S 205876

Court of Appeal 2nd Civil No. B229656

IN THE

SUPREME COURT

OF THE

STATE OF CALIFORNIA

ASSESSOR FOR COUNTY OF SANTA BARBARA
Plaintiff & Appellant

vs.

ASSESSMENT APPEALS BOARD NO. 1
Defendant & Respondent

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

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

REPLY TO RESPONDENT'S JOINT ANSWER BRIEF

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I

OVERVIEW OF REPLY

The Joint Answer filed by the Real Parties in Interest and Respondents (collectively referred to as the "Respondents") goes to great lengths to convert questions of law (ownership, method of valuation and statutory interpretation) into questions of fact. The Respondents' efforts in this regard are nothing more than an attempt to substitute the substantial evidence standard for the more appropriate de novo review standard used when legal issues predominate. Your Court granted review in this case of first impression to consider:

> *The proper method for determining the assessed value of the real property interest in a mobilehome park after a transfer of a membership interest in the nonprofit corporation that owns the park pursuant to Revenue and Taxation Code section 62.1.*

This type of statutory analysis calls for independent review. Respondents' attempt to cling to the Assessment Appeals Board's ("AAB's") misguided conclusions regarding ownership, method of valuation and statutory interpretation are entitled to little weight and have little or no bearing on the ultimate issues presented in this review.

Respondents' Joint Answer presents three, inconsistent, substantive arguments. The first centers on Respondents' claim that the resident-owners are really renters who own nothing more than their mobilehome coaches. The *renter fiction* fails because it: (1) ignores the reality of the marketplace, (2) contradicts the relevant mobilehome ownership definitions contained in the Civil, Health & Safety and Revenue & Taxation Codes, and (3) conflicts with the substance of the 26 transactions at issue which

grant full beneficial use and exclusive possession of an identified space to each new owner.

The second argument is based on an illusory subdivided/ unsubdivided distinction that is not mentioned anywhere in Revenue & Taxation Code Section 62.1 or its legislative history. SB 1885 amended Section 62.1 in 1988 to close loopholes and equalize the way resident-owned mobilehomes were assessed, regardless of how title was held. The subdivided/unsubdivided distinction urged by the Respondents frustrates that legislative purpose and abandons the acquisition cost valuation system mandated by Article XIII A of the California Constitution.

Respondents' second argument also conflicts with the legislative intent behind SB 1585. SB 1585 amended Civil Code 799.1 in 1996 to extend the applicability of existing law regarding residency in a subdivided mobilehome park to residency in an unsubdivided mobilehome park held by a nonprofit corporation.[1]

Respondents' final substantive argument relies on a narrow exception to Property Tax Rule 2's "purchase price presumption." Subsection (c) (2) of Rule 2 provides that the "purchase price presumption" does not apply when the change of ownership occurs as a result of the acquisition of ownership interests in a legal entity. This argument appears to be inconsistent with Respondents' initial claim that the new residents only acquired ownership of their mobilehome coaches. Putting that contradiction aside does not solve the problem because the exemption from the "purchase price presumption" afforded by subsection (c) (2) of Property Tax Rule 2 does not apply when a buyer acquires a tangible interest in real property that includes exclusive possession and full beneficial use equal to

[1] See Appellant/Assessor's Request for Judicial Notice of the Bill Tracking Summary for SB 1585.

the value of the fee interest. The exemption provided by subsection (c) (2) applies when a buyer acquires intangible ownership rights through the purchase of shares of stock in a company that owns real property. Respondents' Joint Answer omits the crucial descriptor, **"shares of stock,"** when they quote Rule 2. They also fail to cite to a single case, annotation, treatise or SBE guidance letter supporting the extension of subsection (c) (2) of Rule 2 to the acquisition of a tangible interest in real property.

II

RESPONDENTS CONFUSE THE AAB's UNSUPPORTED LEGAL CONCLUSIONS WITH FACTUAL FINDINGS

Your Court is not bound by the AAB's conclusions regarding ownership because what constitutes a "change in ownership" is a question of law subject to independent de novo judicial review. (*Pacific Grove-Asilomar Operating Corp. v. County of Monterey* (1974) 43 Cal.App.3d 675, 680-683; *Stratton v. First Nat. Life Ins. Co.* (1989) 210 Cal.App.3d 1071, 1083; *Shuwa Investment Corp. v. County of Los Angeles* (1991) 1 Cal. App. 4th 1635, 1644-1645.)

A. <u>The Meaning of a "Change of Ownership" of Real Property is Defined by Statute and SBE Regulations -- Not the AAB</u>

Article XIII A of the California Constitution (Proposition 13) provides that real property shall be reassessed for property tax purposes when a "change in ownership" occurs or the property is "newly constructed" or "purchased." (Cal. Const., art. XIII A, § 2, subd. (a); R & T Code, § 60 et seq. & 70 et seq.) The Supreme Court in *Amador Valley*

Joint Union High School Dist. v. State Board of Equalization (1978) 22 Cal.3d 208, 245, determined the meaning of "change of ownership" was left for resolution "by the contemporaneous construction of the Legislature or of the administrative agencies charged with implementing the new enactment." (Accord, *Title Ins. & Trust Co. v. County of Riverside* (1989) 48 Cal.3d 84, 95 ["Proposition 13, while directing reassessment of property upon a 'change of ownership,' did not define that phrase."]. [2]

The Legislature subsequently enacted provisions defining "change in ownership" and based on those statutes, the State Board of Equalization ("SBE") adopted detailed regulations explaining the statutory scheme. (R & T Code, §§ 60- 66; *Auerbach v. Assessment Appeals Bd. No. 1* (2006) 39 Cal.4th 153, 161 ["section 60 ... contains the basic change-in-ownership test; section 61 ... contains examples of what is a change in ownership; and section 62 ... contains examples of what is not a change in ownership." (*Auerbach*, at p. 161.) "[T]he Legislature intended for section 60 to contain the overarching definition of a 'change in ownership' for reassessment purposes." (*Pacific Southwest Realty Co. v. County of Los Angeles,* (1991) 1 Cal.4th 155, 162.)

Section 60 states: "A 'change in ownership' means a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest." Thus, as our Supreme Court has explained, the test set forth in section 60 ... 'contains three parts: "A 'change in ownership' means [1] a transfer of a present interest in real property, [2] including the beneficial use thereof, [3] the value of which is substantially equal to the value of the fee interest."' (*Auerbach*, supra, 39 Cal.4th at p. 161.)

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[2] Cal. Constitution, article XIII A is commonly known as Proposition 13.

Sections 61 and 62, which set forth examples of what is and is not a change in ownership, were intended "to elaborate on common transactions" because "[l]ay assessors and taxpayers would otherwise have difficulty applying [the] legal concepts" contained in section 60's definition. (*Pacific Southwest*, supra, 1 Cal.4th at p. 161; *Fashion Valley Mall, LLC v. County of San Diego* (2009) 176 Cal. App. 4th 871, 877-879.)

Section 62.1, in turn, explains what is and is not a reassessable change of ownership when individual interests in resident-owned mobilehome parks are sold.[3] Subdivision (a) of Section 62.1 provides a one-time reassessment exclusion when at least 51% of the tenants form a separate legal entity to purchase the park. Subdivision (b) of Section 62.1 provides the same one-time reassessment exclusion when: (1) at least 51% of the rental spaces are purchased by individual tenants, and (2) the buyers of these spaces, within one year from the first purchase of a rental space, form a resident organization as described in Section 50781 of the Health and Safety Code to operate the park. Subdivision (c), added in 1988 by SB 1885, applies to subsequent changes in ownership of individual spaces. It is the primary focus in this case because it applies to the 26 subsequent changes of ownership of individual spaces sold in 2001.

It is undisputed that the Real Parties took advantage of this one-time exclusion when they initially purchased the park. The dispute in this case arises when 26 of the resident-owners sold their individual real property interests in the park to third parties. Respondents contend, and the AAB apparently agrees, that the 26 subsequent transfers do not constitute changes of ownership of real property because the 26 new owners are really just "renters." Respondents and the AAB base this legal conclusion on the

[3] R & T Code Sections 60 - 69.5 are all found in Chapter 2 entitled CHANGE IN OWNERSHIP AND PURCHASE which is part of Part 0.5 entitled IMPLEMENTATION OF ARTICLE XIII A OF THE CALIFORNIA CONSTITUTION.

fact that the Rancho Goleta and Silver Sands mobilehome parks have never been subdivided. This conclusion does not constitute a finding of fact. It is a legal conclusion subject to independent de novo review.

The conclusion is faulty because subsection (c) of Revenue & Taxation Code Section 62.1 was amended in 1988 by SB 1885 to treat all subsequent transfers of individual interests in subdivided and unsubdivided mobilehome parks the same way. We underscore the word all because SB 1885 amended Section 62.1 to specifically close the loophole that was letting subsequent transfers in unsubdivided parks held by nonprofit corporations escape reassessment.

This brings us back to Respondents' incredible argument that no real property was sold and the AAB's unsupported legal conclusion that the 26 new owners are just renters.

B. Nothing in the Administrative Record Supports the AAB's Legal Conclusion that the Real Parties are Renters Rather than Owners

It is undisputed that Rancho Goleta and Silver Sands were originally owned by investors who rented spaces to tenants, each of whom owned a mobilehome located on a space in one of the mobilehome parks at issue. Nor is it disputed that the residents of Rancho Goleta and Silver Sands formed nonprofit mutual benefit corporations to purchase their mobilehome parks from the previous investor-owners and took advantage of the one-time exclusion from reassessment provided by subsection (a) of Section 62.1. (Admin Record, Vol. 1, Tab 7, APP 000085, lns. 2-9 & Vol. 1, Tab 7, APP 000087 lns. 3-6.)

It is therefore hard to understand on a practical level how the AAB came to the conclusion that the same people, who purchased the Rancho Goleta and Silver Sands parks from the original investor-owners, suddenly

became "renters" with no ownership rights when 26 of them later sold their individual interests to third parties. It is also hard to understand how these 26 "renters" sold whatever it was they owned for prices ranging from $165,000 to $325,000. What we do know is that there is no substantial evidence in the Administrative Record to support the AAB's legal conclusions embracing Respondents' *renter fiction.*

The Silver Sands Occupancy Agreement is a good place to start this analysis. On page one of that document the new Member acknowledges and agrees that the Member is a "Resident in a resident-owned Mobilehome park" as defined in California Civil Code Section 799, et seq. and that Member's rights and obligations ... shall be governed by Civil Code Section 799, not Civil Code 798." (Admin Record, Vol.1, Tab 27, AAP 000262, emphasis added.) The fact that the agreement expressly provides that its terms are controlled by Civil Code Section 799 and not Section 798 is significant because Section 799 et seq. applies to resident-owned parks while Section 798 applies to rental parks owned by investors.

As explained in Chapter 369, Sale, Installation and Use of Mobilehomes by Matthew Bender:

> Different statutory provisions apply to the sale of a mobilehome in a subdivision, cooperative, or condominium for mobilehomes, or in a resident-owned mobilehome park [*see Civ. Code § 799(c)* (definition)], depending on whether a resident has an ownership interest in one of those facilities in which his or her mobilehome is located or installed or whether the resident rents or leases a space on which his or her mobilehome is located or installed [*see Civ. Code § 799.1*]. For residents with no ownership interest, general provisions of the Mobilehome Residency Law govern the resident's rights with regard to sale and other matters. For those residents with an ownership

interest, the separate provisions in *Civ. Code §§ 799-799.10* apply [*Civ. Code § 799.1(a)*].

For a mobilehome park owned and operated by a nonprofit mutual benefit corporation established pursuant to *Bus. & Prof. Code § 11010.8* whose members consist of park residents, when there is no recorded subdivision declaration or condominium plan, the general provisions of the Mobilehome Residency Law govern the rights of members who are residents that rent their space from the corporation [*Civ. Code § 799.1(b)*].

(Matthew Bender: California Forms of Pleading and Practice--Annotated § 369.32 Chapter 369, Sale, Installation and Use of Mobilehomes.)

The foregoing summary provided by Matthew Bender is consistent with the express language found in the Occupancy Agreements because they both provide that the rights of residents who purchased memberships (ownership interests) are governed by Civil Code Section 799 et seq. while the rights of the few tenants who did not purchase ownership interests and are merely renting spaces from the nonprofit corporation are governed by Civil Code Section 798 et seq. The Civil Code Sections that apply to the 26 resident-owners at issue provide as follows:

Civil Code § 799. Definitions

As used in this article:

(a) "Ownership or management" means the ownership or management of a subdivision, cooperative, or condominium for mobilehomes, or of a resident-owned mobilehome park.

(b) "Resident" means a person who maintains a residence in a subdivision, cooperative, or condominium for mobilehomes, or a resident-owned mobilehome park.

(c) "Resident-owned mobilehome park" means any entity other than a subdivision, cooperative, or condominium for mobilehomes, through which the residents have an ownership interest in the mobilehome park.

(Civil Code § 799.)

Civil Code § 799.1. Application of article; Ownership and operation by nonprofit mutual benefit corporation

(a) Except as provided in subdivision (b), this article shall govern the rights of a resident who has an ownership interest in the subdivision, cooperative, or condominium for mobilehomes, or a resident-owned mobilehome park in which his or her mobilehome is located or installed. In a subdivision, cooperative, or condominium for mobilehomes, or a resident-owned mobilehome park, Article 1 (commencing with Section 798) to Article 8 (commencing with Section 798.84), inclusive, shall apply only to a resident who does not have an ownership interest in the subdivision, cooperative, or condominium for mobilehomes, or the resident-owned mobilehome park, in which his or her mobilehome is located or installed.

(b) Notwithstanding subdivision (a), in a mobilehome park owned and operated by a nonprofit mutual benefit corporation,

established pursuant to Section 11010.8 of the Business and Professions Code, whose members consist of park residents where there is no recorded subdivision declaration or condominium plan, Article 1 (commencing with Section 798) to Article 8 (commencing with Section 798.84), inclusive, shall govern the rights of members who are residents that rent their space from the corporation.

(Civil Code § 799.1.)

The provisions of Civil Code Sections 799 and 799.1, as set forth above, are entirely consistent with the Appellant/Assessor's interpretation of Revenue & Taxation Code Section 62.1 which provides in pertinent part:

Revenue & Taxation Code § 62.1.
Change of Ownership

(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 .....

(b) **Any transfer**, on or after January 1, 1985, **of rental spaces to the individual tenants** of the rental spaces, provided that (1) at least 51 percent of the rental spaces are purchased..., and (2) the individual tenants of these spaces form, within one year after **the first purchase of a rental space by an individual tenant**, a resident organization as described in subdivision (k) of **Section 50781 of the Health and Safety Code**, to operate and maintain the park. If, on or after January 1, 1985, an individual tenant or tenants notify the county

assessor of the intention to comply with the conditions set forth in the preceding sentence, **any mobilehome park rental space that 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 paragraph **are not satisfied**, the county **assessor shall thereafter levy** escape **assessments for the spaces so transferred**. This paragraph shall apply only to those rental mobilehome parks that have been in operation for five years or more.

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

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

> (3) Any pro rata portion or portions of real property which changed ownership pursuant to this subdivision may be separately assessed as provided in Section 2188.10.
>
> (R & T § 62.1, as amended in 1988, emphasis added; Admin Record, Vol. 13, Tab. 188, ASSR 002592-2593, attached to Appellant's Opening Brief.)

It is important to note that Section 62.1 makes no distinction between subdivided and unsubdivided parks as suggested by the Respondents. Its provisions requiring reassessment of subsequent transfers apply equally to parks that have not been subdivided like the Rancho Goleta and Silver Sands parks and parks that have been subdivided into condominiums. This makes sense because the fact that a nonprofit corporation, stock cooperative or other entity may hold bare legal title to the real property does not alter the new owner's right to the beneficial use of the coach and the space on which it is located. It also does not impair a resident-owner's ability to sell his or her interest on the open market for a value of which is substantially equal to the value of the fee interest. (See, R & T Code § 60 and *Auerbach*, supra, 39 Cal.4th at p. 161.) Nor should it impact an assessor's statutory duty to separately reassess a "space which is purchased."

III

THE *RENTER FICTION* CANNOT BE USED TO ABANDON THIS STATE'S ACQUSITION COST VALUATION SYSTEM

A. The *Renter Fiction* Ignores the Reality of the Marketplace

Respondents' use of the *renter fiction to* sidestep the acquisition cost valuation system mandated by Proposition 13 is unprecedented. It is based on the patently absurd claim that the 26 new buyers are "renters" who acquired nothing more than personal property when they paid hundreds of thousands of dollars to buy interests in the Rancho Goleta and Silver Sands parks. When we take a look at the reality of the marketplace it cannot be disputed that no one would pay $325,000 to buy a used mobilehome coach with a published N.A.D.A. Guide value of only $16,730.[4] It is undisputed that one of the new owners (Kimball) paid $325,000 in 2001for an interest in the Rancho Goleta park that granted him full beneficial use and exclusive possession of lakefront space 55. It is also undisputed that the new owner of Rancho Goleta space 87 paid only $165,000 for an interest granting him full beneficial use and exclusive possession of a space located 2 blocks away from the lake that backs up to an industrial parking lot on the perimeter of the park. (Admin Record, Vol.1, Tab 16, APP 000174-193, spreadsheet listing all RG purchase prices & Vol. 12, Tab 179, ASSR 002433, Map of RG spaces.)

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[4] Assessors use nationally recognized value guides such as the National Automobile Dealers Association's Manufactured Housing Guide ("N.A.D.A. Guide") to subtract the value of the mobilehome coach out of the total purchase price. This "subtraction method" follows the specific guidance provided to county assessors by the SBE in LTA 99/87. (See Admin Record, Vol. 1, Tab 2, APP 000134-139.)

The following chart lists the space numbers, APN's, purchase prices, coach values and land values enrolled by the Appellant/Assessor for the 26 transfers. The last column shows the land values suggested by the AAB.

Rancho Goleta 2001 Transfers					
Space No.	**APN**	**Purchase Price**	**Mobile home Value**	**Land (Space) Value**	**AAB Space Value**
33	571-190-033	$205,000	$22,577	$182,423	$65,000
51	571-190-051	$216,500	$34,857	$181,643	$65,000
154	571-191-054	$210,000	$20,161	$189,839	$65,000
200	571-192-000	$249,000	$18,735	$230,265	$65,000
97	571-190-097	$ 192,700	$25,274	$167,426	$65,000
94	571-190-094	$212,000	$25,000	$188,500	$65,000
125	571-191-025	$196,000	$16,000	$180,000	$65,000
152	571-191-052	$270,000	$57,740	$212,260	$65,000
45	571-190-045	$190,000	$19,000	$176,292	$65,000
112	571-191-012	$185,000	$16,500	$168,500	$65,000
50	571-190-050	$220,000	$24,295	$195,705	$65,000
164	571-191-064	195,000	$22,500	$172,500	$65,000
80	571-190-080	$210,000	$12,875	$197,125	$65,000
101	571-191-001	$212,500	$24,000	$188,500	$65,000
55	571-190-055	$325,000	$16,730	$308,270	$65,000
186	571-191-086	$185,000	$11,140	$173,860	$65,000
194	571-191-094	$279,900	$24,405	$255,495	$65,000
39	571-190-039	$213,000	$12,000	$201,000	$65,000
87	571-190-087	$165,000	$ 9,000	$156,000	$65,000
185	571-191-085	$179,500	$12,000	$167,500	$65,000
122	571-191-022	$205,000	$23,000	$182,000	$65,000

Silver Sands 2001 Transfers					
Space No.	**APN**	**Purchase Price**	**Mobile home Value**	**Land (Space) Base**	**AAB Space Value**
21	503-430-021	$180,000	$10,000	$170,000	$28,125
78	503-430-078	$250,000	$ 6,000	$244,000	$28,125
33	530-430-033	$180,000	$ 4,000	$176,000	$28,125
46	503-430-046	$187,000	$ 7,355	$179,645	$28,125
55	503-430-055	$250,000	$ 3,951	$246,049	$42,500

(Admin Record, Vol.1, Tab 16, APP 000174-193, spreadsheet listing all RG purchase prices ; Vol. 1, Tab 24, APP 000215-221, spreadsheet listing all SS purchase prices; Vol. 12, Tab 179, ASSR 002433, Map of RG spaces & Vol. 12, Tab 177, ASSR 002388, Map of Silver Sands spaces.)

The difference between paying $325,000 for space 55 and $165,000 for space 87 cannot be explained away by the value of the used coaches. The coach on space 55 had a N.A.D.A. value of $16,730 while the coach on space 87 had a N.A.D.A. value of $9,000.[5] The valuation approach advocated by the Respondents and adopted by the AAB assessed the land (space) value as $65,000 for both of these spaces.

On pages 12-13 of the Joint Answer Respondents argue that Revenue and Taxation Code Section 5803 justifies this absurd result because the difference between the purchase price and the value of the mobilehome coach should be considered non-assessable site value. Reliance on Section 5803 is misplaced. Section 5803(b) provides, in essence, that the assessed value of a manufactured home located on rented or leased land shall not be affected by the usual influences of location. It only applies to investor-owned parks. In investor-owned parks the investor owns all the real property and pays property taxes based on the full cash value of all of the land. As explained in LTA 99/87, Section 5803 has no application to resident-owned parks such as Rancho Goleta and Silver Sands because the resident-owners own a fractional interest in the real property.

[5] The photographs of spaces as well as the maps of the parks provided as attachments to this Reply illustrate the dramatic differences between lakefront space 55 and interior space 87. (Admin Record, Vol. 12, Tab 179, ASSR 002414 & 2423 [photographs]; Vol. 12, Tab 179, ASSR 002433 [RG Space Map] & ASSR 002388 [SS Space Map.)

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

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

(Admin Record, Vol. 7, Tab 113, ASSR 001613, LTA 99/87.)

Respondents' reliance on the comments issued by a legislative analyst in 1983 regarding the enactment of Revenue & Taxation Code Section 5803 is also misplaced. (Admin Record, Vol. 1, Tab 21, APP 000209-210.) Section 5803 was enacted through SB 797 five years before Revenue & Taxation Code Section 62.1 was amended in 1998 to close the loophole allowing the sale of some resident-owned mobilehomes to escape reasssessment. Subsection (c) of Section 62.1 directs assessors to reassess all *changes in ownership* of real property interests in resident-owned mobilehome parks. Respondents' interpretation of Section 5308 conflicts with the specific directive provided in subsection (c).

Revenue & Taxation Code Section 5803 lost all relevance as soon as the Real Parties purchased the parks and took advantage of the one-time exclusion from reassessment provided by subdivision (a) of Revenue & Taxation Code § 62.1. This is when the Rancho Goleta and Silver Sands parks became "resident-owned mobilehome parks" as defined in Civil Code Section799.

In short, Respondents' attempt to focus on Section 5803 is just another attempt to divert this Court's attention away from the real issue - the proper valuation method to be applied when reassessing the 26 real property interests that changed ownership as a matter of law in 2001.[6]

B. The *Renter Fiction* Conflicts with the Substance of the Transactions and the Law Governing the Property Rights of Resident-Owners

The *renter fiction* falls apart when the substance of the transactional documents is examined. This is not an expensive game of musical chairs or bait and switch as suggested by the Respondents. Resident-owners advertise their designated spaces on the Multiple Listing Service ("MLS") to attract potential buyers. The purchase prices paid by the buyers of these identified real property interests reflect the fair market value of the various properties.

It is undisputed that the right to exclusive possession and beneficial use of an identified space is provided through a mandatory Occupancy Agreement executed during escrow. (Admin Record, Vol. 1, Tab 27, APP 000262-000279, Occupancy Agrmt., Vol. 31, Tab 273, TX 006099 - TX 006111, TX 006123[RG lease executed during escrow designates a particular space; RG members have never been required to move to a different space.]) These rights are consistent with and supported by the provisions contained in Article 9 of the California's Mobilehome Residency Law. (Mobilehome Residency Law is set forth in Civil Code

[6] The valuation of mobilehome coaches is not a disputed issue in this case. As illustrated in the chart provide above, the Appellant/Assessor used the published N.A.D.A. Guide values when he subtracted the value of the mobilehome coaches from the reported purchase prices for each of the 26 transactions to determine the fair market value of the real property interest.

section 799 et seq. and the definition of resident-owner provided in Health & Safety Code Section 50781(m).)

For example, Civil Code Section 799.2.5 confirms a resident-owner's right to exclusive possession. It provides that except in case of an emergency, management's right of entry onto the land upon which a mobilehome is situated is limited to the "maintenance of utilities, trees, and driveways, in accordance with the rules and regulations of the subdivision, cooperative, or condominium for mobilehomes, or resident-owned mobilehome park when the resident fails to so maintain the premises....but not in a manner or at a time that would interfere with the resident's quiet enjoyment." (Civil Code 799.2.5.)

The definition of "resident ownership" provided in subsection (m) of Health and Safety Code Section 50561 harmonizes with the Civil and Revenue & Taxation Code provisions addressing the same subject matter. Health & Safety Code Section 50561 was specifically referenced in subsection (b) of Revenue & Taxation Code Section 62.1when it was amended in 1988 by SB 1885. Section 50561, now 50781, defines *resident ownership* as follows:

> (m) "'Resident ownership' means, depending on the context, either the ownership by a resident organization of an interest in a mobilehome park that entitles the resident organization to control the operations of the mobilehome park for a term of no less than 15 years, or the ownership of individual interests in a mobilehome park or both."
>
> [Health & Safety Code § 50781(m), formerly § 50561.[7]]

[7] Health & Safety Code § 50561 was repealed on 1/1/89 and replaced by § 50781.

Respondents try to downplay the significance of this definition on page 62 of the Joint Answer by claiming Health & Safety Code Section 50561 has no relevance because it applies to the Mobilehome Park Purchase Fund and neither Rancho Goleta nor Silver Sands obtained loans from that program. Respondents' perspective is too narrow, especially since Section 50561 is referenced in the Articles of Incorporation for Silver Sands and Revenue & Taxation Code Section 62.1. One of the basic rules of statutory construction is to harmonize code sections relating to the same subject matter and avoid interpretations that render related provisions nugatory. (*Steinhart v. County of Los Angeles* (2010) 47 Cal. 4th 1298, 1325.)

Since Revenue & Taxation Code Section 62.1 and the Silver Sands Articles of Incorporation both rely on definitions related to the same subject matter contained in the Health & Safety Code, the definition of *resident ownership* must be harmonized with the interpretation of Section 62.1. Adopting the Respondents *renter fiction* violates this rule of statutory construction because it negates the definition of "resident ownership" provided by Health & Safety Code Section 50561 as well as the related definitions in Civil Code Sections 799 et seq.

The Civil and Health & Safety Code definitions set forth above are entirely consistent with the Articles of Incorporation for the Silver Sands and Rancho Goleta parks as illustrated below:

> **Silver Sands**
>
> This is a nonprofit mutual benefit corporation organized under the Nonprofit Benefit Corporation Law.

> The specific purpose of this corporation is to facilitate the purchase and operation of a mobilehome park by its residents pursuant to California Health and Safety Code Section 50561.
>
> (Admin. Record, SS Art. of Incorp., Vol. 3, Tab 35.3, APP000701.)

Rancho Goleta

> This is a nonprofit mutual benefit corporation organized under the Nonprofit Benefit Corporation Law.
>
> The specific purpose of this corporation is to provide for the acquisition, construction, management maintenance and care of the property held by the corporation, property commonly held by the members of the corporation, property within the corporation privately held by members of the corporation.
>
> (Admin. Record, Vol. 2, Tab 35, APP 000579, R G Art. of Incorp.)

The operative agreements used to sell membership interests in the nonprofit corporations formed to purchase the Rancho Goleta and Silver Sands parks provide further proof of the ownership interests held by the Real Parties. For example, the Silver Sands Information Statement describes its purpose and objective as follows:

> Purpose of Silver Sands Village, Inc.
>
> [t]o allow the existing homeowners to purchase the Silver Sands Village Mobile Home Park. . . The Purchaser, by acquiring a Membership in the Corporation will participate in the control over the development, use, management and operation of the Park. The Purchaser of a Membership will no longer be subject to the payment of rent, as such, which used

> to be increased yearly, but will be required to pay a monthly Member's Assessment. The Member's Monthly Assessment shall be established by the Board of Directors of the Corporation, to cover the costs of maintaining and operating the Mobilehome Park, including, but not limited to: insurance, maintenance costs, reserves for repair and replacement and corporate debt service.
>
> (Admin Record, SS Info Stmnt, Vol. 1, Tab 26, APP 000232-233.)
>
> The proceeds from the sales of Memberships will be used to: (a) pay down payment portion of the purchase price to purchase the Park. . .
>
> (Admin Record, SS Info Stmnt, Vol. 1, Tab 26, APP 000234.)
>
> [T]he sale of memberships will not generate sufficient income to purchase the Park without a mortgage. The mortgage will be paid from income generated by Member's Assessments. . .
>
> (Admin Record, SS Info Stmnt, Vol. 1, Tab 26, APP 000241.)

As confirmed in the Silver Sands Information Statement noted above, Real Parties do not pay rent. They only pay a monthly Member's Assessment which is used, to pay the mortgage used to purchase the park and cover maintenance and operating costs. [Admin Record, SS Info Stmnt, Vol. 1, Tab 26, APP 000233-241 & APP 000262-263; Admin Record, Vol. 34, Tab 278, TX 006946, lns. 7-10, Lustig Testimony.)

The fact that the Real Parties labeled the documents used to memorialize their ownership interests and obligation to pay the mortgages as "occupancy agreements" and/or "leases" do not make the Real Parties renters. Nor does it overcome the general tax principle that property taxation depends upon the substance of a transaction rather than its form.

Separating the purchase of a membership interest and the assignment of an occupancy agreement into two "steps" does not change the substance of the transaction for property tax purposes. As explained in *Penner v. County of Santa Barbara* (1995) 37 Cal. App. 4th 1672, property tax law:

> treats a series of nominally separate transactional "steps" as a single transaction if the steps are, in substance, inter-dependent and focused toward a particular result. (Citations omitted.) Thus, if a taxpayer, rather than taking a direct route to the desired end, interjects economically or legally meaningless transactions between the starting point and the end to obtain more favorable tax treatment, the intervening transactions will be disregarded and taxes will be assessed as though the taxpayer had taken the most direct route.
>
> *(Penner v. County of Santa Barbara* (1995) 37 Cal. App. 4th 1672, 1679 citing *Commissioner v. Clark* (1989) 489 U.S. 726, 738, 109 S. Ct. 1455; *Associated Wholesale Grocers, Inc. v. U.S.* (10th Cir. 1991) 927 F.2d 1517, 521-1522.)

The substance of the transactions makes it clear that the 26 buyers at issue are the resident-owners of the mobilehome spaces they purchased. The bare legal title held by their respective nonprofit corporations should not allow them to obtain more favorable tax treatment than similar owners of mobilehomes located in subdivided parks. The step transaction doctrine and the sham transaction doctrine (of which the sham-in-fact doctrine is a part) are based on the general principle developed in the area of federal income tax law that courts should look at the substance of a transaction rather than just its form. (*Fashion Valley Mall, LLC v. County of San Diego* (2009) 176 Cal. App. 4th 871, 880.)

IV

THE NARROW EXEMPTION FROM THE PURCHASE PRICE PRESUMTION PROVIDED BY SUBSECTION (C) (2) OF PROPERTY TAX RULE 2 DOES NOT APPLY TO THE 26 CHANGES OF OWNERSHIP AT ISSUE IN THIS CASE

Respondents' reliance on the narrow exception provided by subsection (c) (2) of Property Tax Rule 2 is misplaced. As provided in the only example included in subsection (c) (2), the exception applies when "shares of stock" are purchased to acquire a controlling interest in a corporation that owns real property. The "purchase price presumption" does not apply in that limited situation because there is usually no logical relationship between the price paid for the controlling stock interest and the value of the real property owned by the corporation.[8]

The information contained in the Initial and Final Statements of Reasons issued by the SBE when Property Tax Rule 2 was amended to add subsection (c) (2) provides clarification that explains when and why the exemption from the "purchase price presumption" applies. These official SBE documents categorically defeat the misguided and unsupported arguments presented in the Joint Answer. Specifically, the Initial Statement of Reasons for Property Tax Rule 2 provides as follows:

[8] See Appellant's Request for Judicial Notice of the SBE's Initial Statement of Reasons for Rule 2 issued when Rule 2 was amended to add subsection (c)(2) regarding the exemption Respondents attempt to rely on.

> The second exemption [subsection (c)(2)] is for transfers of real property when the consideration is wholly or partially in the form of ownership interests in a legal entity, such as shares of stock, or the change in ownership occurs as the result of the acquisition of ownership interests in a legal entity. Based on the experience of county assessors who are required to reappraise real property in the described types of situations, it was concluded that application of the presumption in these situations is inappropriate since typically there is little or no relationship between the price paid and the value of the real property which changed ownership. For example, where a stock holder already owns 45 percent of the voting stock of a corporation which may own real property as well as other assets, and the stockholder acquires control of the corporation through the purchase of an additional 10 percent of the stock thus triggering a reappraisal of the real property, there is no logical relationship between the price paid for the 10 percent stock interest and the value of any real property owned by the corporation.

(See pages 3-4 of the Initial Statement of Reasons, Section 2. – The Value Concept issued by the SBE to explain the proposed amendments that added subsections (c)(1), (c)(2) and (c)(3) to Property Tax Rule 2, and the Final Statement of Reasons, attached as Exhibits A & B to Appellant/ Assessor's Request for Judicial Notice filed concurrently with this Reply.)

The facts presented here are very different. The statutes governing the ownership rights of the resident-owners (Civil Code § 799 et seq.) and the documents executed during escrow confirm that the 26 new owners acquired much more than shares of stock or intangible interests in a legal

entity.[9] They acquired a present interest in real property, including the beneficial use thereof by paying an amount substantially equal to the value of the fee interest. They enjoy the right to exclusive possession of their mobilehome coaches and the spaces on which they are located. That is why these transfers are deemed *changes of ownership* of a pro rata portion of the real property of the park as a matter of law pursuant to Revenue & Taxation Code Section 62.1(c).[10]

Respondents' creative argument regarding why the purchase price presumption should not apply fails to explain why Revenue & Taxation Code Section 62.1 requires all new resident-owners to file *change in ownership* statements disclosing the actual purchase price paid for the property. Subsection (b) (6) which was added to Section 62.1 in 2002 provides as follows:

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

---

[9] The ownership rights of the resident-owners and their nonprofit mutual benefit corporation are primarily governed by statute. See, Civil Code § 799 et. seq.

[10] We cite to the language of R & T Code § 62.1 as amended by SB 1885 in 1988 because that is the version in place in 2001 when the 26 transactions occurred. A copy of the 2001 version of Section 62.1 was attached to Appellant's Opening Brief.

R & T Code section 480 also supports the application of the "purchase price presumption." It requires new resident-owners to submit a verified *change in ownership* statement that discloses the amount of consideration paid for the property:

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

Section 480 requires all buyers of resident-owned mobilehomes to report the amount of "consideration paid" to purchase the property and this information is described in the statute as "germane to the assessment function." Thus, it appears the Legislature does not agree with Respondents' conclusion that the "purchase price presumption" does not apply to the 26 transactions at issue here.

V

RESPONDENT'S ARGUMENT REGARDING SECTION 2 OF ARTICLE XIII A RELATING TO THE TAXATION OF PERSONAL PROPERTY IS NOT RELEVANT TO THE TAXATION OF REAL PROPERTY

Respondents are correct when they state that the Legislature has wide authority concerning the taxation of personal property on page 57 of their Joint Answer. However, that well accepted premise has no bearing on a case involving the proper interpretation of the statute at issue -- Revenue & Taxation Code Section 62.1. Nor does it justify the AAB's wholesale violation of the most basic principles of real property assessment.

Respondents try to sidestep the AAB's failure to follow the California Constitution's full cash value mandate and Revenue and Taxation Code Sections 110 and 51 by continuing to claim that the only thing sold in the 26 transactions at issue was personal property consisting of mobilehome coaches. These unsupported contentions ignore the basic facts giving rise to this case. It is undisputed that this controversy arose when the Real Parties filed Applications for Changed Assessment appealing the value of the 26 real property interests that sold in 2001. (Admin. Record Vol. 1, Tab 3, AA B000014, Tab 4, AAB 000033, AAB 000045 & AAB 000057.) Those Applications challenged the way the individual ownership interests were valued when they were sold to third parties.

The Applications for Changed Assessment did not claim there was no change of ownership of real property. That issue was never raised or litigated in the proceedings below. To the contrary, the Applications conceded the fact that changes of ownership of real property had occurred and only challenged the "method of reassessment" and the values enrolled by the Assessor when the 26 individual real property interests were

reassessed pursuant to subsection (c) of Revenue and Taxation Code Section 62.1.

VI

RESPONDENTS CONTINUE TO MISREPRESENT THE LEGISLATIVE HISTORY AND INTENT OF SB 1885

Page 37 of the Joint Answer continues Respondent's efforts to misrepresent the legislative history of SB 1885 by relying on a paragraph included in the SBE's initial 2/21/88 Legislative Bill Analysis for SB 1885. Respondents once again fail to note that although the SBE initially questioned whether differences in the value between mobilehome spaces could be recognized under the amendment it was sponsoring, the SBE deleted that paragraph from its final Legislative Bill Analysis after SB 1885 was redrafted. Accordingly, the SBE's final Bill Analysis submitted to the Legislature on March 24, 1988, deletes the paragraph the Respondents rely on and instead adds a new paragraph which supports the separate assessment of each mobilehome space as follows:

> This measure, with the addition of Section 2188.10... would require the assessor to separately assess the pro rata portion of the real property of a mobile-home park which changes ownership . . . in a manner similar to existing provisions for the separate assessment of certain timeshare interests.
>
> .....
>
> "This amendment attempts to parallel as closely as possible the tax treatment accorded condominium and stock cooperatives.....
>
> (Admin Record, Vol. 6, Tab 92, APP 001274-1278, 3/24/88 Final SBE Leg. Bill Analysis.)

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

VII

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

Respondents argue that no deference should be afforded to the SBE's legal interpretation of Section 62.1 even though it drafted, co-sponsored and analyzed the statute at issue and contemporaneously drafted guidelines for all 58 county assessors (LTA 89/13) regarding how to apply the statute within a month after the amended statute took effect in 1989. Incredulously, Respondents argue that the legal interpretation of a single assessment appeals board is the only decision entitled to deference.

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

Respondents try to justify their position regarding deference by claiming LTA 89/13 contains an entirely different methodology than does LTA 99/87. Respondents cling to the purported differences between LTA 89/13 and LTA 99/87 because they cannot dispute that LTA 89/13 was formulated contemporaneously with the enactment of the statute at issue.

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

Respondents' Joint Answer contends on page 44 that the LTA 89/13 supports the challenged AAB Decisions. Nothing could be farther from the truth. Respondents begin their analysis of LTA 89/13 on page two. Respondents endorse the first paragraph because similar language appears in the SBE's Legislative Bill Analysis. The second paragraph is criticized because it "does not appear in the legislative history" and instead provides practical guidance to county assessors on how to implement the statute. Why this is viewed as a problem is unclear. (Admin Record, LTA 89/13, Vol. 8 AAB 001743, ¶ 2.)

Although the third and fourth paragraphs of LTA 89/13 are clearly based on commentary included in SB 1885's legislative history, they are not mentioned by Respondents for obvious reasons. The third paragraph relates to the application of Revenue & Taxation Code Section 2188.10 – the new statute added by SB 1885 which directs county assessors to separately assess subsequent changes in ownership in a manner similar to existing provisions for the separate assessment of timeshare interests:

> This bill 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.
>
> (Admin Record, LTA 89/13, Vol. 8, Tab 125.1, AAB 001743, ¶ 3 & SBE Legislative Bill Analysis, 3/24/88, Vol. 6, Tab 92, APP 001275.)

The fourth paragraph of LTA 89/13 is also ignored by the Respondents because it instructs that:

> 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 real property which changed ownership.
>
> (Admin Record, LTA 89/13, Vol. 8, Tab125.1, AAB001743, ¶¶ 3 & 4, see also, SBE Legislative Bill Analysis, 3/24/88, Vol. 6, Tab 92, APP001275 and Enrolled Bill Report, 8/1/88, Vol. 6, Tab 95, APP001290-1191.)

The third and fourth paragraphs of LTA 89/13 clearly do not support the AAB Decisions. Those paragraphs instead follow the legislative intent expressed in the Enrolled Bill Report for SB 1885 dated 8/1/88 which provides in pertinent part: "This bill would allow mobilehome owners to request separate valuations for each interest on a prorated basis. A single tax bill would be issued with an itemized breakdown identifying the separate interests....[i]ncreased costs to the county assessor for the

purposes of additional separate valuations would be offset by a fee chargeable by the county for the cost of implementing this bill." (Admin Record, Enrolled Bill Report, 8/1/88, Vol. 6, Tab 95, APP001290-1291.)

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

> **LTA 82/92**
> THE APPRAISAL AND ASSESSMENT OF TIMESHARES
>
> **As individual timeshares are sold** to the ultimate customers, **the unit of appraisal** changes and **becomes the individual timeshare.** Generally, the change in ownership of a timeshare estate requires the reappraisal of the interest transferred.
>
> For both timeshare estates and timeshare uses, the preferred approach to value is the market approach. Of course, **because the transfer of the timeshare being reappraised may have been an open market sale, the actual selling price may be the best indicator of value**.

The assessment methodology provided in LTA 82/92 eviscerates the Respondents' contention that LTA 99/87 conflicts with LTA 89/13 and the legislative history of Section 62.1. Respondents' contention is defeated because the assessment methodology for timeshares provided in LTA 82/92 is entirely consistent with the assessment methodology provided in LTAs 89/13 and 99/87. All three direct county assessors to separately assess the individual interests sold. All three LTAs direct county assessors to apply

the *appraisal unit* actually used in open market transactions. And all three LTAs direct assessors to rely on the actual purchase prices paid for such interests (the purchase price presumption).

Respondents take small portions of LTA 89/13 out of context and ignore the bulk of LTA 89/13's actual language in an attempt to convince your Court that the assessment methodology provided in LTA 89/13 was significantly different from the direction provided ten years later in LTA 99/87. Respondents could not be more wrong.

The actual language of LTA 89/13, the existing provisions for timeshare interests (LTA 82/92), LTA 99/87 are remarkably consistent. They all harmonize with the stated legislative intent and history of SB 1885 by directing county assessors separately assess the pro rata portion of the real property which changes ownership in a manner similar to existing provisions for the separate assessment of certain timeshare interests. (Admin Record, Vol.8, Tab125.1 AAB 001743, ¶ 1, LTA 89/13.)

Moreover, the stilted hypothetical example of how to assess a fractional interest in real property offered by Respondents on pages 46-47 of their Joint Answer has no bearing on this issue. It is an approach that is not addressed or endorsed by Section 62.1, its legislative history or any of the guidelines issued by the SBE related to the assessment of resident-owned mobilehomes from 1988 to the present.

It cannot be reasonably disputed that LTA 89/13 was issued contemporaneously with the 1988 amendment of Section 62.1. Nor can it be disputed that LTA 89/13 and 99/87 are consistent with each other as well as accepted appraisal practices. For these reasons, the SBE's construction of Section 62.1, as reflected in LTA 89/13 and LTA 99/87, is entitled to judicial deference and should be followed if not clearly erroneous. (*Maples v. Kern County Assessment Appeals Bd.* (2002) 96

Cal.App.4th 1007, 1015; *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 4, 5, and 7.)

VIII

RESPONDENTS' INTERPRETATION OF SECTION 62.1 VIOLATES FUNDAMENTAL PRINCIPLES OF PROPERTY ASSESSMENT AND DEPRIVES THE REAL PARTIES OF IMPORTANT PROPERTY TAX BENEFITS

Respondents have presented no legal or factual justification for AAB's wholesale violation of the most basic principles of property assessment. As addressed in detail in Appellant/Assessor's Opening Brief:

A. The Decisions Disregard the "Purchase Price Presumption" Mandated by R & T Code § 110 & Property Tax Rule 2

Respondents offer no credible factual or legal arguments to support the AAB's disregard for the actual purchase prices paid for the 26 individual mobilehome interests. (Admin Record, AAB Decision, Vol. 18, Tab 254, AAB 03632 lns. 3-20; Vol. 18, Tab 255, AAB003708-3709 ¶ 6; Vol. 18, Tab, 255, AAB 003710 ¶ C; Vol. 18, Tab 255, AAB 003712-3713; RG Enrolled Values, Vol. 1, Tab 16, APP 00000174-193; & SS Enrolled Values, Vol. 1, Tab 24, APP 0000215-222.);

B. The Decisions Disregard The Appraisal Unit Commonly Bought and Sold in the Marketplace

Respondents offer no credible arguments to support the AAB's disregard for the "appraisal unit" commonly bought and sold in the marketplace as mandated by Revenue & Taxation Code Sections 110 and 51. It is also patently unreasonable to force county assessors to reassess the entire mobilehome park every time an individual interest is sold to a third

party. (Admin Record, MLS Listings Vol. 11, Tab 174, ASSR 002355-2367; Decision, Vol. 18, Tab 254, AAB 03632 lns. 3-20; Vol. 18, Tab 255, AAB 003708-3709 ¶ 6; Vol. 18, Tab AAB 003710 ¶ C & Vol. 18, Tab 255, AAB 003712-3713.);

C. **The Decisions Violate Property Tax Rule 8 by Relying on the "Income Approach"**

The AAB Decisions inappropriately rely on the Income Approach even though the Rancho Goleta and Silver Sands parks are contractually prohibited from earning income. (Admin. Record, Occupancy Agreement, Vol. 1, Tab 27, APP 000268 & APP 000274; Lustig Testimony, Vol. 34, Tab 278, TX 006951lns. 1-6; Murdock Testimony, Vol. 31, Tab 273, TX 006123 ln. 22 to TX 006124 ln. 10; and TX 006127 ln. 17-20 & Decision, Vol. 18, Tab 254 APP 0003687 ¶ E.);

D. **The Decisions Violate R & T Code §§ 75 and 75.10**

The Decisions violate Revenue & Taxation Code Sections 75 and 75.10 by not valuing subsequent changes of ownership of individual interests as of the actual dates the properties were sold. (Admin Record, Taylor Appraisals, Vol. 14, Tab 212, APP 002992 & Vol. 14, Tab 212, APP 003010; Decision, Vol. 18, Tab 255 APP 0003693 ¶ B.)

E. **The Decisions Violate Property Tax Rule 4 by Relying On Non-Comparable Sales**

The AAB Decisions violate Property Tax Rule 4 by relying on non-comparable sales of investor-owned parks to value individual changes of ownership in resident-owned parks when using the comparative market

approach.[11] (Admin Record, Taylor Testimony Vol. 27, Tab 269, TX 005473, lns. 4-10, Taylor Appraisal, Vol. 14 APP 002992, 14 APP 003027, 14 APP 003046 & 14 APP 003048 & Decision, Vol. 18 APP 0003693 ¶ D.)

F. The Decisions Deprive the Real Parties of Important Property Tax Benefits

1. The Decisions Strip Real Parties of the Right to Apply Any Portion of the Homeowner's Exemption to Land

It appears Respondents agree that if the Real Parties do not own any real property, they will no longer be able to apply any portion of the $7,000 Homeowner's Exemption to the land they occupy. Since many older coaches are assessed for less than $7,000, Real Parties will lose the right to apply the balance of the $7,000 exemption to the value of the real property.

2. The Decisions Strip the Real Parties of the Right to Transfer their Base Year Value to a Replacement Home

Respondents appear to completely misunderstand how a Proposition 60 Base Year Value Transfer works. We can only assume that the Respondents have never read subsection (c) of Revenue & Taxation Code Section 69.5 which provides in pertinent part:

---

[11] The Appraisal prepared by the Real Parties' appraiser, Neet, accurately describes that "[o]wners of mobile home parks will fall into three mutually exclusive categories: resident ownership organizations, municipalities and investors." (Admin Record, Neet Appraisal, Vol. 13, Tab 195, ASSR 002645 and Murdock Testimony Vol. 27, Tab 269, TX 005482 ln. 20 to TX 005483 ln. 7.) Even though the three types of ownership are mutually exclusive, the "comparables" identified by Real Parties' appraisers are based on mobilehome sales in investor-owned parks. (Admin Record, Taylor Testimony, Vol. 27, Tab 269, TX 005473, lns. 4-10, Taylor Appraisal Vol. 14, Tab 212, APP 003027 & Vol. 14, Tab 212, APP 003048.)

(c) The property tax relief provided by this section shall be available if the original property or the replacement dwelling, or both, of the claimant includes, but is not limited to, either of the following:

(1).....

(2) A manufactured home or a manufactured home and any **land owned by the claimant on which the manufactured home is situated**. For purposes of this paragraph, 'land owned by the claimant' includes a pro rata interest in a resident owned mobilehome park...

(R& T Code § 69.5(c) (2).)

The AAB Decisions block all Prop 60 Base Year Value Transfers because those Decisions conclude that the residents have no ownership interest in the real property their manufactured homes are situated on. Respondents' suggestion on page 73 of the Joint Answer that this problem can be eliminated by applying the bookkeeping provisions of Section 69.5(c) (2) is simply incomprehensible.

3. The Decisions Prevent the Real Parties from Securing a R & T Code § 51 Reduction if the Value of an Individual Interest Declines

The Respondents present an incomplete and misleading argument on this issue. We all agree that when considering a property owner's application for a reduction under Revenue & Taxation Code Section 51, the "market value" of the "real property" must be compared to the property's "factored base year value." The lesser of these two values is then enrolled.

Under normal circumstances, the owner of mobilehome located in a resident-owned park can secure a Section 51 reduction by submitting

evidence showing that similar properties have been selling for less than the enrolled value of his or her home. Under the distorted Decisions rendered by the AAB in this case, a mobilehome owner would have two insurmountable problems.

First, the resident-owner would not have standing to file a Section 51 claim if the value of his mobilehome space declined because according the AAB Decisions, he does not own the land his coach is located on. Only the non-profit corporation would have standing to file the Section 51 claim.

Second, the non-profit corporation could not rely on an appraisal of a single mobilehome space or the sales prices of neighboring properties to prove a reduction in market value. The non-profit corporation would be required to spend thousands of dollars to secure an appraisal of the entire mobilehome park and then determine the value of each individual space by dividing the value of the entire park by the number of individual spaces in the park. Respondents do not address the fact that it is extremely burdensome (to the point of absurdity) to require the expenditure of thousands of dollars to appraise an entire mobilehome park just to find out what one individual mobilehome and space is worth.

IX

CONCLUSION

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

The AAB Decisions fail to recognize that Section 62.1 was enacted against the backdrop of the California Constitution and the general taxation statutes that effectuate this state's system of property taxation. Absent constitutional authority or express statutory language, a specific statute like Section 62.1 cannot repeal by implication, general taxation statutes such as Revenue & Taxation Code Sections 110 and 51 which require all property to be assessed according to its fair market value as it is commonly bought and sold in the marketplace.

The legislative intent of the Senate Bill that amended Section 62.1 in 1988 was very clear - it was intended to equalize the way real property was taxed by closing the loophole that allowed *changes of ownership* in resident-owned mobilehome parks held by non-profit corporations to escape reassessment. The interpretation of Section 62.1 directed by the SBE and applied by the Appellant/Assessor honors the legislative intent behind Section 62.1 while harmonizing all of the statutory provisions related to resident-owned mobilehomes and real property taxation.

Based on the foregoing facts and authorities, the Appellant/Assessor respectfully requests that your Court reverse the Decisions issued by the AAB and remand this case with directions to apply the valuation method presented in LTA 99/87.

Date: May 1, 2013

Respectfully submitted,
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CERTIFICATE OF COMPLIANCE

I certify that:

Pursuant to California Rules of Court 8.204(c), the undersigned appellate counsel hereby certifies that, according to the word count on the computer used to produce this brief, the number of words in this brief is 10, 316, including footnotes.

Dated: May 1, 2013

Marie A. LaSala

RANCHO GOLETA MAP

Admin Record, Vol. 12, Tab 177, ASSR 002433

571-190
191
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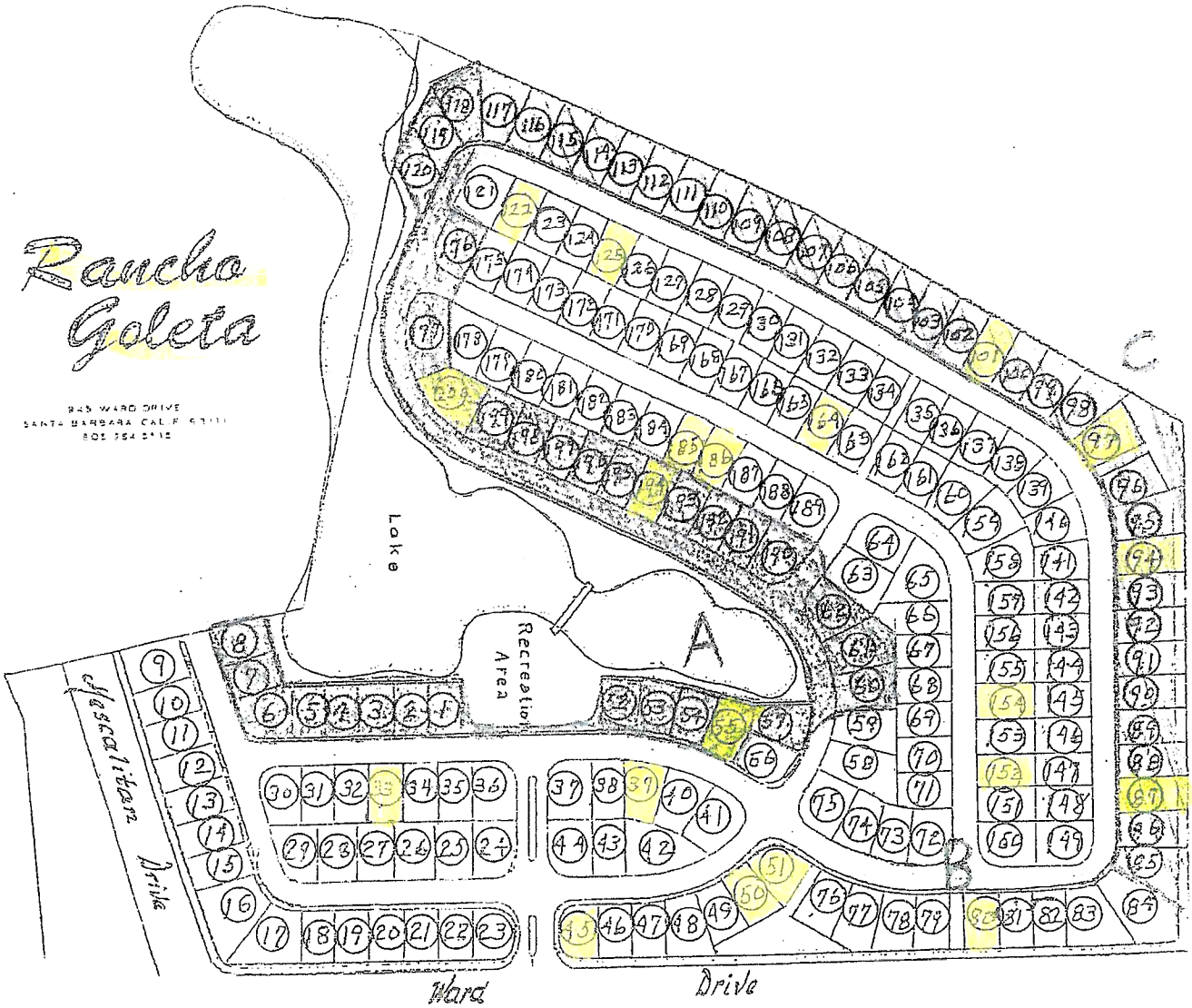

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RANCHO GOLETA SPACE 55

Admin Record, Vol. 12, Tab 177, ASSR 002414

Rancho Goleta Space 55
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RANCHO GOLETA SPACE 87

Admin Record, Vol. 12, Tab 177, ASSR 002423

Rancho Goleta Space 87

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SILVER SANDS MAP

Admin Record, Vol. 12, Tab 177, ASSR 002388

503-430
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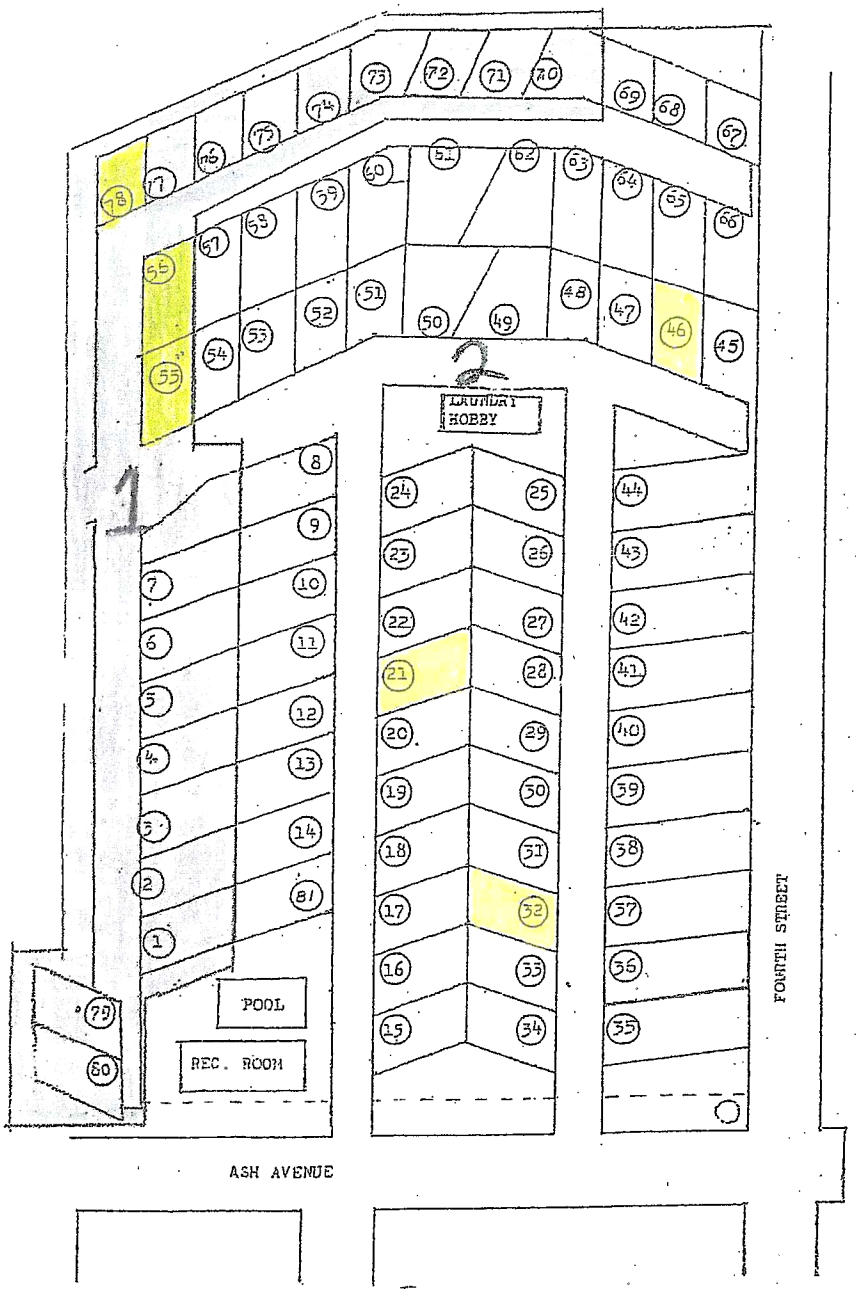

SILVER SANDS MOBILE HOME PARK

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

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA

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

On May 2, 2013, I served a true copy of the within **REPLY TO RESPONDENT'S JOINT ANSWER BRIEF** on the Interested Parties in said action by:

☒ by personally delivering it to the person indicated below:

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

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

See Mail Service List

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

Executed on May 2, 2013, Santa Barbara, California.

Carol Fink

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

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