

**REGULAR STATE BANKING BOARD MEETING
HELD BY CONFERENCE CALL
OFFICE OF THE COMMISSIONER
DEPARTMENT OF FINANCIAL INSTITUTIONS
2000 SCHAFFER STREET, SUITE G
BISMARCK, NORTH DAKOTA**

November 14, 2002

The regular meeting of the State Banking Board was held in the Office of the Commissioner, Department of Financial Institutions, 2000 Schafer Street, Suite G, Bismarck, North Dakota. Chairman Karsky called the meeting to order at 9:02 a.m., Thursday, November 14, 2002, by conference call arrangement.

MEMBERS PRESENT: Timothy J. Karsky, Chairman (*Office*)
Ron Braseth, Member (*Mayville*)
Bill Daniel, Member (*Office*)
Launa Moldenhauer, Member (*Office*)
Roger Monson, Member (*Finley*)
Gary Petersen, Member (*New Town*)
Terry Zeltinger, Member (*Office*)

MEMBERS ABSENT: None

ALSO PRESENT: Robert J. Entringer, Assistant Commissioner (*Office*)
Jeff Jungman, Chief Examiner – Banks (*Office*)
Al Wolf, Wheeler Wolf Law Firm, Bismarck (*Office*)
Dana Ereth, EideBailly, Bismarck (*Office*)
Scott Sayer, Citizens State Bank of Finley (*Finley*)
Chad Aberle, Citizens State Bank of Finley (*Finley*)
Starr Braaten, Citizens State Bank of Finley (*Finley*)

APPROVAL OF MINUTES

Chairman Karsky indicated the Board received copies of the minutes of the regular meeting held on September 26, 2002. **It was moved by Member Braseth,**

seconded by Member Zeltinger, and carried by voice vote to dispense with the reading of the minutes and approve the minutes as published.

THE CITIZENS STATE BANK OF FINLEY – APPLICATION TO ESTABLISH A FACILITY AT 912 BURRELL AVE SE, COOPERSTOWN

Assistant Commissioner Entringer reviewed his Memorandum dated November 5, 2002, with the Board. He indicated the application was received on October 7, 2002, and was published pursuant to North Dakota Administrative Code Section 13-02-05-05 in the Griggs County Sentinel-Courier, Cooperstown. The comment period ended November 11, 2002, and no comments had been received as of the date of the Memorandum. Direct notice was provided to the Cooperstown branch of Community First National Bank, the Cooperstown branch of Security State of North Dakota, and the Aneta Facility of the First State Bank of Sharon.

Assistant Commissioner Entringer stated the statutory criterion as found in Section 6-03-13.3, North Dakota Century Code, requires the Board to consider the following facts to determine whether to approve an application: whether the convenience, needs, and welfare of the people in the community and area served will be met; financial strength of the bank in relation to the cost of establishing and maintaining such separate facility; whether other banks would be seriously injured by the approval of the application. The applicant addressed the convenience, needs, and welfare criterion under Exhibit 5 of the application, and indicates the applicant currently has 90 portfolios with approximately \$1 million in loans and \$1.5 million of deposits in the Cooperstown market. The applicant indicates the grandfather of Scott Sayer, Chairman of the Board, started a bank in Cooperstown and his father operated the bank until 1984, when it was sold. Mr. Sayer was born and raised in Cooperstown. President Roger Monson was also born and raised on a farm near Cooperstown, graduated from high school in Cooperstown, and is involved in the area empowerment zone. The application includes 12 letters of support from businesses and individuals in the Cooperstown market.

Assistant Commissioner Entringer stated to address the financial strength of the bank in relation to cost of establishing and maintaining such separate facility, the applicant discussed under Exhibit 4a the building which is to be purchased and outfitted for the bank. The applicant estimates only cosmetic changes are necessary for the bank to occupy the facility since it was previously operated as a savings and loan. The applicant estimates the cost to equip the facility at \$70,000 and the building will be leased, with a copy of the lease included under Exhibit 4b

of the application. The applicant indicates the lease will not be capitalized since it does not meet the criteria for a capitalized lease. The pro forma balance sheet and future earnings and prospects data are included under Exhibit 6. As is noted, the projected deposits at the end of the first year are \$4 million and estimated to be \$9 million at the end of the third year. Projected loans at the end of the first year are \$3 million, and estimated to be \$7.5 million at the end of the third year. The applicant is projecting a net loss for the first year of operation of \$53,150, turning to a \$57,600 profit by the end of the third year. The assumptions for future earnings and prospects are contained on pages 4-6 of Exhibit 6, and appear to be reasonable. The projected capital ratios throughout the projection period remain above 10% for primary capital and fall to 9.49% Tier One leverage ratio in the third year of the projection period.

Assistant Commissioner Entringer stated the Department feels the applicant has demonstrated financial strength in relation to the cost of establishing and maintaining the facility.

Assistant Commissioner Entringer stated the third criterion of whether other banks would be seriously injured by the approval of the application is addressed under Tab 3, wherein the applicant states they do not believe other banks would be seriously injured by approval of the application. The applicant notes Community First National Bank serves 150 markets in 12 states with \$4.7 billion in deposits. Security State Bank of North Dakota serves 9 North Dakota markets with deposits in excess of \$150 million. The application indicates the proposed management for the facility is President Roger Monson, whose resume is found under Exhibit 2 of the application.

Assistant Commissioner Entringer asked President Monson if he had any comments with regard to the application. President Monson stated that as had been previously mentioned, both he and Scott Sayer have life time relationships in the Cooperstown market, which is shown through the accounts and deposits which the bank currently has. President Monson indicated there have been some subtle changes in the market, resulting in people approaching the bank asking whether they would consider establishing a facility in Cooperstown. President Monson indicated they feel the bank will be favorably received in Cooperstown.

Chairman Karsky asked President Monson to review the history of the banking institutions in the Cooperstown market over the last 10 years. President Monson indicated in the early 1990's there were two banks in the Cooperstown community, the Farmers and Merchants Bank, and First Bank. First Bank was

acquired by the Community First National Bank, who then acquired the Farmers and Merchants Bank, which resulted in Community First National Bank remaining as the only bank in the Cooperstown area. At approximately the same time Security State Bank of North Dakota relocated its Wimbledon facility to Cooperstown, which returned the number of financial institutions in Cooperstown to two, until only recently when the First State Bank of Sharon received approval to establish a facility in Cooperstown.

Chairman Karsky indicated he felt it was somewhat ironic that several years ago there was only one bank in Cooperstown and now there will potentially be four offices, adding that he felt it was very optimistic of the previous applicant for a facility in Cooperstown to indicate they feel they can obtain \$18 to \$20 million of deposits in that market.

President Monson responded to Chairman Karsky's comment by stating when the Farmers and Merchants Bank was sold to Community First National Bank it was a management issue, not a market issue. President Monson indicated he cannot speak as to why First State Bank of Sharon is interested in the Cooperstown market, but can certainly tell the Board The Citizens State Bank of Finley is interested because there is a feeling in the community that the regional bank does not have the community interests at heart. Employees of the regional bank are continually being asked if the bank is going to be there in the future and there seems to be major corporate changes in that location. President Monson indicated because of these changes, they feel it is an opportunity to establish a community bank.

Member Moldenhauer asked if there is something going on in the area that gives the applicant reason to believe there is going to be an increase in deposits. President Monson indicated the empowerment zone, of which he is a member, is a 10-year program which involves \$20 million to be used for economic development in the Cooperstown community, as well as Steele County, and are just now starting to feel effects from that development. Member Monson stated he feels Cooperstown is poised to see some fairly significant growth in jobs and job creation in the next 4 to 5 years.

Member Moldenhauer asked if President Monson was aware of what the sales tax figures for Cooperstown were, and President Monson stated he did not have the figures at this time, but knows they have increased.

President Monson indicated some of the major businesses in the Cooperstown market supporting the facility include the local elevator, implement dealer, bearing puller manufacturer, tool and dye company, and wholesale implement dealer. President Monson mentioned a \$2 million bond issue was just passed for the local school.

Assistant Commissioner Entringer concluded that the Department believes the applicant has demonstrated the statutory criteria of meeting the convenience, needs, and welfare of the people in the community to be served, that the bank has the financial strength in relation to the cost of establishing and maintaining the facility, and the lack of opposition indicates no other banks would be seriously injured by approval of the application; therefore, the Department recommends approval of the application.

It was moved by Member Braseth, seconded by Member Moldenhauer and carried by a vote of 6 to 0, with Member Monson absent and not voting, to approve the application by The Citizens State Bank of Finley, Finley, to establish a facility at 912 Burrell Ave SE, Cooperstown, and to authorize Chairman Karsky to sign the Order on behalf of the Board.

CONFIDENTIALITY OF BANK RECORDS

Chairman Karsky indicated periodically the Board reviews what records are considered to be confidential or open as public information. He explained the current list was last approved by the Board on March 15, 1990.

Assistant Commissioner Entringer reviewed the list of bank records with the Board.

- State bank exams – confidential per statute, although there are certain instances where information in the report can be accessed by specific individuals, so should be changed on the listing.
- Bank of North Dakota exam – confidential, although the statute has been changed to note that it is the Department’s property and is maintained in a confidential manner.
- Examiner work papers – confidential.

- Federal Deposit Insurance Corporation examinations – confidential, although we are required by law to notify the FDIC if we should get a request to see an examination.
- Federal Reserve examinations – confidential. The Department is bound by the same requirements as with the FDIC examinations.
- Comptroller of the Currency examinations – confidential. The Department is bound by the same requirements as the FDIC and Federal Reserve examinations.
- Corporate file – public. These files contain information such as Articles of Incorporation, increase or decrease of capital stock, etc.
- Correspondence from general public regarding banks – public. Letters of a confidential nature, i.e., discussing an examination or transmittal letter of an examination, those documents are considered confidential.
- Correspondence between the Department, Federal Reserve, Federal Deposit Insurance Corporation, and Comptroller of the Currency, as well as all letters, memorandums, etc., received from these agencies – confidential.

Chief Examiner – Banks Jungman stated correspondence from other state banking departments should be added to the correspondence category.

- Applications – statutes define what is confidential: trade secrets, medical information, and personal financial information.

A question was raised as to whether the purchase price for change of control applications should be confidential or public, and Chairman Karsky indicated Assistant Attorney General Miller is looking into this matter.

- Reports of Condition (national banks) – confidential. This should be changed to public, since the entire report of condition is considered public information and are available over the internet.
- Reports of Condition and Income (state banks) (All pages which are considered public by the FDIC and Federal Reserve) – public.

Assistant Commissioner Entringer indicated we could strike “all pages which are considered public by the FDIC and Federal Reserve”, because as previously stated, the entire report is public information.

- Annual papers (Oath of Officers, Oath of Directors, Annual Meeting of Stockholders, List of Stockholders) – confidential.
- Bank stock sale letters – confidential.

Chairman Karsky indicated a motion is needed to approve the changes that were made. The Reports of Condition and Income for state and national banks will be combined into one item; and to add other state banking departments under correspondence to be confidential.

Member Zeltinger inquired as to the confidentiality of the Bank of North Dakota exam, and Assistant Commissioner Entringer indicated we are very careful to not include names in the Bank of North Dakota examination; when we classify any loans we use the account number because of Industrial Commission’s policy of disclosing charged off loans annually. Assistant Commissioner Entringer noted the report is provided to the Legislative Council so if a legislator would want to review the report they could review it at the Legislative Council’s office, but we do make sure they are aware it is the property of the Department.

It was moved by Member Monson, seconded by Member Zeltinger, and unanimously carried to approve the Confidentiality of Bank Records as amended.

DIVIDEND REQUEST AND APPROVAL OF TRANSFER TO UNDIVIDED PROFITS OF \$100,000 – STUTSMAN COUNTY STATE BANK, JAMESTOWN

Chief Examiner – Banks Jungman reviewed his Memorandum and indicated the Department had received a letter dated October 30, 2002, requesting a \$175,000 dividend. The purpose of the dividend is to pay recent organizational costs and interest on the debt as a result of the recent change of control. Chief Examiner – Banks Jungman indicated the request is somewhat unique in that the financial information as of September 30, 2002, shows the bank only has \$94,000 in the undivided profits account and the bank is not allowed to pay a dividend if

there is not sufficient funds in the undivided profits account to cover the dividend. As a result of this request, the bank is asking the Board to authorize a transfer of \$100,000 from surplus into undivided profits to enable the bank to pay the dividend. Once the dividend is paid, the undivided profits account would be at \$19,000; however, that is exclusive of earnings since September 30th. This transfer will have a nominal impact on the bank's lending limit, which is provided in the Memorandum. The primary capital ratio is 10.69%, but the ROAA is only .11% because of the pushdown accounting which requires that the income statement be reflected as an entirely new entity after the change of control. Chief Examiner – Banks Jungman stated taking into consideration what the bank earned from January to June, and then adding in the \$94,000, the return on assets is just under 1%.

Chief Examiner – Banks Jungman restated the request is to transfer \$100,000 from surplus to undivided profits, and then declare a \$175,000 dividend. In the October 30, 2002, letter President Huber asked whether the Board would be opposed to the bank transferring \$100,000 back from undivided profits into surplus later on. Chief Examiner – Banks Jungman stated he would question President Huber as to the rationale for this, and make sure he knows it cannot be done unless there is sufficient funds in the undivided profits account for the transfer to be made. President Huber also asked whether the Board had any reservations about the payment of the dividend taking place over a period of time. Chief Examiner – Banks Jungman indicated he would discuss with President Huber that the dividend should be declared, moved to a dividends payable account, and then could be disbursed as the bank sees fit.

Chairman Karsky stated the reason for putting the money in the dividend payable account is because the bank is not permitted to declare more than four dividends per year or more than one dividend per quarter.

Chairman Karsky indicated he thought it was appropriate that the Board consider this dividend request since we had just approved the large change of control for the bank holding company; however, the Board does need to approve the transfer of \$100,00 from surplus to undivided profits.

It was moved by Member Petersen, seconded by Member Braseth, and unanimously carried to approve the request of Stutsman County State Bank, Jamestown, to transfer \$100,000 from undivided profits to surplus, and to declare a \$175,000 dividend.

ITEM TO BE NOTED

Comptroller of the Currency

Effective 10-1-02, Alerus Financial National Association, Grand Forks, ND, purchased the assets and liabilities of the BNC National Bank Branch located at 3137 32nd Ave. SW., Fargo, ND.

MEETING DATES FOR 2003

Assistant Commissioner Entringer indicated the Board currently meets the second Thursday of January, March, May, July, September, and November. The Board set the following meeting dates for 2003: January 16, March 13, May 8, July 10, September 11, and November 13.

DAY WITH THE COMMISSIONER

Chairman Karsky stated the Day with the Commissioner would be held November 20, 2002, in Bismarck. He stated some of the items on the agenda include Marilyn Foss discussing privacy questions, and discussing the Department's budget. Chairman Karsky informed the Board that he has been made aware that Representative Clark from Fargo would be introducing a bill to combine the Securities Department, Insurance Department, and this Department under one agency. He stated this is not the first time a proposal has been made to combine these Departments; however, there are constitutional issues since the Insurance Department is a constitutional office, and the Insurance Department and this Department both being special funded agencies, while the Securities Department is a general fund agency. He stated the State Banking and Credit Union Boards are also issues with regard to combining the three Departments. Chairman Karsky stated he had a problem with this Department being headed by an elected official, and referred to a bank in Tennessee which was closed over the weekend by the FDIC rather than the state regulator, whereby the FDIC used its powers which were granted back in 1991 through FIRREA. Chairman Karsky indicated he could see a situation whereby a bank got into problems near an election and the elected official did not do anything to close the bank in an attempt to draw more votes. He stated the decision to close a bank is not an easy decision, but has to be made, and

has to be made quickly. He stated if it became a political decision he could foresee serious damage to the industry.

Chairman Karsky stated he appreciated the working relationship we now have with the North Dakota Bankers Association and the Independent Community Banks of North Dakota, as it was the North Dakota Bankers Association who called to advise him of this bill, then he informed the Governor's Office.

LEGISLATION

Chairman Karsky indicated the only bill the Department is introducing with regard to banks is changing the dividend frequency. Right now banks are limited to declaring dividends quarterly, and the proposed bill would remove any limitation, except for the limitation found in Section 6-03-36, North Dakota Century Code.

Chairman Karsky indicated the Department does have a number of bills in the consumer section, but will not introduce any credit union bills. Also, the Department will monitor any legislation which may affect the Department or industries we regulate.

The Board went into closed session at 9:48 a.m., and returned to open session at 10:05 a.m.

HEARING – CHAPTER 13-02-14, NORTH DAKOTA ADMINISTRATIVE CODE – LIFE INSURANCE

Chairman Karsky called the hearing to order at 10:10 a.m., and noted that he would act as hearing officer for this public hearing.

Chairman Karsky indicated the purpose of the hearing is to allow all interested individuals an opportunity to submit information concerning the amendments to Chapter 13-02-14, North Dakota Administrative Code.

The hearing closed at 10:48 a.m.

The meeting adjourned at 10:48 a.m.

Timothy J. Karsky, Chairman

Robert J. Entringer, Secretary