S 205876 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)

OPENING BRIEF

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I

INTRODUCTION

When real property located in California changes ownership, county assessors are required to reassess the Full Cash Value of the property by using the acquisition cost valuation system mandated by Articles XIII and XIIIA of the California Constitution. In most cases, the Full Cash Value of real property is the price paid on the open market in an arms-length transaction. This very basic concept is called the "*purchase price presumption.*" The "*purchase price presumption*" flows from general Revenue and Taxation Code sections 51 and 110 which govern the valuation of all real property in California. [1]

The dispute at issue in this case arose when the Real Parties filed Applications for Changed Assessment ("Applications") appealing the value of 26 individual mobilehome property interests that sold in 2001. [Administrative Record, Vol. 1, Tab 3, AAB000014, Tab 4, AAB000033, AAB000045 & AAB000057.] The Applications challenged the "method of reassessment" and the values enrolled by the Assessor. In short, the Real Parties argued that subsection (c) of R & T Code section 62.1 required assessors to disregard the purchase prices paid for the 26 properties and disregard most of the general R & T Code statutes that govern how real property must be valued under Articles XIII and XIIIA of the California Constitution.[2]

The Santa Barbara County Assessment Appeals Board ("Board") agreed with the Real Parties and proceeded to issue two Decisions which reduced the taxable value of the Rancho Goleta properties to approximately 33% and the Silver Sands properties to a mere 15% of their respective purchase prices. The

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[1] Citations to the Administrative Record will be noted as "Admin. Record" and citations to the Appellant's Appendix will be noted as "Appendix."

[2] Citations to the Revenue and Taxation Code will be noted at "R & T Code."

Board achieved this drastic reduction in value by refusing to apply the "*purchase price presumption*" mandated by R & T Code sections 110 and 51 as well as subsection (b)(6) of section 62.1 and section 480 which require every new owner to promptly file a change of ownership statement that reports the actual purchase price paid for a mobilehome property interest.

To make matters worse, the Board's skewed interpretation of R &T Code section 62.1 only applies to mobilehome properties held by non-profit mutual benefit corporations. It does not apply to similar mobilehome properties held by stock cooperatives or condominium associations thereby rendering the Decisions palpably arbitrary because they essentially exempt one class of resident-owned mobilehomes from full taxation.

The Board's Decisions should be reversed and remanded because they abandon the acquisition cost valuation method and equal taxation principles mandated by the California Constitution and repeal by implication general tax statutes such as R & T 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. The Decisions should also be reversed because they force county assessors to violate the specific mobilehome valuation guidelines published by the State Board of Equalization ("SBE"), the agency that co-sponsored and analyzed the statute at issue when it was enacted by the state Legislature.

II
STATEMENT OF THE CASE

A. Appellant/Assessor's Beneficial Interest

The Appellant/Assessor is "beneficially interested" in the matter of a loss of assessed value from its property tax base. Acting through its statutory officer, the Assessor, was required to, and did, "appear" before the Board at the underlying

hearing. (See, Gov. Code, § 24000, subd. (j) and R & T Code, § 1627 "[W]here a party has a beneficial interest in the subject matter of the proceedings and a right to appear, and has appeared before the administrative agency he properly may institute proceedings for review by mandamus." *County of Los Angeles v. Tax Appeals Board No. 2* (1968) 267 Cal.App.2d 830, 834.)

B. Capacity of Real Parties in Interest

The Real Parties in Interest initiated this dispute by filing Applications for Changed Assessment with the Clerk of the Board for the County of Santa Barbara. [Administrative Record ("Admin. Record") Vol. 1, Tab 1, AAB00001-6 & Tab 2, AAB0007-12.]

C. Capacity of Respondent/Board

The Respondent/Board issued Final Decisions on the Applications filed by the Real Parties in Interest on October 17, 2006, after a formal adjudicatory hearing. [Appellant's Appendix ("Appendix") 0009-0106.]

D. Procedural History

1. Relief Sought by Real Parties Before the Assessment Appeal Board

Representatives for the Rancho Goleta and Silver Sands parks filed Applications for Changed Assessment challenging the valuation method and the enrolled values for each of the 26 individual ownership interests sold in 2001. [Admin. Record, Vol. 1, Tab 3, AAB000014, Tab 4, AAB000033, AAB000045 & AAB000057.]

Because the Applications addressed the same basic issues, the Board consolidated the Applications. The consolidated Applications were later bifurcated

into 2 phases. Phase 1 primarily addressed questions of law - the interpretation of R & T 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 R & T 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 in favor of the Real Parties on October 17, 2006. [Admin. Record Vol. 16, Tab 254, AAB003621-3678 & AAB003680-3715.]

2. Relief Sought by Assessor in Superior Court

The Appellant/Assessor filed a Writ of Mandate in the Superior Court on April 17, 2007, pursuant to Revenue and Taxation Code Section 1611. The Writ sought reversal of the Decisions and remand for further proceedings consistent with the California Constitution, Revenue and Taxation Code and Property Tax Rules. [Appendix 0001-0119.]

3. Relief Sought by Assessor in the Court of Appeal

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

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

The Court of Appeal issued its first Opinion on May 16, 2012. The Opinion was split with Justice Yegan dissenting. 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 Opinion was again split with Justice Yegan dissenting. 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.

4. Relief Sought by Assessor in the Supreme Court

The Appellant/Assessor timely filed a Petition for Review on October 8, 2012. The SBE and the California Assessors' Association filed amicus letters supporting the Petition. The Supreme Court granted the Petition for Review on December 12, 2012.

E. Issues Presented

1. Primary Issue

What is the proper method for determining the assessed value of the real property interest in a mobilehome park after a transfer of a membership interest in the nonprofit corporation that owns the park?

2. Sub-Issues

a. Does R & T Code section 62.1 prohibit county assessors from applying the acquisition cost valuation method and related general Revenue and Taxation statutes when reassessing a change of ownership of membership interest in a mobilehome park held by a nonprofit corporation?

b. What was the Legislature's intent when it amended R & T Code section 62.1 in 1988?

c. Does the valuation method adopted by the Board frustrate the legislative intent of R & T Code section 62.1?

d. Do the Decisions improperly disregard the specific guidance provided by the SBE regarding how to value *changes in ownership* in resident-owned mobilehome parks?

e. Do the Decisions improperly disregard the *Purchase Price Presumption* mandated by R & T Code section 110 and Property Tax Rule 2?

f. Do the Decisions improperly disregard R & T Code section 51 which requires assessors to value the *Appraisal Unit* commonly bought and sold in the marketplace?

g. Do the Decisions improperly rely on the income approach for property contractually prohibited from earning income in violation of in violation of Property Tax Rule 8?

h. Do the Decisions fail to value the properties as of the actual dates the properties were sold as required by R & T Code section 75 and 75.10?

i. Do the Decisions improperly rely on non-comparable sales in violation of Property Tax Rule 4?

j. Did the Assessor properly apply the general tax statutes governing valuation when he reassessed the 26 properties that changed ownership in 2001?

k. Do the Decisions mischaracterize the resident-owners as renters?

l. Does the renter fiction adopted in the Decisions jeopardize other important property tax benefits?

F. Standard of Review

This case of first impression presents mixed questions of law and fact concerning the application of the Revenue and Taxation Code to the assessment of resident-owned mobilehomes held by non-profit corporations. When, as in this case, the inquiry requires a critical consideration, in a factual context, of legal

principles and their underlying values, the question is predominantly legal and its determination is reviewed independently. (*McMillin-BCED/Miramar Ranch North v. County of San Diego* (1995) 31 Cal. App. 4th 545, 554; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal. 4th 216, 271.)

III
STATEMENT OF FACTS

The Real Parties, Rancho Goleta and Silver Sands, are both resident-owned mobilehome parks located in the unincorporated area of Santa Barbara County. These parks were originally owned by investors who rented spaces to the tenants. Although the tenants rented their spaces from the investor-owners, rent control ordinances controlled the amount of rent the investor-owners could charge the tenants. [Admin. Record, Vol. 1, Tab 7, APP000085, lns. 2-9 & APP000087 lns. 3-6].

The residents of Rancho Goleta and Silver Sands eventually formed non-profit corporations to purchase their respective mobilehome parks from the investor-owners. These non-profit corporations own *fee title* to all of the real property in the mobilehome parks. [Admin Record, Vol. 1, Tab 11 APP000129-0132.] It is undisputed that the Rancho Goleta and Silver Sands residents own "memberships" in the corporations. These memberships are owned exclusively by persons who own mobilehomes located in the parks. [Appendix, Vol. 1, Tab 6, 000177 lns. 8- 11.]

Under subdivision (a) of section 62.1, when a mobilehome park is purchased by a non-profit entity formed by the residents for the purpose of purchasing the park, this initial transaction is exempted from reassessment. Real Parties Rancho Goleta and Silver Sands took advantage of this one-time exemption when they formed non-profit corporations to purchase their parks. [Admin. Record, Vol. 6, Tab 91, APP001264.]

Several years later, in 2001, 26 resident-owners sold their individual mobilehome interests to third parties. The purchase prices paid for these properties ranged from a low of $165,000 to a high of $325,000 based on the attributes (size, location, view) of each property. [Administrative Record ("Admin Record") Vol. 1, Tab 16 APP000174-000193 & Tab 24 APP000215-000222.]

The Assessor applied the "purchase price presumption" when he reassessed the 26 properties in accord with Articles XXXI and XIIIA, the general R & T Code statutes and the specific mobilehome valuation guidelines established by the SBE.[3]

Representatives for the Rancho Goleta and Silver Sands parks filed Applications for Changed Assessment challenging the valuation method and the enrolled values for each of the 26 individual ownership interests sold in 2001. [Admin. Record, Vol. 1, Tab 3, AAB000014, Tab 4, AAB000033, AAB000045 & AAB000057.] The Board ultimately ruled in favor of the Real Parties. [Admin. Record , Vol. 16, Tab 254, AAB003621-3678 & AAB003680-3715.]

IV
OVERVIEW OF HOW OF MOBILEHOMES ARE TREATED FOR PROPERTY TAXATION PURPOSES

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. The tenants owned the mobilehome coaches and the municipality or investor owned all the land. Taxation was straight forward for the privately owned parks. The tenants paid tax on their mobilehome coaches based

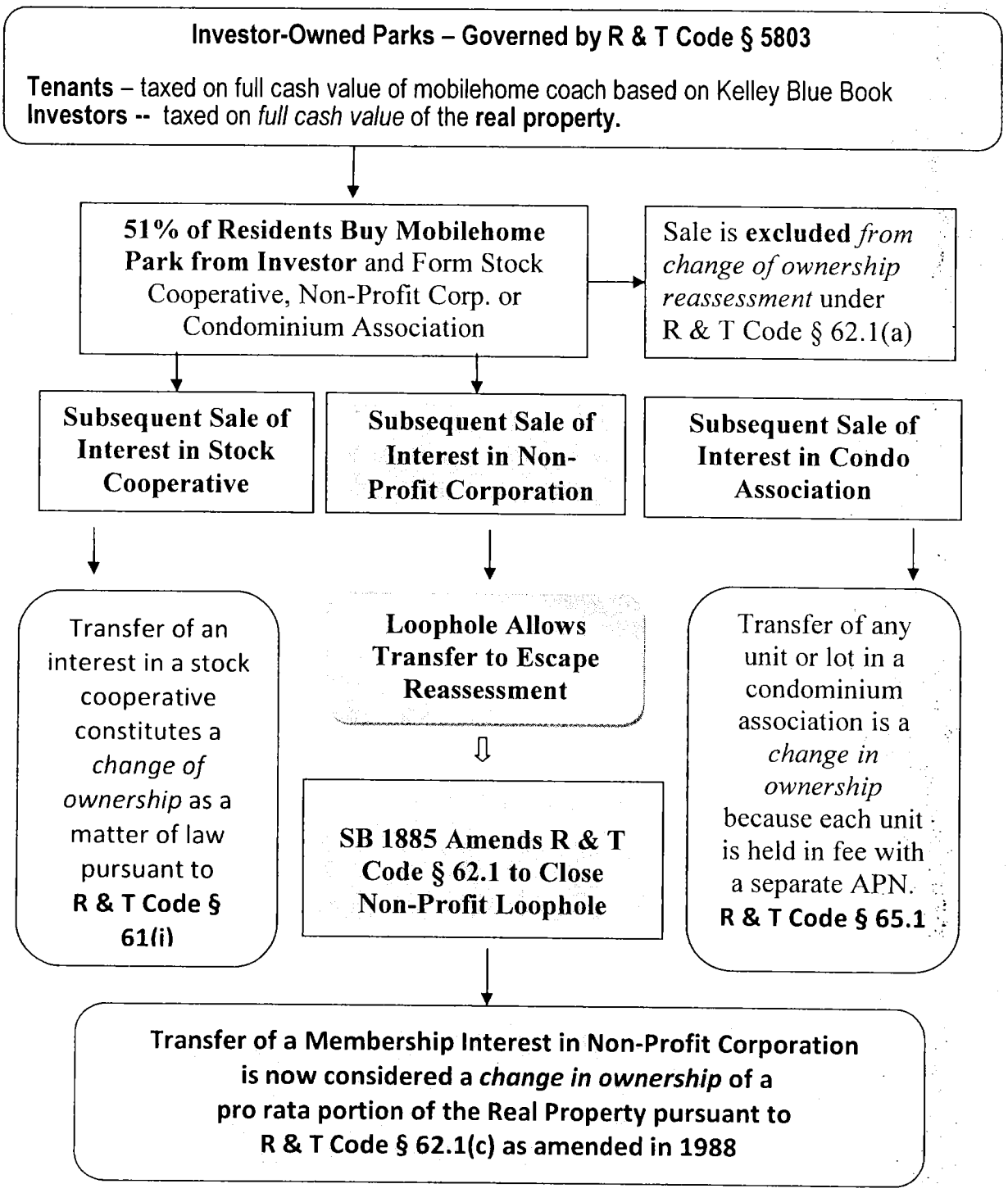
[3] The Assessor followed the SBE's "extraction method" to determine the value of each ownership interest sold in 2001. Under the extraction method, the Blue Book Value of the coach is subtracted or extracted from the total purchase price to determine the site value of the real property. [Admin. Record ,Vol. 7, Tab 113, ASSR001610-1615.]

on Kelley Blue Book values pursuant to R & T Code section 5803 and the investor paid property tax on the Full Cash Value of the land and improvements pursuant to the general property tax statutes. 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 mobilehomes are created when the residents form a homeowners association to purchase a park and then 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 conversions to resident ownership.

After a resident-owned entity buys the park, each respective resident owner receives a certificate representing his or her fractional ownership interest. (R & T 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; R & T Code § 62.1(a)(1).] Upon acquiring an ownership interest in the park, a resident also obtains the exclusive right to sell his mobilehome interests, including the exclusive right to occupy the mobilehome space. [Admin. Record, Vol. 34, Tab 278, TX006966 lns. 17-25; TX006944 lns. 4-13 & TX006945 lns. 20-25.]

The following chart illustrates the overall statutory scheme for the taxation of investor and resident-owned mobilehome parks.



A. Section 62.1 is a *Change of Ownership* Statute That Tells Assessors *What* and *When* to Reassess - It Does Not Override the California Constitution or the General Tax Statues that Control *How* Property is Valued

The parties disagree regarding what R & T Code section 62.1 does and does not do. The Assessor contends it does four basic things:

- Subsections (a) and (b) provide an exclusion from reassessment when 51 % of the residents purchase the park;
- Subsection (c) (1) directs assessors to treat subsequent transfers of membership interests in non-profit corporation as reassessable *change of* ownership of a pro rata portion of the real property;
- Subsection (c) (2) describes what a "pro rata portion of the real property" means; and
- Subsection (c) (3) provides that any pro rata portion or portions of real property which changed ownership pursuant to this subdivision may be separately assessed as provided in R & T Code Section 2188.10, a new companion statute enacted as part of SB 1885.

In short, 62.1 is a *change of ownership* statute that describes which mobilehome transfers are excluded from reassessment and which transfers are subject to reassessment. The Real Parties contend 62.1 goes much further. The Real Parties claim 62.1 also dictates *how* the properties should be valued.

The placement of section 62.1 within the R & T Code provides some guidance on this issue. Section 62.1 is found in Chapter 2 of Part 0.5 in Division 1 of the R & T Code. Chapter 2 is entitled *Change in Ownership and Purchase* and includes 18 sections (§§ 60- 69.5). These 18 sections, including section 62.1, all define what does and does not constitute a *change in ownership* for property tax

purposes under Articles XIII and XIIIA of the California Constitution.[4] None of the sections contained in Chapter 2 address how to value or assess property. Valuation is addressed in other chapters of the R & T Code including Chapter 1 of Part 1 entitled *General Provisions* (§§ 101 – 136) and Chapter 3of Part 2 entitled *Assessment Generally* (§§ 401 -674).

As addressed in more detail below, other sections of the R & T Code as well as Property Tax Rule 2, 4, 6 and 8, Assessor Handbooks and Letters to Assessors issued by the State Board of Equalization dictate how real property should be valued. [Admin Record, Vol. 23, Tab 262, TX004560 (Schreiter Testimony) and Vol. 8, Tab 125.1, AAB001754-1758 (Cazadd Declaration).]

B. Subdivision (a) of R & T Code § 62.1 Provides a One-Time Exclusion From Reassessment When the Residents Buy the Park

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 at least 51% of the residents for the purpose of purchasing the park – this initial transaction does not result in reassessment of the property. Real Parties Rancho Goleta and Silver Sands took advantage of this one-time exclusion when they formed non-profit corporations to purchase their parks. [Admin. Record, Vol. 6, Tab 91, APP001264.]

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[4] Article XIIIA is commonly known as Prop 13.

C. SB 1885 Amended R & T Code § 62.1 in 1988 to Close a Loophole That Let Some Subsequent Transfers Escape Reassessment

R & T Code section 62.1 has been amended eight times since it was enacted in 1984. The primary issue in this case starts with the interpretation of the 1988 amendment to section 62.1 – an amendment intended to close two loopholes.

The first loophole related to subdivision (a) which inadvertently created a situation where an investor could purchase an entire mobilehome park and avoid reassessment by simply renting one 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 membership interests in resident-owned mobilehomes held by non-profit corporations. 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 some but not all resident-owned mobilehomes. Mobilehomes held by non-profit corporations were escaping reassessment but mobilehomes held by condominium associations or stock co-operatives were not.

This dichotomy arose because, unlike interests held by non-profit corporations, the sale of individual mobilehome interests in parks held by condominium associations and stock co-operatives constitute a *change in ownership* as a matter of law. SB 1885 corrected this problem by amending 62.1 to treat a subsequent transfer of a membership interest in a park held by a non-profit corporation as a *change of ownership* of a pro rata portion of the real property.

R & T Code section 62.1, subsection (c)(2), as amended in 1988, 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 1.]

D. The Board's Interpretation Conflicts with the 2002 Amendment to R & T Code § 62.1 Which Reinforces the Purchase Price Presumption

The Board's interpretation of R & T Code section 62.1(c) conflicts with subsection (b)(6) which was added to the same statute in 2002. Subsection (b)(6) requires all new resident-owners to file *change in ownership* statements disclosing the actual purchase price paid for the property.

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."

(R & T Code § 62.1(b)(6) as amended in 2002.)

R & T Code section 480, in turn, requires new resident-owners 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**."

(R & T 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 in the statute as "germane to the assessment function." This language provides a clear indication that the Legislature believes the purchase price paid for a real property interest is an important ("germane") fact that must be considered by county assessors when determining the fair market value of mobilehome properties.

V

THE VALUATION METHOD APPLIED BY THE BOARD FRUSTRATES THE LEGISLATIVE INTENT OF SB 1885 BY CREATING A NEW LOOPHOLE FOR RESIDENT-OWNED MOBILEHOMES HELD BY NON-PROFIT CORPORATIONS

After SB 1885 amended R & T Code section 62.1 in 1988, transfers of individual interests in a resident-owned mobilehome park held by a non-profit corporation no longer escaped reassessment. Those transfers now constituted a *change of ownership* that triggered reassessment of a "pro-rata portion of the

park." That means, every time a resident-owner sold his or her mobilehome interest to third party, county assessors are required to reassess the real property interest that changes ownership at Full Market Value.

The challenged Decisions do not block reassessment completely. However, they frustrate the legislative intent of SB 1885 by reducing the taxable value for ownership interests in resident-owned mobilehome parks held by non-profit corporations to a small fraction of what they sold for on the open market. This new loophole was created by adopting the critically flawed valuation method described below.

A. The Decisions Apply a Flawed Valuation Method Which is Not Required by R & T Code § 62.1

The Real Parties contend their novel valuation method must be followed because R & T Code section 62.1 requires it. They reach this conclusion by misinterpreting subsection (c) (2) of section 62.1, ignoring the rest of that statute, and by ignoring Article XIII and XIIIA of the California Constitution, the general tax statutes and numerous Property Tax Rules. The subsection they hang their hat on provides as follows:

> **62.1. "Change in ownership" exclusion**
> "(c)
> "(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 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)."
>
> (R & T Code §62.1(c) (2).)

Respondents contend the language of subsection (c)(2) requires assessors to value all the real property in a mobilehome park and then divide that value by the number of spaces in the park to determine the value of a single real property interest. As explained in the dissenting Opinion issued by Justice Yegan, "[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.) There is also no logical reason to think a statute could 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.)

As discussed above in section IV-A, R & T Code section 62.1 is a change of ownership statute that describes which mobilehome transfers are excluded from reassessment and which transfers are subject to reassessment. It also defines <u>how much</u> property changed ownership when an individual mobilehome property interest in a non-profit corporation is sold. For example, if 1 out of 200 property interests is sold, that 1/200th "pro rata portion of the real property" must be separately reassessed.

Section 62.1 does not address how to value the 1/200th pro rata share. In fact, the word "value" is not found anywhere in section 62.1. Other sections of the R & T Code, as well as Property Tax Rules 2, 4, 6 and 8, Assessor Handbooks and Letters to Assessors issued by the SBE guide county assessors through the valuation process. [Admin Record, Vol. 23, Tab 262, TX004560 (Schreiter Testimony) and Vol. 8, Tab 125.1, AAB001754-1758 (Cazadd Declaration).]

The flawed valuation method adopted by the Board puts county assessors in the impossible position of having to determine the "fair market value" of individual mobilehome properties which have sold on the open

market, 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 is not a credible or reliable way to value real property 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 interest 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 Decisions is also illustrated by the following example. Assume one Rancho Goleta mobilehome sells on January 1, 2013. Under the flawed valuation method dictated by the Decisions, 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 interest 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]

B. The Flawed Valuation Method Conflicts with Subsection (b)(3) of § 62.1 Which Allows Assessors to Separately Assess Each Subsequent Transfer

Under the flawed valuation method applied in the Decisions, assessors may not separately assess subsequent transfers based on the purchase price paid for the property. Assessors are required to determine the value of the entire mobilehome park and then divide that value by the total number of space in the park. Real Parties base this novel approach on a skewed interpretation of subsection (c) of section 62.1. That interpretation is internally inconsistent with other parts of the same statute. For example, subsection (b)(3) of 62.1 states that pro rata portions of real property may be separately assessed as follows:

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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.

"(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(b)(3).)

C. The Flawed Valuation Method is Not Supported by the Legislative History of SB 1885

The evolution of a proposed statute after its original introduction in the Senate or Assembly can offer considerable insight as to legislative intent. (*People v. Goodloe* (1995) 37 Cal.App.4th 485, 491.) When SB 1885 was first introduced on February 2, 1988, it only included changes to R & T Code section 62.1. [Admin. Record, Vol. 6, Tab 89 , APP001247-1249.] SB 1885 was amended in the Senate on March 24 and the Assembly on August 1, 1998. Those amendments added R & T Code section 2188.10 to SB 1885. Section 2188.10 clarified the legislative intent by expressly providing for the separate assessment of subsequent transfers when individual mobilehome interests were sold. [Admin. Record, Vol. 6, Tab 90, APP001254-1257; see also, Bill Analysis Action, 8/3/88, Vol. 6, Tab 92, APP001281 ["the 8/1/88 amendments are clarifications of the intent of the bill."]

The addition of R & T Code section 2188.10 led to the March 24, 1988, Legislative Bill Analysis which deleted a preliminary concern regarding whether an assessor could recognize differences in a value between mobilehome spaces. [6]

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[6] The deleted paragraph provided: "Thus, any differences in value between mobilehome spaces in a particular park cannot be recognized under this method. Further, since the allocation is based on the ownership interest in the corporation rather than 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 had the power to provide for

The March 24th Legislative Bill Analysis describes the full intent of SB 1885 in pertinent part as follows:

> STATE BOARD OF EQUALIZATION
> LEGISLATIVE BILL ANALYSIS
>
> Senate Bill 1885 Date Introduced: 3/24/88
>
> "Prior to the enactment of SB 298....Section 62.1(a) excluded from change in ownership the transfer 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 the park for purposes of acquiring it. Health and Safety Code Section 50561, in turn, provides that mobile home park tenants may form a nonprofit corporation, stock cooperative, or other entity for purposes of converting a mobilehome park to condominium or stock cooperative ownership interests and for purchasing the mobilehome park from the management of the park."
>
> [Emphasis in original.]
>
> "SB 298 amended Revenue and Taxation Code Section 62.1 to delete the reference to Health and Safety Code Section 50561. This raises two problems:
>
> "1) As amended, Section 62.1 would permit the acquisition of the park by one or two tenants....."
>
> "2) Putting the 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."

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a pass-on of the tax to the appropriate parties." [Admin. Record, 2/24/88 SBE Leg. Bill Analysis, Vol. 6, Tab 92, APP001268, ¶ 1.] The Respondents have relied on this language in numerous briefs even though it was deleted from the SBE's final Legislative Bill Analysis after SB 1885 was amended to include R & T Code § 2188.10 which expressly allows for the separate assessment of each real property interest.

"SB 1885 amends Section 62.1 to address these two problems."

"Existing law provides for separate assessment of condominiums, units in stock cooperatives, etc. There is no provision, however, for the separate assessment of spaces in a mobilehome park owned by a nonprofit corporation."

"This measure, with **the addition of Section 2188.10** to the Revenue and Taxation Code **would require the assessor to separately assess the pro rata portion of the real property** of a mobilehome park which changes ownership pursuant to subdivision (c) of Section 62.1 **in a manner similar to existing provisions for the separate assessment of certain timeshare interests."**

[Admin. Record, SBE Legislative Bill Analysis, 3/24/88, Vol. 6, Tab 92, APP001274-1275, emphasis added.]

The Enrolled Bill Report for the August 1, 1988, Senate hearing on SB 1885 confirms the Assessor's interpretation of section 62.1. The Bill Report provides in pertinent part:

"This bill would clarify the law regarding the purchase of a mobilehome park by its tenants. It would also provide for reassessment of mobilehome park property upon change of ownership on a prorated basis. SB 1885 would allow the county to charge a fee to cover the cost of providing separate valuations in accordance with the bill. "

[Admin. Record, Vol. 6, Tab 95, APP001290.]

"A. Specific Findings

Current law allows for a transfer of ownership from the management of a mobilehome park to a corporation or cooperative formed by the tenants to be excluded from the change of ownership provisions of Article XIIIA of the California Constitution. Chapter 1344/87 (SB 298) inadvertently created a loophole in the treatment of the conversion of mobilehome parks to a collective ownership....."

"In addition, SB 298 was unclear regarding the appropriate treatment of the valuation of the property interest upon transfer. As a result, **SB 1885 would also require subsequent changes in ownership to be reassessed in accordance with the provisions of Article XIIIA** on a basis proportionate to the percentage of total ownership associated with the property transacted."

"Current law identifies limitations upon the separate valuation of property. This bill would allow mobilehome owners to request separate valuations for each interest on a prorated basis.[7] A single tax bill would be issued with an itemized breakdown identifying the separate interests."

"B. Fiscal Analysis

"Increased costs to the county assessor for the purposes of additional separate valuations would be offset by a fee chargeable by the county for the cost of implementing this bill."

[Admin. Record, Enrolled Bill Report, 8/1/88, Vol. 6, Tab 95, APP001290-1191, emphasis added.]

SB 1885's addition of section 2188.10 demonstrates the Legislature's intent to allow assessors to make separate valuations each time an interest in a resident-owned mobilehome park changes ownership in accordance with the provisions of Articles XIII and XIIIA of the California Constitution. Nothing in the legislative history of SB 1885 supports the flawed valuation method adopted by the Board or the wholesale abandonment of the fundamental principle of equal taxation mandated by the California Constitution. To the contrary, the Enrolled Bill Report

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[7] Real Parties are aware of this procedure. The resident-owners of Rancho Goleta submitted a section 2188.10 request on January 29, 2003 in which they requested "that the Santa Barbara County Assessor and the Santa Barbara County Tax Collector bill each resident individually for all property taxes due as a result of their purchase of a membership and mobilehome in Rancho Goleta." [Admin. Record, Vol. 13, Tab 192, ASSR002607.]

confirms the Legislature's intent to reassess changes in ownership in all resident-owned mobilehome parks the same way other real property is assessed.

The flawed valuation method adopted in the Decisions is based, in part, on the Board's failure to acknowledge significant amendments to SB 1885 as it made its way through the Senate as well as a basic misunderstanding of the phrase "a pro rata portion of the real property" as used in subsection (c) of section 62.1.

R & T Code Section 62.1(c)

"(1) If the transfer of a mobile home 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(c), as amended in 1988, emphasis added.]

The Board mistakenly concludes that the phase "pro rata," as used in subsection (c), requires it to apply the same value to every ownership interest in a mobilehome park regardless of how much that interest sold for on the open market. In other words, the Board believes the total value of the park's real property must be equally divided by the total number of spaces in the park every time an individual interest is sold.

The Board is wrong. The phrase "pro rata" does not mandate equal division. The phase "pro rata" is derived from the Latin word "rata" or ratable. As explained in Black's Law Dictionary, it means in proportion and "never means equality or equal division" as provided below:

> **"Ratable.** Proportional; proportionately rated upon a constant ratio adjusted to due relation. According to a measure which fixes proportions. It has no meaning unless referable to some rule or standard, and **never means equality or equal division**, but implies unequal division, as between different persons. *Chenoweth v. Nordan & Morris* (1943) 171 S.W.2d 386, 387."
>
> [Black, Henry C., Black's Law Dictionary (1979 5th Ed.) p. 1134, emphasis added.]

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VI

THE DECISIONS IGNORE OR MISAPPLY THE FUNDAMENTAL PRINCIPLES OF PROPERTY VALUATION

The Decisions ignore or misapply the fundamental principles of property valuation by:

- Disregarding the specific guidance provided by the SBE to all county assessors regarding the proper way to value ownership interests in resident-owned mobilehome parks;

- Disregarding the "purchase price presumption" mandated by R & T Code § 110 and Property Rule 2;

- Disregarding the "appraisal unit" commonly bought and sold in the marketplace as mandated by R & T Code § 51;

- Relying on the "income approach" even though the properties at issue are contractually prohibited from earning income;

- Mischaracterizing the resident-owners who purchased the park as renters;

- Not valuing the properties at issue as of the actual dates the properties were sold as required by R & T Code §§ 75 and 75.10; and

- Relying on non-comparable sales for the comparative market approach in violation of Property Tax Rule 4.

A. The Decisions Disregard the Specific Guidance Provided by the SBE Regarding the Valuation of Mobilehomes

Under its constitutional mandate, the SBE oversees the assessment practices of the state's 58 county assessors, who are charged with establishing values for approximately 12 million properties each year. Specifically, Government Code section 15606, subdivision (e) provides that the SBE:

> "Prepares and issues instructions to assessors designed to promote uniformity throughout the state and its local taxing jurisdictions in the assessment of property for the purposes of taxation."

The SBE has issued two Letters to Assessors ("LTAs") regarding the valuation of individual interests in resident-owned mobilehomes parks. The SBE has also published Assessor Handbook 511 entitled "Assessment of Manufactured Homes and Parks." [See, Admin. Record , Vol. 8, Tab 125.1, AAB001742-1743, LTA 89/17, Vol. 7, Tab 113, ASSR001610-1615, LTA 99/87, and Vol. 8, Tab 125, AAB001738-1741, AH 511.]

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.) 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. It is undisputed that the Assessor followed these guidelines 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(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."

[Admin. Record, Vol.8, Tab 125.1, AAB 001743, ¶ 1, LTA 89/13.]

LTA 99/87 provides additional guidance regarding how to separately assess the pro rata portion of the real property that changes ownership as follows:

INDIVIDUAL TRANSFERS IN RESIDENT-OWNED MOBILEHOME PARKS QUESTIONS AND ANSWERS

"To provide current guidance from staff about the assessment implications of transfers of individual interests in resident-owned mobilehome parks, this letter will present questions and answers relating to:

(1) The exclusion from change in ownership for mobilehome parks transferred to tenant-owned entities.

(2) Upon subsequent transfers by individual resident-owners, the valuation of both the mobilehomes themselves and the accompanying pro rata interests in the mobilehome parks.

(3) The calculation of supplemental assessments upon such transfers by individual resident owners.

(4) The application of certain provisions for base-year value transfers.

QUESTIONS AND ANSWERS

".....

SUBSEQUENT TRANSFERS OF INDIVIDUAL INTERESTS

Once a transfer of a mobilehome park has been excluded from change in ownership under either section 62.1(a) or 62.1(b), questions arise about the proper treatment of subsequent transfers of individual ownership interests in the park. 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 maybe said to cover a special assessment for infrastructure in the park.

2. Question: Under the scenario described above, what portion of the reported purchase price is assessable? How should it be allocated on the tax roll?"

Answer: In amending Section 62.1 in 1987 to provide for treatment of entity-owned mobilehome parks, the Legislature intended that transfers of ownership interests in such 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 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 our view that the entire amount should be reflected in the combined assessments of the mobilehome and the underlying interest in the park.

3. Question: Assuming that the reported purchase price represents the collective fair market value of the mobilehome and the underlying interest in the park, how should that price be allocated?

Answer: 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, using the N.A.D.A Manufactured Housing Appraisal Guide or another recognized value guide, and then (2) assign the remainder of the purchase price to the interest in the park.

".....

5. Question: Section 62.1(c)(1) indicates that the transfer of a corporate share in the entity that acquired the park is a change in ownership of "a pro rata portion of the real property of the park." What does this mean?

Answer: Under subdivision (c)(2) of section 62.1, "pro rata portion of the real property" is defined to mean, essentially, the fractional interest in the park that is conveyed by the transferred share of stock. Thus, if there are 100 shares of outstanding stock, issued or unissued, a transfer of one share gives rise to a reassessment of a 1/100th interest in the real property of the park.

6. Question: Is the "appraisal unit" the individual mobilehome space or the park as a whole?

Answer: Subdivision (d) of section 51 provides that, when determining the taxable value of real property for purposes of Proposition 13, "real property" means "that appraisal unit that persons in the marketplace commonly buy and sell as a unit, or that is normally valued separately." For transfers of shares or other ownership interests that represent ownership of individual mobilehome spaces in a park, 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. Thus, for purposes of determining a new base year value upon such transfers, the appraisal unit is the individual mobilehome space and the mobilehome.

7. Question: Can any portion of the purchase price be attributed to non-assessable "site value," as provided under section 5803(b)?

Answer: No. The ownership of a fractional interest in the park represents exclusive ownership of the individual underlying space. Thus, while a resident may formally lease his or her space from the owning entity, in substance the ownership of the space is with the individual resident. Since the owner of the mobilehome and the owner of the underlying space are one and

the same for all practical purposes, the requirement under section 5803(b) does not apply."

[SBE Letter to County Assessors 99/87, Admin. Record, Vol. 7, Tab 113, ASSR001610-1615, attached hereto as Attachment 2.]

The Decisions do not follow the SBE's guidance even though it is a well-settled rule of statutory construction that when the language of a statute is open to any doubt as to its proper interpretation, administrative construction is to be given great weight by the courts in arriving at its proper meaning. (*Mantzoros v. State Bd. of Equalization* (1948) 87 Cal.App.2d 140, 143; citing *Mudd v. McColgan* (1947) 30 Cal.2d 463, 470; *Coca-Cola Co. v. State Bd. of Equalization* (1945) 25 Cal.2d 918, 921; *Los Angeles County v. Superior Court* (1941) 17 Cal.2d 707, 712; *People v. Southern Pac. Co.* (1930) 209 Cal. 578, 594-595; *Kaiser v. Hopkins* (1936) 6 Cal.2d 537, 540.)

The Board's decision to reject the SBE's interpretation and guidance regarding R & T Code section 62.1 is very difficult to justify considering the SBE's expertise and the fact that it drafted and co-sponsored the 1988 amendment at issue. 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.)

B. Values Established by the Decisions Are Not Based on the *Appraisal Unit* Commonly Bought and Sold in the Marketplace as Mandated by R & T Code § 51

To artificially lower the taxable value of the Rancho Goleta and Silver Sands properties, the Decisions ignored the actual purchase prices paid for the properties and substituted a small fraction of that amount by "estimating" the value of the entire mobilehome parks and dividing that value by the number spaces in

each park. [Admin. Record, Vol. 18, Tab 255, AAB003712-3713; Vol. 1, Tab 16, APP000174-193 & Tab 24, APP000215-222.] This approach to valuation is strictly prohibited by subsection (d) of R & T Code section 51 which requires an assessment to be based on the *appraisal unit* commonly bought and sold in the marketplace.

Subdivision (d) of section 51 provides that, when determining the taxable value of real property, "real property" means "that appraisal unit that persons in the marketplace commonly buy and sell as a unit, or that is normally valued separately." It is important to note that the "appraisal unit" concept does not only apply to resident-owned mobilehomes. It applies to all real property including single family homes, planned unit developments, condominiums, community apartment projects and timeshares.

It is undisputed that the 26 mobilehome interests at issue in this proceeding were sold in 26 separate transactions. This is what persons in the marketplace commonly buy and sell as a unit. Thus, in accordance with section 51, each of these 26 separate real property interests should have been separately assessed.

C. The Decisions Rely on the Income Approach for Property Contractually Prohibited from Earning Income

The appraisals adopted by the Board are incompetent because they improperly apply the income approach to properties contractually prohibited from earning income. [Admin. Record, Vol. 18, Tab 255, AAB003694.] The income approach is appropriately used in conjunction with the cost and market approaches when the property under appraisal is purchased in anticipation of money income and has an established or anticipated income stream. [See, Property Tax Rule 8.] The income approach cannot however be used to value properties contractually prohibited from earning income.

It is undisputed that the Occupancy Agreements for the subject properties prohibit owners from earning income on their properties. [Admin. Record APP000268] "[A] member shall not sublease, rent, encumber or assign his or her Mobilehome." [Admin. Record, Vol. 1, Tab 27, APP000274.] Of course, this makes sense because non-profit corporations, by definition, cannot earn profit.

Ignoring the "non-profit" part of the non-profit corporations, the Real Parties claim that Rancho Goleta and Silver Sands "as property owners/landlords . . . do receive rental income and pay expenses." [Appendix, Vol. 2, Tab 27, 000504, lns. 15-16.] It is not surprising that this claim is not supported by any evidence in the Administrative Record.

As confirmed in the Silver Sands Information Statement, the resident-owners do not pay rent. They only pay a monthly Member's Assessment which is used, to pay the mortgage on the park and cover maintenance and operating costs. [Admin. Record, Vol. 1, Tab 26, APP000233-241 & Tab 27, APP000262-263 & Lustig Testimony, Vol. 34, Tab 278, TX006946, lns. 7-10.] As a result, the values set by the Board based on the income approach must be overturned because they are not supported by competent evidence. [*Freeport-McMoran Resource Partners v. County of Lake* (1993) 12 Cal. App. 4th 634, 644.]

D. Decisions Mischaracterize the Resident-Owners as Renters

It is also undisputed that the Rancho Goleta and Silver Sands residents own "memberships" in the corporations. These memberships are owned exclusively by persons who own mobilehomes located in the parks. (Appendix, Vol. 1, Tab 6, 000177 lns. 8- 11.) The resident-owners shoulder the obligation to pay the mortgages and fees incurred by their non-profit corporations. These obligations are memorialized in documents fictitiously labeled as "occupancy agreements" or "leases." However, labeling yourself as a tenant has never converted an owner

into a renter for property tax purposes. The residents own the memberships. The memberships own the real property.

The residents in these resident-owned parks control the amount of the monthly assessments they charge themselves to cover maintenance expenses. [Admin. Record, Vol. 34, Tab 178, TX006946, lns. 7-10; Vol. 1, Tab 26, APP000233-234 and Tab 27, APP000262-263.] They also enjoy the right to sell their mobilehome, membership interest and exclusive right to occupy their space on the open market as illustrated by the subject properties advertised in the Multiple Listing Service ("MLS"). [Admin. Record, Vol. 11, Tab 174, ASSR002355-2367.] These MLS listings confirm the resident-owners' right to advertise and sell their beneficial interest in the actual mobilehome spaces they exclusively occupy. The Fair Market Value of each space varies based on the size, location and specific attributes of each property.

The renter fiction adopted in the Decisions cannot overcome the general principle that property taxation depends upon the substance of a transaction rather than its form.

> "It treats a series of nominally separate transactional "steps" as a single transaction if the steps are, in substance, inter-dependent and focused toward a particular result. (11 Mertens, The Law of Federal Income Taxation (1992) § 43.253, p. 347.) Thus, if a taxpayer, rather than taking a direct route to the desired end, interjects economically or legally meaningless transactions between the starting point and the end to obtain more favorable tax treatment, the intervening transactions will be disregarded and taxes will be assessed as though the taxpayer had taken the most direct route."
>
> [*Penner v. County of Santa Barbara* (1995) 37 Cal. App. 4th 1672, 1679.]

In this case the series of nominally separate transaction steps is transparent. The renters in an investor-owned mobilehome park form a non-profit corporation in which they each own a membership interest. The non-profit corporation then

buys the park. The resident-owners now own all of the real property of the park. They no longer rent their spaces from an investor-owner. In accord with the *Penner* decision, this series of nominally separate transactional "steps" must be treated as a single transaction because the steps are, in substance, inter-dependent and focused toward a particular result. *Penner v. County of Santa Barbara*, supra at p. 1679.

Subsection (m) of Health and Safety Code Section 50781 is also instructive. It defines "resident ownership" as "either the ownership by a resident organization of an interest in a mobilehome park that entitles the resident organization to control the operations of the mobilehome park for a term of no less than 15 years, or the ownership of individual interests in a mobilehome park, or both." The Articles of Incorporation for Silver Sands and Rancho Goleta satisfy both elements as follows:

Silver Sands

> "This is a nonprofit mutual benefit corporation organized under the Nonprofit Benefit Corporation Law."
>
> "The specific purpose of this corporation is to facilitate the purchase and operation of a mobilehome park by its residents pursuant to California Health and Safety Code Section 50561."
>
> [Admin. Record, Vol. 3, Tab 35.2, APP000701.]

Rancho Goleta

> "This is a nonprofit mutual benefit corporation organized under the Nonprofit Benefit Corporation Law."
>
> "The specific purpose of this corporation is to provide for the acquisition, construction, management maintenance and care of the property held by the corporation, property commonly held by the members of the corporation, property within the corporation privately held by members of the corporation."
>
> [Admin. Record, Vol. 2, Tab 34, APP000579.]

Since corporations continue in perpetuity until terminated, both Silver Sands and Rancho Goleta must be characterized as providing "resident ownership" as that term is defined in Health and Safety Code section 50781.

E. The Decisions Do Not Value the Properties as of the Actual Dates the Properties were Sold as Required by R & T Code §§ 75 and 75.10

R & T Code Sections 75 and 75.10 express the fundamental tenet of real property appraisal that property must be assessed at its fair market value as of the date it changes ownership. It is undisputed that the 26 transactions at issue occurred on different dates during calendar year 2001. Consequently, in accord with Sections 75 and 75.10, the appraisal for each transaction was required to establish the Fair Market Value for each property on the date it actually changed ownership.

The appraisals submitted by the Real Parties and accepted by the Board do not provide values as of the actual dates of transfer. The Rancho Goleta appraisal prepared for the Real Parties by Taylor provides a single "Retrospective Date of Value" violates R & T Code sections 75 and 75.10 because it applies one constant value for all properties sold during an entire year from January 1, 2001 to December 31, 2001. [Admin. Record, Taylor Appraisal, Vol. 14, Tab 212, APP002992 - APP003060.]

The appraisal for Silver Sands is no better. It provides two retrospective years of value for all of the Silver Sands properties sold from November 1, 2000 to October 31, 2001, and November 1, 2001 to October 31, 2002. [Admin. Record, Taylor Appraisal, Vol. 13, Tab 210, APP002848 - APP002922 at APP002913.]

The appraiser hired by the Real Parties accomplishes this valuation "slight of hand" by ignoring the specific dates of transfer and substituting estimated "market values" that supposedly apply for an entire year. This fundamental error

renders the appraisals incompetent because Real Parties' own appraisers have acknowledged the need to value properties as of the specific date of sale: "[i]mplicit in [the] definition [of market value] is the consummation of a sale as of a specific date and the passing of title from seller to buyer." [Admin. Record, Vol. 14, Tab 212, APP002875, Silver Sands Appraisal & Vol. 14, Tab 212, APP003011, Rancho Goleta Appraisal.]

The Real Parties have responded to this critical flaw in the evidence by simply stating:

> "The AAB had no problem understanding or making use of the appraisal report or Mr. Taylor's testimony - since the value of the park was constant through these two time periods"
>
> [Appendix, Vol. 2, Tab 27, 000505, lns. 22-24]

This response misses the point. The fact that the Board had no problem relying on an appraisal that violated basic appraisal practices and the R & T Code is a problem. It means the Board's findings are not based on reliable evidence.

F. The Decisions Rely on Non-Comparable Sales in Violation of Property Tax Rule 4

Property Tax Rule 4 describes the proper application of the comparable sales approach to value. It directs assessors (1) to rely on the actual sales price of the subject property and comparable properties whenever reliable market data is available; (2) to make adjustments for changes in value over time; and (3) to make allowances for differences in the physical attributes, location and expected income of the properties. The Taylor appraisals adopted by the Board violate all of these basic appraisal principles.

We have already established the Board's refusal to rely on the actual purchase prices paid by third parties for the 26 subject properties. The Taylor appraisals compound this problem by failing to adjust the value of the subject properties for changes in price levels that occurred during the calendar year. And perhaps the most glaring violation of Rule 4 is the failure to account for differences in the physical attributes and location of the 26 different mobilehome spaces sold in 2001.

The Taylor appraisals' failure to acknowledge the significant differences between investor-owned parks and resident-owned parks also violates Rule 4. This failing is particularly disturbing in light of some of the information contained in the appraisal prepared by the Applicants' first appraiser, Mr. Neet. The Neet appraisal accurately describes the three types of mobilehome parks.

> "Owners of mobile home parks will fall into three mutually exclusive categories: resident ownership organizations, municipalities and investors."
>
> [Admin. Record, Neet Appraisal, Vol. 13, Tab 195, ASSR002645 & Murdock Testimony, Vol. 27, Tab 269, TX005482 ln. 20 - TX005483 ln. 7.]

Even though the two types of private ownership are mutually exclusive, the "comparables" used in the Taylor appraisals are based on mobilehome sales in investor-owned parks. [Admin. Record, Vol. 27, Tab 269, TX005473, lns. 4-10, Taylor Appraisal, Vol14, Tab 212, APP003027 & APP003048.] Reliance on sales in investor-owned parks is improper because investor-owned parks are generally worth less than resident-owned parks. One of the Applicants' own witnesses acknowledged the difference in value between investor-owned and resident-owned parks when he admitted that when "the resident became a member of the corporation, the value of his home went up because he had an additional bundle of rights as a result of being a member of the corporation." [Admin. Record, Murdock Testimony, Vol. 31, Tab 273, TX006220.] Investor-owned parks are not

"comparable" to higher valued resident-owned parks and for that reason the Respondents' opinion of value is not valid.

VII

THE ASSESSOR COMPLIED WITH R & T CODE §§ 62.1& 110 WHEN HE REASSESSED THE 26 CHANGES IN OWNERSHIP

The Assessor complied with sections 62.1 and 110 when he applied the *purchase price presumption* and enrolled the actual purchase prices for the 26 mobilehome interests that changed ownership in 2001. [Admin Record, Vol. 1, Tab 16, APP00174-00193 Rancho Goleta; Vol. 1, Tab 24, APP00215-00222 Silver Sands.] The incompetent appraisals submitted by the Real Parties and adopted by the Decisions do not rebut this presumption. [Admin. Record, Vol. 1, Tab 16, APP00174-00193 Rancho Goleta; Vol. 1, Tab 24, APP00215-00222 Silver Sands.]

The Board wrongfully rejected the Assessor's traditional valuation approach in its Phase 1 Decision and directed the Assessor to recalculate the Fair Market Value for each of the 26 properties by establishing the entire value of all real property located in the Rancho Goleta and Siler Sands parks. [Admin. Record, Vol. 18, Tab 254, AAB003677, lns. 4-11.] The County Assessor was thereby forced to comply with the Board's misguided directive in Phase 2 of the administrative hearing.

The values presented by the Assessor in Phase 2 of the administrative hearing could not ignore the fact that certain locations in each park had superior attributes. For example, in Rancho Goleta the Assessor identified the 41 lakefront spaces as "superior," the 33 spaces that abut an industrial park and a freeway as "average," and the remaining 126 spaces as "above average." The values for these locations ranged from $173,000 for average to $184,000 for above average, and $264,500 for superior and the value for all locations totaled $39,800,500. Likewise, in Silver Sands, the Assessor's expert identified 20 spaces as "good"

and the remaining 61 as "average." The values ranged from $245,000 to $175,000, for a total of $15,575,000. [Admin Record, Vol. 12, Tab 177, ASSR002388-2389, Tab 178, ASSR002396-2404, Tab 179, ASSR002433 & Tab 180, ASSR002478.]

The Board abused its discretion when it rejected the values presented by the Assessor in Phase 2 because the Assessor: (1) did not employ an income approach, and (2) refused to assign the same value to every space and instead considered the specific attributes and purchase prices for each space that changed ownership. [Admin. Record, Tab 256, AAB003705-3711.]

VIII

THE RENTAL FICTION CREATED BY THE REAL PARTIES AND ACCEPTED BY THE BOARD JEOPARDIZE OTHER IMPORTANT PROPERTY TAX BENEFITS

A. Homeowner's Exemption

In a misguided effort to avoid reassessment based on full market value, the Real Parties have consistently maintained that the Rancho Goleta and Silver Sands residents do not hold ownership interests in the real property of their respective parks. [Admin. Record, Vol. 1, Tab 7, APP000084.] This ***rental*** fiction jeopardizes the benefits provided by the Homeowner's Exemption. If the residents are merely renters, they cannot qualify for Homeowner Exemptions on the real property interests they purchased. (R & T Code § 218.)

B. Proposition 60 Transfer of Base Value

R & T Code Section 69.5, also known as "Prop. 60", allows persons 55 years of age or older who reside in a property eligible for the homeowner's exemption to transfer their existing property tax base from an original property to a replacement property of equal or lesser value. To qualify for the base transfer, the claimant must be "an owner and a resident of the original property" and "and owner of a replacement dwelling [that he occupies]...." (R & T Code §§ 69.5(b)(1) and (4).)

Section 69(c)(2) specifically endorses application of the Prop. 60 to taxpayers who move to resident- owned mobilehome parks: "[f]or purposes of this paragraph, 'land owned by the claimant' includes a pro rata interest in a resident owned mobilehome park...." For the residents to qualify for the transfers of base value, they must qualify as owners of the land. If they in fact rent rather than own, they will never be eligible to transfer the base value of the land comprising their "space." They may only transfer the value of their mobilehome coach.

C. R & T Code § 51 Decline in Value

The flawed Decisions also interfere with a mobilehome owner's ability to secure a reduction in property taxes when his or property suffers a decline in value. When considering a property owner's application for a reduction in assessed value under R & T Code Section 51, an assessor must compare the market value to the factored base year value for the "entire appraisal unit as it is bought and sold in the market." If the valuation approach dictated by the Decisions is upheld, a decline in value suffered by an individual resident-owner may not be considered by the Assessor absent an appraisal and analysis of the total value of the entire mobilehome park. (R & T Code § 51.)

IX

CONCLUSION

Articles XIII and XIIIA of the California Constitution decree that all property is taxable and at the same rate. By misinterpreting a portion of R & T Code section 62.1 and abandoning the most fundamental principles of property valuation, the Decisions create a new loophole that allows the Real Parties to elude full taxation. Section 62.1 does not justify this outcome.

The Decisions fail 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 62.1 cannot repeal by implication, general taxation statutes such as R & T 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 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 R & T Code sections 110, 51 ordered by the Decisions 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 Assessor has presented a reasonable method for the taxation of changes in mobilehome ownership that complies with section 62.1 and the general tax statutes and constitutional provisions that govern the valuation of real property. The valuation method used by the Assessor is supported by the SBE and the California Assessors' Association for good reason. It follows the well-established rules of statutory construction by harmonizing section 62.1 with all relevant sections of the R & T Code and Articles IIIX and IIIXA of the California Constitution.

The Assessor's approach equalizes the assessment of real property in all resident-owned mobilehome parks regardless of whether they are held by stock cooperatives, condominium associations or non-profit corporations by considering the attributes of each mobilehome space and the actual sales price paid for the property. This is exactly what the Legislature intended when section 62.1 was amended in 1988.

Date: January 11, 2013

Respectfully submitted,

DENNIS A. MARSHALL,
COUNTY COUNSEL

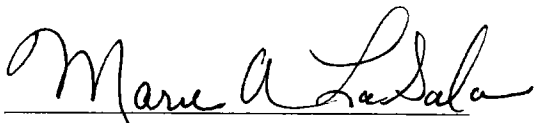
By: _____
Marie A. La Sala, Senior Deputy
Attorneys for Appellant/Assessor
for the County of Santa Barbara

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 11,928 including footnotes.

Dated: Jan. 11, 2013



Marie A. LaSala

ATTACHMENT 1

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 2

EXH 6F

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
PROPERTY TAXES DEPARTMENT
450 N STREET, MIC: 63, SACRAMENTO, CALIFORNIA
(PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0063)
TELEPHONE (916) 445-1516
FAX (916) 323-8765

December 31, 1999

TO COUNTY ASSESSORS:

INDIVIDUAL TRANSFERS IN RESIDENT-OWNED MOBILEHOME PARKS
QUESTIONS AND ANSWERS

No. 99/87

To provide current guidance from staff about the assessment implications of transfers of individual interests in resident-owned mobilehome parks, this letter will present questions and answers relating to:

(1) The exclusion from change in ownership for mobilehome parks transferred to tenant-owned entities.

(2) Upon subsequent transfers by individual resident-owners, the valuation of both the mobilehomes themselves and the accompanying pro rata interests in the mobilehome parks.

(3) The calculation of supplemental assessments upon such transfers by individual resident-owners.

(4) The application of certain provisions for base-year value transfers.

QUESTIONS AND ANSWERS

TRANSFERS OF MOBILEHOME PARKS TO TENANT-OWNED ENTITIES

1. Question: Under what conditions is a transfer of a mobilehome park to the tenants of the park excluded from change in ownership?

Answer: Sections 62.1 and 62.2[1] create three sets of change in ownership exclusions with respect to transfers of mobilehome parks, as follows:

Transfers to Tenant-Owned Entities

Subdivision (a) of section 62.1 excludes from change in ownership a transfer of a mobilehome park to an entity formed by the tenants of the park, and requires that 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 aggregate ownership of at least 51 percent of the voting stock of, or other ownership or membership interests in, the entity which acquires the park.[2]

[1] All statutory references are to California Revenue and Taxation Code, unless otherwise noted.

[2] For transfers on or after January 1, 1998, the exclusion is available notwithstanding that the entity failed to initially attain the required tenant participation level. In such cases, the entity has a "grace period" of up to one year after the date of the transfer to attain the required participation level. Further, if an individual tenant notifies the county assessor of the intention to comply with the required tenant participation level conditions, then the park may not be reappraised during the grace period.

Additionally, transfers from that entity to the individual lot owners (e.g., to complete a condominium plan) are excluded.

Transfers of Individual Rental Spaces to Tenants
Subdivision (b) of section 62.1 provides a separate exclusion for the transfer 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. For this exclusion, our view is that all of the transfers of rental spaces need not occur on the same day; rather, the 51 percent participation may be accumulated, but must occur within the one year period that the residents have to form the resident organization.

Transfers to Non-Tenant-Owned Entities
The third exclusion, provided under section 62.2, applies to any transfer of a mobilehome park to an entity which is *not* formed by the tenants. The exclusion is available for a temporary period following the transfer, to facilitate the transfer of the park to resident ownership pursuant to one of the exclusions under 62.1 described above. Within that temporary period, either subdivision (a) of section 62.1 (transfer to a tenant-formed entity), or subdivision (b) of section 62.1 (transfers of at least 51 percent to the individual tenants), must be complied with, or the exclusion under section 62.2 is lost, and the property is subject to reappraisal and any resulting escape or supplemental assessments. In general, for mobilehome parks initially transferred after 1993, this temporary period within which section 62.1 must be complied with is 36 months.[3] For mobilehome parks initially transferred between January 1, 1989 and January 1, 1993, that period was 18 months.

SUBSEQUENT TRANSFERS OF INDIVIDUAL INTERESTS
Once a transfer of a mobilehome park has been excluded from change in ownership under either section 62.1(a) or 62.1(b), questions arise about the proper treatment of subsequent transfers of individual ownership interests in the park.

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.

2.Question: Under the scenario described above, what portion of the reported purchase price is assessable? How should it be allocated on the tax roll?

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[3] Chapter 603, Statutes of 1999 (SB 42), expanded the 36-month time period for the subsequent transfer of a mobilehome park that was first transferred on or after January 1, 1993. Specifically, this legislation provides that the execution of a purchase contract and the opening of an escrow for the transfer of a rental space in the park is deemed to be within the 36-month time period if the escrow is opened before the end of that 36-month period and closes no more than 6 months after the end of that 36-month period.

Answer: In amending section 62.1 in 1987 to provide for treatment of entity-owned mobilehome parks, the Legislature intended that transfers of ownership interests in such 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 our view that the entire amount should be reflected in the combined assessments of the mobilehome and the underlying interest in the park.

3.Question: Assuming that the reported purchase price represents the collective fair market value of the mobilehome and the underlying interest in the park, how should that price be allocated?

Answer: 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, using the N.A.D.A. Manufactured Housing Appraisal Guide or another recognized value guide, and then (2) assign the remainder of the purchase price to the interest in the park.

4.Question: What is the proper assessed value for a mobilehome in a mobilehome park?

Answer: The law generally provides that while mobilehomes are to be classified as personal property, they receive a treatment similar to that afforded most real property under Proposition 13. Thus, under sections 5800 and following, mobilehomes subject to local ad valorem property taxation (i.e., "manufactured homes") receive a base year value upon purchase or change in ownership.[4] The base year value of a mobilehome is its "full cash value," as defined in section 110, as of the date of the change in ownership.[5] In general, these provisions apply to all mobilehomes sold new after June 30, 1980, including those located in tenant-owned parks, that are not installed on approved foundation systems.

5.Question: Section 62.1(c)(1) indicates that the transfer of a corporate share in the entity that acquired the park is a change in ownership of "a pro rata portion of the real property of the park." What does this mean?

Answer: Under subdivision (c)(2) of section 62.1, "pro rata portion of the real property" is defined to mean, essentially, the fractional interest in the park that is conveyed by the transferred share of stock. Thus, if there are 100 shares of outstanding stock, issued or unissued, a transfer of one share gives rise to a reassessment of a 1/100th interest in the real property of the park.

6.Question: Is the "appraisal unit" the individual mobilehome space or the park as a whole?

---

[4] Section 5802
[5] Section 5803

Answer: Subdivision (d) of section 51 provides that, when determining the taxable value of real property for purposes of Proposition 13, "real property" means "that appraisal unit that persons in the marketplace commonly buy and sell as a unit, or that is normally valued separately." For transfers of shares or other ownership interests that represent ownership of individual mobilehome spaces in a park, 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. Thus, for purposes of determining a new base year value upon such transfers, the appraisal unit is the individual mobilehome space and the mobilehome.

7.Question: Can any portion of the purchase price be attributed to non-assessable "site value," as provided under section 5803(b)?[6]

Answer: No. The ownership of a fractional interest in the park represents exclusive ownership of the individual underlying space. Thus, while a resident may formally lease his or her space from the owning entity, in substance the ownership of the space is with the individual resident. Since the owner of the mobilehome and the owner of the underlying space are one and the same for all practical purposes, the requirement under section 5803(b) does not apply.

8.Question: Is a transfer of an individual interest in a mobilehome park owned by a limited equity housing cooperative, organized pursuant to Health and Safety Code section 33007.5, treated differently from interests in parks under other forms of ownership?

Answer: No. While there are provisions in Health and Safety Code section 33007.5 which generally require that any difference between the fair market value of a sold interest and its defined "transfer value" be used only for certain purposes, including public benefit or charitable purposes, those provisions merely govern the organization of the cooperative, and do not constitute an enforceable restriction on the use of the land, as contemplated in Revenue and Taxation Code section 402.1.

SUPPLEMENTAL ASSESSMENTS

9.Question: How should supplemental assessments be calculated upon the transfer of an individual interest in a resident-owned park?

Answer: 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 amounts for each. The following example illustrates this process:

Existing prorated value of individual interest in the mobilehome park:	$ 10,000

[6] Section 5803(b) provides, in essence, that the assessed value of a manufactured home located on rented or leased land shall not be affected by the usual influences of location.

Existing taxable value of manufactured home:	40,000
Total existing assessment:	50,000
Sale price of manufactured home and underlying park interest:	70,000
Value of manufactured home (from value guide), as of the date of transfer:	30,000
Residual value of individual interest in the park, as of the date of transfer:	40,000

Supplemental assessment amounts would be calculated as follows:

Manufactured home		
New base year value	$30,000	
Existing taxable value	40,000	
Supplemental assessment		<10,000>
Individual interest in mobilehome park		
New base year value	40,000	
Existing taxable value	10,000	
Supplemental assessment		30,000
Net supplemental assessment		$20,000

BASE YEAR VALUE TRANSFERS AND DISASTER RELIEF

10.Question: Is a manufactured home in a resident-owned park eligible for certain base year value transfers?

Answer: In general, yes. Revenue and Taxation Code section 218 and Property Tax Rule 135 treat a manufactured home as a "dwelling" (i.e., "a building, structure, or other shelter constituting a place of abode."). Thus, manufactured homes in resident-owned parks, like other primary residences, are eligible for the following benefits:

- Base year value transfer after displacement by eminent domain proceedings, acquisition by a public entity, or inverse condemnation[7];
- Base year value transfer for persons over 55 or disabled[8];
- Base year value transfer following a disaster[9].

Note that, in any of these cases, the "dwelling" that is eligible for relief and/or value comparison is the manufactured home and the accompanying fractional interest in the mobilehome park (i.e., the underlying space).

[7] Section 68
[8] Section 69.5
[9] Section 69.3

11. Question: Is a mobilehome in a resident-owned park eligible for disaster relief?

Answer: Yes. Disaster relief is available under Sections 69 and 170 to anyone owning a mobilehome assessed as real property.

Sincerely,

/s/ Harold M. Hale for
Richard C. Johnson
Deputy Director
Property Taxes Department

RCJ:MN:cg

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 January 11, 2013, I served a true copy of the within **OPENING BRIEF** on the Interested Parties in said action by:

☒ by personally delivering it to the person indicated below:

Jerry Czuleger, Deputy County Counsel
105 East Anapamu Street, Room 201
Santa Barbara, CA 90101

☒ 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.

See Mail Service List

I declare, under penalty of perjury, that the above is true and correct.

Executed on January 11, 2013, Santa Barbara, California.

_____
Carol Fink

ASSESSOR FOR COUNTY OF SANTA BARBARA
v.
ASSESSMENT APPEALS BOARD NO. 1
Court of Appeal Case Number: B2296564

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