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(11)

Court of Appeal 2nd Civil No. B229656

IN THE

SUPREME COURT

OF THE

STATE OF CALIFORNIA

ASSESSOR FOR COUNTY OF SANTA BARBARA
Plaintiff & Appellant

vs.

ASSESSMENT APPEALS BOARD NO. 1
Defendant & Respondent

After Decision By The Court Of Appeal
Second Appellate District, Division 6
No. B229656

Appeal from the Superior Court of California, County of Santa Barbara
The Hon. James W. Brown, Judge (case number 1244457)

PETITION FOR REVIEW

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ISSUE PRESENTED FOR REVIEW

Whether the Second District Court of Appeal erred in holding that the 1988 amendment of Revenue and Taxation Code section 62.1,[1] requires assessors to value one class of resident-owned mobilehomes[2] at a small fraction of their fair market value in violation of the *uniformity* and *acquisition cost requirements* of the California Constitution, the general Revenue and Taxation statutes that govern the valuation of all real property and in contravention of settled precedent from this Court. (Cal. Const. art. XIII, § 1, art. XIIIA, § 2; Rev. & Tax. Code §§ 51 & 110; *Armstrong v. County of San Mateo* (1983) 146 Cal.App.3d 597, 607.)

WHY REVIEW SHOULD BE GRANTED

The published Opinion ("Opinion") issued in this case of first impression presents important questions of law which have statewide importance because it directs county assessors to abandon the acquisition cost valuation system mandated by articles XIII and XIIIA of the California Constitution and the general Revenue and Taxation Code provisions that make the taxable value of real property dependent on its purchase price. (See Opinion, Attachment 1.) In direct contravention of the Legislature's stated intent, the Opinion creates an unauthorized

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[1] The underlying appeal involves the interpretation of subsection (c) of Revenue & Taxation Code ("R & T Code") § 62.1 as it existed in 2001, the year in which the 26 individual mobilehome properties sold. Subsection (c) was subsequently relettered subdivision (b).

[2] The term "mobilehome" refers to the individual mobile home space/site and the mobilehome coach located on that space unless otherwise indicated.

judicial exemption from full taxation for one class of resident-owned mobilehomes.

The Opinion takes the law of property taxation in an improper and unprecedented direction by directing county assessors to:

- Abandon the California Constitution's *acquisition cost* valuation system; a system that makes the taxable value of property dependent on its sales price (Cal. Const. art. XIII, § 1 & art. XIIIA, § 2);
- Disregard the "purchase price presumption" mandated by Revenue and Taxation Code section 110 which directs that when a change in ownership of real property occurs, the real property must be reassessed at its "fair market value" or "full cash value" and the purchase price paid for real property in an arms' length transaction is rebuttably presumed to be its fair market value or full cash value;
- Ignore the "appraisal unit" mandated by Revenue and Taxation Code section 51 which requires assessment of the fair market value based on the "appraisal unit that persons in the marketplace commonly buy and sell as a unit ...." (Rev. & Tax. Code § 51, subd. (d)); and
- Assess a single class of resident-owned mobilehomes at a small fraction of what they are purchased for in open market, arms-length transactions.[3]

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[3] The 26 Rancho Goleta and Silver Sand properties at issue sold from a low of $165,000 to a high of $325,000. The unprecedented method of appraisal adopted by the Opinion slashed their taxable values to approximately 33% for the Rancho Goleta properties and a mere 15% for the Silver Sands properties. [Administrative Record ("Admin Record") Vol. 1, Tab 16 APP000174-000193 & Tab 24 APP000215-000222; and Vol. 18, Tab 255, AAB003712-3713.]

As explained in the dissenting opinion authored in this case by Justice Yegan, "[t]he majority opinion and the result it reaches are at variance with these constitutional and statutory provisions." (Dissenting Opinion at p. 1.) Misinterpreting the language of subsection (c) of section 62.1 and the Legislature's stated intent, the Opinion engages in judicial activism that profoundly alters long-standing valuation methods relied upon by all 58 county assessors when it:

- Directs county assessors to disregard specific guidelines regarding the valuation of resident-owned mobilehomes provided by the SBE;
- Directs county assessors to ignore what actually happens in the market place and to value all the real property in the entire mobilehome park every time one of the mobilehome spaces within it is sold to a third party; and
- Directs county assessors to then divide the total value of the park by the number of spaces it contains to determine the taxable value of the individual space that changed ownership.
- "[This] 'one size fits all' valuation method ignores the reality of the marketplace. For example, there is no logical rationale that could support assessing a mobilehome 'unit' on the ocean at the same value as a 'unit' in the interior of a mobilehome park." (Dissenting Opinion at p. 2.)

The Opinion attempts to justify its decision to abandon Revenue and Taxation Code sections 110 and 51 by characterizing them as "general statutes [that] have no application where, as here, a specific statutory provision [section 62.1] covering the subject has been enacted." (Opinion at p. 14.) This conclusion is fatally flawed because it fails to recognize the fact that sections 110 and 51 are mandatory statutes of general application which flow directly from article XIII, section 1 and article XIIIA, section 2 of the California Constitution. As stated in the dissenting Opinion, the majority's interpretation of section 62.1 cannot stand because "[a] statute may not trump a constitutional provision. (*Legislature v. Deukmajian* (1983) 34 Cal.3d 658, 674; *Hays v.* Wood (1979) 25 Cal.3d 772, 795.)" (Dissenting Opinion, pp. 2-3.)

The Opinion fails to recognize that section 62.1 was enacted against the backdrop of the California Constitution and the general taxation statutes that effectuate this state's system of property taxation. Absent constitutional authority or express statutory language, a specific statute like section 62.1 cannot repeal by implication, general tax statutes such as Revenue and Taxation Code sections 110 and 51 which require all property to be assessed according to its fair market value as it is commonly bought and sold in the marketplace. As explained in this Court's recent decision in *Dicon Fiberoptics, Inc. v. Franchise Tax Board*:

> "In the absence of express language limiting that background law, we are reluctant to . . . effectuate an implied repeal. [Citations omitted.] All presumptions are against a repeal by implication. Absent an express

> declaration of legislative intent, we will find an implied repeal only when there is no rational basis for harmonizing the two potentially conflicting statutes, and the statutes are 'irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation."
>
> (*Dicon* (2012) Cal. Lexis 3819, 12.)

The implied repeal of Revenue and Taxation Code sections 110 and 51 ordered by the Opinion cannot stand because sections 110 and 51 are not "*irreconcilable, clearly repugnant or so inconsistent*" with section 62.1 that they cannot have concurrent operation. The Opinion actually confirms this fact on page 9 when it states "the Assessor presents a reasonable method for the taxation of changes in mobilehome ownership, but it is not the method set forth in section 62.1, subdivision (c). The Assessor is free to recommend a legislative change but not to ignore an existing statute." (Opinion at p. 9.)

The Opinion misses the point. "[S]tatutes must be harmonized, both internally and with each other, to the extent possible." *(Prudential Reinsurance Co. v. Superior Court* (1992) 3 Cal. 4th 1118, 1145 citing *Woods v. Young* (1991) 53 Cal.3d 315, 323 & *California Mfrs. Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 836, 844.) The "reasonable" interpretation urged by the Assessor, and the State Board of Equalization and the California Assessors' Association[4] complies with

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[4] The SBE drafted, co-sponsored and analyzed the 1988 amendment of R & T Code § 62.1 for the Legislature. It also drafted the guidelines which instruct all county assessors how to assess individual mobilehome interests

the well-established rules of statutory construction by harmonizing section 62.1 both internally and externally with all other relevant provisions of the Revenue and Taxation Code, Property Tax Rules and articles XIII and XIIIA of the California Constitution.

The Opinion's interpretation of subsection (c) of section 62.1 is internally inconsistent with another part of section 62.1 which confirms the relevance of the purchase price (consideration) paid for individual mobilehomes. Subsection (b) (6) of section 62.1, as amended in 2002, requires the following:

> **62.1 "Change in ownership" exclusion**
>
> "(b)(6) Within 30 days of a change in ownership, the new resident owner or other purchaser or transferee of a mobilehome within a mobilehome park that does not utilize recorded deeds to transfer ownership interest in the spaces or lots shall file a change in ownership statement described in either 480 or 480.2."
>
> (Rev. & Tax. Code § 62.1(b)(6) as amended in 2002.)

---

when they change ownership. "The duties, rules, regulations, and instructions specified in [Government Code] section 15606 shall include provisions for mobilehomes which are subject to local property taxation." (Gov. Code § 15606.1) The SBE and California Assessors' Association also filed amicus briefs supporting the Assessor in the underlying appeal.

Section 480, in turn, requires mobilehome transferees to submit a verified change in ownership statement that discloses the amount of consideration paid for the property:

> **480. Change in ownership statement**
>
> "The information shall include, but not be limited to, a description of the property, the parties to the transaction, the date of acquisition, the amount, if any, of the **consideration paid for the property**, whether paid in money or otherwise, and the terms of the transaction. The change in ownership statement shall not include any question that is not **germane to the assessment function**."
>
> (Rev. & Tax. Code § 480, emphasis added.)

The plain language of section 480, as incorporated by reference in subsection (b)(6) of section 62.1, requires buyers of mobilehomes to report the amount of "consideration paid" to purchase the property – this information is described by statute as "germane to the assessment function." This language provides a clear indication of the Legislature's intent that the purchase price paid by the market participants is an important ("germane") consideration that may not be disregarded by county assessors when determining the market value of mobilehome properties.

The Opinion puts county assessors in the impossible position of having to determine the "fair market value" of individual mobilehome properties which have "changed ownership" without considering the purchase prices paid for those properties. Estimating

the value of the entire mobilehome park and dividing that value by the number of spaces does not solve the problem for several reasons:

Resident-owned mobilehome parks do not sell as a unit, each resident-owner retains the exclusive right to sell his or her individual property interest. For example, the 26 mobilehome properties at issue in this case were each sold independently by their respective resident-owners.

↓

The only way to accurately estimate the total value of the entire mobilehome park is to determine how much each individual mobilehome would sell for on the open market.

↓

Market value is based on what persons in the marketplace will pay in an arms-length transaction.

↓

If assessors are not allowed to consider the purchase price paid for similar resident-owned mobilehome properties they are left with no relevant or competent appraisal data.

The senselessness of the valuation method adopted by the Opinion is illustrated by the following example. Assume one Rancho Goleta mobilehome sells on January 1, 2013. Under the valuation method dictated by the Opinion, county assessors would need to estimate the value of the entire 28 acres of land and all 200 mobilehome spaces. That value would be divided by 200 to determine the taxable value of the one mobilehome that sold. If a second mobilehome sells on June 1, 2013, the entire park would have to be reappraised again because the sales are more than 90 days apart.[5]

This impractical, costly and unnecessary process will not only apply to changes in ownership. It will also apply to taxpayer requests for reduced assessment under Revenue and Taxation Code section 51 (decline in market value). Requests for reduced assessment under section 51 have become very common due to the declining real estate market. The Opinion will make it difficult if not impossible for county assessors and taxpayers to determine when the assessed value of an individual mobilehome may be reduced due to a decline in market value because of the Opinion's refusal to consider the

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[5] Under Rev. & Tax. Code §110.1(a), real property must be valued as of the date of purchase or change of ownership. (*Schoderbek v. Carlson* (1984) 152 C.A.3d 1027, 1034, ["full cash value" is determined by separate appraisal as of actual date of purchase]; see also 9 Witkin Sum. Cal. Law Tax § 145 & Rev. & Tax. Code § 402.5 which provides that only properties which sold within the 90-day period preceding a change of ownership may be considered when determining fair market value. This 90-day rule is reinforced by §1609.8 and Property Tax Rule 324 which make the rule mandatory.

purchase prices paid for individual mobilehomes and its nonsensical designation of the entire mobilehome park as the "appraisal unit."

Under section 51 the taxable value of real property is the lesser of its fair market value or full cash value and its enrolled base value. In layman's terms, that means a taxpayer may request a reduction in the taxable value of real property whenever its market value falls below the value on the county tax roll.

The interpretation adopted in the Opinion frustrates this process because under Revenue and Taxation Code section 51 "real property" means the appraisal unit that "persons in the marketplace commonly buy and sell as a unit." Based on the 26 individual sales at issue in the underlying appeal, it is undisputed that the only real property commonly bought and sold in the marketplace are individual mobilehomes. Ignoring this statute of general application, the Opinion directs county assessors to disregard what people commonly buy in sell in the marketplace and directs them to value the entire mobilehome park as the "appraisal unit" even though entire mobilehome parks are not commonly bought and sold in the marketplace.

The section 51 dilemma is just one of the intractable problems created by the Opinion's unprecedented decision to abandon the basic constitutional and statutory provisions governing real property taxation. It illustrates the Opinion's failure to understand and apply the legislative intent behind section 62.1. It also illustrates why deference should be given to the interpretation provided by the SBE, the agency charged by the Legislature to maintain uniform assessment practices throughout the state. (See Gov't. Code §

15606(d), Rev. & Tax. Code § 401.5; *Glidden Co. v. Alameda County* (1970) 5 Cal.App.3d 371; *Xerox Corp. v. Orange County* (1977) 66 Cal.App.3d 746, 753.)

FACTUAL and PROCEDURAL HISTORY

A. Statement of Facts

Rancho Goleta and Silver Sands are both resident-owned mobilehome parks located in the unincorporated area of Santa Barbara County. They were originally owned by investors who rented spaces to the residents. Rent control established the monthly rent paid by the residents to the investor-owners. [Admin. Record Vol. 1, Tab 7, APP000085, lns. 2-9 & APP000087 lns. 3-6].

In 1992 the Rancho Goleta residents formed a non-profit corporation to purchase their mobilehome park from the investor-owner. Pursuant to subdivision (a) of 62.1, this transaction enjoyed the one-time reassessment exemption. In 1998, the Silver Sands residents did the same and also enjoyed the one-time reassessment exemption provided by section 62.1(a). [Admin. Record, Vol. 6, Tab 91, APP001264.] To finance the purchases, the residents of each mobilehome park divided the purchase price of the real property into equal shares and sold those shares as memberships in the parks. [Admin. Record, Vol. 1, Tab 7, APP000085, lns 17-25.] This is how the non-profit corporations acquired fee title to all of the real property in their respective mobilehome parks. [Admin Record, Vol. 1, Tab 11 APP000129-0132.]

B. Procedural History

Representatives for the Rancho Goleta and Silver Sands mobilehome parks initiated proceedings in this case in 2001 by filing Applications for Changed Assessment appealing the value the 26 separate mobilehome ownership interests that sold in 2001. [Admin. Record Vol. 1, Tab 3, AAB000014, Tab 4, AAB000033, AAB000045 & AAB000057.]

Because the Applications addressed the same basic issues, the Assessment Appeals Board ("Board") consolidated the Applications. The consolidated Applications were later bifurcated into 2 phases. Phase 1 primarily addressed questions of law - the interpretation of Revenue and Taxation Code section 62.1 and identification of the proper assessment method. Phase 2 focused on the valuation of the 26 transferred ownership interests using the interpretation of Revenue and Taxation Code section 62.1 and the assessment method dictated by the Board in Phase 1. [Admin. Record, Vol. 18, Tab 254, AAB003625-003627.]

The Board issued final decisions for Phase 1 and Phase 2 on October 17, 2006. [Admin. Record Vol. 16, Tab 254, AAB003621-3678 & AAB003680-3715.] The Assessor filed a Writ of Mandate in Santa Barbara Superior Court on April 17, 2007. [Appellant's Appendix ("Appendix"), Vol. 1, Tab 1, 00001-00119.] The Writ raised mixed questions of law and fact concerning the interpretation of Revenue and Taxation Code section 62.1 and its application to the sale of 26 individual mobilehome interests in Rancho Goleta and Silver Sands in 2001.

The Writ challenged the Board's legal conclusions as well as the evidence that purportedly supported the drastically reduced property values suggested by the appraisals submitted by the Real Parties. [Appendix, Vol. 1, Tab 1, 00001-00119 & 00114-00115.]

On November 12, 2008, the Superior Court action was bifurcated into Phase 1 and Phase 2, as it was when it was heard by the Board. The Superior Court hearing on Phase 1 was held on March 27, 2009. A Judgment Denying Phase 1 was entered three months later on June 25, 2009. [Appendix, Vol. 2, Tab 21, 00355-00356.]

The hearing on Phase 2 was heard on January 26, 2010. After the hearing, the court ordered each party to file a list of issues to be decided along with proposed findings for each issue. The Assessor filed a Post-Trial List of Issues on February 1, 2010. [Appendix, Vol. 3, Tab 34, 00561-00584.]

The Board and Real Parties filed a Joint Post Trial List of Issues on February 1, 2010. [Appendix, Vol. 3, Tab 35, 00585-00653.] On February 8, 2010, the Board and Real Parties filed a responsive Joint Post Trial Brief [Appendix, Vol. 3, Tab 35, 00585-00653] and on February 10, 2010, the Assessor also filed a Revised Post Trial Brief. [Appendix, Vol. 3, Tab 36, 00727-00790.]

The Tentative Decision for the entire Writ was issued more than three months later on May 7, 2010. It adopted all of the issues and proposed findings submitted by the Board and Real Parties. [Appendix, Vol. 3, Tab 41, 00796-00837.]

The Assessor timely filed Objections to Tentative Statement of Decision and Request for Clarification on June 15, 2010. [Appendix, Vol. 4, Tab 44, 00842-00851.] The Court did not issue a ruling on

the Assessor's Objections or Request for Clarification. The final Judgment and Order Denying Petition for Writ of Mandate was entered on October 21, 2010. [Appendix, Vol. 4, Tab 47, 00871-00873] and the Notice of Entry of Judgment was served on December 2, 2010 [Appendix, Vol. 4, Tab 50, 00917-00963].

The Assessor timely filed a Notice of Appeal on December 16, 2010. [Appendix, Vol. 4, Tab 52, 00966-00967.]

The State Board of Equalization and the California Assessors' Association filed amicus briefs in support of the Assessor in October 2011.

The Court of Appeal issued an Opinion on May 16, 2012. The Assessor filed a Petition for Rehearing. The Court of Appeal issued an Order granting rehearing on June 13, 2012.

The Court of Appeal issued an Opinion on Rehearing on August 30, 2012. The Assessor filed a Second Petition for Rehearing on September 14, 2012. The Court of Appeal denied the Second Petition for Rehearing on October 1, 2012.

BACKGROUND AND LEGISLATIVE HISTORY OF REVENUE AND TAXATION CODE § 62.1

Before 1980, most mobilehome parks were owned by municipalities or investors who rented spaces to low and moderate income residents, many of which were subject to rent control. In response to increasing park rents, the closure of some parks and the displacement of many low to moderate income residents, the concept of resident-owned mobilehome parks developed in the mid-1980s.

Resident-owned mobilehome parks are created when the residents form a homeowners association to purchase a park and convert it to a mobilehome subdivision, condominium, stock co-operative or non-profit corporation.

Between 1984 and 1996, the California Legislature responded to this trend by enacting or amending a number of laws to encourage resident ownership, including a new loan program to assist homeowner associations and low-income residents in purchasing their parks as well as various changes to the Subdivision Map Act, exempting or simplifying the conversion process.

To further encourage conversions to resident ownership, in 1984 the Legislature added section 62.1 to Division 1, Part 0.5, Chapter 2 of the Revenue and Taxation Code. Chapter 2, entitled *Change in Ownership and Purchase*, defines what does and does not constitute a change in ownership for property tax purposes under Article XIIIA of the California Constitution (commonly known as Prop 13).

Subdivision (a) of section 62.1 excludes the initial conversion of a mobilehome park from a change of ownership. Under subsection (a), when a mobilehome park is purchased by a non-profit entity formed by the residents for the purpose of purchasing the park, the transaction does not result in a reappraisal of the property. Real Parties Rancho Goleta and Silver Sands took advantage of this exclusion when they formed non-profit corporations to purchase their parks. [Admin. Record, Vol. 6, Tab 91, APP001264.]

Revenue and Taxation Code section 62.1 has been amended eight times since it was enacted in 1984 and the focus of this case

starts with the proper interpretation of the 1988 amendment to section 62.1 – an amendment drafted, co-sponsored and analyzed for the Legislature by the SBE. That amendment was expressly intended to close two loopholes.

The first loophole had inadvertently created a situation where an investor could purchase a valuable mobilehome park and avoid reappraisal by simply renting a vacant unit for a brief time. The second loophole (the one at issue in this case) allowed some, but not all, resident-owners to escape a change of ownership reassessment when they later sold their individual real property interests to third parties. The only property owners enjoying the second loophole were people who owned interests in resident-owned mobilehome parks held by non-profit corporations such as Rancho Goleta and Silver Sands.

The SBE described the second loophole during Senate hearings on the 1988 amendment as follows:

> "Putting a park into a nonprofit mutual benefit corporation ownership could mean that no part of the park would ever be reappraised again, since transfers of individual interests in a nonprofit corporation do not trigger reappraisal. This would give [some] mobilehome parks much more favorable treatment than the average homeowner."
>
> [Admin Record, Vol. 6, Tab 92, APP001274 -1275 3/24/88, SBE Legislative Bill Analysis.]

This second loophole was particularly problematic because it granted more favorable tax treatment to a relatively small class of property owners. The favored class was small because the loophole did not apply to the sale of real property interests in resident-owned mobilehomes held by condominium associations or stock co-operatives. This dichotomy arose because, unlike interests held by non-profit corporations, the sale of a mobilehome interest in a resident-owned mobilehome park held by a condominium associations or a stock co-operative constituted a change in ownership as a matter of law.

Under the 1988 amendments, after a qualifying transfer the resident-owned entity would own the entire park, with each respective resident owner receiving a certificate representing his or her fractional ownership interest. (Rev. & Tax. Code §§ 62.1(a)(1), 2188.10; Admin. Record, Vol. 7, Tab 113, ASSR001610-1611, Letter to Assessor ("LTA") 99/87, Q & A-1.) This fractional ownership interest in the park typically includes: (1) the outright ownership of a particular mobilehome, and (2) the exclusive right to occupy a particular space within the park. (Admin. Record, Vol. 7, Tab 113, ASSR001611-1612, LTA 99/87, Q & A-2; Rev. & Tax. Code § 62.1(a)(1).) Upon acquiring an ownership interest in the park, the residents also would obtain the exclusive right to sell their mobilehome spaces. [Admin. Record, Vol. 34, Tab 278, TX006966 lns. 17-25; TX006944 lns. 4-13 & TX006945 lns. 20-25.]

Once such a transfer occurs, however, any subsequent transfers of the now individually-owned interests in the nonprofit entity that owns the mobilehome park are no longer excluded from change in

ownership, and are thereafter subject to reappraisal and reassessment upon subsequent sale. (Cal. Const., art. XIIIA, § 2; Rev. & Tax. Code § 62.1(c).)

In this regard, section 62.1(c), as it existed in 2001, provided that the transfer of an individual ownership interest in a resident-owned mobilehome park is a change of ownership of "a pro-rata portion of the real property of the park."

Revenue and Taxation Code section 62.1, subsection (c)(2), as amended in 1998, defined the pro rata portion of the real property as follows:

> 62.1. "Change in ownership" exclusion.
> "(a) .....
> "(b) .....
> "(c) (1) If the transfer of a mobilehome park has been excluded from a change in ownership pursuant to subdivision (a) and the park has not been converted to condominium, stock cooperative ownership, or limited equity cooperative ownership, any transfer on or after January 1, 1989, of shares of the voting stock of, or other ownership or membership interests in, the entity which acquired the park in accordance with subdivision (a) shall be a change in ownership of a pro rata portion of the real property of the park . . . ."
>
> "(2) For the purposes of this subdivision, "pro rata portion of the real property" means the total real property of the mobilehome park multiplied by a fraction consisting of the number of shares of voting stock, or

other ownership or membership interests, transferred divided by the total number of outstanding issued or un-issued shares of voting stock of, or other ownership of membership interests in, the entity which acquired the park in accordance with subdivision (a)."

"(3) Any pro rata portion or portions of real property which changed ownership pursuant to this subdivision may be separately assessed as provided in Section 2188.10."

[R & T Code § 62.1 as amended in 1988; see also, Admin. Record, Vol. 13, Tab 188, ASSR002592-2593, attached hereto as Attachment 2.]

DISCUSSION

The critically flawed Opinion exceeds the court of appeals' jurisdiction by abandoning the acquisition cost valuation system mandated by articles XIII and XIIIA of the California Constitution and the general Revenue and Taxation Code provisions that make the taxable value of real property dependent on its purchase price. It takes the law of property taxation in an improper and unprecedented direction by rejecting the guidance offered by the SBE, the agency that proposed, supported and analyzed the 1998 amendments to the statute at issue; the agency constitutionally mandated to oversee the assessment practices of the state's 58 county assessors. It also disregards the guidance offered by the California Assessors' Association, an organization comprised of all of the duly elected county assessors in California.

The Opinion unwittingly changes the way resident-owned mobilehomes have been assessed for the last 20 years throughout the state. It forces assessors to value an entire mobilehome park every time a single mobilehome is sold and to disregard the actual purchase price paid for the property and disregards numerous valuation principles mandated by the R & T Code. To make matters worse, this abhorrent process does not apply to all resident-owned mobilehome parks. It only applies to resident owned mobilehome parks held by non-profit mutual benefit corporations. Mobilehomes in similar resident- owned mobilehome parks held by stock cooperatives and condominium associations will be assessed normally by applying the purchase price presumption mandated by Revenue and Taxation Code section 110 as well as subsection (b)(6) of section 62.1 and section 480.

A. Approach Adopted in the Opinion is Palpably Arbitrary

The Opinion violates the federal and state guaranties of equal protection of the law by taxing the owners of resident-owned mobilehomes held by non-profit corporations at a fraction of their acquisition cost absent constitutional authority or a rational basis. The Opinion's approach is palpably arbitrary because it disregards actual *acquisition costs* only when valuing one type of resident-owned mobilehomes. No rational basis is offered to justify why resident-owned mobilehomes located in parks held by stock cooperatives or condominium associations should be assessed based on their actual purchase prices while similar homes located in parks held by non-profit corporations escape full taxation. (*Hillsborough v. Cromwell* (1946) 326 U.S. 620, 623 [equal protection forbids imposing taxes not levied against persons of the same class].)

The Opinion tries to justify its approach by relying on *Amador Valley Joint Union High School District. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, and *Shafer v. State Bd. of Equalization* (1985) 174 Cal.App. 3d 423. However, neither *Amador* nor *Shafer* provide any support for the critically flawed Opinion issued here.

Amador is the case that upheld the new *acquisition value* system put in place in 1978 by Proposition 13 (Article XIII A). Proposition 13 imposed limitations upon the assessment and taxation of real property. As explained by the California Supreme Court, it replaced the current market valuation standard with an *acquisition cost* system. It "transformed the California real property tax landscape [b]y making the assessed value of real property for tax purposes essentially dependent on sale price." (*Southern Cal. Rapid Transit Dist. v. Bolen* (1992) 1 Cal. 4th 654, 678; *Roy E. Hanson, Jr. Mfg. v. County of Los Angeles* (1980) 27 Cal. 3d 870, 873; 1 Ehrman & Flavin, Taxing Cal. Property, § 3:1, p. 3-2.)

In *Amador,* several public agencies challenged the new *acquisition cost* system because it would allow two taxpayers with substantially identical properties to pay drastically different amounts of property tax. In spite of this dichotomy, the *Amador* Court held that Proposition 13 met the rational basis test because all real property was taxed the same way. It was taxed according to its *acquisition value* rather than its current value. (*Amador*, supra, at p. 235.)

> "This 'acquisition value" approach to taxation finds reasonable support in a theory that the annual taxes should bear some rational relationship to the original cost of the property, rather than relate to an unforeseen, perhaps unduly inflated, current value. Not only does an acquisition value system enable each property owner to estimate with some assurance his

> future tax liability, but also the system may operate on a fairer basis than a current value approach. For example, a taxpayer who acquired his property for $40,000 in 1975 henceforth will be assessed and taxed on the basis of that cost. . . This result is fair and equitable in that his future taxes may be said reasonably reflect the price he was originally willing and able to pay for his property, rather than an inflated value fixed, after acquisition, in part on the basis of sales to third parties over which he could exercise no control. On the other hand, a person who paid $80,000 for similar property in 1977 is henceforth assessed and taxed at a higher level which reflects, again, the price he was willing and able to pay for that property.
>
> Seen in this light . . persons are assessed and taxed on an acquisition value basis predicated on the owner's free and voluntary acts of purchase. This is an arguably reasonable basis for assessment."
>
> (*Amador* at p. 235; see also *Northwest Fin. v. State Bd. of Equalization* (1991) 229 Cal. App. 3d 198, 203-204.)

In contrast to the *acquisition cost* valuation system considered by the *Amador* Court, a taxpayer who acquires a mobilehome under the new approach adopted by the Opinion will not be assessed and taxed based on how much he was willing and able to pay for his property. The taxpayer will instead be taxed on a fraction of the total "value" of the entire mobilehome park. This means his future taxes will <u>not</u> reflect the price he was originally willing and able to pay for his property.

The *Shafer* decision is equally unpersuasive. In *Shafer v. State Bd. of Equalization,* supra, 174 Cal.App.3d 423, county assessors challenged Sections of chapter 3.2 of the R & T Code enacted in 1983 (§§ 75.10, 75.11). The assessors argued that the supplemental assessment provisions at issue imposed new ad valorem taxes in violation of Article XIII A. (*Shafer*, supra at p. 427.) The *Shafer* Court disagreed because the new supplemental assessment legislation merely created a new timing mechanism for the valuation and collection of taxes. The challenged provisions were upheld because the new legislation was consistent with the purpose behind Article XIII A. (Id., at pp. 426-428.)

> "**The express purpose behind chapter 3.5 is to equalize the tax burden among taxpayers.** The approach provided in Sections 75.10 and 75.11 is in full conformity with the purpose behind California Constitution, article XIII A; i.e., to value the property at full cash value as reflected by new construction or a change in ownership. (Cal. Const., art. XIII A, § 2.)
>
> There is nothing unconstitutional about modifying the lien date. (*Sea-Land Service, Inc. v. County of Alameda* (1974) 12 Cal.3d 772, 780.) Chapter 3.5's approach of timing assessments to coincide with the acquisition or completion date is consistent with the purpose behind article XIII A of the California Constitution. (See *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, supra, 22 Cal.3d at pp. 235-237.)
>
> (*Shafer v. State Bd. of Equalization*, supra at p. 428, emphasis added.)

In contrast to the statutes considered in *Shafer*, the Opinion's skewed interpretation of R & T Code section 62.1 abandons the purpose behind California Constitution, article XIIIA; i.e., to equalize the tax burden among taxpayers by valuing the property based on its acquisition cost.

B. Opinion Misconstrues the Legislative History of SB 1885 and R & T Code §§ 62.1 and 2188.10

Page 12 of the Opinion presents an inaccurate account of the legislative history of SB 1885 by relying on a paragraph deleted from the SBE's final Legislative Bill Analysis for SB 1885. The Opinion fails to note that although the SBE initially questioned whether differences in the value between mobilehome spaces could be recognized under the amendment it was sponsoring, the SBE deleted the sole paragraph raising that issue from its final Legislative Bill Analysis after SB 1885 was redrafted. Accordingly, the SBE's final Bill Analysis submitted to the Legislature on March 24, 1988, deletes the paragraph the Opinion relies on and instead adds a new paragraph which supports the separate assessment of each mobilehome space as follows:

> "This measure, with the addition of Section 2188.10... would require the assessor to separately assess the pro rata portion of the real property of a mobile-home park which changes ownership . . . in a manner similar to existing provisions for the separate assessment of certain timeshare interests."
> "....."
> "This amendment attempts to parallel as closely as possible the tax treatment accorded condominium and stock cooperatives....."
>
> [Admin. Record, Vol. 6, Tab 92, APP001274-APP001278, 3/24/88 Final SBE Leg. Bill Analysis.]

The only logical conclusion to be reached by the final Legislative Bill Analysis is that "differences in value between mobilehome spaces" can and should be recognized under R & T Code section 62.1 and the assessor may "separately assess" each and every pro rata portion of park that changes ownership. Assessment of the entire mobilehome park is simply unnecessary – it is not something the Legislature intended.

C. The SBE's Interpretation is Entitled to Great Weight

The Opinion is mistaken when it concludes on page 10 that the SBE's interpretation meets none of the standards set forth by our Supreme Court to determine the weight to be given an administrative interpretation. The Opinion attempts to justify this conclusion by dismissing LTA 99/87 because it has only been in effect for 10 years and by ignoring its predecessors, LTA 89/13, issued just one month after SB 1885 amended section 62.1 and Assessor Handbook Section 511 "Assessment of Manufactured Homes and Parks." [See, Admin. Record Vol. 8, Tab 125.1, AAB001742-1743, LTA 89/17, Attachment 3 & Vol. 8, Tab 125, AAB001738-1741, AH 511, Attachment 4.] LTAs and Assessor Handbooks are entitled to some degree of judicial deference based on the SBE's property-tax delegated responsibilities and expertise in advising county assessors and local boards of equalization in property tax matters. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7-8; Gov. Code § 15606.)

It cannot be disputed that LTA 89/13, issued on Feb. 1, 1989, was drafted contemporaneously with the amendments to section 62.1 which took effect on Jan. 1, 1989. Nor can it be disputed that LTAs 89/13 and 99/87 both support the approach followed by the Assessor when he separately assessed each of the 26 separate changes of ownership at issue in this case. LTA 89/10 directs assessors to reassess the pro rata portion of a

mobilehome park held by a non-profit corporation the same way they assess mobilehomes held by a stock cooperative or condominium association.

> "This pro rata adjustment is similar to a fractional change of ownership of real property. Upon the transfer of any ownership interest in the entity of either an originally issued share or of an unissued share to a new participant, a change in ownership of a pro-rata portion of the real property of the park has taken place. A new base-year value(s) are adjusted, and appropriate supplemental assessments should be processed.
> This bill also adds Section 2188.10 to the Revenue and Taxation Code. It would require the assessor, within the appropriate conditions, to separately assess the pro rata portion of the real property of a mobilehome park which changes ownership pursuant to Section 62.1© in a manner similar to existing provisions for the separate assessment of certain timeshare interests. One of the conditions is for the governing board of the mobilehome park to make a request for separate assessment; otherwise, the assessor merely makes change of ownership assessments to the owning entity.
>
> The provisions for the separate assessment of a pro rata portion of the mobilehome park which changed ownership pursuant to Section 62.1(c) permit the assessments and related taxes to be separately identified on the tax bill sent to the owning entity and provides for the collection of the separately identified share of taxes and any processing fee from the owner of the pro rata portion of the property which changed ownership."
>
> [Admin., Record Vol.8, Tab 125.1, AAB 001743, ¶ 1, LTA 89/13, Attachment 4.]

LTA 99/87 does not change the direction provided by the SBE in LTA 89/13, it simply provides additional guidance regarding how to separately assess the pro rata portion of the real property that changes ownership. The Opinion's decision to reject the SBE's interpretation and guidance regarding Revenue and Taxation Code section 62.1 is very difficult to justify considering the SBE's expertise regarding California's complex Revenue and Taxation Code and the fact that it drafted and co-sponsored the 1988 amendment at issue.

It is also significant that the SBE's administrative construction of section 62.1 has been followed by county assessors and their local boards of equalization for more than 20 years. Its construction is entitled to judicial deference and should be followed if not clearly erroneous. [*Maples v. Kern County Assessment Appeals Bd.* (2002) 96 Cal.App.4th 1007, 1015; *Yamaha, supra at*, 4, 5, and 7.)

D. Opinion Exceeds the Court's Jurisdiction By Suggesting the Legislature Should Have Amended R & T Code § 65.1 Rather than § 62.1 if it Desired Equal Taxation

The Opinion inappropriately challenges the wisdom, desirability and propriety of SB 1885 as follows:

> "If the Legislature had intended to treat resident-owned mobilehome parks in a manner similar to condominiums, stock cooperatives, and subdivided mobilehome parks, it could have amended Section 65.1 to include them. The adoption of a separate statute indicates a legislative intent to treat valuation of underlying spaces in resident-owned mobilehome parks differently than other forms of ownership."
>
> (Opinion at p. 15.)

As noted in footnote 9 on page 21 of the Opinion "Courts do not sit as super-legislatures to determine the wisdom, desirability or propriety of statutes enacted by the Legislature." (*Estate of Horman*, (1971) 5 Cal. 3d 62, 77 citing *Griswold v. Connecticut*, (1965) 381 U.S. 479, 482.) Ignoring this well established principle, the Opinion insists that the Legislature should have amended R & T Code section 65.1 instead of 62.1 when it voted to approve SB 1885 in 1988. This suggestion is difficult to understand since section 65.1 has nothing to do with the assessment of mobilehomes.

Section 65.1 was enacted in 1980 to address changes in ownership of fractional interests in cooperative housing projects, planned unit developments, shopping centers and other complexes with common areas. Section 65.1 provides that when a unit or lot within a cooperative housing corporation changes ownership "only the unit or lot transferred and the share in the common area reserved as an appurtenance of such unit shall be reappraised."

Section 62.1 was enacted four years later in 1984 to specifically address changes in ownership of resident-owned mobilehomes. Subsection (a) provides a change of ownership exclusion when 51% or more of the residents formed a legal entity to purchase the park. The remaining subdivisions address how subsequent changes of ownership of individual mobilehomes would be assessed.

The legislative history for SB 1885 demonstrates that amending section 65.1 would not and could not cure the problems created in 1987 when section 62.1 was amended by SB 298. [Admin. Record, Vol. 6, Tab 92, APP 001274-1279.] The legislative history of SB 1885 could not be more clear. It explains that section 62.1 needed to be amended and 2188.10 needed to be enacted to correct the following two problems that were inadvertently created when section 62.1 was amended in 1987.

1. to prevent investor-owners from moving into parks and posing as tenants solely for the purpose of qualifying for the one-time change in ownership exclusion provided by 62.1(a); and

2. to close a loophole that gave the owners of mobilehomes in parks held by non-profit corporations much more favorable treatment than the average homeowner. [Admin. Record, Vol. 6, Tab 101, AAP 001320.]

The Legislature decided that amending section 65.1, as suggested by the Opinion, would not have corrected the two foregoing problems and that amending section 62.1 and enacting section 2188.10 was the appropriate way to make the assessment of resident-owned mobilehomes more consistent with the assessment of other fractional interests in real property controlled by Section 65.1. It is not up to the court of appeal to second guess the Legislature regarding how to maintain property tax equality.

E. Assessing Resident-Owned Mobilehomes Held by Non-Profit Corporations Differently Than Those Held by Stock Cooperatives or Condominium Associations Does Not Rationally Promote Affordable Housing

The Opinion states on page 13 that the "Board's Interpretation [is] Consistent with Policy of Providing Affordable Housing." However, the Opinion fails to address or explain how assessing resident-owned mobilehomes located in parks held non-profit corporations differently than resident-owned mobilehome parks located in parks held in stock cooperatives or condominium associations promotes that interest. Are the resident-owners of mobilehomes located in parks held by stock cooperatives or condominium associations less deserving of a

property tax exclusion that reduces their assessed values to as little as 15% of the amount they paid to purchase their properties?

It appears the Opinion may have misread the Legislature's stated intent in subsection (c) of section 62.1 to facilitate "all" affordable conversions of mobilehome parks:

> "It is the intent of the Legislature that, in order to facilitate affordable conversions of mobilehome parks to tenant ownership, paragraph (1) of subdivision (a) apply to all bona fide transfers of rental mobilehome parks to tenant ownership, including, but not limited to, those parks converted to tenant ownership as a nonprofit corporation made on or after January 1, 1985."
>
> [R & T Code § 62.1 (c) (subsection (c) was relettered to subsection (d) in 1991.]

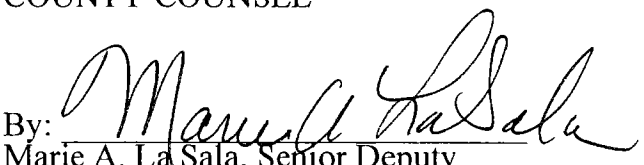
The Legislature's policy of providing facilitating affordable housing is not advanced by the Opinion. The one-time reassessment exclusion provided by subsection (a) of section 62.1 is not at issue in this case for it is undisputed that Rancho Goleta and Silver Sands both took advantage of that one-time exclusion many years ago when those parks were converted to resident-ownership.

CONCLUSION

This Court should grant this Petition for Review because the Opinion issued in this case of first impression abandons the *acquisition cost* valuation system mandated by Proposition 13 as well as the fundamental appraisal principles that form the backbone of the Revenue and Taxation Code, the principles that ensure uniform taxation. The intractable statewide assessment problems created by the Opinion's senseless valuation method demonstrate the lower court's failure to understand and apply the legislative intent behind section 62.1. Those unavoidable problems also demonstrate why deference should be given to the interpretation provided by the SBE, the agency that drafted, co-sponsored and analyzed the legislation at issue.

Date: October 8, 2012

Respectfully submitted,
DENNIS A. MARSHALL,
COUNTY COUNSEL

By: 
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for the County of Santa Barbara

CERTIFICATE OF COMPLIANCE

I certify that:

Pursuant to California Rules of Court 8.204(c), the undersigned appellate counsel hereby certifies that, according to the word count on the computer used to produce this brief, the number of words in this brief is 7, 544, including footnotes.

Dated: Oct. 8, 2012

Marie A. LaSala

ATTACHMENT 1

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

ASSESSOR FOR COUNTY OF SANTA BARBARA, Plaintiff and Appellant, v. ASSESSMENT APPEALS BOARD NO. 1, Defendant and Respondent; RANCHO GOLETA LAKESIDE MOBILEERS, INC., et al., Real Parties in Interest and Respondents.	2d Civil No. B229656 (Super. Ct. No. 01244457) (Santa Barbara County) OPINION ON REHEARING COURT OF APPEAL - SECOND DIST FILED AUG 30 2012 JOSEPH A. LANE, Clerk

The ownership of mobilehome parks and individual spaces within them may take many forms. An individual or entity may own the park and lease spaces to residents who become tenants. In recent years, many mobilehome parks have become resident-owned with residents obtaining a legal interest in some or all of the park's real property. Resident-owned mobilehome parks have been established as condominiums, cooperatives, subdivisions, and ownership by nonprofit corporations.

As part of a legislative policy to encourage affordable housing, a statute was enacted in 1985 to exempt from reassessment, any "transfer . . . of a mobilehome

park to a nonprofit corporation, stock cooperative corporation, limited equity stock cooperative, or other entity formed by the tenants of a mobilehome park, for the purpose of purchasing the mobilehome park." (Rev. & Tax. Code, § 62.1, subd. (a)(1).)[1] A later amendment clarified that subsequent transfers of stock in a previously-formed nonprofit corporation by individual members were taxable changes of ownership "of a pro rata portion of the real property of the park." (§ 62.1, subd. (c)(1).)[2]

A "pro rata portion of the real property" is defined as "the total real property of the mobilehome park multiplied by a fraction consisting of the number of shares of voting stock . . . transferred divided by the total number of outstanding [shares of stock] in, the entity which acquired the park." (§ 62.1, subd. (c)(2).) The dispute in this case concerns the methodology which must be used by assessors to determine the "pro rata portion of the real property of the park" which is sold when a resident sells his or her membership stock in the nonprofit corporation.

Appellant Assessor for the County of Santa Barbara (Assessor) reassessed the Rancho Goleta and Silver Sands Village mobilehome parks (the Parks) which were owned by Rancho Goleta Lakeside Mobileers, Inc., and Silver Sands Village, Inc. (the Nonprofit Corporations). The Assessor computed the reassessment by subtracting the value of the mobilehome from the total purchase price of the mobilehome and membership in the Nonprofit Corporations. The Assessor deemed the remaining amount to be the fair market value of the purchaser's "pro rata portion of the real property of the park." The Nonprofit Corporations appealed to the Assessment Appeals Board No. 1 (the Board) contending that such method of reassessment violated section 62.1, subdivision (c)(2) because it failed to apply the statutory definition of "pro rata portion of the real property" as a multiplication of the Park's total real property by a fraction consisting of

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[1] All statutory references are to the Revenue and Taxation Code unless otherwise stated.

[2] An amendment to section 62.1 in 2001 renumbered subdivisions (c)(1) and (c)(2) to subdivisions (b)(1) and (b)(2). We will use the original (c)(1) and (c)(2) numbering in effect at the time of the reassessments in this case.

the number of membership shares being sold divided by the total number of shares in the Nonprofit Corporation. The Board ruled in favor of the Nonprofit Corporations and, after the trial court denied the Assessor's petition for writ of administrative mandamus, the Assessor appealed. We agree with the Board and trial court and affirm.

FACTS AND PROCEDURAL HISTORY

The Parks were formerly owned by investors with residents of the Parks leasing the spaces underlying their mobilehomes from those investors. In 1992 and 1998, residents of the Parks formed the Nonprofit Corporations which purchased the Parks including the underlying real property. After purchase, each resident who wished to do so purchased a membership in the Nonprofit Corporation. A membership included an undivided interest in the Nonprofit Corporation, but not a direct ownership interest in the real property, and no right to occupy a specific space in the Park. The right to occupy a space in the Park was conveyed by a lease between the Nonprofit Corporation and the owner of the mobilehome. Rent for each space was based on an allocable share of the operating expenses of the Park. The maximum number of memberships in each corporation was limited by the number of spaces available in the Park. Rancho Goleta contains 200 spaces and its purchase price in 1992 was $9.4 million. Silver Sands Village contains 80 spaces and its purchase price in 1998 was $1.5 million.

Pursuant to section 62.1, subdivision (a), the transfer of ownership of the Parks to the Nonprofit Corporations was a nontaxable event. But a change in assessment of the underlying real property is triggered by each subsequent sale of a membership in the Nonprofit Corporation which owned the particular Park. Although a mobilehome is typically sold with the sale of a membership, reassessment of the mobilehome is separate from the reassessment of the Parks. The mobilehome is assessed as personal property (§ 5810), and despite the absence of any formal change in ownership of the real property, a pro rata portion of the real property is deemed to change ownership for purposes of reassessment pursuant to section 62.1, subdivision (c).

For the tax year 2002-2003, the Assessor reassessed the Parks based on the sale of memberships in the Nonprofit Corporations in 2001. The reassessments were

based on a so-called "extraction" method for determining the value of a pro rata portion of the real property as if title to the space (real property) under a mobilehome was being sold along with a membership in the Nonprofit Corporation. The extraction method computes the fair market value of the underlying space by subtracting the value of the mobilehome from the total purchase price of the mobilehome with a membership.

The Nonprofit Corporations appealed to the Board challenging the reassessments. They asserted that the methodology used by the Assessor disregarded the plain language of section 62.1, subdivision (c), which requires that the value of an underlying space be calculated based on a "pro rata" portion of the fair market value of the entire Park according to the multiplication formula set forth in the statute.

The Board heard the appeal in two phases. The first phase involved construing the meaning of section 62.1, subdivisions (c)(1) and (2). The second phase involved valuation of the Parks and calculation of the change in assessment of the Parks. The hearings took place over a period of three years and involved many days of testimony and argument. At the conclusion of phase one, the Board issued a 58-page opinion concluding that the methodology used by the Assessor to calculate the reassessments was invalid and that the methodology argued by the Nonprofit Corporations was required.

The Board construed section 62.1, subdivisions (c)(1) and (2), as requiring a change of assessment upon the transfer of a membership to be based on a pro rata portion of the fair market value of the membership relative to the value of the entire Park. In phase two, the Board relied on the testimony of a certified mobilehome park appraiser as to the fair market value of each of the Parks at the time of the membership transfers. In a separate 35-page opinion, the Board applied the formula it had adopted in phase one, and determined the value of the pro rata portions of the Parks that had changed ownership for purposes of assessment.

The Assessor filed a petition for writ of mandate. Following extensive hearings, the trial court issued statements of decision upholding the Board's decisions. It found that the Assessor's construction of section 62.1, subdivisions (c)(1) and (2), was

contrary to its plain meaning, inconsistent with the statute's legislative history, and would lead to absurd results. The trial court also affirmed the Board's factual findings including its valuations of the Parks and the calculation of the changes of assessment of the Parks. This appeal followed.[3]

DISCUSSION[4]

1. Phase One--Construction of Section 62.1, Subdivision (c)

A. Standard of Review

The construction of a statute is a question of law which we review de novo. (*Usher v. County of Monterey* (1998) 65 Cal.App.4th 210, 216.) When the validity of a method of valuation is challenged, the issue is one of law which we review to determine whether the method was arbitrary, in excess of discretion, or in violation of the standards prescribed by law. (*County of Orange v. Orange County Assessment Appeals Bd.* (1993) 13 Cal.App.4th 524, 529-530.)

B. Principles of Statutory Construction

"The rules governing statutory construction are well settled. We begin with the fundamental premise that the objective of statutory interpretation is to ascertain and effectuate legislative intent. [Citations.] 'In determining intent, we look first to the language of the statute, giving effect to its "plain meaning."' . . . Where the words of the statute are clear, we may not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history." (*Burden v. Snowden* (1992) 2 Cal.4th 556, 562.) We construe the statute to give effect to each word, avoiding a construction making some words surplusage. (*Grupe Development Co. v. Superior Court* (1993) 4 Cal.4th 911, 921.)

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[3] Amicus curiae briefs have been filed by the California Assessors' Association and the California State Board of Equalization on behalf of appellant. The Associates Group for Affordable Housing, Inc., Palm Beach Park Association, Inc., and Summerland by the Sea, Inc., have filed an amicus brief on behalf of real parties in interest and respondents.

[4] Our opinion follows the format used by the Board. In phase one, we construe section 62.1, subdivisions (c)(1) and (2). In phase two, we review the changes of assessment determined by the Board.

"[I]f the statutory language permits more than one reasonable interpretation, courts may consider various extrinsic aids, including the purpose of the statute, the evils to be remedied, the legislative history, public policy, and the statutory scheme encompassing the statute. [Citation.] In the end, we "'must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." [Citation.]'" (*Torres v. Parkhouse Tire Service, Inc.* (2001) 26 Cal.4th 995, 1003.) "'. . . [I]n case of doubt statutes levying taxes are construed most strongly against the government and in favor of the taxpayer.'" (*Larson v. Duca* (1989) 213 Cal.App.3d 324, 329.)

C. The Statute

Section 62.1, subdivision (a)(1) provides that a "change in ownership" shall not include "[a]ny transfer, on or after January 1, 1985, of a mobilehome park to a nonprofit corporation, stock cooperative corporation, limited equity stock cooperative, or other entity formed by the tenants of a mobilehome park, for the purpose of purchasing the mobilehome park . . . ."[5] At the time of the reassessments, section 62.1, subdivisions (c)(1) and (2) provided: "(1) If the transfer of a mobilehome park has been excluded from a change in ownership pursuant to subdivision (a) and the park has not been converted to condominium, stock cooperative ownership, or limited equity cooperative ownership, any transfer on or after January 1, 1989, of shares of the voting stock of, or other ownership or membership interests in, the entity which acquired the park in accordance with subdivision (a) shall be a change in ownership of a pro rata portion of the real property of the park unless the transfer is for the purpose of converting the park to condominium, stock cooperative ownership, or limited equity cooperative ownership or is excluded from change in ownership by Section 62, 63, or 63.1. [¶] (2) For the

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[5] Under the California taxation system, taxation and reassessment are triggered by a change of ownership of real property. (Rev. & Tax. Code, § 60 et seq.) A "change of ownership" means the transfer of interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest. (*Id.* at § 60; see also Cal. Const., art. 13, § 2.)

purposes of this subdivision, 'pro rata portion of the real property' means the total real property of the mobilehome park multiplied by a fraction consisting of the number of shares of voting stock, or other ownership or membership interests, transferred divided by the total number of outstanding issued or unissued shares of voting stock of, or other ownership or membership interests in, the entity which acquired the park in accordance with subdivision (a)."

As indicated above, the language in dispute in subdivision (c)(1) is "change in ownership of a pro rata portion of the real property of the park." The language in dispute in subdivision (c)(2) is "'pro rata portion of the real property' means the total real property of the mobilehome park multiplied by a fraction consisting of the number of shares of voting stock . . . transferred divided by the total number of outstanding issued or unissued shares of voting stock . . . in, the entity which acquired the park . . . ."

D. Board's Interpretation of Statute

The Board found that the plain language of section 62.1, subdivision (c), requires that the value of each change of ownership of a pro rata portion of the real property of the Parks must be determined by multiplication of the fractional interest in the Park deemed to have changed ownership by the appraised fair market value of the entire Park at the time of sale. The fractional interest of the real property deemed transferred is determined by dividing the number of memberships transferred by the total number of memberships. For example, a reassessment triggered by the transfer of one membership in the Rancho Goleta Nonprofit Corporation is determined by multiplying the fair market value (FMV) of that Park by 1/200. The formula is: Fractional interest x FMV of entire Park = FMV of fractional interest which has changed ownership.

E. Assessor's Interpretation of Statute

The Assessor contends that section 62.1, subdivision (c), states a method to identify the pro rata portion of the real property being transferred, but not a methodology to determine the fair market value of that interest, and that the Assessor must rely on other laws such as section 51, subdivision (d) to determine the appraisal unit and fair

market value of the appraisal unit.[6] The Assessor's so-called "extraction" method of valuation reaches the FMV of the pro rata portion of the real property deemed to have changed ownership by subtracting the FMV of the mobilehome alone from the total purchase price of the mobilehome plus membership.[7] The formula is: Purchase Price - FMV of mobilehome = FMVof real property deemed to have changed ownership.

This methodology is based on an advisory opinion by the staff of the State Board of Equalization (SBE) in 1999 which was issued as a letter to the assessor (LTA) No. 99/87. In describing a mobilehome sale, the letter states: "Under a typical scenario, a park is acquired by a non-profit corporation formed by the former tenants. Subsequent purchasers pay an established price for a share in a corporation, where each share gives its holder the right to occupy a specific space in the park. A share in the corporation may be transferred only in combination with the purchase of a mobilehome. The purchase price for a share may represent consideration for both the mobilehome and the fractional interest in the corporation. In addition, the price may be said to cover a special assessment for infrastructure in the park."

LTA No. 99/87 interprets section 62.1 as intending that ownership changes in nonprofit corporation mobilehome parks "be treated on a par with transfers of other forms of 'share' ownership (i.e., condominiums or stock cooperatives) and with stick-built homes. Thus, while each share in the corporation may be said to afford its holder the right, for example, to participate in the governance of the corporation and a management of the park, such rights are merely incidental to that which the share conveys to its holder in substance: (1) the outright ownership of a particular mobilehome, and (2) the exclusive right to occupy a particular space within the park. With this backdrop in mind, if the reported purchase price was negotiated in the open market at arm's length, then it is

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[6] Section 51, subdivision (d), states: "For purposes of this section, 'real property' means that appraisal unit that persons in the marketplace commonly buy and sell as a unit, or that is normally valued separately."

[7] Section 5803, subdivision (b), provides that the fair market value of a mobilehome may be determined by reference to the sales prices listed in the Kelly Blue Book Manufactured Housing and Mobilehome Guide or other recognized value guide for manufactured homes.

our view that the entire amount should be reflected in the combined assessments of the mobilehome and the underlying interest in the park. [¶] The most reasonable way of allocating the value between the two assessments would be to (1) extract from the reported purchase price the value of the mobilehome itself . . . , and then (2) assign the remainder of the purchase price to the interest in the park. . . . [¶] Assuming that the purchase price represents the collective fair market value of the manufactured home and the underlying space, the assessor should (1) allocate that purchase price between the manufactured home and the fractional interest in the real property of the park and (2) calculate separate supplemental [assessment] amounts for each."

F. Plain Language of Statute Supports Board's Interpretation

We conclude that the Board's interpretation conforms to and embodies the plain meaning of the statute. Arguably, the Assessor presents a reasonable method for the taxation of changes in mobilehome ownership, but it is not the method set forth in section 62.1, subdivision (c). The Assessor is free to recommend a legislative change but not to ignore an existing statute.

The sale of a mobilehome in one of the Parks involves transfer of a membership in the Nonprofit Corporation and a change in ownership of a fractional interest in the Park which must be determined by the statutory formula. The words "pro rata" appearing in section 62.1, subdivision (c) have a long-established meaning. "These words *pro rata* have a defined and well-understood meaning. . . . It is well understood by persons of ordinary intelligence to denote a disposition of a fund or sum indicated in proportion to some rate or standard, fixed in the mind of the person speaking or writing, manifested by the words spoken or written, according to which rate or standard the allowance is to be made or calculated." (*Rosenberg v. Frank* (1881) 58 Cal. 387, 405-406; see also *Wright v. Coberly-West Co.* (1967) 250 Cal.App.2d 31, 36 ["In Webster's, Third New International Dictionary (Unabridged), the word 'prorate' is defined, 'to divide, distribute, or assess proportionately'"].) The Assessor's reliance on a definition of "ratable" is erroneous because "ratable" is not the term contained in section 62.1,

subdivision (c), and fails to take into consideration the word "pro" which precedes the word "rata" in the statute.

The Board's interpretation is further supported by the language of section 2188.10. That statute was enacted at the same time as section 62.1, subdivision (c), and contains procedures for recording the "separate assessment of a pro rata portion of the real property of a mobilehome park which changed ownership pursuant to subdivision (c) of Section 62.1 as the result of the transfer of . . . [a] membership [interest or] interests . . . ." Subdivision (b) states: "The interest that is to be separately assessed is the value of the pro rata portion of the real property of the mobilehome park which changed ownership pursuant to subdivision (c) of Section 62.1." Contrary to the Assessor's contention that the proration language of section 62.1, subdivision (c), refers only to a pro rata interest in the ownership of the Nonprofit Corporation, section 2188.10 makes clear that it is the pro rata portion of the real property that is subject to assessment.

G. LTA No. 99/87 Is Not Controlling

The Assessor argues that we must give great weight to LTA No. 99/87. We disagree. It is clear that LTA No. 99/87 expresses the opinion of the staff of the State Board of Equalization regarding its preferred method of assessing ownership changes in nonprofit corporation mobilehome parks under general principles of taxation, but it fails to follow the actual method of assessment expressly set forth in section 62.1.

LTA No. 99/87 meets none of the standards set forth by our Supreme Court to determine the weight to be given an administrative interpretation. "The . . . factors . . . suggesting the agency's interpretation is likely to be correct—includes indications of careful consideration by senior agency officials ('an interpretation of a statute contained in a regulation adopted after public notice and comment is more deserving of deference than [one] contained in an advice letter prepared by a single staff member'. . .), evidence that the agency 'has consistently maintained the interpretation in question, especially if [it] is long-standing' [citation] ('[a] vacillating position . . . is entitled to no deference' [citation]), and indications that the agency's interpretation was contemporaneous with

legislative enactment of the statute being interpreted." (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12-13 (*Yamaha*).)

LTA No. 99/87 does not represent a consistent interpretation of the statute by the SBE nor is it one of longstanding. LTA No. 89/13 represents the SBE's contemporaneous interpretation of the statute, and LTA No. 99/87 was formulated more than 10 years after section 62.1, subdivisions (c)(1) and (2) were adopted. Also, it is not a regulation enacted after compliance with administrative notice and hearing procedures, but rather is an advisory opinion drafted by staff members. Because LTA No. 99/87 does not have attributes suggesting its correctness, we follow the instruction of our Supreme Court and give it little deference. (*Yamaha, supra,* 19 Cal.4th at p. 11; see also *City of Palmdale v. State Bd. of Equalization* (2012) 206 Cal.App.4th 329, 339-341.)[8]

H. Board's Interpretation Supported by Legislative History and LTA No. 89/13

Section 62.1 was intended to permit mobilehome parks to be sold by their tenant resident to corporations formed by the tenants without incurring a change in ownership assessment. Prior to the amendment in 1988, section 62.1 contained loopholes which may have allowed mobilehome owners to avoid reassessment upon the subsequent sale of individual mobilehomes. To remedy this omission, the SBE sponsored a bill (Sen. Bill No. 1885 (1988 Reg. Sess.) § 1) that added subdivision (c) to section 62.1. In connection with its sponsorship of Senate Bill No. 1885, the SBE prepared and submitted an analysis which was submitted to the chairman of the Revenue and Taxation Committee and the bill's author. The analysis states in part:

"The proposed new subdivision (c) . . . provide[s] that a transfer of stock or an ownership interest in a mobilehome park is a change in ownership of a pro rata portion of the real property of the park, if the park had previously been in a transaction qualifying

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[8] The dissent believes we should uphold the Assessor's interpretation because it is entitled to great weight and its interpretation promotes the goal of increasing tax revenues. We conclude that the Assessor's interpretation is not entitled to deference because it does not meet the criteria set forth in *Yamaha*. In addition, we are aware of no authority that permits interpretation of a statute to be based on conditions existing at the time of interpretation rather than on Legislative intent at the time of enactment.

under Section 62(a) and it had not been converted to condominium or stock cooperative ownership. . . .

"This amendment attempts to parallel as closely as possible the tax treatment accorded condominium and stock cooperatives. A perfect match is not possible, however, because the transfer of a share or membership interest in a nonprofit corporation is not the same thing as a transfer of ownership of a condominium or stock cooperative interest which relates to specific identifiable real property. Thus, rather than following the pattern prescribed in Section 65.1(b), which provides for reappraisal of the specific unit or lot transferred as well as a share of the common area, the amendment provides for a straight pro rata adjustment.

"Thus, any differences in a value between mobilehome spaces . . . cannot be recognized under this method. Further, since the allocation is based on the ownership interest in the corporation rather than in specific property, the proposal does not require that any increase in taxes be allocated to the particular tenant-shareholder as required in Section 65.1(b). This should not work any real hardship, however, since the nonprofit corporation, through its bylaws and rental agreements has the power to provide for a pass-on of the tax to the appropriate parties."

The SBE in LTA No. 89/13 issued a month after the amendment became effective was intended to guide county assessors in implementing the new statute and contains language substantially similar to that in the SBE's earlier Legislative analysis: "This pro rata adjustment is similar to a fractional change of ownership of real property. Upon the transfer of any ownership interest in the entity of either an originally issued share or of an unissued share to a new participant, a change in ownership of a pro rata portion of the real property of the park has taken place. A new base-year value is established for that portion of the real property, the prior base-year value(s) are adjusted, and appropriate supplemental assessments should be processed."

The Assessor argues that the SBE's final legislative bill analysis deleted the language stating "any differences in value between mobilehome spaces . . . cannot be

recognized under this method." The deletion, however, does not substantially alter the SBE's analysis or the legislative history of section 62.1 in general.

I. Board's Interpretation Consistent with Policy of Providing Affordable Housing

The Assessor argues that the Board's interpretation provides unequal tax treatment to a small group of taxpayers and violates the constitutional principle of equal taxation. We disagree.

"'". . . '[W]here taxation is concerned and no specific federal right, apart from equal protection, is imperiled, the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation.' [Citation.] A state tax law is not arbitrary although it 'discriminate[s] in favor of a certain class . . . if the discrimination is founded upon a reasonable distinction, or difference in state policy,' not in conflict with the Federal Constitution. [Citation.] This principle has weathered nearly a century of Supreme Court adjudication . . .". . . '" (*Shafer v. State Bd. of Equalization* (1985) 174 Cal.App.3d 423, 431, quoting *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 233-234.)

"Tax schemes which favor a particular class may be justified on the basis of administrative convenience and in furtherance of legitimate state interests. [Citations.] 'Legislative judgment as to the adequacy of a distinction to justify a classification for tax purposes will not be set aside on equal protection grounds unless it is palpably arbitrary. . . .'" (*Shafer v. State Bd. of Equalization, supra,* 174 Cal.App.3d at p. 431.)

The state has a legitimate interest in providing affordable housing. This concern is reflected in section 62.1, subdivision (c) which provides: "It is the intent of the Legislature that, in order to facilitate affordable conversions of mobilehome parks to tenant ownership, paragraph (1) of subdivision (a) apply to all bona fide transfers of rental mobilehome parks to tenant ownership, including, but not limited to, those parks converted to tenant ownership as a nonprofit corporation made on or after January 1, 1985."

Under the Assessor's method, more taxes would be imposed on valuation of certain mobilehomes than others in the same mobilehome park. The Board used the

following example to illustrate this point: "[I]f 3 purchasers simultaneously paid $300,000 for a mobile home and an ownership interest in the park and they acquire spaces that are immediately adjacent to each other and that are identical for purposes of this example, and if the values of the mobile homes respectively vary from $75,000 to $125,000 to $175,000, the underlying values of the real property, the spaces, for tax assessment purposes would respectively vary from $225,000, $175,000 and $125,000." Using the Assessor's method of valuation, "[t]hree purchasers that substantially have the same land on the same purchase date would be paying drastically different property taxes for the land, assuming a tax rate of 1.5%, in the respective amounts of $3,375, $2,625 and $1,875." The Board's method of valuation, on the other hand, results in the same value being assigned to substantially similar properties and furthers the legislative goal of providing affordable housing.

J. Conclusion

The plain meaning of the statute and its legislative history support the Board's interpretation of section 62.1, subdivision (c). In addition to giving the word "prorata" its ordinary meaning, the Board's formula complies with the legislative direction that the "pro rata portion of the real property" means the "total real property of the mobilehome park *multiplied* by a fraction consisting of the number of . . . outstanding issued or unissued shares of voting stock of . . . the entity which acquired the park." (§ 62.1, subd. (c)(2), italics added.)

The Assessor's interpretation, on the other hand, disregards the plain language of section 62.1, subdivision (c). It disregards the ordinary meaning of "pro rata" and renders the term "multiply" meaningless since no multiplication occurs under the SBE's approach. The Assessor's justification for its method based on conformance with sections 110 and 51, subdivision (d), has little merit. Those general statutes have no application where, as here, a specific statutory provision covering the subject has been enacted and the Board expressly determined the full cash value of the total real property of the Parks prior to applying the pro rata fraction. (See, e.g., *Woods v. Young* (1991) 53 Cal.3d 315, 325 ["'A specific provision relating to a particular subject will govern a

general provision, even though the general provision standing alone would be broad enough to include the subject to which the specific provision relates'"].) If the Legislature had intended to tax the spaces underlying mobilehomes in resident-owned parks in the same manner as other types of common interest developments, it would have so stated and not adopted a separate statute with a different methodology and appraisal unit. An existing statute, section 65.1, subdivision (b) covers the appraisal unit for reassessments of changes in ownership of condominiums, stock cooperatives, and subdivided mobilehome parks. We assume that in enacting a statute, the Legislature acted with full knowledge of the state of the law at the time. (*Palos Verdes Faculty Assn. v. Palos Verdes Peninsula Unified Sch. Dist.* (1978) 21 Cal.3d 650, 659.)

If the Legislature had intended to treat resident-owned mobilehome parks in a manner similar to condominiums, stock cooperatives, and subdivided mobilehome parks, it could have amended section 65.1 to include them. The adoption of a special statute indicates a legislative intent to treat valuation of underlying spaces in resident-owned mobilehome parks differently than other forms of ownership. (See, e.g., *Fogarty v. Superior Court* (1981) 117 Cal.App.3d 316, 320 [where a statute on a particular subject omits a particular provision, the inclusion of such provision in another statute concerning a related matter indicates an intent that the provision is not applicable to the statute from which it was omitted].) We cannot disregard this clear indication of legislative intent.

The Legislature has made a valid classification for purposes of taxation which promotes an important legislative policy. Our task is neither to rewrite the statute nor question its wisdom. (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 545; *Superior Court v. County of Mendocino* (1996) 13 Cal.4th 45, 53.)

2. Phase Two

Following hearing and decision in phase one, the Board held additional hearings and took evidence to determine the value of the changes in ownership of pro rata portions of the Parks using the formula adopted in phase one.

A. Standard of Review

The Board's application of a valid method of valuation is reviewed for substantial evidence. (*County of Orange v. Orange County Assessment Appeals Bd., supra,* 13 Cal.App.4th at p. 529.)

B. Methods of Valuation of Mobilehome Parks

Regulations adopted by the SBE set forth approved methods for valuing real property. (Cal. Code Regs., tit. 18, § 3 et seq.) The approved methods are the comparable sales approach, the cost approach, and the income approach.

The comparable sales approach is based on a comparison of the subject property with similarly situated properties that have been recently sold. After making appropriate adjustments for non-comparable factors, market data is used to arrive at fair market value. Property tax rules 3, subdivision (a), and 4 state that when reliable market data are available with respect to a given real property, the comparable sales approach is the preferred method to determine the fair market value of the property.

The income approach, also referred to as the capitalization approach, is based on an estimated net income stream that the subject property is likely to produce for an investor during the probable remaining economic life of the subject property. It is a method of determining the present worth of monetary profit to be received from the property in the future. Property tax rule 3, subdivision (e), and rule 8, subdivision (a), provide that the income approach is used with other approaches to determine value when the property is purchased for its anticipated income and where the property "either has an established income stream or can be attributed a real or hypothetical income stream by comparison with other properties." Rule 8, subdivision (a), further states that: "It is the preferred approach for the appraisal of improved real properties and personal properties when reliable sales data are not available and the cost approaches are unreliable . . . ."

The third method, the cost approach, is based on the estimate of the value of the land, usually made using the comparable sales approach, and an estimate of the cost to reproduce or replace the improvements on the land. Reductions are then made for a depreciation of the improvement.

C. The Evidence

An expert appraiser testified on behalf of the Nonprofit Corporations. The appraiser selected the income and comparable sales approaches to value the Parks and rejected the cost approach because it was too difficult to estimate and support a depreciation or obsolescence rate for the physical, functional and economic factors employed in a cost approach. There is a lack of comparable land sales, and a potential buyer of the park would not consider a cost approach in determining the fair market value purchase price of the Parks.

The salient features the appraiser identified were land size, improvements, zoning, current use and highest and best use. The appraiser applied each approach to the particular circumstances of the respective Parks. The income approach yielded a value of $13.2 million for the Rancho Goleta Park for the calendar year 2001. The comparable sales approach yielded a value of $12.7 million. After considering all significant factors derived from the income and comparable sales approaches, the appraiser concluded that the fair market value of the Rancho Goleta Park in 2001 was $13 million.

The appraiser used a similar methodology in valuing the SSVP. He did two appraisals—the first for the period November 1, 2000, to October 31, 2001, and the second covering the period January 1, through October 31, 2001. Two appraisals were necessary because the park underwent major infrastructure improvements in 2001. The income approach yielded a value of $2.2 million for the first appraisal period and the comparable sales approach yielded a value of $2,320,000. The appraiser concluded that the fair market value of the SSVP during the first period was $2,250,000. For the second appraisal period, the income approach and comparable sales approach both yielded a value of $3.4 million.

Two property appraisers employed by the Assessor's office testified. Despite the Board's conclusion in phase one that the extraction method was invalid, the Assessor's appraisers applied that method and opined that the fair market value of the RGP was $39,800,500 and the SSVP was $15,575,000.

The Board discounted their testimony for several reasons. The Assessor's appraisers inappropriately characterized the highest and best use of the parks as being limited to resident-owned parks. In addition, they based their opinions on several mistaken assumptions, including (1) park residents who own membership interests and are currently residing in the parks will all terminate their leasehold interest in the parks as a condition or term of the sale of the parks to prospective purchasers, (2) all the leasehold interests for spaces in the parks will necessarily be sold at the same time as a provision and condition of the sale of the parks to prospective purchasers, (3) the fair market value of the parks would equal the sum of the sales of all the leasehold interest held by the residents who have membership interests in the park, (4) the residents of the parks did not lease their spaces, (5) the purchase of a membership interest was essentially a purchase of the fee interest in the space, and (6) leasing of an improved condominium is equivalent to the leasing of a space in the parks. In addition, the Assessor failed to perform any appraisal using any of the three valuation methods prescribed in property tax rules 4, 6, and 8, and failed to present evidence as to why it rejected the income or comparable sales approach. Finally, the approach developed by the Assessor was based on the same formula that the Board had rejected in phase one. The Board concluded, "[w]hat was invalid on a small scale does not become legitimate by its use on a much larger scale."

The Board accepted the conclusions of the Nonprofit Corporations' appraiser as to the values of the parks. Using the formula it approved in phase one, the Board determined that the fair market value of each change in ownership under section 62.1 in the Rancho Goleta park that occurred in 2001 was $65,000. The fair market value of each change in ownership in the Silver Sands Village during the first appraisal period was $28,125 and during the second appraisal period was $42,500.

The Assessor challenges the Board's conclusions as to valuation on the grounds that (1) relying on the income method is not warranted, (2) the Nonprofit Corporations' assessor relied on noncomparable sales, and (3) the parks were not valued on the actual date of sale pursuant to sections 75 and 75.10. The arguments are without merit.

The appraiser properly relied on the income approach. The State Board of Equalization's general rule on the income approach to value states, "[u]sing the income approach, an appraiser values an income property by computing the present worth of a future income stream. This present worth depends upon the size, shape, and duration of the estimated stream and upon the capitalization rate at which future income is discounted to its present worth." (Rule 8, subd. (b).) This method rests upon the assumption that in an open market a willing buyer of the property would pay a willing seller an amount approximately equal to the present value of the future income to be derived from the property. (*Bret Harte Inn, Inc. v. City and County of San Francisco* (1976) 16 Cal.3d 14, 24.)

This approach "is used in conjunction with other approaches when the property under appraisal is typically purchased in anticipation of a money income and either has an established income stream or can be attributed a real or hypothetical income stream by comparison with other properties. . . . It is the preferred approach for the appraisal of improved real properties and personal properties when reliable sales data are not available and the cost approaches are unreliable . . . ." (Rule 8, subd. (a).)

Use of this method is proper because the Assessor used market rents rather than actual rents in its calculations of the income potential of the Parks. Although the Nonprofit Corporations receive rental income, they do not charge market rent and do not operate the Parks for the purpose of earning a profit. Property tax rule 3, subdivision (e), states the income approach is "[t]he amount that investors would be willing to pay for the right to receive the income that the property would be expected to yield, with the risks attendant upon its receipt . . . ." Case law describes the income approach as one that "'estimates current fair market value of a property by attempting to determine the amount that an investor would be willing to pay for the right to receive the future income the property is projected to produce.'" (*Freeport-McMoran Resource Partners v. County of Lake* (1993) 12 Cal.App.4th 634, 640, quoting *Union Pacific Railroad Co. v. State Bd. of Equalization* (1991) 231 Cal.App.3d 983, 989-990.) "Since a property's 'full value' must be determined by reference to the price it would bring on an open market, '[t]he net

earnings to be capitalized . . . are not those of the present owner of the property, but those that would be anticipated by a prospective purchaser.'" (*Freeport-McMoran,* at p. 642, quoting *DeLuz Homes, Inc. v. County of San Diego* (1955) 45 Cal.2d 546, 566.) Thus, because it is the future income stream that is relevant, the income approach may be appropriate where, as here, the subject property is generating income and the Parks, although not currently being operated for a profit, may be operated for a profit in the future.

The Assessor takes issue with the use by the Nonprofit Corporations' appraiser of alleged incomparable properties, such as parks which are not tenant-owned, in determining value under the comparative sales approach. Relevant authority is to the contrary. When reliable market data is available, the preferred approach is for the assessor to value the subject property by reference to sales prices of comparable properties. (Rule 4.) Section 402.5 provides that, in order to be considered comparable, the sales must be sufficiently near in time to the valuation date, be located sufficiently near the subject property, and be sufficiently alike with respect to character, size, situation, and usability, so as to make it clear that the properties sold and the properties being valued are comparable in value. In other words, the Assessor is to examine sales that may shed light on the value of the subject property. (*Midstate Theatres, Inc. v. County of Stanislaus* (1976) 55 Cal.App.3d 864, 880.)

An integral part of the appraisal process is to make adjustments to the raw data as mandated by the California Code of Regulations to ensure that there is statewide uniformity in appraisal practices and that the subject property is assessed at its full value. (*Main & Von Karman Associates v. County of Orange* (1994) 23 Cal.App.4th 337, 342-343.) Therefore, the Assessor must "[m]ake such allowances as he deems appropriate for differences . . . in physical attributes . . . , location . . . and the income and amenities which the properties are expected to produce." (Rule 4, subd. (d).)

"Standards of comparability [however] can never be treated in absolute terms. Even relatively poor data can 'fairly be considered as shedding light on the value of the property being valued' (Rev. & Tax. Code, § 402.5) if it is the best or only data

available." (*Midstate Theatres, Inc.* v. *County of Stanislaus, supra*, 55 Cal.App.3d at p. 880.) Where, as here, exact comparable sales are not available, it is appropriate to use the best market data available. Thus, even if there are "major dissimilarities, it cannot be said use of the comparables violated . . . section 402.5 or rule 4." (*Ibid.*)

The appraiser's rationale for using an appraisal date range is persuasive. With respect to the date of valuation, the parks' appraiser testified that his appraisals valued the parks for the period January 1, through December 31, 2001. Thus, the fair market value of the RGP was the same on any given day in 2001. It was appropriate to rely on the same constant market values for the RGP for the calendar year 2001 because there were no intervening events or factors that took place during that year that would account for negative or positive material variations in market value for any given period or day in 2001. In contrast, two appraisals were needed for the Silver Sands Village park because substantial infrastructure improvements were made during 2001. The Silver Sands Village park had less value before the infrastructure improvements were completed and more value after the improvements were completed.

The appraiser's approach reasonably accommodates section 62.1, subdivision (c)'s mandate that valuation of an underlying space be based on the valuation of the entire mobilehome park. To require that a park be appraised anew each time a mobilehome is sold would be impractical, costly and unnecessary.

D. Conclusion

From our review of the entire record and the applicable law, we conclude the Board applied the appropriate valuation method correctly and its findings are supported by substantial evidence.[9]

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[9] Our decision that section 62.1, subdivision (c) was properly interpreted and applied by the Board makes a discussion of the Assessor's remaining contention--that the interpretation deprives taxpayers in resident-owned parks of certain tax benefits, such as the homestead exemption, unnecessary. (See *Estate of Horman* (1971) 5 Cal.3d 62, 77 ["Courts do not sit as super-legislatures to determine the wisdom, desirability or propriety of statutes enacted by the Legislature"].)

The judgment is affirmed. Real parties in interest and respondents shall recover costs on appeal.

CERTIFIED FOR PUBLICATION.

PERREN, J.

I concur:

COFFEE, J.*

* Retired Associate Justice of the Court of Appeal, Second Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Yegan, J. Dissenting

I respectfully dissent.

The California Constitution mandates that, when a change in ownership of real property occurs, the real property must be reassessed at its "fair market value" or "full cash value." (Cal. Const., art. XIII, § 1; Cal. Const., art. XIIIA, § 2.) The purchase price paid for real property in an arms' length transaction is rebuttably presumed to be its fair market value or full cash value. (Rev. & Tax. Code, § 110, subd. (b).)[1] Assessment of the fair market value or full cash value of real property must be based on the "appraisal unit that persons in the marketplace commonly buy and sell as a unit . . . ." (§ 51, subd. (d).) The majority opinion and the result it reaches are at variance with these constitutional and statutory provisions.

The State Board of Equalization (SBE) has determined that, where certain types of mobile home parks are concerned, the appropriate "appraisal unit" is the resident's ownership or membership interest in the park because that is the "unit" ordinarily transferred between buyers and sellers in the market for mobile homes. A mobile home park resident's membership interest typically includes ownership of a particular mobile home and the exclusive right to occupy a specific space in the park. The SBE has determined that residents ordinarily do not sell either the mobile home by itself, or the membership interest alone. Instead, they sell the two as a unit, conveying the mobile home together with their membership interest, e.g., the right to occupy the real property underneath the mobile home. Individual mobile homes are treated, for tax purposes, as personal property. (§§ 5802, 5803.) The remainder of the membership interest in the non-profit corporation is taxed as real property. (§ 62.1, subd. (2)(b)(1).)

In Letter to Assessor (LTA) 99/87, the SBE advised county assessors of its determination that the appropriate appraisal unit for transactions involving such mobile home parks is the individual resident's entire ownership or membership interest in the park. It instructed assessors to appraise the fair market value of the mobile home by

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[1] All statutory references are to the Revenue and Taxation Code unless otherwise stated.

referring to section 5802 or 5803. It further instructed them to appraise the fair market value of the remaining real property by subtracting the value of the mobile home from the total purchase price.

The majority reject the SBE's determination and valuation method as inconsistent with the plain language of section 62.1. I would give deference to the SBE because it has a certain expertise and perhaps a better understanding than we do of how the market for mobile homes and mobile home park spaces actually functions. (See e.g. *Yamaha Corp. of America v. State Bd. Of Equalization* (1998) 19 Cal.4th 1, 7-8.) Section 51 requires assessors to base reappraisals and reassessments on the unit of property that people in market for mobile homes actually buy and sell. (§ 51, subd. (d).) The SBE has identified that unit. The majority's opinion disregards the SBE's determination, and in the process approves a "one size fits all" valuation method that ignores the reality of the marketplace. For example, there is no logical rationale that could support assessing of a mobile home "unit" on the ocean at the same value as a "unit" in the interior portion of a mobile home park.

Moreover, the SBE's valuation method is not inconsistent with section 62.1. As appellant and the SBE contend, section 62.1 establishes the formula for determining what portion of a mobile home park's real property is subject to separate assessment after a resident transfers his or her membership interest in the park. Thus, when a park has 200 spaces, the sale by a resident of one membership interest does not trigger a reassessment of the entire park, it triggers a reassessment of 1/200th of the park. Section 62.1 is silent, however, on the method assessors are to use in determining the value of the membership interest. LTA 99/87 answers that question in a way that corresponds to the behavior of actual buyers and sellers in the market for mobile homes and that respects the constitutional mandate to tax the fair market value, or full cash value of real property.

To the extent that a literal or dictionary definition of "pro rata" in section 62.1 supports the majority opinion, it is at variance with the California Constitution, article III, section 1; and article IIIA, section 2. A statute may not trump a constitutional

provision. (*Legislature v. Deukmejian* (1983) 34 Cal.3d 658, 674; *Hays v. Wood* (1979) 25 Cal.3d 772, 795.)

CERTIFIED FOR PUBLICATION

YEGAN, Acting P.J.

James W. Brown, Judge

Superior Court County of Santa Barbara

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Kamala D. Harris, Attorney General, Paul D. Gifford, Senior Assistant Attorney General, W. Dean Freeman, Supervising Deputy Attorney General, Stephen Lew, Deputy Attorney General, for California State Board of Equalization as amicus curiae on behalf of Appellant.

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The Gibbs Law Firm, Gerald R. Gibbs for The Associates Group for Affordable Housing, Inc., Palm Beach Park Association, Inc., and Summerland by the Sea, Inc., on behalf of Real Parties in Interest and Respondents.

ATTACHMENT 2

3 of 8 DOCUMENTS

*** ARCHIVE MATERIAL ***

*** THIS SECTION IS CURRENT THROUGH THE 2001 SUPPLEMENT (2000 SESSION) ***

REVENUE AND TAXATION CODE
DIVISION 1. Property Taxation
PART 0.5. Implementation of Article XIII A of the California Constitution
CHAPTER 2. Change in Ownership and Purchase

Cal Rev & Tax Code § 62.1 (2001)

§ 62.1. Transfer of mobilehome park to nonprofit corporation or other entity formed by tenants

Change in ownership shall not include either of the following:

(a) Any transfer, on or after January 1, 1985, of a mobilehome park to a nonprofit corporation, stock cooperative corporation, limited equity stock cooperative, or other entity formed by the tenants of a mobilehome park, for the purpose of purchasing the mobilehome park, provided that, with respect to any transfer of a mobilehome park on or after January 1, 1989, subject to this subdivision, the individual tenants who were renting at least 51 percent of the spaces in the mobilehome park prior to the transfer participate in the transaction through the ownership of an aggregate of at least 51 percent of the voting stock of, or other ownership or membership interests in, the entity which acquires the park. If, on or after January 1, 1998, a park is acquired by an entity that did not attain an initial tenant participation level of at least 51 percent on the date of the transfer, the entity shall have up to one year after the date of the transfer to attain a tenant participation level of at least 51 percent. If an individual tenant notifies the county assessor of the intention to comply with the conditions set forth in the preceding sentence, the mobilehome park may not be reappraised by the assessor during that period. However, if a tenant participation level of at least 51 percent is not attained within the one-year period, the county assessor shall thereafter levy escape assessments for the mobilehome park transfer.

(b) Any transfer or transfers on or after January 1, 1985, of rental spaces in a mobilehome park to the individual tenants of the rental spaces, provided that (1) at least 51 percent of the rental spaces are purchased by individual tenants renting their spaces prior to purchase, and (2) the individual tenants of these spaces form, within one year after the first purchase of a rental space by an individual tenant, a resident organization as described in subdivision (k) of Section 50781 of the Health and Safety Code, to operate and maintain the park. If, on or after January 1, 1985, an individual tenant or tenants notify the county assessor of the intention to comply with the conditions set forth in the preceding sentence, any mobilehome park rental space which is purchased by an individual tenant in that mobilehome park during that period shall not be reappraised by the assessor. However, if all of the conditions set forth in the first sentence of this subdivision are not satisfied, the county assessor shall thereafter levy escape assessments for the spaces so transferred. This subdivision shall apply only to those rental mobilehome parks which have been in operation for five years or more.

(c) (1) If the transfer of a mobilehome park has been excluded from a change in ownership pursuant to subdivision (a) and the park has not been converted to condominium, stock cooperative ownership, or limited equity cooperative ownership, any transfer on or after January 1, 1989, of shares of the voting stock of, or other ownership or membership interests in, the entity which acquired the park in accordance with subdivision (a) shall be a change in ownership of a pro rata portion of the real property of the park unless the transfer is for the purpose of converting the park to condominium, stock cooperative ownership, or limited equity cooperative ownership or is excluded from change in ownership by Section 62, 63, or 63.1.

(2) For the purposes of this subdivision, "pro rata portion of the real property" means the total real property of the

mobilehome park multiplied by a fraction consisting of the number of shares of voting stock, or other ownership or membership interests, transferred divided by the total number of outstanding issued or unissued shares of voting stock of, or other ownership or membership interests in, the entity which acquired the park in accordance with subdivision (a).

(3) Any pro rata portion or portions of real property which changed ownership pursuant to this subdivision may be separately assessed as provided in Section 2188.10.

(d) It is the intent of the Legislature that, in order to facilitate affordable conversions of mobilehome parks to tenant ownership, subdivision (a) apply to all bona fide transfers of rental mobilehome parks to tenant ownership, including, but not limited to, those parks converted to tenant ownership as a nonprofit corporation made on or after January 1, 1985.

HISTORY: Added Stats 1984 ch 1692 § 3. Amended Stats 1986 ch 447 § 1, effective July 22, 1986; Stats 1987 ch 1344 § 1, effective September 29, 1987; Stats 1988 ch 1076 § 1; Stats 1991 ch 442 § 1 (SB 674), effective September 18, 1991; Stats 1993 ch 1200 § 1 (SB 664), effective October 11, 1993.
Amended Stats 1998 ch 139 § 1 (AB 2384).

NOTES:
AMENDMENTS:
1986 Amendment:
Substituted the section for the former section which read: "Change in ownership shall not include any transfer, on or after January 1, 1985, of a mobilehome park to a nonprofit corporation, stock cooperative corporation, or other entity, as described in Section 50561 of the Health and Safety Code, formed by the tenants of a mobilehome park for the purpose of purchasing the mobilehome park.
"This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1989, deletes or extends that date."
1987 Amendment:
(1) Deleted ", as described in Section 50561 of the Health and Safety Code," after "other entity" in subd (a); (2) designated the former last paragraph to be subd (c); (3) substituted "January 1, 1994" for "January 1, 1989" in subd (c); and (4) added subd (d).
1988 Amendment:
(1) Amended subd (a) by adding (a) "limited equity stock cooperative," after "corporation,"; (b) the comma before "for the purpose"; and (c) the proviso; (2) added subds (c)(1)–(c)(3); (3) redesignated former subds (c) and (d) to be subds (d) and (e); and (4) substituted "operative" for "in effect" wherever it appears in subd (d).
1991 Amendment:
(1) Amended subd (b) by substituting (a) "January 1, 1994" for "January 1, 1987" both times it appears; and (b) "resident organization as described in subdivision (k) of Section 50781" for "nonprofit corporation, stock cooperative, or other entity, as described in Section 50561" in the first sentence; and (2) amended subd (d) by (a) substituting "Subdivision (a) and (b)" for "Subdivision (a)"; and (b) deleting the former second sentence which read: "Subdivision (b) shall remain operative only until January 1, 1987."
1993 Amendment:
(1) Substituted "January 1, 2000" for "January 1, 1994" wherever it appears; (2) deleted a comma after "a resident organization" in subd (b); and (3) deleted "the provisions of" before "Section 62, 63, or 63.1" in subd (c)(1).
1998 Amendment:
(1) Added the second, third, and fourth sentences in subd (a); (2) deleted "and before January 1, 2000," after "on or after January 1, 1985," in the first and second sentences of subd (b); (3) deleted former subd (d) which read: "(d) Subdivisions (a) and (b) shall remain operative only until January 1, 2000."; (4) redesignated former subd (e) to be subd (d); and (5) deleted ", and before the termination date of subdivision (a)" at the end of subd (d).

NOTE-
Stats 1993 ch 1200 provides:
SEC. 4. Notwithstanding Section 2229 of the Revenue and Taxation Code, the requirements of that section relating to any exemption of property for more than five years or for more than 75 percent of the value thereof, shall not apply to any

ATTACHMENT 3

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STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA

(PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)

(916) 445-4982

WILLIAM M. BENNETT
First District, Kentfield

CONWAY H. COLLIS
Second District, Los Angeles

ERNEST J. DRONENBURG, JR.
Third District, San Diego

PAUL CARPENTER
Fourth District, Los Angeles

GRAY DAVIS
Controller, Sacramento

CINDY RAMBO
Executive Director

February 1, 1989

No. 89/13

TO COUNTY ASSESSORS:

MOBILEHOME PARK EXCLUSION
CHAPTER 1076, STATUTES OF 1988
(SENATE BILL 1885)

Chapter 1076 of the Statutes of 1988 (Senate Bill 1885) became effective January 1, 1989. This act amends Section 62.1(a) to require that when a mobilehome park is transferred on or after January 1, 1989 to an entity formed by the tenants, at least 51 percent of the tenants must participate in the transaction through the ownership of an aggregate of at least 51 percent of the voting stock of, or other ownership or membership interests in, the entity which acquires the park.

This act also amends Section 62.1(c) to provide that a transfer of stock or an ownership interest in a mobilehome park is a change in ownership of a pro rata portion of the real property of the park, if the park had previously been transferred in a transaction qualifying under Section 62.1(a), but had not been converted to condominium or stock cooperative ownership. The effect of this act is prospective, i.e., on or after January 1, 1989. It must be remembered that the exclusion from the change in ownership provision provided by Section 62.1(a) is operative only until January 1, 1994.

There have been questions raised regarding whether the subsequent transfers of rental spaces to condominium ownership from the entity formed to acquire the mobilehome park under the exclusion provided by Section 62.1(a) are also excluded from change in ownership under this provision. Typically, due to the amount of time needed to subdivide a mobilehome park into condominium ownership, the tenants of a mobilehome park form a nonprofit corporation to purchase the park from the private owner. This transfer is excluded by the provisions of Section 62.1(a). Once the subdivision into condominium ownership is accomplished, the nonprofit corporation then transfers specific rights to prior rental spaces to the tenants who are purchasing them. It is these subsequent transfers that are being questioned. However, because Section 62.1 was enacted to facilitate affordable conversions of mobilehome parks to tenant ownership, and because Section 62.1(e) states that it is the intent of the Legislature to apply subdivision (a) "to all bona fide transfers of rental mobilehome parks to tenant ownership," it is the opinion of the Board that subsequent transfers to the original tenants should be excluded under Section 62.1 as well.

Section 62.1(c) attempts to parallel as closely as possible the tax treatment accorded condominium and stock cooperatives. A perfect match is not possible, however, because the transfer of a share or membership interest in a nonprofit corporation is not the same thing as a transfer of ownership of a condominium or stock cooperative interest which relates to specific identifiable real property. Rather than following the pattern prescribed in Section 65.1(b), which provides for reappraisal of the specific unit or lot transferred as well as a share of the common area, the amendment provides for a straight pro rata adjustment.

This pro rata adjustment is similar to a fractional change of ownership of real property. Upon the transfer of any ownership interest in the entity of either an originally issued share or of an unissued share to a new participant, a change in ownership of a pro rata portion of the real property of the park has taken place. A new base-year value is established for that portion of the real property, the prior base-year value(s) are adjusted, and appropriate supplemental assessments should be processed.

This bill also adds Section 2188.10 to the Revenue and Taxation Code. It would require the assessor, within the appropriate conditions, to separately assess the pro rata portion of the real property of a mobilehome park which changes ownership pursuant to Section 62.1(c) in a manner similar to existing provisions for the separate assessment of certain timeshare interests. One of the conditions is for the governing board of the mobilehome park to make a request for separate assessment; otherwise, the assessor merely makes change of ownership assessments to the owning entity.

The provisions for the separate assessment of a pro rata portion of the mobilehome park which changed ownership pursuant to Section 62.1(c) permit the assessments and related taxes to be separately identified on the tax bill sent to the owning entity and provides for the collection of the separately identified share of taxes and any processing fee from the owner of the pro rata portion of the property which changed ownership. This collection is the responsibility of the mobilehome park governing board, however, since the total taxes, as a matter of law, are a lien on the entire park (see 2188.10(f)).

I hope this information proves helpful. If you have additional questions, please feel free to contact our Technical Services Unit at (916) 445-4982.

Sincerely,

Verne Walton

Verne Walton, Chief
Assessment Standards Division

VW:wpc
AL-24-0153G

ATTACHMENT 4

ASSESSORS' HANDBOOK
SECTION 511

ASSESSMENT OF MANUFACTURED HOMES AND PARKS

NOVEMBER 2001

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the transfer is for the purpose of converting the park to condominium, stock cooperative ownership, or limited equity cooperative ownership or is excluded from change in ownership by Section 62, 63, or 63.1.

Commonly, a park is acquired by a non-profit corporation formed by the former tenants. Subsequent purchasers of the manufactured homes also pay an established price for a share in the corporation, where each share gives its holder the right to occupy a specific space in the park. A share in the corporation usually may be transferred only in combination with the purchase of a manufactured home. The purchase price for a share may represent consideration for both the manufactured home and the fractional interest in the corporation.

PRO RATA PORTION

Section 62.1, subdivision (b)(1), provides that the transfer of an ownership interest in the entity that acquired the park is a change in ownership of "a pro rata portion of the real property of the park." Under subdivision (b)(2) of section 62.1, "pro rata portion of the real property" is defined to mean the total real property of the park, multiplied by the fractional interest in the park that is conveyed by the transferred share of stock or other ownership interest. In simplistic terms, if there are 100 shares of outstanding stock, issued or unissued, a transfer of one share gives rise to a reassessment of a $1/100^{th}$ interest of the real property of the park.

The pro rata portion is similar to a fractional change of ownership of real property. Upon the transfer of any ownership interest in the park entity of either an originally issued share or of an unissued share to a new participant, a change in ownership of a pro rata portion of the real property of the park has occurred. A new base year value is established for that portion of the real property, the prior base year value(s) is adjusted, and appropriate supplemental assessments should be processed.

The pro rata assessments are issued to the park as the owner of the real property. Subdivision (b)(3) of section 62.1 provides that any pro rata portion(s) of real property which changed ownership pursuant to subdivision (b) may be separately assessed as provided in section 2188.10. Section 2188.10 requires, initially, a written request made by the governing board of the park. However, whenever a portion of the real property of a park becomes subject to separate assessment, it shall continue to be subject to separate assessment in subsequent fiscal years, and once a request for separate assessment is made, it is binding on all the future owners of the voting stock or other ownership or membership interests in the entity which owns the park.

As with any property type, location within a park can make a difference in the value of the space being transferred. If the purchase price was negotiated in the open market at arm's length, then the assessor should enroll the entire amount in the combined assessments of the manufactured home and the underlying interest in the park. The most reasonable way of allocating the value between the two assessments would be to extract from the purchase price the value of the manufactured home, using one of the recognized value guides,[96] and then assign the remainder of

[96] Section 5803.

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the purchase price to the interest in the park. This method of allocation will ensure that the market value attributable to the location of the space being transferred is recognized.

TRANSFERS OF SPACES IN ENTITIES FORMED PRIOR TO 1985

Subdivision (b)(1) of section 62.1 specifically provides that any transfer on or after January 1, 1989 of ownership interests in a park, shall be a change in ownership of a pro rata portion of the real property of the park if the transfer of the mobilehome park has been excluded from a change in ownership pursuant to paragraph (1) of subdivision (a) of section 62.1. Subdivision (a)(1), enacted effective January 1, 1985, by its terms, applies only to transfers of parks "on or after January 1, 1985." As such, only transfers of parks after that date qualify for the exclusion and trigger the pro rata change in ownership requirement. Accordingly, for parks that transferred to entities prior to 1985, the provisions of section 62.1 providing for pro rata changes in ownership do not apply to transfers of interests in the entity owning the park. Since such owner is by definition a legal entity, the statutory provisions applicable to transfers of interests in legal entities generally, Revenue and Taxation Code section 64, would ordinarily govern.

Subdivision (a) of section 64 provides that, with certain exceptions, the purchase or transfer of ownership interests in legal entities shall not be deemed to constitute a transfer of the real property of the legal entity. Therefore, unless one of the enumerated exceptions of section 64 occurs, such as one person or entity obtains a majority interest in the park entity, the transfers of interests in the park entity would ordinarily not constitute changes in ownership or precipitate reassessments of the real properties of the entity.

However, there may be instances, analyzed on a case-by-case basis, where the transfer of an ownership interest in such legal entity is accompanied by the transfer of a present interest in real property, including the beneficial use thereof, the present value of which is substantially equal to the value of the fee interest.[97] This could occur, for example, where there is transferred a specific right to occupy a specific parcel of real property, coupled with the right to sell or otherwise transfer that occupancy right. Such a transfer would meet the definition of change in ownership set forth in section 60.

TRANSFERS OF SPACES IN ENTITIES PRIOR TO 1989

Subdivision (b)(1) of section 62.1 specifically provides that any transfer *on or after January 1, 1989* of ownership interests in a park that has previously been excluded from change in ownership shall be a change in ownership of a pro rata portion of the real property of the park. Consequently, any transfer of an ownership interest that occurred prior to 1989, even if it was an ownership interest in a park entity that had previously been excluded from a change in ownership pursuant to subdivision (a)(1) of section 62.1, would not be a change in ownership of a pro rata portion of the real property of the park entity pursuant to section 62.1. However, as indicated in the prior section, there may be instances where the transfer of such an ownership interest may

[97] Section 60.

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otherwise meet the section 60 definition of a change in ownership of a portion of the park's real property.

APPRAISAL UNIT

Property Tax Rule 324, subsection (b), defines an *appraisal unit* as:

> . . . a collection of assets that functions together, and that persons in the marketplace commonly buy and sell as a single unit or that is normally valued in the marketplace separately from other property, or that is specifically designated as such by law.

For transfers of shares or other ownership interests representing ownership of individual mobilehome spaces in parks, it is clear that what persons in the marketplace commonly buy and sell as a unit is not the entire park, but rather the fractional interests conveyed by the individual interests. Therefore, for purposes of determining a new base year value upon such transfers, the appraisal unit is the individual space and the manufactured home.

WELFARE EXEMPTION

Subdivision (g) of section 214 extends the property tax welfare exemption to low-income rental housing owned and operated by specified types of organizations. Under certain circumstances, a park may qualify for the welfare exemption.[98]

PARKS—RENTAL HOUSING

To qualify for the welfare exemption, a park must be used exclusively for rental housing and related facilities serving lower-income households and must be owned and operated by a religious, hospital, scientific, or charitable fund, foundation, or corporation meeting all the requirements of section 214.

The basic requirements of section 214 and related sections that must be met by an organization claiming the welfare exemption include the following:

- The organization must be organized and operated for charitable purposes and cannot be organized or operated for profit.[99]
- No part of the organization's net earnings can inure to the benefit of any private shareholder or individual.[100]

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[98] For an in-depth discussion of the welfare exemption, see Assessors' Handbook Section 267, *Welfare, Church, and Religious Exemptions*.
[99] Section 214, subdivision (a)(1).
[100] Section 214, subdivision (a)(2).

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PROOF OF SERVICE
(C.C.P. §§ 1013(a), 2015.5)

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 105 East Anapamu Street, Santa Barbara, California.

On October 9, 2012, I served a true copy of the within **PETITION FOR REVIEW** on the Interested Parties in said action by:

☒ by personally delivering it to the person indicated below:

☒ by mail. I am familiar with the practice of the Office of Santa Barbara County Counsel for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with the ordinary course of business, the above mentioned documents would have been deposited with the United States Postal Service on the above date after having been deposited and processed for postage with the County of Santa Barbara Central Mail Room.

☒ (State) I declare, under penalty of perjury, that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on October 9, 2012, Santa Barbara, California.

_____
Carol Fink

ASSESSOR FOR COUNTY OF SANTA BARBARA
v.
ASSESSMENT APPEALS BOARD NO. 1
Court of Appeal Case Number: B229656

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