

<b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203	<b>Docket No.: 78899</b>
Petitioner:  <b>HERKERT &amp; MEISEL TRUNK COMPANY,</b>  v.  Respondent:  <b>GUNNISON COUNTY BOARD OF EQUALIZATION.</b>	
<b>FINAL AGENCY ORDER</b>	

**THIS MATTER** was heard by the Board of Assessment Appeals (“Board”) on November 16, 2020, Samuel Forsyth and John DeRungs presiding. Attorney Charles F. (Skip) Dufour appeared on behalf of Petitioner. Respondent was represented by David Baumgarten, Esq. Petitioner protests the actual value of the subject property for tax year 2019.

**EXHIBITS**

The Board admitted into evidence Petitioner’s Exhibits I, II and III and Respondent’s Exhibits A and B.

**DESCRIPTION OF THE SUBJECT PROPERTY**

235 Roper Lane, aka as Lot 2 of the Lost Canyon Resort Subdivision near Gunnison, Colorado  
County Parcel No.: 3517-284-01-002

The subject property is a 4.034 acre lot with advantageous Gunnison River frontage, (reportedly of well over 500 feet) in this subdivision. Access is from Roper Lane, a farm road reached from County Highway 135 and a bridge crossing. Various site constraints include that west portion in the River and a 100-year floodplain with its associated topographic bench dropping precipitously below the east portion of the site. In addition, a right-of-way easement and building setback confines the building area to a narrow, but buildable, acre or so. A private well is not currently in use and no private septic tank or field has been added.

The subject property's actual value, as assigned by the County Board of Equalization ("CBOE") below and as requested by Petitioner, are:

CBOE's Assigned Value:	\$270,200
Petitioner's Requested Value:	\$172,370

### **BURDEN OF PROOF AND STANDARD OF REVIEW**

In a proceeding before this Board, the taxpayer has the burden of proof to establish, by a preponderance of the evidence, that the assessor's valuation is incorrect. *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198, 204 (Colo. 2005). Proof by a preponderance of the evidence means that the evidence of a circumstance or occurrence preponderates over, or outweighs, the evidence to the contrary. *Mile High Cab, Inc. v. Colorado Public Utilities Comm'n*, 302 P.3d 241, 246 (Colo. 2013). The evaluation of the credibility of the witnesses and the weight, probative value, and sufficiency of all of the evidence are matters solely within the fact-finding province of this Board, whose decisions in such matters may not be displaced on appeal by a reviewing court. *Gyurman v. Weld Cty. Bd. of Equalization*, 851 P.2d 307, 310 (Colo. App. 1993). The determination of the degree of comparability of land sales and the weight to be given to the various physical characteristics of the property are questions of fact for the Board to decide. *Golden Gate Dev. Co. v. Gilpin Cty. Bd. of Equalization*, 856 P.2d 72, 73 (Colo. App. 1993).

The Board reviews every case de novo. *See Bd. of Assessment Appeals v. Valley Country Club*, 792 P.2d 299, 301 (Colo. 1990). In general, the de novo proceeding before the Board "is commonly understood as a new trial of an entire controversy." *Sampson*, 105 P.3d at 203. Thus, any evidence that was presented or could have been presented in the county board of equalization (CBOE) proceeding may be presented to this Board for a new and separate determination. *Id.* However, the Board may not impose a valuation on the property in excess of that set by the CBOE. § 39-8-108(5)(a), C.R.S.

### **APPLICABLE LAW**

For property taxation purposes, the value of residential properties must be determined solely by the market approach to appraisal. *See* Colo. Const. art. X, § 20(8)(c); § 39-1-103(5)(a), C.R.S. The market approach relies on comparable sales, as required under section 39-1-103(8)(a)(I), C.R.S., which states:

Use of the market approach shall require a representative body of sales, including sales by a lender or government, sufficient to set a pattern, and appraisals shall reflect due consideration of the degree of comparability of sales, including the extent of similarities and dissimilarities among properties that are compared for assessment purposes.

When valuing vacant land using the market approach, assessors must also consider the direct costs of development, and access, among other factors. § 39-1-103(14)(b), C.R.S.; *see Fidelity Castle Pines v. State of Colorado*, 948 P.2d 26 (Colo. App. 1997).

## FINDINGS AND CONCLUSIONS

Petitioner presented the testimony of Mr. Wallace McNeill, president and sole owner of Herkert & Meisel Trunk Company. Mr. McNeill objected to what he considered an unreasonable increase of 72% in his 2019 tax year valuation. Mr. McNeill went into detail about the aforementioned site constraints (flood plain, road and river setbacks, easements, a steep embankment) and the subject's farm road access to make an argument of diminished site utility. However, he offered no other comparable sales to refute what Assessor's data selection and indications from direct comparison showed. Petitioner's requested value of \$172,370 is based on a 10% increase in the 2017 actual value.

Respondent presented the testimony of appraiser William Spicer, supported by his appraisal of the subject property. Mr. Spicer selected five sales of vacant land as his comparable sales. He testified he selected riverfront sales with steep banks, but also a flat buildable are, similar to the subject. He calculated a buildable area of around 1 acre for the subject, and testified that road and river setbacks are typical of his selected sales, and all have buildable areas less than their gross acreage as a result. He opined that the selection of a building site on the subject would not be impacted by the 150-foot setback from the neighbor to the south. He further testified that the existence of a floodplain is not complete impediment to constructing an improvement on a site; Gunnison County allows improvements in the floodplain subject to certain standards. He testified that in his analysis of market data, he found a strong correlation between lot size and price, but not between building envelope size and price. Mr. Spicer made adjustments to his comparable sales prices for lot size, and water and sewer attributes. Mr. Spicer considered his best comparable to be his comparable 4, the sale of 319 Rocky River Lane, a property smaller than subject, with a significant amount of floodplain and similar quality access. It sold for \$250,000 on 12/19/2017. His sale price after adjustments for comparable 4 was \$360,000.

Mr. McNeill critiqued Respondent's sales as being variously incomparable in size, topography, water and sewer, and access. However, the Board finds that Mr. Spicer made appropriate adjustments to his sales to account for their differences with the subject, and where he did not do so, was able to support that decision with market data.

The Board finds therefore that by failing to present sales evidence to support claims of diminished site utility and a resulting lower value than that assigned by the County, the Petitioner has not met its burden of proving that the assigned value for tax year 2019 is incorrect.

## ORDER

The petition is **DENIED**.

## APPEAL RIGHTS

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

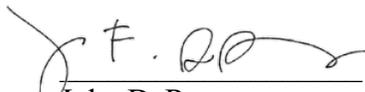
*See* § 39-8-108(2), C.R.S. (rights to appeal a tax protest petition); *see also* § 39-10-114.5(2), C.R.S. (rights to appeal on an abatement petition).

**DATED and MAILED** this 12th day of April, 2021.

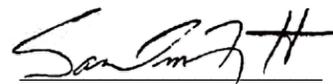
**BOARD OF ASSESSMENT APPEALS:**

Drafting Board Member:



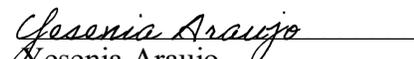
  
John DeRungs

Concurring Board Member:

  
Samuel Forsyth

*Concurring without modification  
pursuant to § 39-2-127(2), C.R.S.*

I hereby certify that this is a true and correct copy of the order of the Board of Assessment Appeals.

  
Yesenia Araujo