

3/22/93 gab

STATE OF MINNESOTA
HOUSING FINANCE AGENCY

STATEMENT OF NEED AND REASONABLENESS

In the Matter of the Proposed Rules Governing the
Publicly Owned Neighborhood Land Trust Program

I. INTRODUCTION

The Minnesota Housing Finance Agency (Agency) proposes to adopt rules governing the Publicly Owned Neighborhood Land Trust Program (Program). The Program provides deferred loans to cities to acquire, construct, and rehabilitate housing (land and buildings) through the use of a land trust model.

The Agency has prepared this Statement of Need and Reasonableness (SNR) to explain its proposed rules and satisfy the rulemaking requirements of the Minnesota Administrative Procedures Act, Minnesota Statutes Chapter 14 (1992).

Part II of this SNR describes the statutory authority of the Agency to undertake this rulemaking. Part III describes the need for the proposed rules. Part IV describes the reasonableness of the proposed rules. Parts V and VI address the small business consideration and the fiscal note requirements of Chapter 14, respectively. Part VII consists of required dates and signatures. A fee requirements disclosure is unnecessary, because the proposed rules do not establish or adjust fees as contemplated in Minnesota Statutes Chapter 16A.128 (1992).

The proposed rules were drafted after discussions with various representatives of existing land trusts, cities, housing and redevelopment authorities, and nonprofit organizations from around the state. The Agency drafted these proposed rules based on these discussions as well as the constitutional and statutory requirements of the Program and its funding source. The Agency board of directors has also reviewed and approved the Program concept and proposed rules.

II. STATUTORY AUTHORITY OF PROPOSED RULES AND FUNDING SOURCE

The Agency's statutory authority to adopt rules to comply with Chapter 14 is set forth in Minnesota Statutes, Section 462A.06, subdivision 11 (1992).

The Agency's authority to implement the Program is set forth in Minnesota Statutes Section 462A.202, subdivision 6 (1992) which provides that the Agency may make loans with or without interest to cities to finance the capital costs of a land trust project. This authority is subject to the restrictions contained in Minnesota Statutes Sections 462A.30, 462A.31, and 462A.202, subdivision 7 (1992).

The Program is financed with proceeds from the sale of state general obligation bonds. Therefore, loans in the Program are also subject to Article XI, Section 5 of the Minnesota State Constitution.

III. STATEMENT OF NEED

Minnesota Statutes Chapter 14 (1992) requires the Agency to make an affirmative presentation of facts establishing the need for and reasonableness of the rules as proposed. In general terms, this means that the Agency must set forth the reasons for its proposal, and the reasons must not be arbitrary or capricious.

However, to the extent that need and reasonableness are separate, need means a problem exists which needs administrative attention, and reasonableness means the solution proposed by the Agency is appropriate. The need for the proposed rules is discussed below. The reasonableness of the proposed rules is discussed in Part IV.

As general background information, there exists a serious shortage of decent, safe, and sanitary housing at prices or rentals within the means of persons and families of low and moderate income. There are three significant factors contributing to this shortage: (i) the initial cost of improved land as part of a project's total development costs; (ii) the speculative value of land; and (iii) the unlimited equity appreciation enjoyed, not by the public, but instead by the initial recipient of a subsidy for developing affordable housing.

In 1992, the Minnesota Legislature recognized the need to address these housing affordability issues that involve land. Their response was to authorize the Agency to develop a Program using

the land trust model. In addition, the Legislature approved the use of proceeds from the sale of state general obligation bonds to fund the Program.

The Agency reviewed the statutory authority for implementing the Program. This authority, and its related restrictions, are contained in several different sections and subparts which do not specifically deal with eligibility requirements or what activities are to be performed under the program.

There is a need for substantive and procedural Program requirements to be as clear as possible to entities which do not regularly apply to the Agency for financing, and which do not know the various statutory and constitutional requirements affecting this Program. Hence, the Agency found that rules were necessary to clearly define eligible parties, eligible applications, and eligible activities.

Using state general obligation bond funds for financing the Program also required the Agency to address various constitutional provisions as to the terms and conditions of the financing and the subsequent use of property which receives the benefit of Program funds. The Agency saw rules as a method to reasonably assist in clarifying these matters for all.

Finally, due to the lack of limited financing available for the Program, the Agency found rules were necessary to establish reasonable standard criteria to assist in selecting among competing proposals.

Based upon the above facts, the Agency has determined that rules are necessary to implement the Program.

IV. STATEMENT OF REASONABLENESS

The Agency is required by Minnesota Statutes Chapter 14 (1992) to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. Reasonableness is the opposite of arbitrariness or capriciousness. It means that there is a rational basis for the Agency's proposed action. The reasonableness of the proposed rules is discussed below.

A. Reasonableness of the Rules as a Whole.

To determine the need for and adequacy of rules for the Program, the Agency performed various activities which are discussed here.

The Agency sponsored a statewide forum on community land trusts. A total of 50 interested parties attended. Information on the land trust concept in general was distributed and parties expressed their willingness to learn more about Agency-financed land trusts.

The Agency requested comments from the public before undertaking the drafting of the proposed rules (Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rule Governing Neighborhood Land Trusts, 17 S.R. 10). No formal comments were received in response to the formal notice. However, informal discussions with various interested parties revealed the need for specific explanations of Program requirements and eligible activities, especially related to the financing source for the Program.

Discussions were conducted with the Special Assistant Attorney General assigned to the Agency and the State's general obligation bond counsel to ensure statutory and constitutional requirements were met in the Program, including the terms and conditions of the loans, the eligible activities, the restrictive covenants of the ground lease, and the repayment requirements of the loans funded under the Program.

The complex combination of the statutory authority to conduct the Program activity and the constitutional requirements of its financing source requires definitional and procedural guidance. To ensure uniformity, and avoid arbitrary and capricious decisions, the Agency determined rules were necessary.

The Agency drafted the proposed rules as a reasonable means of establishing uniform procedures for the Program. The proposed rules define eligible parties and eligible activities in accordance with applicable statutory and constitutional provisions. The proposed rules also establish uniform application requirements to assist both the Agency and the applicants to avoid capricious acts in completing, reviewing, and selecting the applications.

The Agency considered concerns of all parties and believes their concerns are adequately addressed and reasonably accommodated in the proposed rules. The reasonableness of each proposed rule is discussed below.

B. Reasonableness of Individual Rules

The following discussion addresses the specific provisions of the proposed rules.

4900.3430

SCOPE

This section cites the statutory authority for the Program, and briefly explains the nature of the Program. This is reasonable to establish a frame of reference for the proposed rules.

4900.3431

DEFINITIONS

This section establishes that the terms used in this chapter are assigned the following meanings. This is reasonable to establish uniform and clear definitions of terms appearing throughout the proposed rules.

Subpart 1. Agency.

This definition is necessary and reasonable because it will help avoid needless repetition of the full title of the Minnesota Housing Finance Agency.

Subpart 2. Applicant.

This term requires definition because it appears throughout the proposed rules and has a specific meaning not commonly understood outside legal and administrative contexts. The proposed definition is reasonable because it clearly and adequately describes what is meant by the term and provides a useful means of identifying parties seeking financial assistance.

Subpart 3. Application.

This term requires definition because it appears throughout the proposed rules and has a specific meaning not commonly understood outside administrative contexts. The proposed definition is reasonable because it clearly and adequately describes what is meant by the term.

Subpart 4. Building.

This term requires definition because it appears throughout the proposed rules and has a specific meaning not commonly understood outside administrative contexts. The proposed definition is reasonable because it clearly and adequately describes what is meant by the term and provides a useful means of identifying a particular type of eligible structure.

Subpart 5. City.

This term requires definition because it appears throughout the proposed rules and has a specific meaning not commonly understood outside legal and administrative contexts. The proposed definition is reasonable because it clearly and adequately describes what is meant by the term.

Subpart 6. Eligible Nonprofit Organization.

This term requires definition because it appears throughout the proposed rules and has a specific meaning not commonly understood outside legal and administrative contexts. The proposed definition is reasonable because it clearly and adequately describes what is meant by the term, and incorporates criteria referenced in applicable statutes.

Subpart 7. Financial Assistance.

This term requires definition because it appears throughout the proposed rules and has a specific meaning not commonly understood outside administrative contexts. The proposed definition is reasonable because it clearly and adequately describes what is meant by the term.

Subpart 8. Land Trust Activities.

This term requires definition because it appears throughout the proposed rules and has a specific meaning not commonly understood outside legal and administrative contexts. The proposed definition is reasonable because it clearly and adequately describes what is meant by the term, and cites the statutory reference which identifies requirements and specific eligible activities involving publicly owned properties financed with proceeds from state general obligation bonds.

Subpart 9. Persons and families of low and moderate income.

This definition is the same as expressly contained in statute. This term requires definition here because it appears throughout the proposed rules and has a specific meaning not commonly understood outside legal and administrative contexts. The proposed definition is reasonable because it clearly and adequately describes what is meant by the term.

Subpart 10. Program.

This definition is necessary and reasonable because it will help avoid needless repetition of the full title of the publicly owned neighborhood land trust program.

Subpart 11. Property.

This term requires definition because it appears throughout the proposed rules and has a specific meaning not commonly understood outside legal and administrative contexts. The proposed definition is reasonable because it clearly and adequately describes what is meant by the term.

This section establishes adequate and workable notice of the minimum requirements of applying for financial assistance. One of the goals of this rulemaking is to make Agency application procedures as clear as possible to entities which do not regularly apply to the Agency for financing and do not know the various statutory and constitutional requirements affecting the Program.

This section is reasonable in stating uniform and clear standards of eligibility, and promotes administrative efficiency for all parties.

Subpart 1. Eligible Applicants

This subpart identifies those entities which may apply for financial assistance. While constitutional provisions related to the use of state general obligation bond funds restrict eligibility to cities, the statutory provisions related to Agency land trust programs allow a city or an eligible nonprofit organization to act as an eligible applicant and conduct land trust activities.

Because the funding source of the Program is state general obligation bond funds, there is a need to specifically identify in these proposed rules that only a city may qualify as an eligible applicant. It is reasonable to state this eligibility requirement because not all interested entities know the various statutory and constitutional requirements affecting the Program.

Subpart 2. Eligible Uses of Financial Assistance.

This subpart identifies those activities for which the financial assistance may be used. The funding source of the Program is state general obligation bond funds. Constitutional provisions related to the use of state general obligation bond funds restrict the use of the funds to capital costs only. Many eligible applicants are not familiar with these financing provisions.

Therefore, there is a need to specifically identify eligible uses of the financial assistance in the Program. It is reasonable to state this eligibility requirement in the proposed rules because not all interested entities know the various statutory and constitutional requirements affecting the Program.

Subpart 3. Eligible Applications.

This subpart identifies the documentation which must be contained in an eligible application. The practical requirements stated in this subpart are based on the various statutory and constitutional requirements affecting the Program, as well as the Agency's standard administrative practices as to what constitutes an eligible application.

In general, there is a need to make Agency application procedures as uniform and as clear as possible to ensure the administrative efficiency for all parties. By stating the requirements of an eligible application, the Agency can avoid arbitrary and capricious actions in its acceptance, review, and selection of applications.

In addition, an eligible application will be referenced in an agreement between the Agency and the eligible applicant concerning the financial assistance. The application will be one measure of the eligible applicant's specific performance during the term of the financial assistance. Therefore, there is a need for requiring specific documentation to be contained in the application which details an eligible applicant's intended specific performance.

The form and content of the application is reasonable and consistent with standard Agency administrative requirements. In addition, the documentation required in this subpart is reasonable to provide an enforceable attachment to an agreement for the term of the financial assistance. The reasonableness of each required part of the application is discussed below.

Subpart 3.A. Only a city, as defined in these rules, may apply for financial assistance. It is reasonable to require evidence of the applicant's eligibility because "city" has a specific meaning in the Program.

Subpart 3.B. There is a need to make Agency application procedures as uniform and as clear as possible to ensure the administrative efficiency for all parties. Requiring the submission of a comprehensive plan which meets minimum requirements of an application assists in ensuring uniformity of applications. The specific requirements of the plan showing the need for the proposed activity, the other financial sources available for completing the activity, and a timetable for completing the activity is reasonable to ensure clarity of purpose in the application.

Subpart 3.C. There is a need to ensure the financial assistance will be used for its intended purpose in a timely manner. Timeliness in completing the activity is a reasonable requirement as it will save monies for the State by assisting the State in proper budgeting of expenditures for the Program. In addition, a city qualifying for financial assistance must perform activities as required in Minnesota Statutes 462A.202, subdivisions 6 and 7 (1992). These statutorily required activities include the long-term ownership of the property and its use as a land trust. It is reasonable to require documentation of the applicant's ability to maintain the property in accordance with its funded use for the period of time identified in the application.

Subpart 3.D. There is a need to ensure that the scarce financial resources of the State are used in an efficient and effective manner. It is reasonable to require documentation demonstrating that the proposed use of the funds will be for purchasing capital goods of a high quality at a reasonable cost.

Subpart 3.E. Minnesota Statutes 462A.31, subdivision 6 (1992) allows a city to act as a neighborhood land trust with the powers and duties described in Minnesota Statutes 462A.31, subdivision 1 to 5 (1992). These powers and duties include a requirement to use a ground lease meeting certain requirements. Therefore, it is reasonable to have, as a requirement of the application, evidence of the intended use of an eligible ground lease. Without this documentation, a city is not an eligible applicant for the Program.

Subpart 3.F. Minnesota Statutes 462A.202, subdivision 7 (1992) permits a city to agree with an eligible nonprofit organization to perform eligible land trust activities, subject to various restrictions. There is a need for the Agency to review this agreement to ensure it complies with statutory provisions. There is also a need for the Agency to review the organization's abilities and capacities to perform under the agreement for the term of the financial assistance. It is reasonable to require this documentation at the time of application to ensure activities will be in compliance with statutory requirements, and to assist in administrative efficiency in reviewing applications.

4900.3433 TERMS AND CONDITIONS OF FINANCIAL ASSISTANCE, USE OF PROPERTY, AND REPAYMENT REQUIREMENTS

This section establishes adequate and workable notice of the interest rate on the financial assistance, the eligible uses of the property during the term of the financial assistance, and the repayment requirements of the financial assistance.

The financing source of the Program is state general obligation bond funds. There is a need to make Program requirements as clear as possible to entities which do not know the various statutory and constitutional requirements affecting the Program.

This section is reasonable in restating the requirements imposed by the financing source of the Program. These proposed rules will be useful to entities interested in applying for financial assistance. These clear and concise proposed rules will promote administrative efficiency for all parties.

Subpart 1. Interest rate.

This subpart makes it clear that the Agency will charge no interest on the financial assistance. The Agency has the statutory authority to determine the interest rate on the financial assistance.

One of the goals of the Program is to provide affordable housing. It is reasonable to charge no interest on this financing to better achieve housing affordability. The rule is reasonable to ensure the financing terms are clear and uniform for all.

Subpart 2. Ownership and Use Requirements.

The funding source of the Program is state general obligation bond funds. The requirements concerning ownership and use are statutory and constitutional in nature. Minnesota Statutes 462A.202, subdivision 7 (1992) places various restrictions on the use of the property. There is a need to specifically identify these ownership and use requirements when using this funding source because not all interested entities know of these requirements.

It is reasonable to state these eligibility requirements to ensure a uniform and clear understanding. The proposed rule will be useful to entities interested in applying for financial assistance, and will promote administrative efficiency for all parties. These requirements shall also be incorporated into an agreement between the Agency and an eligible applicant to ensure the applicant is performing an eligible activity. The reasonableness of each ownership and use requirement is discussed below.

Subpart 2.A. Due to the funding source of the Program, only a city may qualify for funding. Also, the city must maintain ownership of the land during the term of the funding, and may only lease the use of the land or buildings subject to the restrictions contained in Minnesota Statutes 462A.202, subdivision 7 (1992). It is reasonable to state these requirements in the proposed rules because not all interested entities know of these requirements.

Subpart 2.B. Minnesota Statutes 462A.202, subdivision 7 (c)(4), (1992) permits a city to agree with an eligible nonprofit organization to manage the property. It is reasonable to state this permission in the proposed rules because not all interested entities know of this permitted activity.

Subpart 2.C. Minnesota Statutes 462A.202, subdivision 7 (a)(2), (1992) permits a city to use the property for a different purpose only after it has repaid the amount of the original loan. It is reasonable to state this requirement in the proposed rules because not all interested entities know of this requirement.

Subpart 2.D. Minnesota Statutes 462A.202, subdivisions 7 (b) and (c)(1), (1992) permit a city to perform the activity identified in this proposed rule. It is reasonable to state this permission in the proposed rules because not all interested entities know of this permitted activity.

Subpart 2.E. Minnesota Statutes 462A.202, subdivision 7 (c)(2), (1992) permits a city to perform the activity identified in this proposed rule, subject to the stated restrictions. It is reasonable to state this permission in the proposed rules because not all interested entities know of this permitted activity.

Subpart 2.F. Minnesota Statutes 462A.202, subdivisions 7 (d) and (c)(3), (1992) permit a city to perform the activity identified in this proposed rule, subject to the stated restrictions. It is reasonable to state this permission in the proposed rules because not all interested entities know of this permitted activity.

Subpart 3. Repayment Requirements.

This subpart makes it clear as to when the financial assistance must be repaid. The requirements stated in Subpart 3.A. are found in Minnesota Statutes 462A.202, subdivisions 7 (a) and (c)(2), (1992). The requirements stated in Subpart 3.B. are found in Minnesota Statutes 462A.202, subdivisions 7 (a)(2), (1992). There is a need to specify these requirements because not all interested entities know of the requirements when using state general obligation bond funds. In addition, a city is liable for compliance with its agreement with the Agency for the term of the financial assistance.

It is reasonable to state these repayment requirements to ensure a uniform and clear understanding of the terms of the financial assistance, and to ensure the Agency does not act arbitrarily and capriciously in requiring repayment of the financial assistance.

4900.3434 SELECTION CRITERIA FOR LOANS

This section establishes the selection criteria to be used when the Agency is reviewing competing applications. These scarce financial resources should be used only in areas demonstrating a need for the type of housing to be created, and where there's a reasonable chance for success in meeting the purpose of the Program. There is a potential for requests for financial assistance to exceed the available financing. There is therefore a need to establish uniform criteria to ensure orderly procedure and just results.

It is reasonable to use specific criteria in selecting applications for funding to avoid the Agency's arbitrary and capricious review and selection of applications for financial assistance. The specific criteria used here are those commonly used in Agency activities. Using commonly used criteria will assist in promoting administrative efficiency for all parties. The reasonableness of each selection criterion is discussed below.

A. There is generally a serious shortage of decent, safe, and sanitary housing at prices or rentals within the means of persons and families of low and moderate income in the State. In certain areas, however, there already exists sufficient supplies of certain types of housing that might be created using the Program. It is therefore reasonable, as a criterion for selecting applications for funding, to consider the severity of need for a proposed type of housing in an area.

B. The financial assistance from the Program cannot be used to finance operational expenses of the land trust. The Program also does not provide other resources necessary for the success of the land trust, including social services, tenant management, or resident empowerment counseling. There is a need to select applications where various resources are available to develop the property, to assist in the operation of the land trust, and to maintain the property for its intended use. It is therefore reasonable, as a criterion for selecting applications for funding, to consider other resources that are or will be allocated to meet these needs.

C. There is a limited amount of funds available. It is not expected that there will be sufficient financial assistance from the Program to finance all capital costs, and the financial assistance from the Program cannot be used to maintain the property's use as a land trust. There is a need to select applications where other financial resources are available to pay additional capital costs, and where other financial resources are available to maintain the property for its intended use. It is therefore reasonable, as a criterion for selecting applications for funding, to consider other financial resources that are or will be allocated to meet the needs for financing.

D. The need for the type of financing provided by the Program exists statewide. The high initial cost of improved land as part of a project's total development costs and the speculative value of land under existing housing are present in both rural or urban settings. To the extent there will be competing applications for funding, it is reasonable to consider the geographic distribution of the applications as a selection criterion.

E. The need to have a selection criterion to consider the extent to which persons or families of low and moderate income will benefit from the financing is reasonable because it is a

requirement of the statutory authority contained in Minnesota Statutes 462A.31 (1992) that persons and families of low and moderate income benefit from the land trust activities.

F. Displacement of existing residents is very costly and time consuming, as the residents must be assisted in finding replacement housing. Also, the housing from which the residents are being displaced is often affordable housing and is often lost due to redevelopment. It is generally acknowledged in the area of housing finance that the less displacement of existing residents which occurs, the greater the efficiency and affordability of the total activity. It is therefore reasonable to consider the minimization of displacement as a selection criterion.

G. There is a need to consider innovativeness of proposals to encourage more efficient and affordable activities. It is also necessary to promote unique approaches to solving housing problems using limited financial resources when those approaches may be duplicated in future similar situations. It is reasonable to have this one selection criterion encouraging creativity in solving housing problems.

H. The need for a selection criterion to consider the extent of community support for the activities is reasonable because the property will be operated as a land trust for a long time, such as the term of the financial assistance (20 years), or the initial term of the ground lease (99 years). This, by design, will require a significant commitment from the surrounding community to accept the land trust model. The selection criterion will ensure an application for funding reflects the involvement and support of the community.

I. There is a need to ensure the scarce financial resources of the State are used in an efficient and effective manner. It is reasonable to require documentation demonstrating the proposed use of the funds will be for purchasing capital goods of a high quality at a reasonable cost.

J. The property will be used as a land trust for a long time, such as the term of the financial assistance (20 years), or the initial term of the ground lease (99 years). There is a need for a selection criterion to consider the experience and capacity of the applicant over such a long period of time. It is reasonable to use this selection criterion to ensure a reasonable chance for long-term success of the applicant's land trust activities.

K. Minnesota Statutes 462A.202, subdivision 7 (1992) permits a city to agree with an eligible nonprofit organization to perform eligible land trust activities, subject to various

restrictions. There is a need for the Agency to review the organization's abilities and capacities to perform under the agreement for the term of the financial assistance. It is reasonable to require this documentation at the time of application to ensure activities will be in compliance with statutory requirements, and to assist in administrative efficiency in reviewing applications.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

The Agency is cognizant of the provisions of Minnesota Statutes 14.115 (1992) which requires a state agency to consider methods for reducing the negative impact on small businesses of its proposed rules or amendments to its rules. The proposed rules do not establish any compliance or reporting requirements, design or operational standards, or directly affect the required operation of any small businesses. Therefore, the provisions contained in Minnesota Statutes 14.115 (1992) do not apply to the proposed rules.

VI. FISCAL NOTE

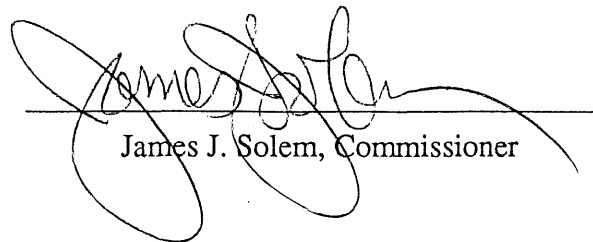
The Agency is cognizant of the provisions of Minnesota Statutes 14.11, subdivision.1 (1992) which requires a state agency, when proposing rules or amendments to rules, to determine if the rules will require expenditures of public monies by local public bodies to implement the rule. If the expenditures are estimated to exceed \$100,000 in either of the two years immediately after the adoption of the rule, the Agency's notice must contain a written statement giving a reasonable estimate of the total cost.

There is no requirement for the expenditure of public monies by local public bodies to implement the proposed rules. Any expenditure of public monies by public bodies with regard to the proposed rules is voluntary. Therefore, the provisions contained in Minnesota Statutes 14.11, subdivision 1 (1992) do not apply to the proposed rules.

VII. CONCLUSION

Based on the foregoing, the proposed Minnesota Rules parts 4900.3430 to 4900.3434 are needed and reasonable.

Dated: 3-25-93


James J. Solem, Commissioner