

**BEFORE THE WEST VIRGINIA REAL ESTATE
APPRAISER LICENSING AND CERTIFICATION BOARD**

IN THE MATTER OF:

**GARY D. HERNDON
Certified Residential Appraiser License No. CR0510**

CONSENT DECREE

Now comes Respondent, Gary D. Herndon, and the West Virginia Real Estate Appraiser Licensing and Certification Board (hereinafter "Board"), by Sharron L. Knotts, its Executive Director, for the purpose of resolving Board Complaint Number 07-026, against Herndon. As reflected in this Consent Decree, the parties have reached an agreement in which Herndon hereby agrees and stipulates to the Findings of Fact and Conclusions of Law set forth in the instant Consent Decree concerning the proper disposition of this matter, and the Board, having approved such agreement, does hereby find and Order as follows:

FINDINGS OF FACT

1. The Board is a state entity created by W. Va. Code § 30-38-1 *et seq.*, and is empowered to regulate, among other things, the conduct of licensed residential appraisers.
2. Herndon is a state certified residential real estate appraiser licensed by the Board, holding license number CR0510.
3. On December 14, 1998, Herndon entered into an agreement with the Board wherein Herndon agreed "to refrain from performing any eminent domain appraisals without first affiliating with a qualified appraiser."

4. In August 2005, Herndon performed an appraisal of property located in Servia, West Virginia, for determining the value of timber located on such property.

5. The appraisal was prepared for use in connection with a condemnation action by the property owner against the West Virginia Division of Transportation.

6. In performing such an eminent domain appraisal, Herndon failed to consult or affiliate with an appraiser qualified in the field of eminent domain appraising.

7. Herndon stated that the date of diminution of the property was March 1981, and arose from the alteration of a tunnel which provided access to the property.

8. Herndon opined that the market value of the property before the alteration was \$147,590.00.

9. Herndon opined that the market value of the property after the alteration was \$70,500.00.

10. As a result, Herndon concluded that the market value of the land diminished by \$77,090.00.

11. Herndon stated in the appraisal that the highest and best use of the property after the alteration was to convert the property in its entirety to timber land.

12. Herndon further stated that as of 2005, that removal of the timber would cost an additional \$100,000.00 as a result of the alteration.

13. In an attempt to revert the \$100,000.00 cost to a comparable value from 1981, Herndon assumed that construction costs have risen commensurate to the value of minimum wage, under the Federal Minimum Wage Rate under the Fair Labor Standards Act.

14. Based upon Herndon's conversion of cost, Herndon opined that the \$100,000.00 cost of removing the timber in 2005 would be equivalent to the cost of \$65,000.00 in 1981.

15. Based upon Herndon's determination of the market value relating to the diminution of property, and the converted cost representing the expense of removing the timber after the alteration of the property, Herndon opined that "just compensation due the Landowner" was \$142,090.00.

16. Herndon failed to justify his methodology relating to the conversion of costs from 2005 to 1981.

17. The methodology utilized by Herndon to converted past value to present day value does not constitute an accepted appraiser methodology.

18. As a result, the estimated value of compensation due to the property owner was unreasonable, inaccurate and/or unsupportable.

19. In September 2005, Herndon performed another appraisal of the same property for the same property owner.

20. The appraisal was prepared for use in connection with a condemnation action by the property owner against the West Virginia Division of Transportation.

21. In performing such an eminent domain appraisal, Herndon failed to consult or affiliate with an appraiser qualified in the field of eminent domain appraising.

22. Herndon opined that had access to the 300 acre property not been altered, that the property would have had two specific highest and best uses.

23. Specifically, Herndon stated that 26 acres would have had a highest and best use relating to the development of residential property, and that the remaining 274 acres would have a highest and best use relating to timber land.

24. Herndon opined that had the access to the property not been altered, that the 26 acre portion of the property would have a market value of \$478,400.00, and that the remaining 274 acres of land would have a market value of \$334,280.00.

25. As a result, Herndon opined the total market value of the 300 acres of property was \$812,680.00 as of September 2005.

CONCLUSIONS OF LAW

1. Pursuant to Article 38 of Chapter 30 of the West Virginia Code, the Board is the State entity vested with the power to regulate real estate appraisers in the State of West Virginia.

2. Pursuant to West Virginia Code § 30-38-4(c), “[a] state certified residential real estate appraiser is authorized to conduct appraisals of residential real estate of one to four units without regard to value or complexity, and nonresidential real estate when the value is less than one hundred thousand dollars.”

3. Pursuant to W. Va. Code §§ 30-38-12(a)(7) and 30-38-13(b), the Board may revoke, suspend, refuse to renew, or otherwise discipline the license of an appraiser, or deny an application, for any violation of any section of this article, or rule of the Board.

4. Herndon, as a certified residential real estate appraiser, operated outside of the scope of his licensure by and through completing the appraisal of the nonresidential real estate property, where the value of such property exceeded \$100,000.00, in violation of W. Va. Code §§ 30-38-12(a)(7), 30-38-13(b), and 30-38-4(c).

5. West Virginia Code § 30-38-17 provides, in pertinent part, that “[e]ach real estate appraiser licensed or certified under this act shall comply with generally accepted standards of professional appraisal practice and generally accepted ethical rules to be observed by a real estate appraiser. Generally accepted standards of professional appraisal practice are currently evidenced by the uniform standards of professional appraisal practice promulgated by the appraisal foundation.”

6. Pursuant to the Uniform Standards of Professional Appraisal Practice, Standards Rule 1-1(a), “[i]n developing a real property appraisal, an appraiser must: be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal.”

7. Herndon failed to apply and correctly employ a recognized and justifiable methodology in determining the value of the timber on the property, in violation of W. Va. Code §§ 30-38-12(a)(7), -17, and USPAP Standards Rule 1-1(a).

8. Pursuant to the Uniform Standards of Professional Appraisal Practice, Standards Rule 1-1(b), “[i]n developing a real property appraisal, an appraiser must: not commit a substantial error of omission or commission that significantly affects an appraisal.”

9. By and through the utilization of a flawed methodology for determining the value of timber on real estate, Herndon committed a substantial error that significantly affected the appraisal, in violation of W. Va. Code §§ 30-38-12(a)(7), -17, and USPAP Standards Rule 1-1(b).

CONSENT

Herndon, both in his individual capacity and as a certified residential real estate appraiser, by the execution hereof, agrees to the following:

1. Herndon has had the opportunity to consult with counsel and executes this Consent Decree voluntarily, freely, without compulsion or duress and mindful that it has legal consequences. No person or entity has made any promise or given any inducement whatsoever to encourage Herndon to make this settlement other than as set forth herein. Herndon acknowledges that he is aware that he may pursue this matter through appropriate administrative and/or court proceedings, and is aware of his legal rights regarding this matter, but intelligently and voluntarily waives such rights.

2. Herndon consents to the entry of the following Order affecting his conduct as a certified residential real estate appraiser.

ORDER

On the basis of the foregoing, the Board hereby ORDERS as follows:

1. The real estate appraiser license of Herndon, Certified Residential Appraiser License No. CR0510, is hereby REPRIMANDED.

2. The real estate appraiser license of Herndon, License No. CR0510, is hereby SUSPENDED for a period of sixty (60) days. Respondent shall not engage in the business of real estate appraising whatsoever, either directly or indirectly, in the State of West Virginia during such period of SUSPENSION.

3. Herndon shall pay to the Board the amount of one thousand two hundred and fifty dollars (\$1250.00). Such payment by Respondent shall represent the costs incurred by the Board associated with the investigation and prosecution of Complaint Number

07-026, and the subsequent reimbursement to the Board thereof. Such payment shall be paid to the Board in full within thirty (30) days of the date of entry of the instant Consent Decree.

4. Respondent shall additionally pay to the State of West Virginia two fines in the amounts of five hundred dollars (\$500.00) and five hundred dollars (\$500.00). The respective fines are imposed as a result of the following: (a) violating the terms of a previous Consent Decree; and (b) performing an appraisal outside of the scope of licensure. Such payments shall be paid to the Board in full within thirty (30) days of the date of entry of the instant Consent Decree.

5. Further, the Board hereby REVOKES Herndon's privileges to perform appraisals relating to eminent domain or condemnation, either directly or indirectly, in the State of West Virginia, where such revocation begins upon the effective date of the instant Consent Decree.

6. Any deviation from the requirements of the instant Consent Decree, without the prior written consent of the Board, shall constitute a violation of this Order, and result in the immediate suspension of Herndon's license. The Board shall immediately notify Herndon via certified mail of the specific nature of the charges, and the suspension of Herndon's license. Herndon may request reinstatement of his license through renewal of this agreement, or execution of a new agreement, which may contain different or additional terms. The Board is not bound to comply with Herndon's request.

In the event Herndon contests any such allegations of violation of the Consent Decree, if any, which results in the suspension of Herndon's license, Herndon may request a hearing to seek reinstatement of his license. Any such hearing shall be scheduled and

conducted in accordance with the provisions of West Virginia Code § 30-1-8 and § 30-38-1
et seq.

Further, in the discretion of the Board and in the event Herndon violates the provisions of the instant Consent Decree, the Board may schedule a hearing on its own initiative for the purpose of allowing the Board the opportunity to consider further discipline against Herndon's license.

AGREED TO BY:

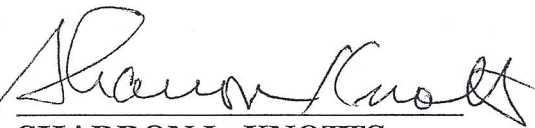

GARY D. HERNDON, Individually

12/1/08
DATE

ENTERED into the records of the Board this:

1st day of December, 2008.

**WEST VIRGINIA REAL ESTATE APPRAISER
LICENSING AND CERTIFICATION BOARD**

By: 
SHARRON L. KNOTTS
EXECUTIVE DIRECTOR

12/1/08
DATE