S205876

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

ASSESSOR FOR COUNTY OF SANTA BARBARA
Petitioner and Appellant

vs.

ASSESSMENT APPEALS BOARD NO. 1
Respondent

RANCHO GOLETA LAKESIDE MOBILEERS, INC. and SILVER SANDS VILLAGE, INC.
Real Parties in Interest and Respondents

Review Granted from Decision of the Court of Appeal,
Second Appellate District, Division Six – Case No. B229656

Appeal from the Superior Court of Santa Barbara County
The Honorable James W. Brown – Case No. 01244457

RESPONDENTS' JOINT ANSWER BRIEF

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INTRODUCTION

Respondent ASSESSMENT APPEALS BOARD (the **"AAB"**), and Real Parties in Interest/Respondents RANCHO GOLETA LAKESIDE MOBILEERS, INC. (**"RG, Inc."**) and SILVER SANDS VILLAGE, INC. (**"SSV, Inc."**) (collectively, **"Real Parties"**) jointly answer the Opening Brief of Petitioner/Appellant ASSESSOR FOR COUNTY OF SANTA BARBARA (the **"Assessor"**). The AAB and the Real Parties collectively are the **"Respondents."**

The **"RG Park"** is the mobilehome park owned by RG, Inc. The **"SSV Park"** is the mobilehome park owned by SSV, Inc.

Under *Revenue & Taxation Code* § 62.1(a), [1] there was no reassessment of the RG Park when it was purchased by RG, Inc., or of the SSV Park when it was purchased by SSV, Inc. -- since RG, Inc. and SSV, Inc. are non-profit corporations whose members were a majority of the tenants of the RG Park and SSV Park, respectively.

Due to such exclusions from reassessment under Section 62.1(a), Section 62.1(c) is applicable to both the RG Park and SSV Park.

Under Section 62.1(c)(1), a "change of ownership" of a "pro rata portion of the real property of the park" is deemed to occur *for assessment purposes* when there is a transfer of a share or membership in a corporation such as RG, Inc. or SSV, Inc.

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[1] Unless otherwise indicated, all references to statutes in this Brief are to the California *Revenue & Taxation Code* as it existed in 2001 (i.e., when the "changes of ownership" occurred that are valued in the AAB's final decision). For the changed lettering of subsections of Section 62.1 in legislation adopted in 2002 and effective January 1, 2003, see footnote 6, on page 10, below.

Section 62.1(c)(2) states that the "pro rata portion of the real property" means "the total real property of the mobilehome park multiplied by a fraction consisting of the number of... shares or ...memberships transferred divided by the total number of ... shares or ...membership interests in the entity which acquired the park."

The Real Parties appealed the Assessor's reassessment of their mobilehome parks that were triggered by transfers of memberships in RG, Inc. and SSV, Inc., respectively. The Real Parties challenged the Assessor's valuation methodology, which had been suggested by the staff of the State Board of Equalization (**"SBE"**) in an *advisory* letter to assessors (**"LTA"**) -- LTA 99/87.

In the AAB proceedings, the facts were contested and the main legal issue was statutory construction of Section 62.1(c).

The Assessor contended, *without proof but citing LTA 99/87*, that the mobilehome spaces in the RG Park and SSV Park are owned by individuals and that the two mobilehome parks are not "rental mobilehome parks."

Real Parties proved that the real properties of the RG Park and SSV Park have not been subdivided and are owned in fee by RG, Inc. and SSV, Inc, respectively, and that RG, Inc. and SSV, Inc., as landlords, lease all the mobilehome spaces in the two mobilehome parks to members and nonmembers of the corporations, as tenants.

In the final **"AAB Decision,"** the AAB made factual findings, construed Section 62.1(c), and rejected the LTA 99/87 methodology.

The Assessor filed a petition for writ of mandate. Santa Barbara Superior Court Judge James Brown denied the petition for writ of mandate and upheld the AAB Decision.

The Court of Appeal's majority Opinion on Rehearing (the **"Opinion"**) affirmed the trial court Judgment in favor of Respondents.

In the Supreme Court, as was also true in the Court of Appeal, the trial court and the underlying AAB proceedings, the primary issues are:

- What are the facts relating to the RG Park and SSV Park?
- What is the meaning (intent) of Section 62.1?

PROCEDURAL HISTORY

A. AAB Proceedings.

The Real Parties' assessment appeals sought to lower the assessed values of the RG Park and the SSV Park, based on use of a proper methodology for valuing the "changes of ownership" which were deemed to have occurred prior to January 1, 2002.[2] (AR-v1-t1-3-p000001-000023; AR-v1-t4-p000032-000038.)[3]

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[2] The assessment appeals heard and decided by the AAB were for the 2002-2003 tax year. Both the RG Park and SSV Park properties had been valued by the Assessor as of the January 1, 2002 lien date for the "regular roll," based on transactions occurring prior to the lien date.

Additional assessment appeals, raising the same issues, have been filed and are pending for both properties for each subsequent tax year. The parties have agreed not to schedule such appeals for hearing until there is a final decision in this case.

[3] The Administrative Record (**"AR"**) and the Appellant's Appendix (**"Appendix"**) are cited by volume, tab and page number. For example, AR-v1-t1-3-p000001-000023 cited above references the Administrative Record, volume 1, tabs 1-3, pages 000001-000023.

The Assessment Appeals raised the same basic issues and were consolidated for hearing. The Real Parties had the burden of proof.

The AAB bifurcated issues for hearing. Statutory interpretation and factual issues relating to the proper methodology for the reassessments were to be heard and decided in Phase 1. After the AAB ruled on the proper methodology, valuation issues then were to be heard and decided in Phase 2.

From November 2003 through October 2006, the AAB held 10 day-long hearings at which testimony was received and documentary evidence was admitted. There were also multiple additional hearings concerning procedural/scheduling matters. (AR-v19-33 (transcripts).)

The AAB subpoenaed SBE staff to testify after Real Parties and the Assessor completed their presentations in the Phase 1 hearings.

Following SBE staff's testimony, the AAB rendered a lengthy "Tentative Decision Following 1st Phase," which interpreted Section 62.1(c) and made factual findings generally consistent with Real Parties' contentions. (AR-v9-t135.) The AAB also provided guidance concerning the appraisal unit to be used and what kind of evidence it would find relevant in Phase 2 hearings. (AR-v9-t136.)

In the Phase 2 (valuation) hearings, the Real Parties presented evidence in accordance with the AAB's guidance.

The Assessor did not. First, the Assessor did not use the appraisal unit as directed by the AAB. Second, in lieu of using standard valuation methods pursuant to the AAB's guidance, the Assessor presented a novel valuation method derived from its statutory interpretation. In essence, the Assessor reargued its statutory interpretation and factual assertions previously rejected by the AAB.

After the Phase 2 hearings, the AAB issued its "Statement of Tentative Decision for 2nd Phase." (AR-v17-t241.)

The parties agreed to sever remaining lesser issues, since none of such issues can ever be meaningfully resolved without a final court ruling concerning the meaning of Section 62.1(c).

Thereafter, the AAB rendered its final decision.

B. AAB Decision.

Part 1 of the AAB Decision, at AR-v18-t254, is 58 pages long. It rules on the statutory interpretation issue -- i.e., the proper reassessment methodology applicable to the RG Park and SSV Park under Section 62.1(c). It also includes detailed factual findings concerning the RG Park and the SSV Park.

Part 2 of the AAB Decision, at AR-v18-t255, is 35 pages long. The AAB determined the value of the RG Park and SSV Park during 2001, and then applied its methodology under Section 62.1(c) to value individual pro rata portions of the real property of each park that were deemed to change ownership for assessment purposes in 2001.

C. Superior Court Proceedings.

The Assessor filed its Petition in April 2007. (Appendix-v1-t1.)

The case was bifurcated for trial, with the issues in each phase to parallel the two phases of the AAB proceedings.

After trial of Phase 1 issues in March 2009, Judge Brown (tentatively) denied the Assessor's claims. Trial of Phase 2 issues was held in January 2010. At the conclusion of trial, Judge Brown ordered the parties to prepare questions which they wished him to

address in a statement of decision, to exchange such questions, and then brief all questions – which occurred. (Appendix-v3-t33-37.)

In May 2010, Judge Brown issued a 42-page Tentative Decision. (Appendix-v4-t41.)

The Assessor requested clarification on certain rulings. (Appendix-v4-t44.)

On October 21, 2010, the Superior Court Judgment was entered. The Judgment attached the Tentative Decision without change as the Court's **"Statement of Decision."** (Appendix-v4-t47.)

The Statement of Decision addresses all sixty (60) questions that the parties expressly requested be decided. Written in question and answer format, the Statement of Decision is most easily understood if Judge Brown's answers to Questions 21-60 (i.e., Respondents' questions) are read first. (Appendix-v4-t47-p000886-000913.)

The Assessor appealed the Judgment. (Appendix-v4-t52.)

D. Court of Appeal Proceedings.

In the Court of Appeal, multiple amici curiae filed briefs. The Assessor was supported by the SBE, the County Assessors Association, and several county assessors. The Respondents were supported by (a) two corporations which each own a mobilehome park and have pending property tax appeals similar to those filed by the Real Parties, and (b) a non-profit corporation that assists mobilehome tenants in organizing themselves to attempt to purchase their mobilehome parks.

In May 2012, the Court of Appeal filed an opinion, which was certified for publication. In a 2-1 decision, the Court of Appeal affirmed the trial court Judgment and the AAB Decision.

The Assessor petitioned for rehearing. Rehearing was granted.

On August 30, 2012, the Court of Appeal filed its Opinion on Rehearing, again certified for publication. Again, in a 2-1 decision, the Court of Appeal affirmed the trial court Judgment and the AAB Decision. The Assessor petitioned for rehearing, which was denied.

The Assessor petitioned for review. Various amici curiae filed letters requesting or opposing review. This Court granted review.

OVERVIEW OF MOBILEHOME PARKS AND MOBILEHOMES

This case does not arise in a vacuum. The specific issues of this case arise inside the general context of real property, personal property, landlord-tenant and tax assessment concepts affecting mobilehome parks and mobilehomes. [4]

Therefore, Respondents provide an overview of mobilehome parks and mobilehomes at the outset.

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[4] In this Brief, when referring to a **"mobilehome,"** *Respondents refer to personal property only* (as did the Court of Appeal majority, the trial judge and the AAB).

A mobilehome is distinct from a mobilehome space and from a mobilehome park.

In its Opening Brief, the Assessor frequently speaks vaguely of "mobilehomes" as if they are and/or include real property. (In previous briefs, the Assessor even defined a "mobilehome" as the "mobilehome coach and mobilehome space.")

Such "mobilehome" references by the Assessor are inaccurate as well as confusing.

A. Character and Ownership of Mobilehome Parks.

1. Subdivided Mobilehome Parks.

The land of some mobilehome parks has been subdivided -- i.e., the mobilehome spaces have been parcelized or condominiumized by a recorded subdivision map.

In a subdivided mobilehome park, each subdivided space is separately owned and there are many owners of the real property of the mobilehome park. Title to (ownership of) such parcelized or condominiumized mobilehome spaces is transferred by a deed recorded with the County Recorder.

Each owner of a subdivided mobilehome space has the ability to provide a deed of trust on his/her separate identifiable real property, and therefore to obtain a residential real estate mortgage.

The rights and duties of the owners of subdivided mobilehome spaces are similar to the rights and duties of owners in other real estate subdivisions. Such rights and duties are not structured or enforced as a landlord-tenant relationship.

2. Unsubdivided (Rental) Mobilehome Parks.

Most mobilehome parks have not been subdivided, and are fundamentally different than subdivisions.

Unsubdivided mobilehome parks are *rental* properties, in which each mobilehome space is the subject of a written lease (or "occupancy agreement") between the owner of the mobilehome park (as landlord) and the owner of a mobilehome located on a rental space (as tenant).

In the absence of such landlord-tenant relationships, there would be no way to structure, regulate and enforce the rights and responsibilities of the landowner and the mobilehome owners.

Mobilehome park tenants cannot obtain real estate mortgage loans since they do not own separate identifiable real property against which a deed of trust can be recorded. Their "mobilehome mortgage loans," in which the collateral is the mobilehome, bear significantly higher rates of interest than do residential real estate mortgage loans.

When a mobilehome that will remain in a rental park is sold, this sale is accompanied by either the assignment of the existing lease to the buyer or the execution of a new lease by the buyer. The lease for a particular space grants the mobilehome buyer the right to retain the mobilehome on, and to personally reside at, the space. (See California Mobilehome Residency Law, California *Civil Code* § 798 *et seq.*)

Some rental mobilehome parks, like the RG Park and SSV Park, are owned by an entity whose shareholders or members are tenants of mobilehome spaces and reside in the park.

B. Reassessment(s) of the Real Property of a Mobilehome Park.

1. Subdivided Mobilehome Spaces.

If a mobilehome park has been subdivided, then, upon sale of an individual mobilehome space (i.e., as a subdivided residential lot or condominium), such individual mobilehome space is reassessed as of the date of purchase, pursuant to Section 65.1. [5]

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[5] Section 65.1(b), since the 1980s, has provided: "If a unit or lot within a ... condominium,... or other residential... land subdivision ... changes ownership, *then only the unit or lot transferred... shall be reappraised.*" (italics added.)

2. Unsubdivided (Rental) Mobilehome Parks.

When a rental mobilehome park is purchased by a typical investor (whether an individual, partnership or corporation), then the real property is reassessed based on value of the park as of the date of purchase, under standard procedures applicable in most (but not all) real property reassessments after a "change in ownership."

However, if a rental mobilehome park is purchased by a corporation whose shareholders or members are a majority of tenants of the park, then the real property is not reassessed as of the date of purchase, pursuant to Section 62.1(a).

Such exclusion from reassessment at the time such a corporation purchases the mobilehome park occurs due to the Legislature's desire to promote such purchases of mobilehome parks. (Section 62.1(d).)

If a mobilehome park is excluded from reassessment under Section 62.1(a), then the Legislature has provided for partial reassessments of the mobilehome park property at later dates, triggered by transfers of a share or membership in the corporation. (Section 62.1(c).) [6]

The proper reassessment valuation methodology of the RG Park and SSV Park, pursuant to Section 62.1(c), is the ultimate issue in this case.

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[6] The subdivisions of Section 62.1, as in effect in 2001, have been relettered as follows:

Subdivision as of 2001	*Subdivision after 2001*
(a)	(a)(1)
(b)	(a)(2)
(c)(1), (2) & (3)	(b)(1), (2) & (3)
(d)	(c)

C. Character of Mobilehomes as Personal Property.

Mobilehomes (also called "manufactured housing") are *personal property*. Each mobilehome is hauled (in one or more parts) on its axles and wheels from the factory to a mobilehome space where supporting piers are attached. Importantly, the piers rest on, but are not attached to, the land.

Mobilehomes are registered with either the Department of Housing and Community Development (**"HCD"**) or the Department of Motor Vehicles (**"DMV"**). When a mobilehome in a rental mobilehome park is sold, then title to the mobilehome is re-registered with HCD or DMV, which completes the transfer of ownership.

The mobilehomes located in the RG Park and SSV Park are personal property set on piers that rest on, but are not affixed to, land. (For examples of certificates of title for mobilehomes in the SSV Park, see AR-v13-t181.)

In contrast, if a mobilehome is permanently affixed to a foundation, then it changes character and <u>becomes real property</u>. The affixing of a mobilehome to a foundation typically occurs only on subdivided properties, and is followed by de-registration with HCD and assessment of the home by the county assessor as real property.

D. Assessment and Taxation of Mobilehomes.

Many, but not all, mobilehomes in rental mobilehome parks are subject to personal property tax.

Mobilehomes first registered on or after July 1, 1980 are subject to personal property tax, while mobilehomes first registered before July 1980 (usually, DMV-registered) usually are not subject to property tax.

The sale of a mobilehome that is subject to property tax and located in a rental mobilehome park triggers reassessment under Section 5803(b).

Personal property taxes are paid by the buyer (new owner) of the mobilehome, based on the reassessment valuation of such mobilehome.

The personal property taxes are secured by the mobilehome, but not by any lien on an ownership interest in real property. See Statement of Decision (Appendix-v4-t47-p000897-898). [7]

There is no "purchase price presumption" in Section 5803(b). Without regard to the actual sales price, the Assessor must reassess a mobilehome that is subject to property tax and located on "rented or leased land" using the NADA Guide (blue-book) value.

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[7] Section 5830 provides in pertinent part that:

> "The assessment on any manufactured home shall be entered on the secured roll and shall be subject to all provisions of law, applicable to taxes on the secured roll, *provided however:*
>
> (a) If the taxes on any manufactured home are not a lien on real property of the owner of the manufactured home pursuant to Section 2188.1, 2189, or 2189.3 and are unpaid when any installment of taxes on the secured roll becomes delinquent, the tax collector may use the procedures applicable to the collection of delinquent taxes on the unsecured roll; ..."

Thus, since the mobilehomes in the RG Park and SSV Park are situated on leased land (leased mobilehome spaces) owned in fee by RG, Inc. or SSV, Inc., and such land is not owned by the owners of the personal property (i.e., the mobilehomes), the property taxes on the mobilehomes are not secured by the underlying real property of the RG Park or SSV Park. The Tax Collector would foreclose against the mobilehome, but not against an ownership interest in the real property of the RG Park or SSV Park.

According to the Legislative Analyst, when Section 5803(b) was enacted, the "legislative intent [was] that site values be excluded from the assessed value of mobilehomes located on rented or leased land." (AR-v1-t21-p000209-000210.) For additional legislative history for Section 5803(b) to similar effect and discussing the mandate to Assessors to use the blue book value guide, see also AR-v1-t19-23.

E. Mobilehome Ressessments in 2001 in the Santa Barbara Area

The Assessor acknowledged (conceded) in the AAB proceedings that:

1. After the sale of mobilehomes subject to property tax in the RG Park and SSV Park, such mobilehomes were reassessed using the NADA Guide, and the resulting tax bills, based on such assessed values, were sent to the registered owners of such mobilehomes;

2. This is the same manner that mobilehomes were reassessed (and their owners were taxed) in mobilehome parks that the Assessor agreed were rental mobilehome parks (although the Assessor disputes whether the RG Park and SSV Park are rental parks); and

3. In 2001, mobilehomes in rental mobilehome parks in southern Santa Barbara County typically sold for prices significantly in excess of their NADA Guide values and the reassessment valuations for the mobilehomes accordingly were much lower than the actual sales prices.

The difference between the actual sales price of a mobilehome in a rental mobilehome park and its reassessment valuation per Section 5803(b) was termed "non-assessable site value" in LTA 99/87 (more on this below).

Consistent with the Section 5803(b) legislative history quoted above, this "site value" reflects the value of the leasehold interest in the rental space and *trades in the marketplace as part of the price for the mobilehome*. Such leasehold interest, the tenant's interest in the lease, is held (owned) by the owner of the mobilehome.

STATEMENT OF FACTS

The key facts in this case were summarized in the AAB's factual findings, which are quoted below. (Other AAB factual findings, relating to "Phase 2" valuation issues, are discussed further below.)

A. RG Park and RG, Inc.

The AAB's findings of fact concerning the RG Park and RG, Inc., at AR-v18-t254-p003629-003634, state:

> "[RG, Inc.] is a nonprofit corporation, which purchased the... ("RG Park") in February 1992. The RG Park... consists of 200 spaces. One of the spaces has always been the resident manager's space....
>
> "Up to February 1992...:
>
> - The RG Park was owned by an investment limited partnership;
> - 199 of 200 spaces were rented to space tenants, each of whom owned the mobile home located on a space in the park;
> - Rent control established the monthly rent paid by space tenants...
>
> "As a nonprofit corporation, [RG, Inc.] has members rather than shareholders. Members own memberships, each of

which are undivided interests in the corporation.... Not everyone who owns a mobilehome in the park is a member. In the corporation, the maximum number of memberships is 200... At the time of the [AAB] hearing... [there were] 190 members and 10 unsold memberships....

"In 1992, when the RG Park was purchased by [RG, Inc.], approximately 170 mobilehome owners elected to purchase a membership ..., and 30 mobilehome owners elected not to become members. All members signed new leases for the space in which their mobilehome was located. The membership did not (and does not) give the member the right to occupy an individual space in the RG Park....

"The purchase price for the RG Park in 1992 was $9,400,00.00....

"The transfer of ownership of the RG Park to [RG, Inc.] in 1992 did not, pursuant to § 62.1(a), constitute an assessable change of ownership and, consequently, the Assessor did not reassess the RG Park property....

"After the initial acquisition of the park by the corporation and over the intervening years to date, both of the following have occurred:

- Sales by members of their respective mobile homes and memberships; and
- Sales by non-members of their mobile homes accompanied by sales by the tenant-owned corporation of memberships in the tenant-owned corporation....

"In making reassessments based on changes in ownership in the tenant-owned corporation, the assessor followed and applied... LTA 99/87....

"In assessing the value of the mobilehome coaches, the assessor ... [used the] ... sales prices listed in [the NADA Guide]."

B. SSV Park and SSV, Inc.

The AAB's factual findings concerning the SSV Park and SSV, Inc., at AR-v18-t254-p003634-003636, state:

"[SSV, Inc.] is a nonprofit corporation, which purchased [the SSV Park] in 1998. The [SSV] Park... consists of 81 spaces, one of which has always been the resident manager's space..."

"The status of [SSV] Park up until May 1998 was...:

- [SSV] Park was owned by investors who were members of one family;
- 80 of 81 spaces were rented to tenants, each of whom owned the mobile home located in a space in the park; and
- Rent control established the monthly rent paid by tenants...

"In 1998, when [SSV, Inc.] purchased [SSV] Park, 75 mobile home owners elected to purchase a membership in [SSV, Inc.] and 5 mobile home owners elected not to become members....

"As a non-profit corporation, [SSV, Inc.] has members rather than shareholders. Members own memberships, each of which is an undivided interest in the nonprofit corporation. ... Not everyone who owns a mobile home located on a space in the park is a member. In the corporation, the maximum number of memberships is 81,...

"All members signed new leases for the space on which their mobile home was located. The membership did not (and does not) give the member the right to occupy an individual space in the [SSV] Park. This was expressly stated in the Information Statement (like a prospectus) provided to potential members by [SSV, Inc.] prior to any sale and purchase of a membership. The Department of Corporations required the Information Statement to include multiple, specific disclaimers to the effect that the purchase of a membership did not give the member the right to occupy an individual space in the [SSV] Park....

"The purchase price for the [SSV] Park was $1,500,000.00 and ... separately purchased the manager's mobile home for $100,000 in cash....

"In assessing the value of the mobilehome coaches, the assessor took into consideration... sales prices listed in [the NADA Guide]....

"The [SSV] Park property was in very poor condition at the time [SSV, Inc.] purchased the park. All utilities were over forty years old and the roads needed to be repaired or replaced.... After much planning, the utilities and roads were replaced. Including all expenses, the cost of the infrastructure project exceeded $1,000,000.00 and was completed in 2001-2002....

"[SSV, Inc.] has not sold additional memberships since the original issuance...

"In 1998, when [SSV, Inc.] purchased the [SSV] Park, there was no reassessment of the [SSV] Park pursuant to § 62.1(a). Over time, there have been changes in ownership of memberships (which have coincided with the sales of

mobilehomes on rental spaces in the [SSV] Park). The Assessor followed the methodology in LTA 99/87 to reassess the [SSV] Park ...."

C. AAB Findings Concerning Assessor's Factual Contentions.

The following findings by the AAB in Part II of its Decision reinforce the above-quoted findings from Part I of the Decision:

> "The Assessor mistakenly assumed that the members... did not lease the Spaces, and expressly stated that there were no leases ...There is no evidence to support that contention and, in fact, the evidence is uncontradicted that members ... did enter into leases ... for a leasehold right to a Space in [each] Park... The Assessor mistakenly assumed that the purchase of a membership interest was essentially the purchase of a fee interest in the Space." (AR-v18-t255-p003707.)

D. Court of Appeal's Statement of Facts.

The facts of this case were succinctly summarized by the Court of Appeal majority, as follows:

> "In 1992 and 1998, residents of the Parks formed the Nonprofit Corporations which purchased the Parks ... each resident who wished to do so purchased a membership in the Nonprofit Corporation. A membership included an undivided interest in the Nonprofit Corporation, but not a direct ownership interest in the real property, and no right to occupy a specific space in the Park. The right to occupy a specific space in the Park was conveyed by a lease between the Nonprofit Corporation and the owner of the mobilehome. ... Pursuant to Section 62.1, subdivision (a), the transfer of ownership of the Parks to the Nonprofit Corporations was a [nonassessable] event. But a change of assessment of the underlying real property is triggered by each subsequent sale of a membership in the Nonprofit Corporation which [owns] the particular Park.

Although a mobilehome is typically sold with a membership, reassessment of the mobilehome is separate from the reassessment of the Parks. The mobilehome is assessed as personal property (§5810), and despite the absence of any formal change in ownership of the real property, a pro rata portion of the real property is deemed to change ownership for purposes of reassessment pursuant to section 62.1, subdivision (c)." Opinion, p. 2.

LEGAL DISCUSSION

I.

STANDARD OF REVIEW

A. Inquiry in Administrative Mandate Cases.

Section 1094.5 of the California *Code of Civil Procedure* (**"CCP"**) provides for judicial review of "the validity of any final administrative... decision made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in [a] ... board."

"Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the... decision is not supported by the findings, or the findings are not supported by the evidence." (CCP §1094.5(b).)

B. Assessor's Claims in This Case.

In the Petition, the Assessor's sole allegation of AAB error was:

"The [AAB's] first decision directs the County Assessor to adopt an invalid and unconstitutional *method* for reassessing changes in ownership of resident-owned mobilehome parks.

> The second decision applies the invalid valuation *method* to the twenty-six changes in ownership at issue. The challenged decisions should be reversed and remanded because they violate the California Constitution and misapply several sections of the Revenue & Taxation Code and Property Tax Rules." (emphasis added.) (Appendix-v1-t1-p000002.)

The Respondents acknowledged that such allegations were a claim under CCP §1094.5, to the effect that "the AAB did not proceed in the manner required by law" and presented a question of law. (Appendix-v2-t27-p000470-71.)

Judge Brown ruled that the Assessor's points and authorities *filed concurrently with* the Petition also gave rise to a challenge to the sufficiency of the evidence to support the factual findings, although there were no such allegations in the Petition. (Appendix-v4-t47-p000874 and -p000892-894.)

This particular trial court ruling, while against Respondents, had no ultimate adverse impact on Respondents since Judge Brown rejected the Assessor's challenge to the sufficiency of the evidence to support the findings on the merits.

C. Standard of Review for Questions of Law.

In an administrative mandate case, the trial and appellate courts each "review questions of law de novo." (*Duncan v. Dept. of Personnel Admin.* (2000) 77 Cal.App. 4th 1166, 1174.) The ultimate interpretation of a statute is a matter for the courts. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7.) When the validity of a method of valuation is challenged, the issue is one of

law which the courts review to determine whether the method was arbitrary, in excess of discretion, or in violation of the standards prescribed by law. (*County of Orange v. Orange County Assessment Appeals Bd.* (1993) 13 Cal.App.4th 524, 529-530.)

D. Standard of Review for Suficiency of the Evidence to Support the AAB's Factual Findings.

In an administrative mandate case, the court must ascertain which standard of review, independent judgment or substantial evidence, is applicable to determine whether the evidence in the record supports the factual findings in the administrative decision. (CCP §1094.5(c).)

While the court's role differs under each standard, a strong presumption of correctness attaches to a board's factual findings regardless of which standard applies. (*Sager v. County of Yuba* (2007) 156 Cal.App.4th 1049, 1053 [independent judgment]; *Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 335 [substantial evidence].)

"Unless a statute provides for independent judgment review or a case involves a fundamental vested right, the general standard of review of administrative decisions is the substantial evidence test." CEB, *California Administrative Mandamus* (2011 update), at p. 278.1.

In this case, there is no basis for independent judgment review of the sufficiency of the evidence to support the findings.

Judge Brown held that substantial evidence was applicable. (Appendix-v4-t47-p00894-895.)

Similarly, the Court of Appeal majority reviewed the AAB's factual findings for substantial evidence. (Opinion, at p. 16.)

In substantial evidence cases, an appellate court's standard of review of the sufficiency of the evidence is "identical" to the trial court's standard. (*Desmond, supra,* 21 Cal.App.4th at 334; *California Youth Authority v. State Personnel Board* (2002) 104 Cal.App.4th 575, 584.)

When the substantial evidence test is applicable, the petitioner has the burden to demonstrate that the board's findings are not supported by substantial evidence in light of the whole record. CCP §1094.5(c).

For this purpose, substantial evidence has been defined both as "evidence of ponderable legal significance ... reasonable in nature, credible, and of solid value" and as "relevant evidence that a reasonable mind might accept as adequate to support a conclusion." (*Desmond, supra,* 21 Cal.App.4th at 335 [references both definitions]; *California Youth Authority, supra,* 104 Cal.App.4th at 584-585 [same].)

In applying the substantial evidence test, the courts "indulge all presumptions and resolve all conflicts in favor of the board's decision." (*California Youth Authority, supra,* 104 Cal.App.4th at 584-585.)

In summary, substantial evidence is the standard of review for the sufficiency of the evidence to support the AAB's factual findings. The Assessor has the burden to demonstrate that the AAB's findings are not supported by substantial evidence, which it did not (and can not) do.

E. Response to Assessor's Discussion of Standard of Review and Assessor's Assertion of Mixed Questions of Law and Fact.

The Assessor's one-paragraph discussion of the standard of review (Opening Brief, at pp. 6-7) is vague and conclusionary. The two cases cited by the Assessor are not on point, as discussed below.

To the extent that the Assessor's Opening Brief suggests that (1) all questions in this case are mixed questions of law and fact, or (2) the standard of review as to the sufficiency of the evidence is other than substantial evidence, then such suggestion(s) is (are) inaccurate.

The Assessor has never identified which issues in this case are questions of fact, which are questions of law, and which (if any) are mixed questions of law and fact. In an appellate court's review of a mixed question of law and fact (if there is one), either substantial evidence or independent review may be applicable -- depending on the question itself. Thus, it is impossible for Respondents to respond specifically to Assessor's assertion of mixed questions of law and fact (if any) unless a mixed question is identified – which the Assessor has failed to do.

In *McMillan-BCED/Miramar Ranch North v. County of San Diego* (1995) 31 CA4th 545, cited by the Assessor, the reason that there was independent review of all contested issues was that "the parties do not dispute the facts of the various transactions in this case, only the legal conclusions to be drawn from them." *Id* at 550.

As such, the *McMillan-BCED* case is irrelevant to the standard of review of factual issues in this case. In the underlying AAB hearings, unlike in the *McMillan-BCED* case, the Real Parties and the Assessor hotly disputed the underlying facts. The AAB then made

detailed factual findings, as discussed above. As to such factual findings, CCP §1094.5(c) expressly provides that in this type of case the substantial evidence test is applicable to judicial review of the sufficiency of the evidence to support the factual findings.

In *20th Century Ins. Co. v. Garamendi* (1994) 8 C4th 216, cited by the Assessor, the case arose from the Insurance Commissioner's adoption of rate regulations in the course of implementing a ballot proposition. This Court held that "for standard-of-review purposes," the adoption of rate regulations was a "quasi-legislative and not quasi-adjudicative" action since what was adopted were "general rules applicable to all insurers formulated in quasi-legislative proceedings" and "regulations incorporating generic determinations." Id at 275. As to the "finding" of "facts" in the course of adopting the regulations, "the 'facts' 'found' must themselves be viewed as quasi-legislative in nature." Id at 278, note 12. Such factual findings were "informed with legal, policy and technical considerations, including those implicated in the generic determinations concerning the efficiency standards, rate of return, leverage factor, etc." Id.

As such, the *20th Century Ins. Co.* case was <u>not an administrative mandate case under CCP §1094.5</u>, and the case is not relevant to the standard of review in this administrative mandate case.

As stated by this Court in *20th Century Ins. Co.*: "Consequently, none [of the challenged findings of fact] is similar to the sort of 'historical or physical facts' [citation omitted] typically found in the course of administrative adjudication." Id.

In conclusion, neither of the cases cited by the Assessor concerning standard of review is applicable to this case.

II.

THE FACTUAL FINDINGS IN PART 1 OF THE AAB DECISION ARE SUPPORTED BY SUBSTANTIAL EVIDENCE

The AAB's factual findings quoted above are supported by the following evidence submitted by Real Parties:

1. Testimony from multiple witnesses relating to all of the factual findings quoted above, often with multiple witnesses testifying to such matters in the course of direct examination, cross examination, re-direct and re-cross examinations, and AAB questions. (AR-v19, 20, 27, 30, 31.) The witnesses included:
    - Leann Lustig (RG Park tenant, member of RG, Inc., and former president of board of directors of RG, Inc.);
    - Gerald Gibbs (expert mobilehome park attorney who prepared the membership offering circular for sales of memberships in SSV, Inc. and was a leader in efforts of tenant groups to purchase their mobilehome parks, dating back to the 1980s);
    - Jerry Taylor (expert appraiser);
    - Ray Cole (SSV Park tenant, member of SSV, Inc., and former president of board of directors of SSV, Inc.);
    - James Murdock (president of the property management company engaged by RG, Inc. from 1993 forward to oversee operation of RG Park as a rental park); and
    - David Fainer (counsel for SSV, Inc. at time of sales of memberships in 1998, purchase of mobilehome park in

1998 by SSV, Inc., and signature of new leases for SSV Park in 1998);

2. Samples of leases placed into record. (AR-v1-t27.) [8]

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[8] For example, the Member Occupancy Agreements for the SSV Park state:

> "1. HOMESITE. Owner [i.e., SSV, Inc.] leases to Member and Member leases from Owner, Space No. ___, in which space the member has placed a Mobilehome that the Member presently owns (hereinafter, the 'Homesite')...
>
> "2.1 "Monthly Assessment" shall include the monthly fee paid by Member to Owner for use and possession of the Homesite, ...
>
> "3. TERM. The tenancy created under this Agreement shall be for a term of ... [10-year, 1-year, month-to-month options]."
>
> "18. TERMINATION OF TENANCY BY OWNER. This Agreement, at the sole option of the Owner, may be declared forfeited and/or the tenancy may be terminated ... in accordance with the following provisions and other applicable law. ... For purposes of this section, 'Monthly Assessment' shall be considered as 'rent' as defined in Section 1161, et seq., of the California Code of Civil Procedure.
>
> "A Member's tenancy shall be terminated by Owner for one or more of the following reasons:...(e) Nonpayment of Monthly Assessment, ... provided that the member shall be given a three-day written notice ... to pay the amount due or vacate the tenancy. ... The three-day notice shall be given to the member in the manner prescribed by Section 1162 of the Code of Civil Procedure." (AR-v1-t27-p. 00262-263 and 00271-272)

3. Testimony from Gerald Gibbs that he had personally handled unlawful detainer actions against tenants of parks similar to the SSV Park and RG Park in which such tenants were members of corporations similar to SSV, Inc. and RG, Inc. and evicted such persons from their tenancies on grounds of non-compliance with their leases, including failure to pay rent;
4. The Information Statement [9] for sale of memberships in SSV, Inc. which, *at the direction of the Department of Corporations*, contained the following statement in capital letters: "PURCHASE OF A MEMBERSHIP DOES NOT PROVIDE THE PURCHASER WITH THE RIGHT TO A SPECIFIC PLACE IN THE PARK, BUT DOES ENTITLE PURCHASER TO ENTER INTO AN OCCUPANCY AGREEMENT WITH THE CORPORATION." (AR-v1-t26-p000229.)
5. The Membership Subscription Agreement for SSV, Inc. which, *at the direction of the Department of Corporations*, contained the following statements (which were individually signed by all 75 members of SSV, Inc.): "Such Membership shall entitle the subscriber to an interest in the Corporation, but does not entitle him or her to an ownership or exclusive right of occupancy to the mobilehome space. Each Subscriber will enter into an Occupancy Agreement with the Corporation to lease a mobilehome space on terms to be mutually agreed upon." (AR-v1-t28-p000281.)

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[9] Sales of this type of membership, like sales of stock, are subject to the securities laws. The Information Statement is, essentially, a prospectus.

6. Copies of the Articles of Incorporation and Bylaws of both SSV, Inc. and RG, Inc., setting forth the rules for their corporate operation and which do not purport to grant members a right of exclusive use of a mobilehome space. (AR-v1-t33, 34, 35.2.)
7. Real Estate appraisals by statewide expert mobilehome park appraiser Jerry Taylor which include statements that each park was a rental park. (AR-v1-t35, and t-35.8; AR-v14-t210-213.)

The Real Parties' *evidence*, summarized above, was uncontradicted.

While the Assessor made factual contentions, the Assessor's "evidence" primarily consisted of references to statements in LTA 99/87. (The falsity of the key statements in LTA 99/87 is discussed further below in this Brief.)

The Real Parties' evidence constitutes substantial evidence that supports the AAB's factual findings. The evidence is reasonable, credible, and of solid value, and it is relevant evidence that reasonably supports the AAB's findings. [10]

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[10] The Real Parties note that even if the independent judgment test was applicable to judicial review of the sufficiency of the evidence to support the AAB's factual findings in this case, (1) the evidence overwhelmingly supports the AAB's findings and certainly constitutes a preponderance of the evidence, and (2) the Assessor has completely failed to carry its burden of proving that the AAB's findings are not supported by the weight of the evidence. See CCP §1094.5(c).

III.

THE AAB PROPERLY INTERPRETED SECTION 62.1

A. Statutory Language of Section 62.1.

Under Section 62.1(a), the sale of a mobilehome park to a corporation whose shareholders or members are at least 50% of the residents of such park does not constitute a "change of ownership" for real property assessment purposes.

Section 62.1(d) states:

"(d) It is the intent of the Legislature that, **in order to facilitate affordable conversions of mobilehome parks to tenant ownership**, subdivision (a) apply [sic] 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 ...." (emphasis added)

Section 62.1(c)(1) and (2) provide in relevant part:

"(c)(1) If the transfer of a mobilehome park has been excluded from a change in ownership..., **any transfer... of shares of the voting stock of, or other ownership or membership interests in, the entity which acquired the park... 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 unissued shares of voting stock of, or other ownership or membership interests in, the entity which acquired the park...." (emphasis added)

B. The Competing Statutory Interpretations.

The parties' competing interpretations of Section 62.1(c) and examples of their application are set forth below.

The parties' disagreement "boils down" to how to determine the Fair Market Value (**"FMV"**) of a "pro rata share of the real property of the park."

Respondents' Interpretation of Section 62.1(c):

FMV of "total real property of park"
multiplied by "fraction" of ownership in corporation transferred
equals FMV of "pro rata share of the real property of the park"

Application of Respondents' Interpretation for RG Park:

$13,000,000	(FMV of RG Park in 2001)
multiplied by 1/200	(memberships transferred ÷ total)
equals $65,000	(FMV of "pro rata share")

Assessor's (LTA 99/87) Interpretation of Section 62.1(c):

Total consideration paid for mobilehome and membership
minus NADA Guide Value of mobilehome
equals FMV of "pro rata share of the real property of the park"

Hypothetical Example for Assessor's Interpretation

$200,000 paid to seller	(for mobilehome & membership)
minus $35,000	(NADA Guide - mobilehome)
equals $165,000	(FMV of "pro rata share")

C. The AAB Followed the Rules of Statutory Construction.

Before engaging in statutory construction, the AAB reviewed the applicable principles:

> "The rules governing statutory construction are well settled. We begin with the fundamental premise that the objective of statutory interpretation is to ascertain and effectuate legislative intent.... In determining intent, we look first to the language of the statute, giving effect to its plain meaning. Although we may properly rely on extrinsic aids, we should first turn to the words of the statute to determine the intent of the Legislature.... Where the words of the statute are clear, we may not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history." (Burden v. Snowden (1992) 2 Cal.4th 556, 562)" (AR-v18-t254-p003673.)

> "In interpreting a statute where the language is clear, courts must follow its plain meaning.... However, if the statutory language permits more than one reasonable interpretation, courts may consider various extrinsic aids, including the purpose of the statute, the evils to be remedied, the legislative history, public policy and the statutory scheme encompassing the statute.... In the end, we 'must select the construction that comports most closely with the apparent intent of the statute, and avoid an interpretation that would lead to absurd consequences'... (Torres v. Parkhouse Tire Service, Inc. (2001) 26 Cal.4th 995, 1003)." (AR-v18-t254-p003675)

The AAB concluded that the statutory language "does not permit more than one reasonable interpretation." (AR-v18-t254-p003674.)

The AAB rejected the Assessor's and SBE witness' assertion that a "statutory scheme analysis" should be used to reach a different result, quoting *Esberg v. Union Oil* (2002) 28 Cal.4th 262, 269:

"Because the language of these sections is unambiguous, we need not consider various extrinsic aids, such as the purpose of the statute, the evils to be remedied, the legislative history, public policy or the statutory scheme encompassing the statute.... (underline added.)" (AR-v18-t254-p003674.)

The AAB also noted that "any ambiguity in or doubt about the interpretation of §62.1(c) is resolved in favor of the taxpayer," quoting *Larson v. Duca* (1989) 213 Cal.App.3d 324 at AR-v18-t254-p003675.

Nevertheless, "for purposes of fully analyzing the SBE's construction of §62.1(c)(1)&(2)," the AAB reviewed the legislative history "under the assumption that § 62.1(c)(1)&(2) supports more than one reasonable construction." (AR-v18-t254-p003675.)

D. The Plain Meaning of the Statute.

The AAB, at AR-v18-t254-p003673, concluded that "the plain language of § 62.1(c)(1)&(2) prescribes the following formula" for calculating the FMV of a pro rata share of the real property of the park:

"FMV of Entire Real Property" X "Fractional Interest"

with the *"Fractional Interest"* defined as

the number of memberships transferred divided by the maximum number of memberships.

The AAB noted that this interpretation "gives meaning to the term multiply as used in Section 62.1(c)(2)" but the SBE's interpretation "makes the term multiply completely meaningless since no multiplication occurs under the SBE's approach." (AR-v18-t254-p003674.)

The AAB's plain meaning formula also gives meaning to the words *pro rata* in the phase "*pro rata* portion of the real property" in Section 62.1(c), subdivisions (1) and (2).

As stated by the Court of Appeal in the Opinion, at page 9:

> "The words 'pro rata' appearing in Section 62.1, subdivision (c) have a long-established meaning. 'These words *pro rata* have a defined and well-understood meaning.... It is well understood by persons of ordinary intelligence to denote a disposition of a fund or sum indicated in proportion to some rate or standard, ...according to which rate or standard the allowance is to be made or calculated.' (*Rosenberg v. Frank* (1881) 58 Cal. 387, 405-406; see also *Wright v. Coberly-West Co.* (1967) 250 Cal.App.2d 31, 36 ['In Webster's Third New International Dictionary (Unabridged), the word "prorate" is defined, "to divide, distribute, or assess proportionately"'].)"

Webster's New World Dictionary of the American Language, Second College Edition (1980), which was in common use in 1988, defines "*pro rata*" to mean "proportionate." (Id. at p. 1140.)

The Assessor suggests that the definition of "*pro rata*" (which means "*proportionate*") should not apply to construing the meaning of "*pro rata* portion of the real property," but that the definition of "*ratable*" (which means "*proportional*" according to the Assessor) should be applied, and that this leads to a different statutory construction than the AAB's. (Opening Brief, p. 26.)

The Assessor's suggestion is without merit. The AAB's construction provides for a *pro rata adjustment*.

E. The Legislative History Supports the AAB's Construction of the Statute.

Section 62.1(c) was adopted by the Legislature in Senate Bill 1885 of 1988 (**"SB 1885"**), in response to concerns generated by prior legislation. The AR included the complete legislative history for Section 62.1 through 1988, assembled by the Legislative Intent Service, and a copy of all versions of Section 62.1 after 1988. (AR-v3-6-t37-104.) The legislative history is discussed below.

1. Section 62.1, as Enacted in 1984.

Section 62.1, as originally enacted (Chapter 1692, Statutes 1984), provided:

> "Change in ownership shall not include any transfer, ...after January 1, 1985, of a mobilehome park to a nonprofit corporation,... 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..." (AR-v3-t36-p000776-000777.)

2. Section 62.1, as Amended in 1986.

Section 62.1 was amended in 1986 (Chapter 447, Statutes 1986) to add the language of then-subdivision (b), expanding the exclusion from reassessment to include transfer of subdivided mobilehome spaces into individual ownership if the individual owners were at least 51% of the tenants of the park prior to the transfers of subdivided mobilehome spaces. (AR-v4-t54-p000885-000886.)

3. Section 62.1, as Amended in 1987.

Section 62.1 was amended by SB 298 (Chapter 1344, Statutes 1987), to add a new subdivision (d) and to extend the sunset provision. (AR-v5-t72-p001074-001075.)

Subdivision (d) in Section 62.1, as added in 1987, is quoted above at page 29 of this Brief. Section 62.1(d) sets forth the Legislature's express intent to encourage "affordable conversions of mobilehome parks to tenant ownership, including ... those parks converted to tenant ownership as a nonprofit corporation."

4. Section 62.1(c), as Enacted in 1988, and Key Legislative History Documents.

The statutory language at issue in this case, Section 62.1(c)(1) and (2), was adopted in 1988 as part of SB 1885 (Chapter 1076, Statutes 1988). (AR-v6-t89-p001258-001259.)

As introduced on February 2, 1988, SB 1885 proposed adding new subdivision (b)(1) and (2) to Section 62.1. (AR-v6-t89-p001247-1249.) *A copy of the February 1988 version of SB 1885 is Attachment 1 to this Brief.*

The February 1988 version of SB 1885 was accompanied by a February 2, 1998 Legislative Bill Analysis, which was authored by the SBE staff. (AR-v6-t92-p001266-001268.) *A copy of the February 1988 Legislative Bill Analysis is Attachment 2 to this Brief.*

The February 1988 Legislative Bill Analysis stated:

"...SB 298 [adopted in 1987] ... raises two problems:

"1) As amended, Section 62.1 would permit the acquisition of a park by one or two tenants. In fact, an investor purchasing a mobilehome park might be encouraged to move in and become a tenant solely for the purpose of qualifying for the change in ownership exclusion.

"2) 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 a reappraisal.

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

"1. The amendment to subdivision (a) of Section 62.1 addresses the first problem by adding a condition that tenants representing at least 51 percent of the mobilehome spaces in the park participate in the excluded transaction. It is our understanding that normally 75 percent participation by the tenants is necessary ... but 100 percent participation is usually not possible.

"2. The proposed new subdivision (b) [11] addresses problem 2. ***The amendment would provide that a transfer of stock ... is a change in ownership of a pro rata portion of the real property of the park, if the park had previously been in a transaction qualifying under Section 62(a)*** ....

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

---

[11] This proposed new subdivision was relettered as subdivision (c) in the March 24, 1988 version of SB 1885, and later enacted as subdivision (c).

"***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 in specific property***, the proposal does not require that any increase in taxes be allocated to the *particular tenant-shareholder*.... This should not work any real hardship, however, since *the nonprofit corporation, through its bylaws and rental agreements* has the power to provide for a pass-on of the tax to the appropriate parties." (emphasis added; AR-v6-t92-p001266-001268)

On March 24, 1988, SB 1885 was amended. (AR-v6-t89-p001250-001253.) *A copy of the March 1988 version of SB 1885 is Attachment 3 to this Brief.*

The amendments were as follows:

1. Add a new subdivision (b), addressing the exclusion from reassessment in certain circumstances not applicable in this matter;
2. Re-letter the originally proposed subdivisions (b)(1) and (2) as subdivisions (c)(1) and (2), without changing the operative language of these provisions;
3. Add subdivision (c)(3), which stated: "Any pro rata portion or portions of real property that changed ownership pursuant to this subdivision may be separately assessed as provided in Section 2188.10;" and
4. Add new proposed Section 2188.10, which (as discussed below) is optional and provides for a bookkeeping function.

A March 24, 1988 Legislative Bill Analysis was prepared by the SBE staff. (AR-v6-t92-p001274-001276.) *A copy of the March 1988 Legislative Bill Analysis is Attachment 4 to this Brief.*

The March 1988 Legislative Bill Analysis repeated much of what had been said in the February 1988 Legislative Bill Analysis, and added some brief discussion of the newly-proposed Section 2188.10.

The March 1988 Legislative Bill Analysis did not mention or suggest any Legislative intention to alter or amend the purpose and intent of the originally-proposed subdivisions (b)(1) and (2), which were relettered in the March 1988 version of SB 1885 without any change in the language.

SB 1885 was amended once more before final adoption by the Legislature, with cleanup changes only. (AR-v6-t89-p001254-001257; see AR-v6-t101-p001322 for explanation of the cleanup changes.)

The operative language of Section 62.1(c)(1) and (2), as enacted in Fall 1988, is identical to what was first proposed as Section 62.1(b)(1) and (2) in February 1988.

5. Section 2188.10 as adopted in 1988.

In the AAB proceedings, there was little discussion of Section 2188.10 by the Assessor or Real Parties. In the trial court, the Assessor began referring extensively to Section 2188.10 in its arguments, and has continued to do so in its arguments to the Court of Appeal and Supreme Court.

Judge Brown ruled that Section 2188.10 does not have the meanings ascribed to it by the Assessor and is merely a bookkeeping statute. (Appendix-v4-t47-p 000901-902.)

The Court of Appeal stated that the AAB's interpretation of Section 62.1(c)(1) and (2) was "supported by the language of Section 2188.10," and quoted Section 2188.10 (a) and (b). (Opinion, at p. 10.)

Section 2188.10, as introduced in the March 1988 version of SB 1885, was enacted along with Section 62.1(c) in Fall 1988, effective January 1, 1989. Section 2188.10 provides in pertinent part as follows:

> "(a) Whenever the assessor receives a written request for separate assessment of a pro rata portion of the real property of a mobilehome park which changed ownership pursuant to subdivision (c) of Section 62.1 as the result of the transfer of a share or shares of voting stock or other ownership or membership interest or interests, the assessor shall, ... , separately assess the portion or portions of real property described in subdivision (b) if the conditions specified in subdivision (c) have been met. ...
>
> (b) *The interest that is to be separately assessed is the value of the pro rata portion of the real property of the mobilehome park which changed ownership pursuant to subdivision (c) of Section* 62.1.
>
> (c) A separate assessment may not be made by the assessor under this section unless the following conditions are met:
>
> (1) The governing board of the mobilehome park makes the request for separate assessment and certifies that the request has been approved in the manner provided in the organizational documents of the entity owning the mobilehome park.
>
> (2) Information is filed with the assessor listing ...
>
> (e) The assessor shall cumulate all the separate assessments in a mobilehome park and enter the total assessment on the secured roll *in the name of the entity which owns the park*. ...
>
> (f) The tax on the total assessment of the mobilehome park shall be a lien on the real property of the park...

(g) The tax collector shall send a single tax bill, with an itemized breakdown detailing the taxes and the allocated portion of any fee imposed pursuant to subdivision (i) applicable to each separate assessment, to the entity owning the mobilehome park...." (emphasis added)

In summary, Section 2188.10 is an *optional* provision which, if invoked, sets out procedures that result in the tax collector attaching "an itemized breakdown detailing taxes ... applicable to each separate assessment" to the "single tax bill [sent]... to the entity owning the mobilehome park."

Thus, Section 2188.10 involves what is essentially bookkeeping, and has no relevance to the question of what Section 62.1(c)(1) and (2) mean. In fact, Section 2188.10 defines the "separate assessments" in terms of Section 62.1(c)(1) and (2).

The practical purpose of the "separate assessments" is to assist corporations such as RG, Inc. and SSV, Inc. to "pass-through" increased property taxes resulting from increased assessed value of the mobilehome park arising from a deemed "change in ownership" under Section 62.1(c), <u>if the corporation requests such assistance</u>.

This was expressly discussed in the last paragraph of the March 1988 SBE Legislative Bill Analysis, which stated:

"The provisions for the separate assessment of a pro rata portion of the mobilehome park which changed ownership pursuant to Section 62.1(c) <u>permits the assessments and related taxes to be separately identified</u> .... collection [of taxes] is the responsibility of the mobilehome park governing board since the total taxes, as a matter of law, are a lien on the entire park. <u>The governing board can protect the financial interests of all park shareholders</u>

through contractual arrangements, security deposits, etc., which will guarantee the payment of all taxes in full." AR-v6-t92-p001275-001276 (emphasis added)

Whether "separate assessments" have been requested or not, the method for calculating the value of the "pro rata portion of the real property" of the mobilehome park that changed ownership under § 62.1(c) is unaffected -- but the form of the property tax bill changes for the convenience of the corporation that owns the park and that is responsible to pay the taxes. [12]

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[12] The Assessor asserts that RG, Inc. made a "Section 2188.10 request," applicable to the 2003-2004 tax year and subsequent years. (Opening Brief, p. 24, fn. 7.)

Respondents strongly disagree. The Assessor's statement is based solely on a short letter sent by a management company on behalf of RG, Inc. in 2003. (AR-v13-t192-p002607)

Such letter involves matters not contemplated by, nor authorized by, Section 2188.10. The letter, which never mentions Section 2188.10, was suggested by the Assessor.

Without consulting counsel, the board of directors of RG, Inc. approved the Assessor's suggestion for direct billing of members, believing that the suggestion was for the convenience of RG, Inc.

As a technical matter, the letter does not comply with the "certification" and other requirements of Section 2188.10(c).

More importantly, Section 2188.10 requires "a single tax bill [be sent]... to the entity owning the mobilehome park," accompanied by an "itemized breakdown" as was discussed above. The letter sent by the management company requests direct billing by the tax collector to almost 200 individuals, rather than the itemized breakdown contemplated as an option in Section 2188.10.

6. History of Section 62.1(c) After 1988.

There have been no changes to the wording of Section 62.1(c) as adopted in 1988, but the various subdivisions of Section 62.1 (as it existed in 2001) have been re-lettered. [13]

The only substantive changes to Section 62.1 after 1988 were to eliminate the sunset provision, and the addition of provisions governing escape assessments and related matters (effective January 1, 2003 and not effective as to the Real Parties' assessment appeals for the 2002-2003 tax year). (AR-v8-t125-p001698-001704.)

7. Discussion of Legislative History.

The attached February and March 1988 versions of SB 1885 and the two attached Legislative Bill Analyses are the definitive legislative history documents for Section 62.1(c).

All other committee reports, letters, etc. are repetitive of the Legislative Bill Analyses. (See AR-v6-t93-103.)

Both the February 1988 and March 1988 Legislative Bill Analyses state that a transfer of a membership interest in a nonprofit corporation "is not the same thing" as a transfer of an "interest in specific identifiable real property."

Both Legislative Bill Analyses also state: "Thus, rather than following the pattern prescribed in Section 65.1(b), which provides for reappraisal of the specific unit or lot transferred..., the amendment provides for a straight pro rata adjustment."

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[13] See footnote 6 on page 11 of this Brief, for a summary of the re-lettering of the subdivisions of Section 62.1.

In conclusion, the legislative history supports the AAB's construction of Section 62.1(c) because the AAB's construction carries out a "straight pro rata adjustment," and does not follow the pattern of Section 65.1(b). [14]

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[14] The Assessor asserts that "[t]he 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...." (Opening Brief, p. 25.)

Contrary to the Assessor's suggestion, the wording of Section 62.1(c)(1) and (2) never changed from time it was first proposed.

There is no merit to the Assessor's suggestion that, although the wording never changed, the meaning of the words in the proposed statute did change in the middle of the Legislative process.

The Assessor believes that a deletion in the March 1988 Legislative Bill Analyses of the language in the February 1988 Legislative Bill Analysis stating "any differences in value between mobilehome spaces ... cannot be recognized under this method" is indicative of a change in Legislative intention, although the proposed statutory language did not change.

The Respondents agree with the Court of Appeal majority that such deletion "does not alter the SBE's analysis [in the March 1988 Legislative Bill Analysis] or the legislative history of section 62.1 in general." (Opinion at p. 12-13.)

See also Statement of Decision, at Appendix-v4-t45-p000874-000878.

F. LTA 89/13 Supports the AAB's Decision.

In 1989, one month after SB 1885 became effective, the SBE issued LTA 89/13 to advise county assessors in implementing the new legislation. (AR-v8-t125.1-p001742-001743.) *A copy of LTA 89/13 is Attachment 5.* In LTA 89/13, the SBE staff stated:

> "Section 62.1(c) attempts to parallel as closely as possible the tax treatment accorded condominium and stock cooperatives. A perfect match is not possible, however, because the transfer of a share or membership interest in a nonprofit corporation is not the same thing as a transfer of ownership of... specific identifiable real property. Rather than following the pattern prescribed in Section 65.1(b), which provides for reappraisal of the specific unit or lot transferred..., the amendment provides for a straight pro rata adjustment.
>
> "This pro rata adjustment *is similar to* a fractional change of ownership of real property. Upon the transfer of any ownership interest in the entity of either an originally issued share or of an unissued share to a new participant, a change in ownership of a pro rata portion of the real property of the park has taken place. A new base-year value is established for that portion of the real property...." (AR-v8-t125.1-p001743 (emphasis added).)

1. LTA 89/13 repeats key statements of the February and March 1988 Legislative Bill Analyses.

The first above-quoted paragraph from LTA 89/13 is exactly the same language as appeared in both Legislative Bill Analyses (discussed above and attached).

Thus, in LTA 89/13, for the third time in the year from February 2, 1988 through February 1, 1989, the SBE staff (a) expressly stated

that the "transfer of a ... membership interest in a nonprofit corporation is not the same thing as the transfer of ... specific identifiable real property," and (b) expressly distinguished a reappraisal carried out according to "the pattern prescribed in Section 65.1(b)" from one carried out as a "straight pro rata adjustment" under Section 62.1(c).

2. Per LTA 89/13, a Section 62.1(c) pro rata adjustment "is similar to a fractional change of ownership of real property."

The second above-quoted paragraph of LTA 89/13 does not appear in the legislative history. It provides practical guidance to assessors on how to carry out a "straight pro rata adjustment" under Section 62.1: "This pro rata adjustment is similar to a fractional change of ownership of real property."

This was meaningful *advice* from the SBE staff in 1989 since, from 1983 forward, the SBE had advised Assessors how to carry out a reassessment when there is a "fractional change of ownership of real property," as follows:

> "**850.0100 Undivided Interest**. The proper method of determining the base year value of an undivided interest in real property is to first appraise the entire property as of the date of change of ownership at its fair market value and to then allocate to such interest that percentage of value that corresponds to the percentage of the interest vis-à-vis all interest in the property. C 1/12/83" SBE, Property Tax Law Guide [2007], Vol. III, p.7804, Annotation 850.010 [15]

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[15] January 12, 1983 is the date when this position was taken by SBE staff in writing. The Annotation and the underlying 1983 document can be viewed online by clicking on the Annotation number at www.boe.ca.gov/lawguides/property/current/ptlg/annt/850.0100.html.

In subsequent years, the SBE staff has consistently advised that the proper approach for valuing a fractional change of ownership is as set forth in the above-quoted Annotation 850.0100. [16]

Thus, for example, if a real property had five original owners (A, B, C, D and E), each holding an undivided one-fifth interest in the property, and A should sell his/her one-fifth interest to F in Sale 1 on Day 1 and B should sell his/her one-fifth interest to G in Sale 2 on Day 2, respectively, then reassessment of the property after such fractional changes in ownership (ignoring the annual assessment inflation factor) would be as follows:

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[16] For example, in an Annotation summarizing a January 1998 letter:

> "**850.0001 Appraisal of Partial Interest Transfer. ...**If a 25 percent interest in a property underwent a change in ownership, it would be proper for the assessor to reappraise the entire parcel and allocate 25 percent of the new reappraised value to determine the new base year value of the interest transferred..... C 1/23/98" SBE, *Property Tax Law Guide* [2007], Vol. III, p.7802, Annotation 850.0001
>
> See also SBE, *Assessor's Handbook 502* (Dec. 1998, p. 4):
>
> "There is statutory authority permitting the separate valuation of undivided interest for the limited purpose of collection on part of an assessment...section 2821 provides that any person filing an affidavit of interest may apply to the tax collector *to* have fractional interests in a parcel separately valued on the current roll for the purpose of paying taxes... *Thus, the proper method for determining the value of fractional interests is to first appraise the proper appraisal unit (i.e., the whole property) and then to allocate value to the undivided interest(s) proportionately.*" (emphasis added)

- After Sale 1, the property would be reassessed to a new assessed value calculated as follows: [1/5 x FMV of the property on Day 1] + [4/5 x original assessed value]; and
- After Sale 2, the property would be reassessed to a new assessed value calculated as follows: [1/5 x FMV of the property on Day 2] + [1/5 x FMV of the property on Day 1] + [3/5 x original assessed value].

The example above involving a "fractional change in ownership of real property" is very similar to how reassessments of the RG Park and SSV Park are to be carried out under Section 62.1(c).

In both a "fractional change of ownership of real property" and a "straight pro rata adjustment" under Section 62.1(c), the value of the *entire* real property as of the date of the "change of ownership" is multiplied by the proportionate percentage (pro rata fraction) of the real property changing ownership for assessment purposes.

IV.

THE VALUATIONS IN PART 2 OF THE AAB DECISION WERE PROPERLY UPHELD BY THE COURT

A. The AAB's Guidance to the Parties on Valuation.

Prior to the Phase 2 hearings, the AAB provided the parties guidance "arising out of the [AAB's] tentative decision on the statutory construction of §62.1." (AR-v9-t136-p001880.)

First, the AAB stated the appraisal unit is the total real property of each mobilehome park. (AR-v9-t136-p001880.)

Second, the AAB stated its intention to ascertain the full cash value of each change of ownership as of each change of ownership

date, consistent with all constitutional and statutory requirements, including Section 62.1(c). (AR-v9-t136-p001881.)

Third, the AAB stated that, "[t]o prevail, the [Real Parties] will not only have to show that the SBE's and the Assessor's methodology is in error, but will also have to demonstrate ...the fair market value of the property on each individual valuation date so that the formula prescribed by §62.1(c)(2) may be applied by the Board ... for the subject change of ownership." (AR-v9-t136-p001883.)

Fourth, the AAB stated that the "potentially applicable valuation methodologies to determine the fair market value of the total real property of each park for the valuation date at issue" were the standard appraisal methodologies incorporated into the Property Tax Rules [17] -- i.e., the comparable sales approach (Rule 4), the cost approach (Rule 6), the income approach (Rule 8), or any combination thereof. (AR-v9-t136-p00185.)

B. Valuation Evidence in Phase 2 Hearings.

RG, Inc. presented evidence of the FMV of the RG Park for calendar year 2001, using the comparable sales approach and income approach, in the form of an expert appraisal report and testimony of Gerald Taylor. Mr. Tayor is one of the leading mobilehome park appraisers in California. (AR-v18-t255-p003692.)

Mr. Taylor's appraisal report for the RG Park is AR-v14-t212. Mr. Taylor's testimony concerning the RG Park appears in the

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[17] The Property Tax Rules are regulations, adopted by the SBE, codified at Title 18, Division 1, Chapter 1 of the California *Code of Regulations*.

transcript of his day-long testimony (direct, cross, re-direct, re-cross, AAB questions) concerning his appraisals of the RG Park and SSV Park. (See AR-v27-t269-p005300-005522.)

Mr. Taylor conducted a rent study to ascertain market rent for the RG Park. He concluded that market rent for the RG Park was higher than actual rents being charged, and he used market rent and actual expenses in his calculations so that his appraisal would yield FMV. The income approach yielded an average value of $13,200,000 based on the indicated range of capitalization rates in the marketplace. The comparable sales approach yielded an average value of $12,700,000 based on the observed range of gross income multipliers in the marketplace. After considering all factors and reconciling the income and comparable sales approaches, Mr. Taylor concluded that the FMV of the RG Park for all of 2001 was $13,000,000.

SSV, Inc. presented evidence of the FMV of the SSV Park for calendar year 2001, under the comparable sales approach and income approach, in two appraisal reports and testimony of Mr. Taylor.

The appraisal reports for the SSV Park appear at AR-v14-t210-211. Mr. Taylor's testimony concerning the SSV Park appears in the transcript of his day-long testimony mentioned above.

The time periods for the two SSV Park appraisal reports (January-October and November-December 2001) relate to the fiscal year of SSV, Inc., which ends on October 31 each year. Such periods also take into account the effect of construction of an infrastructure project replacing 40-year-old roads and utilities, which was completed in October 2001, at a construction cost of $880,000 (which was the amount then used by Mr. Taylor).

Mr. Taylor conducted a rent study to ascertain market rent for the SSV Park. He concluded market rent for the SSV Park was higher than the actual rents being charged. He used market rent and actual expenses in his calculations so that his appraisals would yield FMV. After considering all factors and reconciling the approaches, Mr. Taylor concluded the FMV of the SSV Park for January-October 2001 was $2,250,000, and for November-December 2001 was 3,400,000.

The Real Parties did not use the "cost approach," which the AAB found to be reasonable. (AR-v18-t255-p003708.)

The Assessor did not use the total mobilehome park as the appraisal unit for either the RG Park or the SSV Park, and presented evidence based on a methodology roughly following LTA 99/87 that the Assessor termed the "Market Approach." Such Market Approach is nowhere to be found in Property Tax Rules 4, 6 and 8.

C. The AAB's Valuations Follow the Law and are Supported by Substantial Evidence.

Part 2 of the AAB's Final Decision sets forth (1) the legal authorities that the AAB followed as to valuation, which were consistent with its earlier guidance to the parties, and (2) factual findings and a summary of the evidence. (AR-v18-t255.)

The AAB's conclusions were as follows:

- The FMV of the entire RG Park was $13,000,000 for all of 2001. Therefore, the value of each change in ownership of a pro rata portion of the real property of the RG Park upon transfer of one membership in RG, Inc. on each day in 2001 was 1/200th of such FMV, equaling $65,000.

- The FMV of the entire SSV Park was $2,250,000 for January 1 though October 31, 2001, and $3,400,000 from November 1 through December 31, 2001. Therefore, the value of each change in ownership of a pro rata portion of the real property of the SSV Park upon transfer of one membership in SSV, Inc. was $28,125 for January-October change of ownership (membership transfer) dates and $42,500 for November-December change of ownership (membership transfer) dates.

The AAB found that the Real Parties' evidence met the preponderance of the evidence standard and "supports a decision in [Real Parties'] favor." (AR-v18-t255-p03711.) [18]

The Court of Appeal held that, from its "review of the entire record and the applicable law," the AAB "applied the appropriate valuation method and its findings are supported by substantial evidence." (Opinion, at p. 21.)

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[18] The AAB also found that "[t]he Assessor failed to perform any appraisal in accordance with any of the three valuation methodologies prescribed by Property Tax Rules 4, 6 and 8." (AR-v18-t255-p03708.)

Concerning the Assessor's evidence in Phase 2 hearings, the AAB made the following findings:

> "This 'Market Approach'... is the very same market approach model, but on a larger scale, that the Board rejected in the first phase of the bifurcated hearing....What was invalid on a small scale does not become legitimate by its use on a much larger scale." (AR-v18-t255-p03709-10.)

V.

RESPONSES TO THE ASSESSOR'S OPENING BRIEF

A. Response to Assessor Arguments Concerning Full Cash Value, Purchase Price Presumption and Appraisal Unit.

The Assessor's positions concerning full cash value, purchase price presumption and appraisal unit are very much linked to each other and to the Assessor's constitutional arguments. These intertwined arguments are repeated at length throughout the Opening Brief. In support, the Assessor cites over and over to Sections 110 and 51 throughout the Opening Brief, with references to the California Constitution sprinkled throughout.

The Assessor's entire position is based on the Assessor's factual contentions, which are not accurate and which do not apply in this case. Moreover, the Assessor's position (based on LTA 99/87) is contradicted by multiple SBE Rules and advisory documents, all of which are consistent with Respondents' position.

As discussed below, as to the Assessor's specific arguments concerning a "purchase price presumption" under Section 110 and Property Tax Rule 2:

- the purchase price presumption under Section 110(b) is not applicable in the way that Assessor asserts, and
- Property Tax Rule 2(c)(2) directly conflicts with the Assessor's "purchase price presumption" arguments.

As also discussed below, the Assessor's specific arguments concerning "full cash value" under Section 110(a) and appraisal unit under Section 51(d) are without merit.

1. Section 110 and the Purchase Price Presumption.

Section 110(a) requires the valuation of *real property* at full cash value (fair market value) at the time of sale. Section 110(b) provides for a general, rebuttable "purchase price presumption" when *real property* is sold in a "change of ownership" transaction.

In the transactions which occur between two individuals and give rise under Section 62.1(c) to a deemed change of ownership of a pro rata portion of the total real property of the mobilehome park owned by one of the Real Parties, no real property was sold.

What, in fact and reality, was sold was a mobilehome (i.e., *tangible personal property* registered with HCD or DMV) and a membership in a non-profit corporation (i.e., a *security* subject to regulation by the Department of Corporations).

The Assessor's characterization of what happens in the transaction between the individuals is false. The Assessor characterizes the transaction between the two individuals as a purchase and sale of *real property* (i.e., of a subdivided mobilehome space that neither ever owns). The Assessor then argues the purchase price presumption applicable to an actual sale of *real property* is applicable to reassessments of deemed "changes of ownership" in this matter.

Thus, the "purchase price presumption" for *real property*, set forth in Section 110(b) simply does not apply in this matter at all, and certainly not in the way that the Assessor asserts. [19]

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[19] While the transfer of a membership is defined to constitute "change in ownership" of a pro rata portion of the total real property of the park, there is not an actual transfer of real property.

2. Property Tax Rule 2(c)(2) *directly contradicts* the Assessor's "purchase price presumption" arguments and the SBE's methodology in LTA 99/87 and in the Assessor's Handbook.

Property Tax Rule 2, as adopted by the SBE, is part of the California *Code of Regulations*, Title 18, Division 1, Chapter 1.

Property Tax Rule 2 implements Section 110. Property Tax Rule 2(a), like Section 110(a), requires the valuation of *real property* at full cash value (fair market value). Property Tax Rule 2(b), like Section 110(b), sets forth a general, rebuttable "purchase price presumption" as to *real property* that is purchased and sold.

Rule 2(c)(2) expressly provides that the purchase price presumption in Rule 2(b) "shall not apply" to "the transfer of real property when ... the change in ownership occurs as the result of the acquisition of ownership interests in a legal entity."

Under Rule 2(c)(2), the purchase price for an ownership interest in a corporation (i.e., shares or a membership) is not presumed to be the value of the real property (owned by the corporation) that is deemed to change ownership.

Property Tax Rule 2(c)(2) became effective in September 1991, shortly after the adoption of Section 62.1.

This rule makes sense because the acquisition of an ownership interest in a legal entity does not represent direct ownership of real property and many factors may affect the value of an ownership interest in a legal entity in addition to the value of its real property.

Thus, in this case, since the "change in ownership occurs as the result of the acquisition of ownership interests in a legal entity," the purchase price presumption that is relentlessly argued by the Assessor simply does not apply.

Rule 2(c)(2) directly contradicts the Assessor's positions and the SBE's methodology in LTA 99/87 and in the Assessor's Handbook.

The Property Tax Rules, in contrast to LTA 99/87 and the Assessor's Handbook, have the force of law. (*Prudential Insurance Co. of America v. City and County of San Francisco* (1987) 191 Cal. App.3d 1142, 1152, 1155.) [20]

"[I]n any conflict between the handbooks and the regulations, the latter must govern." (*Prudential Insurance Co., supra,* 191 Cal. App.3d at 1155.)

In conclusion, Rule 2(c)(2), as binding law, disposes of any argument by the Assessor or SBE that the purchase price presumption under Section 110(b) applies in this case.

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[20] On this subject, the SBE has advised county assessors and taxpayers in *Assessor's Handbook Section 501, Basic Appraisal* (1997, updated in January 2002), at pp. 136-137, that:

- "The Property Tax Rules are regulations codified in the California Code of Regulations to [interpret] and [implement] the Revenue and Taxation Code statutes...these rules are more than mere 'guidelines' and have the force of law on all parties, taxpayers and assessors;" and

- The Assessors Handbook and LTAs "are strictly advisory and are not binding on taxpayers or assessors."

3. The AAB's Decision Enrolls the Full Cash Value of the "Pro Rata Portion of the Real Property."

The full cash value provision of Section 110(a) is applicable even though the purchase price presumption of Section 110(b) is not.

The question that the Assessor and SBE have always avoided is the FMV of what? Section 62.1(c) defines a change of ownership of real property to occur when a membership in RG, Inc. or SSV, Inc. is sold. The change of ownership is of *a pro rata portion of the total real property* of the RG Park or SSV Park.

In order to properly reappraise the pro rata portion of the real property deemed to change ownership, it is necessary to ascertain the full cash value (i.e., the FMV) of the total real property of the mobilehome park and then apply the fraction of the ownership of the corporation that transfers with the membership.

This is what the AAB did and the Court of Appeal affirmed. As the Court of Appeal stated: "*the Board expressly determined the* ***full cash value*** *of the* ***total real property of the Parks*** *prior to applying the pro rata fraction.*" (Opinion, p.14; emphasis added.)

Thus, Section 110(a) was followed, in the way and to the extent that it is applicable. The Real Parties presented evidence that allowed valuation of the FMV of each change of ownership and the AAB was cognizant of its obligation to value each change of ownership at FMV.

The Assessor's states repeatedly that the AAB Decision fails to enroll the full cash value of the changes of ownership. This assertion, however, is based on the Assessor's factual contentions (i.e., that the mobilehome space is owned by an individual, who sells it), and such assertion fails due to the falsity of the underlying premise.

4. The AAB Applied the Proper Appraisal Unit.

The Assessor argues that the wrong "appraisal unit" was used by the AAB in its Decision, citing Section 51(d). (Opening Brief, pp. 33-34.) This argument is another variation of the AAB's position based on its false assumption that members own mobilehome spaces and sell their spaces. The entire line of argument fails due the falsity of the AAB's factual assumption.

The proper appraisal unit is dictated by Section 62.1(c). Indeed, when it tentatively ruled on statutory construction after the Phase 1 hearings, the AAB immediately understood what appraisal unit should be used and provided guidance to the parties on the subject.

B. The Assessor's Constitutional Arguments Ignore Article XIII, Section 2 of the California Constitution.

The Assessor's constitutional arguments cite selected provisions of Article XIII and XIIIA of the California Constitution.

Respondents note that the Assessor's constitutional arguments ignore Article XIII, Section 2 of the California Constitution, which provides that *"[t]he Legislature may provide for property taxation of all forms of tangible personal property, shares of capital stock, ... [and] may classify such personal property for differential taxation or exemption...."* (emphasis added)

Thus, under Article XIII, Section 2, the Legislature has wide authority concerning the taxation of personal property and/or

exemption from taxation of personal property. [21]

The Assessor misstates the California Constitution's requirements relating to taxation of the property involved in this case – by failing to distinguish between *real property* and *personal property* and between the rules for assessment and taxation of *real property* versus the rules for assessment and taxation of *personal property.*

By constantly asserting that *real property* actually transfers in a way that it is wholly inaccurate, the Assessor attempts to convert *personal property* that is not assessable and is beyond taxation into assessable *real property* that will be taxed. [22]

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[21] For example, some mobilehomes (registered prior to July 1980) are exempt from any property taxation, while other mobilehomes (registered on or after July 1, 1980) are subject to property taxation.

For those mobilehomes subject to property tax and located on rented or leased land, Section 5803(b) provides that the NADA Guide value is to be used to establish the assessed value of the mobilehome, rather than the actual sales price.

Exemptions from property tax (i.e., altogether for older mobilehomes) and for much of the actual market value of many mobilehomes (i.e., under Section 5803(b)) do not present any sort of constitutional problem, in light of Article XIII, Section 2 of the California Constitution.

[22] To demonstrate the extent of the problem, consider the following hypothetical, which (using a compressed time period) demonstrates what the Assessor seeks to be able to do over time:

> If there had been transfers of all 200 memberships of RG, Inc. during 2001, then reassessment of 100% of the RG Park would have been triggered for the 2002-2003 tax year, with the following results under the competing methodologies:

Because the factual contentions on which the Assessor builds its constitutional arguments are false and because the Assessor improperly mixes real property and personal property concepts and rules, the Assessor's constitutional arguments in the Opening Brief fail. [23]

- Under the AAB Decision, the final reassessed value of the RG Park would be $13 million (i.e., its FMV in 2001);

- Under LTA 99/87, the final reassessed value of the RG Park would be $30 to $50 million. (See AR-v1-t17-18.)

Specifically, the Assessor seeks to reassess RG, Inc., the owner of a $13 million rental mobilehome park, as if its real property (the RG Park) is worth $30 to $50 million, by converting exempt mobilehome (personal property) value into assessable real property value that is taxable to RG, Inc.

In fact, for the 2002-2003 tax year, the RG Park's *actual* assessed value was over $15,000,000– although less than 60% of the 200 possible memberships of RG, Inc. had transferred between the 1992 purchase of the RG Park and the end of 2001. (See AR-v1-t16-p000174-000193.) As such, RG, Inc. was excessively taxed.

[23] Real Parties submit that, to the extent that there is any conceivable constitutional problem with Section 62.1, it would relate to the Section 62.1 exemptions of *real property* from reassessment when mobilehome parks are purchased by corporations such as RG, Inc. and SSV, Inc. and/or when subdivided mobilehome spaces are purchased by individuals.

If the exemption from reassessment under Section 62.1(a) or (b) was unconstitutional for such reason, then all of Section 62.1 would be

C. The AAB's Decision Properly Found that the Members of RG,Inc./SSV, Inc. are Tenants of the RG Park/SSV Park.

The Assessor argues that the AAB Decision adopts what the Assessor calls the "renter fiction." The Assessor specifically argues that the mobilehome space leases are "fictitiously labeled" because the "the resident-owners shoulder the obligation to pay the mortgages and fees incurred by their non-profit corporations." (Opening Brief, p. 35-36.)

The Assessor's statements are false and are contradicted by the AAB's factual findings and the evidence submitted by the Real Parties.

RG, Inc. and SSV, Inc. collect rent from the tenants (members and nonmembers alike) and use such rent monies to pay the costs of operating their mobilehome parks, just as all other landlords of rental mobilehome parks do. Failure to pay rent subjects the tenant, member or nonmember, to eviction.

The Assessor also asserts that since members have the right to sell their mobilehomes in place, this somehow proves that the members own their spaces. (Opening Brief, p. 36.) As evidence, the Assessor refers to MLS Listings (AR-v11-t174-p002355-2367), arguing that the "FMV of each space varies based on the size, location and specific attributes of each property." (Opening Brief, p. 36.)

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invalid since the rest of Section 62.1 is a "catch-up" provision stemming from the initial exemption from reassessment.

(The AAB notes that it has and had no jurisdiction to consider the question in this footnote, and such issue was never argued or considered in the AAB proceedings.)

The MLS Listings in evidence listed mobilehomes in numerous rental mobilehome parks. In all of the listings, the mobilehome is for-sale *in place*, but mobilehome spaces were not for sale. (AR-v11-t174-p002355-2367.)

Nothing in the MLS Listings supports the Assessors' assertions that members of RG, Inc./SSV, Inc. own a mobilehome space.

The MLS Listings include listings for mobilehomes that were for sale in (a) the SSV Park and two investor-owned rental mobilehome parks (Rancho Granada, Sandpiper), in Carpinteria, and (b) the RG Park and two investor-owned rental mobilehome parks (San Vicente, Rancho Santa Barbara) west of the City of Santa Barbara.

In all six of these rental parks, the buyer of the listed mobilehome was entitled to lease the space on which the mobilehome was located when purchasing the mobilehome.

A quick perusal of the MLS Listings discloses the visual similarity and similar size of the mobilehomes in the parks and of the prices in each geographic area -- even though the price listed for a mobilehome in the SSV Park and RG Park also included the purchase price of a membership in SSV, Inc. and RG, Inc., respectively. (AR-v11-t174-p002355-2367. See also AR-v1-t29-p000286-000321; AR-v3-t35.5-35.6-p000705-000706.)

The Assessor's Opening Brief, at p. 36-37, then quotes *Penner v. County of Santa Barbara* (1995) 37 Cal.App.4th 1672, 1679, and argues that *Penner* supports the Assessor's "renter fiction" argument.

The Assessor asserts, without explanation, that there have been step transactions in this matter.

The claim is false. The *Penner* decision actually supports Respondents because it makes clear that the form of a transaction, *if associated with substance in the relationships involved*, can and does make a great difference in property tax results.

In *Penner*, the Court of Appeal noted that there is a significant difference between owning a direct, on-title percentage interest in real property and owning a percentage interest in a limited liability entity that owns the real property. (Id. at 1679-1680.)

Respondents note that a similar distinction was expressly discussed in the legislative history of Section 62.1(c) and is inherent in the AAB's factual findings.

The step-transaction doctrine is altogether inapplicable.

Under the step-transaction doctrine, if a taxpayer "*interjects economically or legally meaningless transactions* between the starting point and the end to obtain more favorable tax treatment, then the intervening transactions will be disregarded." (Id. at 1679 (emphasis added).)

But there are no "economically or legally meaningless transactions between the starting point and the end" that were "interjected" by RG, Inc. or SSV, Inc. or anyone else "to obtain more favorable tax treatment." RG, Inc. and SSV, Inc. own and operate rental mobilehome parks and their member-tenants lease their spaces and pay rent, as do nonmember-tenants. The Real Parties should be taxed in accordance with assessments that comply with Section 62.1(c).

Finally, the Assessor asserts that *Health and Safety Code* §50781(m) is "instructive" as to whether members of RG, Inc. and SSV, Inc. own their spaces. (Opening Brief, pp. 37-38.) This statute

is a definition for purposes of the "Mobilehome Park Purchase Fund" only. Neither RG, Inc. nor SSV, Inc. sought or obtained a loan under this state program. Section 62.1(c) does not cross-reference such definition. Thus, the Assessor's suggestion that a definition in a loan program is somehow relevant to this matter is without merit.

D. The Parties' Factual Disagreements are Rooted in LTA 99/87.

The wide divergence between the parties on fundamental factual issues has led to endless debates on every subject.

The factual dispute is whether the members of RG, Inc. and SSV, Inc. own or lease mobilehome spaces.

The source of the disagreement is LTA 99/87, which the Assessor feels compelled to follow.

A very elastic and self-serving vocabulary is used in LTA 99/87 to describe what transfers when a share or membership transfers:

1. Transfer of the share (membership) is *initially characterized as* a transfer of "a fractional interest in the corporation" (AR-v1-t12-p00135);

2. Transfer of the share (membership) *then morphs into* a transfer of "outright ownership of a particular mobilehome" and "the exclusive right to occupy a particular space in the park" (AR-v1-t12-p00136); [24]

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[24] The extent to which the SBE attempts in LTA 99/87 to bend real-world facts to its views is evident in the statement that transfer of a share in corporation transfers "outright ownership of a particular

3. Transfer of the share (membership) *later morphs into* a transfer of "exclusive ownership of the individual underlying space" (AR-v1-t12-p00137).

Such "morphed" factual *assumptions* are critical to the SBE's interpretation of Section 62.1(c) in LTA 99/87. Since the "morphed" factual assumptions in #2 and #3, above, are false, the analysis in LTA 99/87 based on such assumptions is flawed, to say the least. Specifically, LTA 99/87 states:

> "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." (AR-v1-t12-p000136; emphasis added.)
>
> "Assuming that the reported purchase price represents the collective fair market value of the mobilehome and the underlying interests in the park, ... [t]he most reasonable way of allocating value ...would be to extract from the reported purchase price the value of the mobilehome itself, using the [NADA Guide]... and then (2) assign the remainder of the purchase price to the interest in the park." (AR-v1-t12-p000136.)
>
> "For transfers of shares or other ownership interests that represent ownership of individual spaces in mobilehome parks, it is clear that what persons in the marketplace commonly buy and sell is not the entire park, but rather the fractional interests

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mobilehome." The statement is completely in error, and directly conflicts with the certificate of title and registration requirements for mobilehomes that are administered by HCD and DMV.

conveyed by the individual interests. Thus,... the appraisal unit is the individual mobilehome space and the mobilehome." (AR-v1-t12-p000137.)

"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, ...Section 5803(b) does not apply." (AR-v1-t12-p000137; question 7 & answer.)

None of the factual assumptions in LTA 99/87 apply to (or are true of) the memberships in RG, Inc. or SSV, Inc., or to the RG Park or the SSV Park – or to other similar mobilehome parks owned by other corporations whose members are a majority of tenants. It is ironic that LTA 99/87 proposes to use the NADA Guide to value mobilehomes, a procedure applicable to mobilehomes located on rented or leased lands.

E. The AAB Committed No Error in Declining to Follow the Mistaken, Advisory-Only LTA 99/87

The Assessor's contentions concerning LTA 99/87 and its offspring, portions of Assessor's Handbook Section 511, are premised on the Assessor's belief that LTA 99/87 is correct. In view of the errors in LTA 99/87, however, the AAB properly declined to follow both LTA 99/87 and portions of Handbook Section 511.

LTAs (and the Assessor's Handbook) are merely advisory. (AR-v8-t125.1-p001760.) The question is what, if any, deference is due to LTA 99/87 and those portions of Handbook Section 511 based on it.

The Assessor states that deference should be shown by this Court to LTA 99/87. (Opening Brief, pp. 28-33.)

The Assessor is wrong.

This Court has held that the deference to an agency's interpretation depends on the circumstances and the weight to be given to the agency's determination is "fundamentally situational." *Yamaha Corp.of America, supra,* 19 Cal. 4th at 12.

As stated in *Yamaha*:

> "Considered alone and apart from the context and circumstances that produce them, agency interpretations are not binding or necessarily even authoritative....'The standard for judicial review of agency interpretation of law is the *independent judgment* of the court, giving *deference* to the determination of the agency *appropriate* to the circumstances.' ...
>
> "A court assessing the value of an interpretation must consider complex factors material to the substantive legal issue before it, the particular agency offering the interpretation, and the comparative weight the factors ought in reason to command. ... two broad categories of factors relevant to a court's assessment of the weight due an agency's interpretation: Those 'indicating that the agency has a comparative advantage over the courts,' and those 'indicating that the interpretation in question in probably correct.'
>
> "In the first category,... A court is more likely to defer to an agency's interpretation of its own regulation than to its interpretation of a statute,... The second group of factors... those

> suggesting the agency's interpretation is likely to be correct includes... evidence that the agency 'has consistently maintained the interpretation in question, especially if [it] is long-standing'..., and indications that the agency's interpretation was contemporaneous with legislative enactment of the statue being interpreted.... The deference due an agency's interpretation... will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and those factors which give it power to persuade...." (Id. at 8, 12-15.)

Under the *Yamaha* standards, Respondents submit that LTA 99/87 and its progeny are not entitled to any deference or weight, and that the AAB properly gave it no deference or weight in its Decision.

The SBE's rationale in LTA 99/87 is contradicted by the plain meaning of Section 62.1(c), by the SBE's own Legislative Bill Analyses (prepared by SBE staff during the legislative process), and by LTA 89/13 (issued by the SBE when the statute was newly-enacted).

The credibility of LTA 99/87 is also further undermined by the completely inaccurate statement that the transfer of a membership effectively accomplishes the transfer of a mobilehome.

Thus, the AAB and the Court of Appeal properly rejected the Assessor's arguments concerning LTA 99/87 and those portions of Assessor's Handbook Section 511 which are based on LTA 99/87.

Respondents submit that deference from the courts in this case is appropriate only for the SBE's statements in LTA 89/13 and to the AAB concerning its factual findings .

Deference is due to LTA 89/13 because it meets the criteria in *Yamaha*. Not surprisingly, LTA 89/13 conflicts with LTA 99/87.

And deference of a different sort is due to the AAB with respect to its factual findings and is inherent in the standard of review. [25] A strong presumption of correctness attaches to a board's factual findings. See also *Fukada v. City of Angels* (1999) 20 Cal.4th 805, 824 [trial court erred in "failing to accord a presumption of correctness to the administrative findings"].

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[25] As discussed above, in applying the substantial evidence test, the courts indulge all presumptions and resolve all conflicts in favor of a board's decision.

In the Opening Brief, the Assessor did not (and at no time in this case did the Assessor ever) demonstrate that the AAB's factual findings are not supported by substantial evidence in light of the whole record. Instead, the Assessor simply disagrees with the AAB's factual findings by asserting its factual contentions (based on LTA 99/87).

The AAB devoted an enormous amount of time, including three weeks of full-day hearings to witness testimony and the examination of voluminous documentary evidence, in order to ascertain the facts of this case and make its factual findings.

The members of the AAB were: (1) an experienced certified public accountant, (2) an attorney who had litigated cases involving landlord-tenant issues in mobilehome parks, and (3) a tenured University of California, Santa Barbara professor of history whose specialty is economic history.

The AAB set forth its factual findings in detail, and the AAB Decision was unanimous. Applying the proper standard of review for the AAB's factual findings, the trial court and the Court of Appeal majority ruled that substantial evidence supports the findings.

F. The Assessor's Contentions Concerning Appraisals are Without Merit.

1. The AAB's Income Approach Analysis was Proper.

The Assessor acknowledges that the income approach under Property Tax Rule 8 is appropriate when a real property has an established income stream. (Opening Brief, p. 34.)

But the Assessor then argues that it was improper to use the income approach to value the RG Park and SSV Park because tenants of spaces in the RG Park and SSV Park are prohibited from subleasing their mobilehome spaces and "the income approach cannot ... be used to value properties contractually prohibited from earning income." (Opening Brief, p. 34-35.)

Again, this argument is based on the Assessor's contention that the members own, rather than lease, their spaces.

(The Assessor's argument is internally-inconsistent since the Assessor incorporates a prohibition on subletting, set forth in the *mobilehome space leases*, into the argument)

In fact, RG, Inc. and SSV, Inc., as property owners/landlords operating rental mobilehome parks, do receive rental income and pay park operating expenses. The Real Parties' appraiser used fair market rent and actual expenses of operating the mobilehome parks to calculate net operating income as part of the income approach analysis.

Because the two parks are rental parks and the proper appraisal unit was the entire mobilehome park, the income approach was properly applied by the AAB in its Decision.

2. The AAB's Comparative Sales Approach Does Not Violate Property Tax Rule 4.

The Assessor argues that the Real Parties' expert appraisal reports, on which the AAB based its valuations, violated Property Tax Rule 4 (comparative sales approach). (Opening Brief, pp. 39-40.) The premise for this argument (again) is the Assessor's beliefs that the members own their spaces and concerning the proper appraisal unit.

Because the parks are rental mobilehome parks and the proper appraisal unit was the mobilehome park as a whole, the comparative sales approach (based on looking at data from the sale of other mobilehome parks) was properly considered.

3. The Appraisal Values Apply for Every Date of Change of Ownership in 2001.

In its Opening Brief, at pp. 38-39, the Assessor objects that the Real Parties' appraisal reports for the RG Park and SSV Park did not list as specific appraisal dates those dates in 2001 on which memberships in RG, Inc. and SSV, Inc. transferred – and instead used date ranges that included all of such specific membership transfer dates.

The Assessor cites Sections 75 and 75.10, asserting that the use of a range of dates in such appraisal reports renders the appraisal reports incompetent.

While Sections 75 and 75.10 require that property shall be assessed as of the date of change of ownership, these statutes do not prohibit use of an appraisal report with a range of dates that includes the specific change of ownership dates. Thus, the appraisal reports in evidence do not conflict with Sections 75 and 75.10.

Indeed, the AAB had no problem understanding or making use of the appraisal reports or Mr. Taylor's testimony – since the value of the parks was stable through the defined date ranges.

Importantly, the AAB Decision includes a date for each change in ownership for which it makes a valuation, consistent with the requirements of Section 75 and 75.10. (AR-v18-t255-p003712-003713.)

4. The Assessor's Appraisals Were Not Competent Evidence.

The Assessor argues that only its appraisals are competent estimates of value. (Opening Brief, pp. 41-42.)

However, the Assessor's appraisals were based on false assumptions, an incorrect statutory interpretation, an incorrect appraisal unit, and failure to use recognized appraisal approaches.

As such, the Assessor's valuations were not competent evidence, and the AAB properly did not use them to value the changes of ownership at issue.

G. The AAB's and Court of Appeals' Statutory Construction of Section 62.1 Is Unaffected by the 2002 Amendments.

The 2002 amendments added subdivisions (b)(4)-(6) to Section 62.1 (concerning escape assessments and some new reporting requirements).

The 2002 legislation did not amend the language at issue in this case, other than to re-letter subdivisions (c)(1)-(3) as (b)(1)-(3).

The Assessor contends that the 2002 amendments support the Assessor's purchase price presumption argument.

The contention is without merit. As discussed above, in accordance with Property Tax Rule 2(c)(2), the purchase price presumption is inapplicable in the circumstances of this matter.

Moreover, the statutory language at issue in this case was not altered by the 2002 amendments. In fact, the language has not been changed since it was first proposed in February 1988.

The addition of a reporting requirement does not effect an implied repeal of a long-standing statute.

The required change of ownership statement under the 2002 amendments serves the purpose of notifying the Assessor when there has been a deemed change of ownership, since such a transfer is not evidenced by a recorded deed – so that the Assessor may carry out a reassessment pursuant to what is now Section 62.1(b)(1) and (2).

H. No Constitutional "Property Tax Benefits" are Jeopardized.

The Assessor asserts that the AAB Decision jeopardizes "important property tax benefits." The claim is false.

1. Homeowner's Exemption.

The Assessor's alleged concern is that members of RG, Inc. and SSV, Inc. are at risk of losing the right to a $7,000.00 homeowner's exemption. (Opening Brief, at p. 42.)

The Assessor's argument is based on the Assessor's false factual assumption concerning ownership of mobilehome spaces, and is without merit for that reason.

Additionally, the Assessor is not correct that member-tenants would lose a Homeowner's Exemption. The exemption is available to owners of mobilehomes located on leased land, under California Constitution, Article XIII, §3(k).

2. Proposition 60 Transfer of Base Value.

The Assessor suggests that the AAB Decision will cause members of RG, Inc. and SSV, Inc. to lose the right to carry-over a prior assessed value under Proposition 60 -- but that if the members own their spaces in the RG Park and SSV Park, then they would enjoy the benefits of Proposition 60.

In general, "Proposition 60 Base Year Value Transfer" is applicable to persons over age 55 who sell one residential *real property* and purchase another residential *real property* if the prior base year value of the original property as adjusted is lower than the purchase price on the replacement *real property*.

Real Parties question the real-world likelihood of Proposition 60 base year value transfers ever applying to (1) transactions involving member's mobilehomes in the RG Park or the SSV Park (which would otherwise be valued under Section 5803(b)) or (2) the valuation of the pro rata portion of the real property to the park deemed to transfer when a membership transfers (if properly valued according to the AAB Decision).

However, to the extent that prior base year values would be beneficial, the *bookkeeping* provisions of Section 69.5(c)(2) would apply and would avoid any possibility of the loss of benefits that the Assessor suggests might occur.

It should be noted that the fact that Section 69.5(c)(2) provides some remedial treatment for an assessed value assigned to "pro rata interest in a mobilehome park" – "for *purposes of this paragraph*" (emphasis added) – does not mean that individual tenants of the RG Park and SSV Park own the spaces on which their mobilehomes are located. To the extent that the Assessor was attempting to use the highly technical, bookkeeping provisions of Section 69.5 to assert that individual tenants of the RG Park and SSV Park own the spaces on which their mobilehomes, the argument is without merit and fails.

3. Decline in Value.

The AAB Decisions do not jeopardize *any* taxpayer's ability to seek a property tax assessment reduction due to a decline in value. The Assessor's arguments to the contrary (Opening Brief, p. 43) are false.

Under Section 51, a taxpayer may seek a reduced assessment for real property if there has been a decline in value such that its FMV is less than its value on the property tax roll.

If ever the SSV Park and/or the RG Park should decline in value below a *properly assessed* tax roll value, then their owners, SSV, Inc. and RG, Inc., could seek an assessment reduction under Section 51.

This, of course, is not what the Assessor meant. The Assessor states that the Decision "interfere[s] with a mobilehome owner's ability to secure a reduction in property taxes when his or [her] property suffers a decline in value." (Opening Brief, p. 43.) This argument fails due its false premise – i.e., that the mobilehome owner owns his/her mobilehome space, which is not accurate.

In addition, the statement is inaccurate since Section 5813 provides that mobilehomes may be reviewed for declines in value.

CONCLUSION

In addition to whether the Real Parties will be assessed (and taxed) according to the law and as intended by the Legislature, what is at stake in this case is whether there will be long-run fulfillment or frustration of the Legislature's purpose in Section 62.1 – i.e., encouraging purchases of unsubdivided mobilehome parks by corporations formed by a majority of tenants in such parks.

For the reasons discussed above, Respondents request that the Court affirm the Court of Appeal Opinion, which affirmed the trial court's Judgment denying the petition for writ of mandate.

DENNIS A. MARSHALL,
COUNTY COUNSEL,
COUNTY OF SANTA BARBARA

Dated: March 5, 2013

By _____
Jerry F. Czuleger
Deputy County Counsel
Attorneys for Respondent
ASSESSMENT APPEALS BOARD

Dated: March 5, 2013

David C. Fainer Jr.
DAVID C. FAINER, JR.,
Attorney for Real Parties in Interest
and Respondents RANCHO GOLETA
LAKESIDE MOBILEERS, INC. and
SILVER SANDS VILLAGE, INC.

CERTIFICATE OF WORD COUNT

The undersigned certifies that, as counted by the word-processing program used to generate this brief, the number of words in the text of this brief, including footnotes, is 18,137 words.

Dated: March 5, 2013

David C. Fainer Jr.

David C. Fainer, Jr.
Attorney for Real Parties
in Interest and Respondents
RANCHO GOLETA LAKESIDE
MOBILEERS, INC. and
SILVER SANDS VILLAGE, INC.

Introduced by Senator Craven

February 2, 1988

An act to amend Section 62.1 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1885, as introduced, Craven. Property taxation: change in ownership.

Existing property tax law requires the reassessment of real property upon a change in ownership and specifies what transfers of property do and do not constitute a change in ownership. It excludes from a change in ownership, and hence from reassessment, any transfer made, on or after January 1, 1985, and prior to January 1, 1994, of a mobilehome park to a nonprofit corporation, stock cooperative corporation, or other entity formed by the tenants of the park for the purpose of purchasing the park.

This bill imposes a condition upon that exclusion for parks transferred on or after January 1, 1989, that requires that individual tenants who were renting at least 51% of the spaces in the park prior to the transfer participate in the transaction through the ownership of an aggregate of at least 51% of the voting stock of, or other ownership or membership interests in, the entity acquiring the park.

This bill would also provide that, if the transfer of a mobilehome park has been excluded from a change in ownership under either existing law or existing law as modified by this bill and if the park has not been converted to condominium or stock cooperative ownerships, any transfer on or after January 1, 1989, of shares of the voting stock of, or other ownership or membership interests in, the entity acquiring the park shall be a change in ownership of a pro rata portion of the real property, as defined, of the park

unless the transfer is for the purpose of converting the park to condominium or stock cooperative ownership or is otherwise excluded from a change in ownership under other specified provisions of law.

Existing property tax law excludes from a change in ownership, and hence from reassessment, transfers of rental spaces in a mobilehome park made on or after January 1, 1985, and before January 1, 1987, to individual tenants of those spaces if certain conditions are met concerning the formation by those tenants of a nonprofit corporation, stock cooperative, or other entity to operate and maintain the park.

This bill would delete those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 62.1 of the Revenue and Taxation Code is amended to read:

62.1. 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, or other entity formed by the tenants of a mobilehome park for the purpose of purchasing the mobilehome park ~~:~~

~~(b) Any transfer or transfers on or after January 1, 1985, and before January 1, 1987, 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 nonprofit corporation, stock cooperative, or other entity, as described in Section 50561 of the Health and Safety Code, to operate and maintain the park. If, on or after January 1, 1985, and before January 1, 1987, 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 of more~~, *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.*

(b) 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 or stock 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 or stock cooperative ownership or is excluded from change in ownership by the provisions of Section 62, 63, or 63.1.

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 shares of voting stock of, or other ownership or membership interests in, the entity which acquired the park in accordance with subdivision (a).

(c) Subdivision (a) shall remain in effect only until

January 1, 1994. ~~Subdivision (b) shall remain in effect only until January 1, 1987.~~

(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, and before the termination date of subdivision (a).

O

ATTACHMENT 1

STATE BOARD OF EQUALIZATION
LEGISLATIVE BILL ANALYSIS

Bill Number: SB 1885 Date Introduced: 2/02/88

Author: Craven Tax: Property

Board Position: _____ Related Bills: _____

BILL SUMMARY:

This bill amends Section 62.1 of the Revenue and Taxation Code to require, under subdivision (a), that at least 51 percent of the individual tenants renting 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.

Further, it amends subdivision (b) to provide that the transfer of ownership interests, as defined, shall be a change in ownership of a pro rata portion of the real property under certain conditions unless such transfers are otherwise excluded under Section 62, 63 or 63.1.

ANALYSIS:

In General:

Prior to the enactment of SB 298 (Chapter 1344, Statutes of 1987) 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. Thus, in order to qualify under Section 50561, the entity formed by the mobilehome park tenants must have two purposes:

1) To convert the mobilehome park to condominium or stock cooperative ownership interests, and;

2) to purchase the mobilehome park from its management.

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ATTACHMENT 2

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 a park by one or two tenants. In fact, an investor purchasing a mobilehome park might be encouraged to move in and become a tenant solely for the purpose of qualifying for the change in ownership exclusion.

2) 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 a reappraisal. This would give mobilehome parks much more favorable treatment than the average homeowner.

SB 1885 amends Section 62.1 to address these two problems and to delete portions of the section which are now obsolete because they sunsetted on January 1, 1987.

COMMENTS:

1. The amendment to subdivision (a) of Section 62.1 addresses the first problem by adding a condition that tenants representing at least 51 percent of the mobilehome spaces in the park participate in the excluded transaction. It is our understanding that normally 75 percent participation by the tenants is necessary in order for the conversion to be successful but 100 percent participation is usually not possible.

2. The proposed new subdivision (b) addresses problem 2. The amendment would provide that a transfer of stock or an ownership interest in a mobilehome park is a change in ownership of a pro rata portion of the real property of the park, if the park had previously been in a transaction qualifying under Section 62(a) and it had not been converted to condominium or stock cooperative ownership. The effect of the proposal would be prospective.

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

SP-2

ATTACHMENT 2

Thus, any differences in a 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 in specific property, the proposal does not require that any increase in taxes be allocated to the particular tenant-shareholder as required in Section 65.1(b). This should not work any real hardship, however, since the nonprofit corporation, through its bylaws and rental agreements has the power to provide for a pass-on of the tax to the appropriate parties.

3. The strikeout of subdivision (b) and the second sentence in subdivision (c) merely removes obsolete language.

COST ESTIMATE

The cost of this amendment to the Board of Equalization should be insignificant, less than $10,000.

REVENUE ESTIMATE

The purpose of SB 1885 is to close an inadvertent loophole enacted by Chapter 1344, Statutes of 1987. Thus, the effect of this measure would be to negate any property tax revenue loss attributable to Chapter 1344.

Analysis prepared by: Richard Ochsner 445-4588
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rj

2/17/88

SP-3

ATTACHMENT 2

APP001268

AMENDED IN SENATE MARCH 24, 1988

SENATE BILL No. 1885

Introduced by Senator Craven

February 2, 1988

An act to amend Section 62.1 of, *and to add Section 2188.10 to,* the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1885, as amended, Craven. Property taxation: change in ownership.

Existing property tax law requires the reassessment of real property upon a change in ownership and specifies what transfers of property do and do not constitute a change in ownership. It excludes from a change in ownership, and hence from reassessment, any transfer made, on or after January 1, 1985, and prior to January 1, 1994, of a mobilehome park to a nonprofit corporation, stock cooperative corporation, or other entity formed by the tenants of the park for the purpose of purchasing the park.

This bill imposes a condition upon that exclusion for parks transferred on or after January 1, 1989, that requires that individual tenants who were renting at least 51% of the spaces in the park prior to the transfer participate in the transaction through the ownership of an aggregate of at least 51% of the voting stock of, or other ownership or membership interests in, the entity acquiring the park.

This bill would also provide that, if the transfer of a mobilehome park has been excluded from a change in ownership under either existing law or existing law as modified by this bill and if the park has not been converted to condominium or stock cooperative ownerships, any transfer on or after January 1, 1989, of shares of the voting stock of, or other ownership or membership interests in, the

entity acquiring the park shall be a change in ownership of a pro rata portion of the real property, as defined, of the park unless the transfer is for the purpose of converting the park to condominium or stock cooperative ownership or is otherwise excluded from a change in ownership under other specified provisions of law.

~~Existing property tax law excludes from a change in ownership, and hence from reassessment, transfers of rental spaces in a mobilehome park made on or after January 1, 1985, and before January 1, 1987, to individual tenants of those spaces if certain conditions are met concerning the formation by those tenants of a nonprofit corporation, stock cooperative, or other entity to operate and maintain the park.~~

~~This bill would delete those provisions.~~

Existing property tax law prescribes the conditions under which and the methods by which interests in real property may be separately assessed.

This bill would authorize the separate assessment of any pro rata portion or portions of the real property of a mobilehome park which have changed ownership pursuant to the provisions of this bill and would prescribe the conditions under which and the method by which that separate assessment is to be made. Since this bill would require the assessor to provide for this separate assessment upon a written request by the governing board of the entity owning the park and would impose specified duties on the assessor in implementing this requirement, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ *yes*. State-mandated local program: ~~no~~ *yes*.

The people of the State of California do enact as follows:

SECTION 1. Section 62.1 of the Revenue and Taxation Code is amended to read:

62.1. 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, 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.

(b) Any transfer, on or after January 1, 1985, of a mobilehome park to a nonprofit corporation, stock cooperative corporation, or other entity formed by the tenants of a mobilehome park for the purpose of purchasing the mobilehome park.

Any transfer or transfers on or after January 1, 1985, and before January 1, 1987, 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 nonprofit corporation, stock cooperative, or other entity, as described in Section 50561 of the Health and Safety Code, to operate and maintain the park. If, on or after January 1, 1985, and before January 1, 1987, 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 of 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 or stock 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 or stock cooperative ownership or is excluded from change in ownership by the provisions of Section 62, 63, or 63.1.

~~For~~

(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 shares of voting stock of, or other ownership or membership interests in, the entity which acquired the park in accordance with subdivision (a).

~~(c)~~

(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) Subdivision (a) shall remain in effect only until January 1, 1994.

~~(d)~~ *Subdivision (b) shall remain in effect only until January 1, 1987.*

(e) 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, and before the termination date of subdivision (a).

SEC. 2. Section 2188.10 is added to the Revenue and Taxation Code, to read:

2188.10. (a) Whenever the assessor receives a written request for separate assessment of a pro rata portion of the real property of a mobilehome park which changed ownership pursuant to subdivision (c) of Section 62.1 as the result of the transfer of a share or shares of voting stock or other ownership or membership interest or interests, the assessor shall, on the first lien date which occurs more than 60 days following the request, and on each lien date thereafter, separately assess the portion or portions of real property described in subdivision (b) if the conditions specified in subdivision (c) have been met. Whenever a portion of the real property of a mobilehome park becomes subject to separate assessment, it shall continue to be subject to separate assessment in subsequent fiscal years and once a request for separate assessment is made, it is binding on all future owners of the voting stock or other ownership or membership interests in the entity which owns the park.

(b) The interest that is to be separately assessed is the value of the pro rata portion of the real property of the mobilehome park which changed ownership pursuant to subdivision (c) of Section 62.1.

(c) A separate assessment may not be made by the assessor under this section unless the following conditions are met:

(1) The governing board of the mobilehome park makes the request for separate assessment and certifies that the request has been approved in the manner provided in the organizational documents of the entity owning the mobilehome park.

(2) Information is filed with the assessor listing all of the following:

(A) The total number of outstanding shares of voting stock of, or other ownership or membership interests in, the entity which owns the mobilehome park.

(B) The number of shares of voting stock, or other ownership or membership interests, which have been transferred and resulted in the change in ownership of portions of the real property of the park pursuant to subdivision (c) of Section 62.1, together with the names and addresses of the owners of the transferred voting stock or other ownership or membership interests.

(C) Any other information as the assessor may require.

The entity owning the mobilehome park shall file an annual statement for each succeeding assessment year, on or before April 1, with the assessor, setting forth any changes to the required information known to the entity. The information provided pursuant to this section is not a public document and shall not be open to public inspection, except as provided in Section 408.

(d) Nothing in this section shall be construed to require applicants for separate assessments to meet the requirements of the Subdivision Map Act, nor shall the approval of any governmental agency be required for separate assessment except for the assessor's approval.

(e) The assessor shall cumulate all the separate assessments in a mobilehome park and enter the total assessment on the secured roll in the name of the entity which owns the park. The assessor shall notify each owner of a portion of the real property of the park subject to separate assessment under this section of the amount of an increased assessment pursuant to Section 619.

(f) The tax on the total assessment of the mobilehome park shall be a lien on the real property of the park and shall be subject to all provisions of law applicable to taxes on the secured roll.

(g) The tax collector shall send a single tax bill, with an itemized breakdown detailing the taxes and the allocated portion of any fee imposed pursuant to subdivision (i) applicable to each separate assessment, to the entity owning the mobilehome park.

(h) The assessor shall provide to owners of voting stock or other ownership or membership interest in a mobilehome park entity subject to subdivision (c) of Section 62.1, and to the governing board of the park, at that time and in that manner as the assessor deems appropriate, adequate notice of the provisions of this section and other pertinent information relative to the implementation thereof.

(i) The county may charge a fee for the initial cost of separately assessing and implementing subdivision (g), not to exceed the actual cost of the separate assessment and billing. This fee shall be allocated to each owner of a share of voting stock or other ownership or membership interest for which a separate assessment has been made and the fee shall be deposited in the county's general fund.

(j) The governing board of the entity which owns the mobilehome park shall collect the allocated portion of any fee charged pursuant to subdivision (i) and any itemized taxes applicable to a separate assessment from the owner of the voting stock or other ownership or membership interest whose acquisition of the interest resulted in the separate assessment. The fees and taxes resulting from separate assessment shall be deducted from the proportional cost of the fees and taxes collected from the remaining owners or members.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

O

STATE BOARD OF EQUALIZATION
LEGISLATIVE BILL ANALYSIS

Bill Number: Senate Bill 1885 Date introduced: 3/24/88

Author: Craven Tax: Property

Board Position: Support Related Bills: _____

BILL SUMMARY:

This bill requires that, when a mobilehome park is transferred to an entity formed by the tenants, at least 51 percent of the tenants must participate in the transaction through the ownership of an aggregate of at least 51 percent of the voting stock of, or other ownership or membership interests in, the entity which acquires the park; and, it provides that the transfer of ownership interests, as defined, shall be a change in ownership of a pro rata portion of the real property.

The bill also requires the assessor, upon receipt of a written request, to separately assess those spaces in a mobilehome park that have transferred and been subject to reassessment under subdivision (c) of Section 62.1 of the Revenue and Taxation Code.

ANALYSIS:

In General:

Prior to the enactment of SB 298 (Chapter 1344, Statutes of 1987) 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. Thus, in order to qualify under Section 50561, the entity formed by the mobilehome park tenants must have two purposes:

1) To convert the mobilehome park to condominium or stock cooperative ownership interests, and;

2) to purchase the mobilehome park from its management.

SP.9

ATTACHMENT 4

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 a park by one or two tenants. In fact, an investor purchasing a mobilehome park might be encouraged to move in and become a tenant solely for the purpose of qualifying for the change in ownership exclusion.

2) 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 a reappraisal. This would give mobilehome parks much more favorable treatment than the average homeowner.

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.

COMMENTS:

1. The amendment to subdivision (a) of Section 62.1 addresses the first problem by adding a condition that tenants representing at least 51 percent of the mobilehome spaces in the park participate in the excluded transaction. It is our understanding that normally 75 percent participation by the tenants is necessary in order for the conversion to be successful but 100 percent participation is usually not possible.

2. Subdivision (c) addresses problem 2. The amendment would provide that a transfer of stock or an ownership interest in a mobilehome park is a change in ownership of a pro rata portion of the real property of the park, if the park had previously been in a transaction qualifying under Section 62.1 (a) and it had not been converted to condominium or stock cooperative ownership. The effect of the proposal would be prospective.

SP-10

ATTACHMENT 4

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

The provisions for the separate assessment of a pro rata portion of the mobilehome park which changed ownership pursuant to Section 62.1(c) permits the assessments and related taxes to be separately identified and requires the collection of the taxes and any processing fee from the owner of the pro rata portion of the property which changed ownership. This collection is the responsibility of the mobilehome park governing board since the total taxes, as a matter of law, are a lien on the entire park. The governing boards can protect the financial interests of all park shareholders through contractual arrangements, security deposits, etc., which will guarantee the payment of all taxes in full.

3. The first paragraph of subdivision (b) of Section 62.1 appears to be included in error. The subdivision should consist only of the second paragraph.

COST ESTIMATE

The cost of this amendment to the Board of Equalization should be insignificant, less than $10,000.

REVENUE ESTIMATE

The purpose of SB 1885 is to close an inadvertent loophole enacted by Chapter 1344, Statutes of 1987. Thus, the effect of this measure would be to negate any property tax revenue loss attributable to Chapter 1344.

Analysis prepared by: Richard Ochsner 445-4588 March 31, 1988
Gene Palmer 445-6777
Contact: Margaret Shedd Boatwright 322-2376
rj

SP-11

ATTACHMENT 4

AAB-L

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA

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

(916) 445-4982

No. 89/13

February 1, 1989

TO COUNTY ASSESSORS:

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

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

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

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

ATTACHMENT 5

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

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

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

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

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

Sincerely,

Verne Walton

Verne Walton, Chief
Assessment Standards Division

VW:wpc
AL-24-0153G

ATTACHMENT 5

PROOF OF SERVICE

STATE OF CALIFORNIA,
COUNTY OF SANTA BARBARA

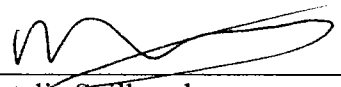
I am employed in the County of Santa Barbara, State of California. I am over the age of eighteen years and not a party to the above titled action. My business address is 1114 State Street, Suite 200, Santa Barbara, California 93101.

On March 6, 2013, I served the foregoing document described as RESPONDENTS' JOINT ANSWER BRIEF on the interested parties in said action by enclosing a copy thereof in sealed envelopes which were addressed as shown on the attached SERVICE LIST, as follows:

☑ By U.S. Mail. I am readily familiar with this office's practice of collection and processing correspondence on the same day with postage thereon fully prepaid at Santa Barbara, California, in the ordinary course of business.

☑ (STATE) I declare, under penalty of perjury under the laws of the State of California, that the above is true and correct.

Executed on March 6, 2013, in Santa Barbara, California.



Natalie Spilborghs

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(continued)

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