 33, 34 and 35.

In its statutory context, the term cannot reasonably be read as the equivalent of "future". It refers to the strength of the adverse effect. The word "undue" clearly indicates that the effect must be something more than would be expected in the normal course of events. The adverse effect must be excessive, disproportionate, or unreasonable, or one that would amount to a significant threat to the solvency of an existing institution. The Legislature did not say that an application should be denied if another bank would lose

accounts or lose business. Neither did it say that an application should be granted unless it will cause the insolvency of an existing institution. It settled on the requirement that there be no "undue adverse effect upon the solvency of existing financial institutions".

As part of the support for its application with respect to this issue, North Shore presented the testimony of Lee Maxfield, a consultant in real estate development and banking. Mr. Maxfield and his firm, Maxfield Research Group, provide market research, feasibility studies and investment analysis to developers, lenders, and government agencies concerning, among other things, the siting and development of bank offices and shopping centers. (Tr. 102). His firm has done feasibility studies regarding proposed bank charters and branches in a number of Minnesota communities and in other states. (Tr. 104-105; Applicant's Ex. 7). Mr. Maxfield and his firm prepared a study to determine the market demand potential for a banking facility in the Miller Hill Mall, assessing growth in the area, the local economy, and competitive financial institutions, in an effort to evaluate the deposit potential and prospects for success of the proposed facility. The study utilized both primary and secondary data, the latter being from sources generally regarded as reliable, such as FDIC bank operating statistics and Minnesota Department of Labor and Industry records. (Tr. 107-108; Applicant's Ex. 7, p. 3).

With regard to the proposed site, they found a considerable amount of new commercial and industrial development, new retail activity, and increased customer traffic in the Mall area, suggesting that it is one of the better locations in Duluth for a new facility. They examined demographic data to assess growth in the primary trade areas. With the exception of 1988, employment in the area has increased each year since 1983. (Tr. 119; Table 3). Household incomes have - been increasing. (Tr. 122-123; Table 7). Mr. Maxfield also reviewed studies of regional economic activity and found that the

indicator suggested that Duluth is recovering or has recovered from its recession. (Tr. 125-126; Applicant's Ex. 11). The forecasts were generally positive and indicated that employment and bank deposits will increase.

With regard to banks and savings and loans in the primary trade area, Mr. Maxfield found that all have had an increase in deposits and all with the exception of First Bank North-Duluth, have had an increase in loans over that period. (Tr. 134; Tables 11 and 12). Mr. Maxfield found that all of the banks have acceptable capital-asset ratios. (Tr. 133).

Mr. Maxfield concluded that a sufficient market exists for the proposed facility with \$3 million in deposits after three years and that, based on the generally increasing deposits and loans of the banks in the area and their general profitability, none of the banks would be unduly injured by the opening of the new facility. The Administrative Law Judge found Mr. Maxfield's testimony to be thorough and highly credible.

The Applicant's other expert witness, Dr. Austin, also agreed that \$3 million in deposits for the facility was a reasonable figure and would come from a number of sources, including the overall growth of business in the Mall, and would not come from any other financial institution in any quantity that would have an undue adverse effect upon its solvency. (Tr. 189-190).

Dr. Austin also reviewed the criteria with respect to Republic Bank and noted that it has been the fastest growing bank in Duluth over the past five years and that it has been very aggressive in seeking funds, having the highest yield on assets and the highest yield on funds. (Tr. 184). He did not find any statistical measure indicating that Republic Bank would be unduly adversely affected by the proposed facility, and he believes that any adverse effect, though slight, could be outweighed by steps taken in response. (Tr. 183). Even if it were assumed that Republic would lose as much as \$3 million in deposits from the Mall, it could make up that loss in six months at the rate it has been growing in recent years. (Tr. 187).

Ervin Ellefson, president of Republic Bank since 1984, testified that Republic had 67 accounts which arose from the Mall area. Republic Bank was unwilling to disclose the identities of the account holders and did not disclose any of the underlying data. However, Republic Bank did disclose the size of its average balances. From this information it can be deduced that Republic's Mall accounts represent approximately \$308,000 to \$330,000, a small portion of Republic's \$29 million in deposits. (Tr. 237). Even if Republic Bank were to lose all of its Mall accounts, a circumstance which is highly unlikely, the impact would not cause an undue adverse impact on Republic Bank's solvency.

In conclusion, no evidence was presented in this case indicating that North Shore's proposed detached facility in the Miller Hill Mall would have any significant, substantial or unreasonable effect upon the solvency of Republic Bank or any other financial institution in the area. The Applicant has met its burden of proof for the third statutory criteria.

P.A.R.

