WEST VIRGINIA CODE: §54-1-5A

§54-1-5a. Restrictions as to the exercise of the right of eminent domain by the West Virginia Housing Development Fund.

(1) The West Virginia Housing Development Fund, in exercising the power of eminent domain as provided for in section six, article eighteen, chapter thirty-one of this code, shall allege and prove, and the trier of fact shall find, in addition to other requirements of the law, the following:

(a) That resort is had to condemnation proceedings only after all other reasonable alternatives for acquisition of the site in question have been explored and found impractical;

(b) That the housing sought to be developed on the site in question is necessitated by circumstances existing in the local community or area where the site is located as follows:

(i) An extreme shortage of land suitable for housing exists in the local community or area and that no practical alternative site is available for purchase by negotiation;

(ii) A serious shortage of housing exists in the local community or area, as evidenced by an insufficient number of housing units, by low vacancy rates, or by a high proportion of substandard or overcrowded housing;

(iii) An open, active and free market for adequate housing does not exist in the local community or area;

(iv) The real property which is the subject of the proposed condemnation proceeding is not a part of, or contiguous to, the owner's principal residence or the curtilage thereof; and

(v) The owner of the real property which is the subject of the condemnation proceeding is seized of title to the surface of five thousand acres of land or more within this state, without reduction for any lease, license or easement to which the estate may be subject: Provided, That any portion of the five thousand acres or more of land which is being used or operated in the production of agricultural products by the owner of his lessee (under bona fide written lease executed and delivered prior to the institution of a proceeding in condemnation subject to the restriction provided in this section) shall not be taken by condemnation under the provisions of this section. In the case of a corporate owner, the court shall aggregate the holdings of the corporation, the holdings of other corporate bodies which have legally enforceable control of a majority of the shares of the corporate owner, and the holdings of other corporate bodies which have a majority of their shares subject to the legally enforceable control of the corporate owner. Such aggregate holdings shall be used to determine whether the corporate owner owns five thousand acres of land or more within this state.

WV Legislature

(2) If, for any reason, the provisions of subdivision (b), subsection one of this section are held unconstitutional or invalid, then upon the finding of such unconstitutionality or invalidity, the West Virginia Housing Development Fund shall not exercise the powers of eminent domain provided for in section six, article eighteen, chapter thirty-one of this code.

WV Legislature