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B229656

IN THE COURT OF APPEAL FOR THE

STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

ASSESSOR FOR COUNTY OF SANTA BARBARA

Plaintiff & Appellant

vs.

ASSESSMENT APPEALS BOARD NO. 1

Defendant & Respondent

Appeal from the Superior Court of California, County of Santa Barbara

The Hon. James W. Brown, Judge (case number 1244457)

REPLY TO JOINT ANSWER TO PETITION FOR REVIEW

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I

OVERVIEW

The Real Parties and Respondents (hereinafter "Respondents") begin their Joint Answer (hereinafter "Answer") by mischaracterizing all unsubdivided mobilehome parks as *rental* properties. This blatant misrepresentation is not supported by the Record and is, in fact, controverted in the very first paragraph of the Opinion which states:

> "Resident-owned mobilehome parks have been established as condominiums, cooperatives, subdivisions, and ownership by nonprofit corporations." (Opinion, p. 1.)

Ignoring the actual basis of the Opinion, the facts of this case and overwhelming statutory authority, Respondents insist that unsubdivided mobilehome parks purchased by a tenant organization are *rental* parks which must be valued differently for purposes of taxation. Respondents' continued reliance on this *rental* fiction is particularly inappropriate because the statute at issue in this case, Revenue and Taxation Code Section 62.1, only applies to mobilehome parks owned by its residents.[1]

Respondents' *rental* subterfuge is nothing more than an effort to confuse and distort the Legislative intent behind Section 62.1. As amended in 1988, Section 62.1 accomplished two things. First, subsection (a) granted a one-time exclusion from reassessment when the tenants formed an association to purchase the park. The second purpose of Section 62.1 is addressed in subsection (c) which ensures that after the tenants purchase the

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

park, subsequent *changes in ownership* of the individual spaces are reassessed like all other real property. It is these *changes in ownership* that triggered the reassessment of the 26 individual property interests that sold in 2001.

Once Revenue and Taxation Code Section 62.1 was amended in 1988, subsequent 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* of real property that triggered reassessment of a "pro-rata portion of the park." Thus, after 1988, the Real Parties could no longer escape reassessment when they resold their individual ownership interests to third parties.

It is important to note that the purported subdivided/unsubdivided distinction and the *rental* fiction stressed by the Respondents are not mentioned anywhere in Section 62.1 or its legislative history. Equally important is the fact that these illusory arguments are not recognized or adopted by the Opinion issued by the Court of Appeal. These arguments are completely irrelevant to the interpretation of Section 62.1.

As addressed in our Petition, the Senate Bill that amended Revenue and Taxation Code Section 62.1 in 1988 (SB 1885) was intended to close loopholes and equalize the tax treatment afforded to all owners of mobilehome properties, regardless of whether the tenants used a nonprofit corporation, a stock cooperative or other entity to purchase the park. [Administrative Record ("Record"), SBE Legislative Bill Analysis, 3/24/88, Vol. 6, APP001274-1275 & Enrolled Bill Report, 8/1/88, Vol. 6, APP 001290-1191.] If allowed to stand, the majority Opinion issued in this case will frustrate the stated intent of the Legislature by creating a new loophole which allows resident-owned mobilehomes held by nonprofit corporations to permanently avoid full taxation.

II

THE PETITION SETS FORTH AN APPROPRIATE ISSUE FOR THIS COURT'S REVIEW

Respondents contend the Petition for Review does not set forth "an issue presented for review because: (1) it does not recite the detailed facts as stated in the underlying decision issued by Respondent Assessment Appeals Board and (2) the stated issue is too argumentative. (Answer, pp. 8 & 11.) Respondents misunderstand the applicable rules of procedure governing the contents of a petition which provide that "[t]he body of the petition must begin with a concise, nonargumentative statement of the issues presented for review, framing them in terms of the facts of the case but without unnecessary detail." (Cal Rules of Court, Rule 8.504(b)(1).) The issue presented in the Petition follows this directive.[2] It is concise, nonargumentative and framed in terms of the salient facts of the case.

The need for review of the issue presented is reinforced by the amicus letters recently submitted by the California State Board of Equalization ("SBE") and the California Assessors' Association ("CAA") which represents the assessors from all 58 counties.[3] The SBE's amicus

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[2] The issue presented for review is "[w]hether the Second District Court of Appeal erred in holding that the 1988 amendment of Revenue and Taxation Code section 62.1 requires assessors to value one class of resident-owned mobilehomes at a small fraction of their fair market value in violation of the uniformity and acquisition cost requirements of the California Constitution, the general Revenue and Taxation statutes that govern the valuation of all real property and in contravention of settled precedent from this Court. (Cal. Const. art. XIII, § 1, art. XIIIA, § 2; Rev. & Tax. Code §§ 110, 110.1 and 51.)"

[3] The CAA is a statewide non-profit professional association for County Assessors which was formed in 1902. The purpose of the Association is to promote cooperation between assessing officers in California; improvement

letter urges review because "The Majority Decision Below Raises Important Questions that Affect Both Substantive Property Tax Law and the SBE's Duties in Administering that Law." (SBE amicus letter, p. 3.)

The amicus letter submitted by the CAA incorporates the Petition by reference and further urges review because the majority opinion "demonstrates a fundamental misunderstanding of property tax law and longstanding appraisal practice" and "abandons the acquisition value system of assessment that has been the bedrock of property taxation since Proposition 13." (CAA amicus letter, p. 2.)

III

NEW EVIDENCE SUBMITTED IN RESPONDENTS' ANSWER MAY NOT BE CONSIDERED ABSENT A FORMAL MOTION AND A SHOWING OF GOOD CAUSE

Proceedings for the production of additional evidence on review must comply with Cal. Rules of Court, Rule 8.54. This means a formal appellate motion must be filed, as distinguished from simply including such new evidence in an appellate brief as Respondents have done here. However, even if Respondents followed the mandatory procedure directed by Rule 8.54, it is well settled that a court's power to accept new evidence on appeal should not be exercised when the appellant has failed to show good cause for the unavailability of the evidence in the trial court. (*DeYoung v. Del Mar Thoroughbred Club* (1984) 159 Cal.App.3d 858, 863, fn. 3.)

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of California assessment procedures and laws for the public good; and liaison with the State Board of Equalization and the International Association of Assessing Officers. (CAA public website.)

Despite the well-recognized rule prohibiting the introduction of new evidence on appeal, Respondents' Answer attempts to rely on new evidence related to subdivided and unsubdivided mobilehome parks (Answer pp. 2-4), the taxation personal property (Answer, pp. 5-6), recent conversations regarding the number and character of "rental mobilehome parks" in California between counsel for Real Parties and Catherine Borg (Answer, p. 17, footnote 12) and unsupported factual assertions claiming "some other county assessors still do not follow" [SBE guidelines (Answer, p. 18, footnote 13).[4] Since Respondents have not filed a motion to augment and have not shown good cause for the failure to present such evidence in the proceedings below, this Court should not consider the new evidence. (*DeYoung v. Del Mar Thoroughbred Club*, supra, 159 Cal.App.3d at p. 863, fn. 3; see also *Tsakos Shipping & Trading, S.A. v. Juniper Garden Town Homes, Ltd.* (1993) 12 Cal. App. 4th 74, 88.)

However, in the event this court finds evidence related to these new issues is needed to resolve the issues presented in the Petition, the Assessor has no objection to allowing all parties an opportunity to introduce additional factual evidence on the new issues raised by the Respondents.

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[4] Respondents' statements regarding the practice of other assessors is particularly inappropriate in light of the amicus letter submitted by the California Assessors' Association which represents all 58 county assessors.

IV

DEFERENCE REGARDING THE PROPER INTERPRETATION OF SECTION 62.1 SHOULD BE GIVEN TO THE SBE RATHER THAN ONE MISGUIDED ASSESSMENT APPEALS BOARD

Respondents argue that no deference should be afforded to the SBE's legal interpretation of Section 62.1 even though it drafted, co-sponsored and analyzed the statute at issue and contemporaneously drafted guidelines for all 58 county assessors regarding how to apply the statute within a month after the amended statute took effect in 1989. (See, Letter to Assessors ("LTA") 89/13 issued Feb. 1, 1989, Record, Vol.8, Tab125.1 AAB 001743-001744.] Incredulously, Respondents continue to argue that the contemporaneous interpretation of Section 62.1 by the SBE in 1989 should be disregarded and the decision by a single assessment appeals board issued 17 years later in 2006 is the only decision entitled to deference. [Respondent Assessment Appeals Board issued its final decisions on October 17, 2006; Record Vol. 16, Tab 254, AAB003621-3678 & AAB003680-3715.]

It is not surprising that the dissenting Opinion authored by Justice Yegan finds "no logical rationale" to support the unprecedented decision issued by one misguided assessment appeals board and instead gives deference to the SBE: "I would give deference to the SBE because it has a certain expertise and perhaps a better understanding than we do of how the market for mobilehomes and mobile spaces actually functions." (Dissenting Opinion, p. 2.)

Respondents try to justify their position regarding deference by claiming LTA 89/13 contains an entirely different methodology than does LTA 99/87. Respondents cling to the purported differences between LTA

89/13 and LTA 99/87 because they cannot dispute the fact that LTA 89/13 was formulated contemporaneously with the enactment of the statute at issue. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal. 4th 1, 12-13 [factors suggesting an agency's interpretation is likely to be correct--includes evidence that the agency has consistently maintained the interpretation in question and indications that the agency's interpretation was contemporaneous with legislative enactment of the statute being interpreted].)

When the actual language of LTA 89/13 is examined any impartial reader will find it entirely consistent with the direction provided ten years later in LTA 99/87. Both LTAs direct county assessors to reassess *changes in* ownership of the pro rata portion of a mobilehome park "in a manner similar to existing provisions for the separate assessment of certain timeshare interests." For example, LTA 89/13 provides as follows:

> **LTA 89/13**
>
> MOBILEHOME PARK EXCLUSION CHAPTER 1076, STATUTES OF 1988 (SENATE BILL 1885)
>
> "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."

[Record, Vol.8, Tab125.1 AAB 001743, ¶ 1, LTA 89/13, emphasis added.]

Since LTA 89/13 specifically references the existing provisions for the *separate assessment of timeshare interests* those provisions must also be reviewed to fully understand LTA 89/13. The existing provisions for the assessment of timeshare interests are well documented in LTA 82/92, issued by the SBE to all county assessors on July 27, 1982. LTA 82/92 provides in pertinent part as follows:

LTA 82/92

THE APPRAISAL AND ASSESSMENT OF TIMESHARES

"**As individual timeshares are sold** to the ultimate customers, **the unit of appraisal** changes and **becomes the individual timeshare.** Generally, the change in ownership of a timeshare estate requires the reappraisal of the interest transferred."

"For both timeshare estates and timeshare uses, the preferred approach to value is the market approach. Of course, **because the transfer of the timeshare**

being reappraised may have been an open market sale, the actual selling price may be the best indicator of value."

(LTA 82/92, p. 3, emphasis added, attached to this Reply as Attachment 1.)

The assessment methodology provided in LTA 82/92 eviscerates the Respondents' contention that LTA 99/87 conflicts with LTA 89/13 and the legislative history of Section 62.1. Respondents' contention is defeated because the assessment methodology for timeshares provided in LTA 82/92 is entirely consistent with the assessment methodology provided in LTAs 89/13 and 99/87. All three direct county assessors to separately assess the individual interests sold. All three direct county assessors to apply the *appraisal unit* actually used in open market transactions. And all three direct assessors to rely on the actual purchase prices paid for the transferred real property interests (the purchase price presumption).

Respondents take small portions of LTA 89/13[5] out of context and ignore most of its actual language in an attempt to convince your Court that the assessment methodology provided in LTA 89/13 was significantly different from the direction provided 10 years later in LTA 99/87. Respondents could not be more wrong.[6]

The actual language of LTA 89/13, the existing provisions for timeshare interests (LTA 82/92), and LTA 99/87 are remarkably consistent. They all harmonize with the stated legislative intent and history of SB 1885

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[5] A complete copy of LTA 89/13 entitled *Mobilehome Park Exclusions Chapter 1076, Statutes of 1988 (Senate Bill 1885)* is attached to the Assessors Petition for Review.

[6] It was blatant distortions such as this that prompted the SBE and the CAA to file amicus briefs and present oral argument to the Court of Appeal and file amicus letters supporting the Petition.

by directing county assessors to separately assess the individual interests sold; to apply the appraisal unit actually used in the marketplace and to rely on the actual purchase prices paid for the transferred real property interests. ([Record, Vol.8, Tab125.1, AAB 001743, ¶ 1, LTA 89/13; Vol. 1, Tab 12, APP 000134-000139, LTA 99/87 and Attachment 1, LTA 82/92.]

Respondents try to divert attention away from the consistent assessment methodology provided in LTA 82/92 (timeshares) and LTAs 89/13 and 99/87 (mobilehomes) by offering a stilted hypothetical example of how fractional interests in real property are assessed. (Answer, p. 28.) Respondents' hypothetical is not persuasive because it reflects a valuation method that is not addressed or endorsed by Section 62.1, its legislative history or any of the guidelines issued by the SBE related to the assessment of resident-owned mobilehomes from 1988 to the present.

It cannot be reasonably disputed that LTA 89/13 was issued contemporaneously with the 1988 amendment of Section 62.1. Nor can it be disputed that LTA 89/13 and 99/87 are consistent with each other as well as accepted appraisal practices. For these reasons, the SBE's construction of Section 62.1, as reflected in LTA 89/13 and LTA 99/87, 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 Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 4, 5, and 7.)

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V

RESPONDENTS OFFER NO LEGAL JUSTIFICATION FOR THE MAJORITY OPINION'S WHOLESALE ABANDONMENT OF THE ACQUISITION VALUE SYSTEM MANDATED BY THE CALIFORNIA CONSTITUTION & THE R & T CODE

Respondents rely on no decisional or statutory authority when contesting the constitutional arguments presented by the Assessor in the Petition for Review. (Answer, pp. 32-37.) Respondents instead attempt to sidestep the Opinion's failure to follow the California Constitution's full cash value mandate and Revenue and Taxation Code Sections 110, 51 by claiming no real property was sold! (Answer p. 32.) Respondents go on to argue that the only thing sold in the 26 transactions at issue was personal property consisting of mobilehome coaches. (Answer, p. 30-32.)

These unsupported contentions ignore the basic facts giving rise to this case. It is undisputed that this controversy arose when the Real Parties filed Applications for Changed Assessment appealing the value of the 26 real property interests that sold in 2001. [Record Vol. 1, Tab 3, AAB 000014, Tab 4, AAB000033, AAB000045 & AAB000057.] Those Applications challenged the way the individual ownership interests were valued when they were sold to third parties.

The Applications for Changed Assessment did not claim there was no change of ownership of real property. That issue was never raised or litigated in the proceedings below. To the contrary, the Applications challenged the "method of reassessment" and the values enrolled by the Assessor when the 26 individual real property interests were reassessed pursuant to subsection (c) of Revenue and Taxation Code Section 62.1.

As confirmed in the Opinion the Respondents hope to hold onto, the 1988 amendment of Section 62.1 "clarified that subsequent transfers of stock in a previously-formed nonprofit corporation by individual members were taxable changes of ownership 'of a pro rata portion of the real property of the park.'" (Opinion, p. 2.) Thus, the dispute in this case has never been whether real property changed ownership. The dispute in this case concerns the methodology which must be used by assessors to determine the value of the real property "which is sold when a resident sells his or her membership stock in the nonprofit corporation." (Opinion, p. 2.)

Respondents rely on the same nonsensical argument on page 35 of their Answer when they claim the Assessor misstates the California Constitution's requirements by failing to distinguish between the requirements applicable to *real* property and those relating to *personal* property. (Answer, p. 35.) Surely Respondents understand that the issues presented in this case involve the valuation of real property for that is the only type of property that may be reassessed under Revenue and Taxation Code Section 62.1.

CONCLUSION

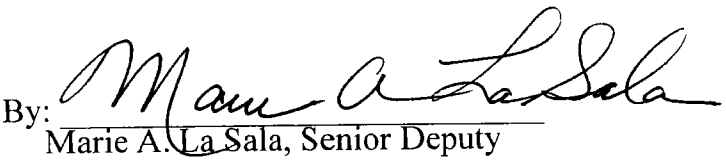
The legislative intent of the Senate Bill that amended Section 62.1 in 1988 was very clear - it was intended to close the loophole that allowed resident-owned mobilehome parks held by non-profit corporations to escape reassessment and equalize the way resident-owned mobilehomes were assessed, regardless of how title was held. The interpretation of Section 62.1 directed by the SBE and applied by the Assessor complies with this legislative intent by assessing *changes of ownership* in all resident-owned mobilehome parks the same way, regardless of whether they are held by stock California has clear constitutional and statutory

requirements for ensuring the uniform valuation and taxation of real property.

Unless reviewed by this Court, the majority decision will frustrate the Legislature's stated intent and result in thousands of real property assessments that violate the acquisition value system and the fair market value standard that have served as the bedrock of property taxation since Proposition 13 was enacted. For these reasons, the Assessor respectfully requests that this Court grant the Petition.

Date: November 19, 2012

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 3,377, including footnotes.

Dated: November 19, 2012

Marie A. LaSala

ATTACHMENT 1

STATE OF CALIFORNIA
STATE BOARD OF EQUALIZATION
[illegible] N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 1799, SACRAMENTO, CALIFORNIA 95808)
(916-445-4982)

July 27, 1982

No. 82/92

TO COUNTY ASSESSORS:

THE APPRAISAL AND ASSESSMENT OF TIMESHARES

I. What is a timeshare?

We have received a number of questions concerning the appraisal and assessment of timeshares. Generally, a timeshare entitles the purchaser to use a specified or unspecified unit of real property for a specified period of time. There are two categories of timeshares: timeshare estates and timeshare uses. Timeshares are defined in Section 11003.5 of the Business and Professions Code as follows:

> "(a) A 'time-share project' is one in which a purchaser receives the right in perpetuity, for life, or for a term of years, to the recurrent, exclusive use or occupancy of a lot, parcel, unit, or segment of real property, annually or on some other periodic basis, for a period of time that has been or will be allotted from the use or occupany periods into which the project has been divided.
>
> "(b) A 'time-share estate' is a right of occupancy in a time-share project which is coupled with an estate in the real property.
>
> "(c) A 'time-share use' is a license or contractual or membership right of occupancy in a time-share project which is not coupled with an estate in the real property."

In this letter we will refer to timeshares in which the fee interest is transferred as "timeshare estates" and to all others as "timeshare uses."

As stated, a timeshare estate consists of the right to use a timeshare unit and an undivided fractional ownership of the underlying fee interest in the real property. Generally, the developer of a timeshare estate project transfers his fee simple interest in the real estate to the purchasers of individual timeshares, thereby divesting himself of any further interest in the property. The timeshare purchaser then has an undivided fee interest in the timeshared property. The duration of the fee timeshare may be into perpetuity, as in a fee simple

co-ownership of a timeshare unit, or it may be for a limited term, as in a life estate or an estate for years in a timeshare unit. The timeshare estate purchaser receives all the rights inherent in undivided co-ownership of real estate, such as the right to sell, lease or bequeath his interest. Fee timeshares may be termed "undivided interest timeshares" or "interval ownership timeshares" (i.e., a tenancy for years plus a vested remainder as tenant in common with other owners of a timeshare unit).

The purchaser of a timeshare categorized as a timeshare use receives only those rights specifically granted to him by the developer of the timeshare project, which usually means the right to occupy a unit and the related timeshare premises. The duration of this right may range from 15 years or fewer to as long as 99 years. Timeshare use projects can be called "nonfee" timeshare projects because the timeshare developer or his successor in interest remains the fee owner of the real estate.

Timeshare uses are referred to variously as "leasehold interest timeshares," "vacation licenses," "club memberships," and "rights to use." Under certain conditions, any of these formats may be equivalent to a lease. In the recent California appellate court case of Cal-Am Corporation v. Department of Real Estate (104 Cal App.3d 453), decided in April 1980, the court held that a timeshare use interest can be in the nature of a lease. The court found that, regardless of whether it is termed a license, membership or right to use, if the contract gives exclusive possession of the premises against all the world, including the owner, then it is considered a lease. Further, the purchaser's right of exclusive occupancy is an estate or interest or possessory interest in the property itself. Based on the Cal-Am holding, it is our opinion that the creation of a timeshare use, whether called license, lease, membership, or right to use, should be considered an interest in real property, provided that the timeshare use confers upon the purchaser exclusive occupancy, even if only for a portion of each year and for an unspecified time period and unspecified unit.

II. The Appraisal of Timeshares

The appraisal of timeshares for property tax purposes is a topic best approached by considering the development of a timeshare project as it passes from its early stages as construction in progress through its completion and eventual marketing as individual timeshares. This portion of our letter will present our views on the correct methodology of appraising timeshares as related to this "stage of production" concept.

While a timeshare project is being constructed, there should be little difference in the values assigned to either timeshare uses or timeshare estates, because at this point the only elements being valued are the physical components of the timeshare project, i.e., the land and improvements. For this reason, conventional replacement cost estimates, adjusted for the estimated percentage of project completion, may

be appropriate indicators of value. Note that these cost factors are based upon single ownership of building types and would not apply to the valuation of individual timeshares that have been placed in the hands of the final consumer, that is, the purchaser of an individual timeshare interest.

The actual historical costs of development incurred by the timeshare project developer, added to the factored base year value of the land, can also provide an indicator of total timeshare project value. The actual costs incurred while the project is being constructed will not include the sizeable promotional and marketing costs ("soft" costs) that attend the final stages of development of the timeshare project. The historical costs up to this point will not include amounts attributable to placing the single timeshare in the hands of the ultimate consumer, that is, the timeshare purchaser.

The "stage of production" concept applies to timeshare construction in progress. The added utility of timesharing ownership has not yet been added to the dwelling units. The ownership of the total property by a single entity at this point in time requires that the property be appraised like comparable properties not subject to timeshare ownership. It would be incorrect to merely sum the prospective selling prices of the total number of timeshares into which the project has been divided. This would overstate the project value because it would be based upon an inaccurate estimate of the appraisal unit.

When the timeshare project reaches the stage where all physical construction has been completed but no timeshares have been sold, the proper unit of appraisal is still the entire project. At this point, the project should still be valued as a single property, regardless of whether it is a timeshare estate or a timeshare use project. Accordingly, the developer's total historical cost would be one indicator of value, as would a standard replacement cost estimate added to the factored base year value of the land. For both newly constructed projects and for existing developments converted to timeshare projects still under single ownership, the market data approach may be used, relating sales of comparable properties not subject to timeshare ownership.

As individual timeshares are sold to the ultimate consumers, the unit of appraisal changes and becomes the individual timeshare. Generally, the change in ownership of a timeshare estate requires the reappraisal of the interest transferred. Also, the transfer of a timeshare use having an original term of 35 years or more usually requires the reappraisal of the interest transferred.

For both timeshare estates and timeshare uses, the preferred approach to value is the market approach. Of course, because the transfer of the timeshare being reappraised may have been an open market sale, the actual selling price may be the best indicator of value. Nominal (i.e. "gross") selling prices of timeshares are subject to cash equivalency adjustments, just as are the selling prices of other real property;

that is, they should be scrutinized for favorable financing or non-assessable items that may be included in the purchase price.

The income approach to value is somewhat more difficult to apply to an individual timeshare than is the market approach. Timeshares are generally purchased not as investments, but rather as prepaid vacations. As a result, timeshare purchasers do not anticipate a flow of cash income over time, except in rare instances. The amenity they anticipate is a prepaid vacation, guaranteed and free from inconvenience.

In certain situations, an Overall Rate (OAR = Net Income divided by Sales Price) can be employed to arrive at an indicator of the value of an individual timeshare. Certain timeshare resorts offer rental pool arrangements whereby a purchaser can elect to have his timeshared unit rented out by the timeshare management organization, instead of occupying it himself. Wher the timeshare is in a hotel unit, for instance, room rents and vacancy rates can readily be ascertained. Annual timeshare maintenance fees are fixed amounts and can be treated as operating expenses. These expenses should be deducted from the estimated gross effective income and the resulting net income should be capitalized at an appropriate Overall Rate. As is always the case when employing the Overall Rate, the sold properties from which a rate is selected must be truly comparable to the subject timeshare property.

The Gross Rent Multiplier (GRM), although actually a market indicator, can be applied as an income factor in valuing timeshares. The operation of dividing the adjusted selling prices of comparable timeshares by the total potential rent generated by comparable vacation units can yield a useful multiplier. Because peak and swing season rental rates can vary dramatically, however, rental rates must be selected that are appropriate to the season in which the timeshare is held.

The conventional replacement cost approach is deficient as an indicator of the value of an individual timeshare because most square foot costs are predicated on single ownership of improvements. The added ownership utility of timesharing is not reflected in the cost factors.

In addition, timeshare projects usually involve a relatively large selling and promotional expense. Factors contributing to this disproportionately large marketing expense include the distances at which most timeshare resorts are located from the urban centers where the timeshares are marketed, as well as the high costs of entertaining potential timeshare purchasers with free or discounted weekends at timeshare resorts. This "soft" portion of the timeshare project cost is not included in conventional tables of cost factors. Such costs should be considered as elements to be included in the market value of a timeshare.

The purchase price of an individual timeshare, carefully adjusted for the influence of financing and the inclusion of nonassessable items in the timeshare package, can be a reliable indicator of the timeshare's

value. Most timeshares include personal property such as furniture, bedding and linen and completely outfitted kitchens. The full value of any such personalty, which is exempt from taxation provided that it qualifies as "household furnishings" within the meaning of Revenue and Taxation Code Section 224, should be allocated among the timeshares comprising each vacation unit. The allocated value of the personalty should then be deducted from the nominal selling price of the timeshare.

Other nonassessable items that are frequently included in the timeshare purchase price are memberships in timeshare exchange networks and club memberships. Currently there are two major exchange networks: Interval International and Resort Condominiums International. Timeshare project developers must pay a fee to enroll their projects in these networks. Additional fees are charged to each timeshare purchaser for the initial membership, and there are ongoing annual dues as well. Often the initial membership fee is included in the purchase price of the timeshare. Appraisal judgment is called for in estimating the value of this membership right and deducting it from the purchase price. Our information from Interval International in Florida is that their annual membership fee for individuals is $45 ($60 if the individual owns timeshare interests in more than one Interval International resort affiliate). An exchange fee of $49 is charged for each successful exchange. Currently, the initial fee charged to enroll an entire U.S. timeshare project in I.I.'s exchange program is $6,900. The resort must affiliate with Interval International in order to offer Interval International's program to individual members. Renewal of individual memberships is strictly optional after the first year.

Certain timeshare resorts will include membership in recreational enterprises which are under separate ownership as part of the timeshare package. The purchaser of a timeshare interest in such a resort becomes a member of a tennis club, for example, by virtue of his timeshare purchase. If such memberships, which allow the use of common recreational facilities, can readily be obtained by individuals without their also purchasing a timeshare interest, the value of the membership can be identified and should be deducted from the purchase price of the timeshare. If club memberships are available exclusively to timeshare purchasers--in other words, if every timeshare owner is also a club member, and only timeshare owners can be club members--then it may be difficult to assign any separate value to this intangible right of membership. The offer of club membership as an added bonus for purchasing a timeshare would seem to be a marketing technique in this case.

A final nonassessable item that may be included in the purchase price of a timeshare is the prepaid expense. If the first year's maintenance fee, for instance, is collected at the time the timeshare purchase is consummated, it should not be considered part of the purchase price. Some timeshare resorts will collect from all timeshare purchasers a one-time assessment which is paid to the timeshare project organization to defray organization costs. This should not be included in the value of the timeshare.

When reappraising individual timeshares because of a change in ownership, several statutory provisions must be recognized. The primary one is that Revenue and Taxation Code Section 61(c) includes in the definition of change in ownership the creation of a leasehold interest in taxable real property for a term of 35 years or more, including renewal options. This section further provides that only the portion of the property subject to such a lease shall be considered to have undergone a change in ownership. This means that the sale or transfer of a timeshare use which conveys use for 35 years or longer, whether it is termed a license, membership, lease or right to use, is a statutory change in ownership requiring reappraisal of that timeshare interest.

Still another change in ownership statute affecting the appraisal of timeshares is Revenue and Taxation Code Section 65.1, which provides that the transfer of an interest in a portion of real property requires that only the interest transferred be reappraised. There shall be no reappraisal if the interest transferred represents less than 5 percent of the market value of the entire property and has a value of less than $10,000; however, these transfers are to be accumulated during each assessment year. When the minimum value/percentage threshhold has been crossed, the cumulative interests transferred must be reappraised. Although it is unlikely that any single timeshare would represent 5 percent or more of a timeshare project's value, it is not uncommon for individual timeshares to sell for more than $10,000.

Senate Bill 1260, Chapter 1081 of the Statutes of 1980, added Section 65.1 to the Revenue and Taxation Code. This section modified the previously existing requirement that a transfer of an undivided interest of less than 5 percent shall not be reappraised. As a result of SB 1260, this requirement was revised to provide that a change in ownership of an interest in a portion of real property with a market value of less than 5 percent of the value of the total property shall not be reappraised if the market value of the interest transferred is less than $10,000. Because SB 1260 is silent on the issue of its effective date, we conclude that the $10,000 minimum value requirement is not retrospective and should not be applied to transfers of timeshare interests occurring before March 1, 1979.

A final statute affecting the appraisal of timeshares is Section 2812.2 of Chapter 6 of Title 10 of the California Administrative Code. This Section allows the Department of Real Estate to require the transfer of a timeshare use or timeshare estate project subject to a blanket encumbrance into an irrevocable trust for the duration of the timeshare. The purpose of this requirement is to protect purchasers, especially purchasers of timeshare uses, against the further encumbrance or sale of the property by the developer.

Although it protects timeshare purchasers, this Section could also trigger the reappraisal of the timeshare property. The transfer of real property into an irrevocable trust in which the trustor is not the sole present beneficiary constitutes a change in ownership; therefore,

it is possible that reappraisal of the entire project could be required upon creation of the trust. If this were so, and the timeshare property were to revert to the trustor upon termination of the trust, yet another reappraisal could be required. These trusts should be reviewed
individually on a case-by-case basis, to determine whether a change in ownership has taken place.

III. Assessment of Timeshares

Although current law allows the separate assessment of condominiums, planned developments, community apartment projects, housing cooperatives, certain leased land, and undivided interests not to exceed four per parcel, there are to date no provisions for the separate assessment of timeshare interests. This means that, lacking statutory directive, the assessor is not required to make more than a single assessment of any timeshare project. He should reappraise all timeshare estates and qualifying timeshare uses upon change in ownership, of course, and should maintain separate base years and base year values on the individual timeshares in a timeshare project; but there is no requirement that there be more than a single entry of the total timeshare project's value on the local tax roll. The tax collector will bill the owner of the timeshare project for the total amount of taxes due. In other words, tax billing for timeshare projects must be singular and cumulative until there is a change in the property tax statutes.

Senate Bill 1276, introduced by Senators Beverly and Presley, offers a solution to this assessment problem. As amended May 17, 1982, this measure would make timeshare estates or timeshare uses eligible for separate assessment, upon written request of the timeshare association, and would also authorize the assessor to charge a fee for the initial cost of separately assessing these interests. This bill would also provide for the separate tax billing of certain timeshare estates when a fee simple interest has been conveyed to the individual interest owner. Timeshare use projects and timeshare estate properties in which individual interest owners do not have a fee simple interest would receive a single tax bill with an itemization of taxes for each separately assessed interest. The tax on a timeshare estate when fee simple interests have been conveyed to the individual interest owners would constitute a lien solely on such interest and would be subject to all provisions of law applicable to taxes on the secured roll. The tax on the cumulated separate assessments in a timeshare use project and in a timeshare estate project not qualifying for separate tax bills would be a lien on the entire timeshare project and would also be subject to all secured roll procedures.

We anticipate that you will have further questions on the subject of the assessment of timeshares. Please address them to our Technical Services Section, whose telephone number is (916) 445-4982.

Sincerely,

Verne Walton

Verne Walton, Chief
Assessment Standards Division

VW:scm
AL-13-1352A

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 November 19, 2012, I served a true copy of the within **REPLY TO JOINT ANSWER TO PETITION FOR REVIEW** 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 November 19, 2012, 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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