Filed 5/16/12

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

ASSESSOR FOR COUNTY OF SANTA BARBARA, Plaintiff and Appellant, v. ASSESSMENT APPEALS BOARD NO. 1, Defendant and Respondent; RANCHO GOLETA LAKESIDE MOBILEERS, INC., et al., Real Parties in Interest and Respondents.	2d Civil No. B229656 (Super. Ct. No. 01244457) (Santa Barbara County)

California's taxation system deems the sale of real property accompanied by a transfer or change of ownership to be a taxable event triggering a change of assessment. (Rev. & Tax. Code, § 60 et seq.)[1] Ordinarily, the method used to determine the value of real property for purposes of calculating a change of assessment is based on the "full cash price" or fair market value of the property (referred to as the "purchase price presumption"). (§ 110, subd. (a).)

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

In 1985, the Legislature sought to "facilitate affordable conversions of mobilehome parks to tenant ownership." (Rev. & Tax. Code, § 62.1, subd. (c)(3).)[2] To achieve this goal, it excluded from reassessment the transfer of ownership of a mobilehome park to a non-profit corporation formed by the park's tenants. Inadvertently, this legislation created a loophole which permitted transfers of individual mobilehomes in resident-owned mobilehome parks to escape a change of ownership assessment. (§ 62.1, subd. (a).) Section 62.1 was amended in 1988 to close this loophole by providing that a transfer of stock or an ownership interest in a mobilehome park is a change of ownership of a pro rata portion of the real property in the park, if the park had previously been in a transaction qualifying under section 62, subdivision (a) and it had not been converted to condominium or stock cooperative ownership. (§ 62.1, subd. (c)(1).)

Here we address the meaning of the phrase "pro rata portion of the real property of the park." The Legislature provided the following definition in section 62.1, subdivision (c)(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 . . . , transferred divided by the total number of outstanding issued or unissued shares of voting stock . . . in, the entity which acquired the park in accordance with [paragraph (1) of] subdivision (a)."

In reassessing transfers of ownership occurring in 2001 in two tenant-owned mobilehome parks, the Rancho Goleta Park (RGP) and the Silver Sands Village Park (SSVP), appellant Assessor for Santa Barbara County (Assessor) relied on a letter opinion issued by the State Board of Equalization (SBE) and arrived at the value of the space underlying a mobilehome by subtracting the purchase price of the mobilehome from the mobilehome's value as established by an authorized valuation manual.

RGP and SSVP appealed the reassessments to respondent Assessment Appeals Board No. 1 (Board) contending that the Assessor erred in not valuing the

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[2] An amendment to section 62.1 in 2001 renumbered subdivisions (c)(1) and (c)(2) to subdivisions (b)(1) and (b)(2). In this opinion, we will use the numbering in effect at the time the reassessments were made by the Assessor.

underlying space by the method contained in section 62.1, subdivision (c)(2). The Board agreed and valued the underlying space by using a formula based a pro rata portion of the real property of the park. The Assessor filed a petition for writ of administrative mandamus pursuant to Code of Civil Procedure section 1094.5 challenging the Board's decision. The trial court denied the petition, finding that the Assessor's interpretation was contrary to the plain meaning of section 62.1, subdivisions (c)(1) and (2), and was not consistent with the statute's legislative history. The trial court also found that substantial evidence supported the Board's calculation of the values of the underlying spaces. We agree and affirm.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

RGP and SSVP (collectively "parks") were formerly owned by for-profit corporations. The residents of the parks leased the spaces underlying their mobilehomes from the corporation. In 1992 and 1998, tenants of the parks formed nonprofit corporations to purchase the parks. After purchase, each resident who wished to do so purchased a membership in the non-profit corporation owning the park. The membership interest purchased conveyed an undivided interest in the park, but did not give the owner the right to occupy a specific space in the park. The right to occupy the underlying space was conveyed by a lease between the corporation and the mobilehome owner. Rent for each space was based on an allocable share of the operating expenses of the park. The maximum number of memberships in each corporation was limited by the number of spaces available in the park. RGP contains 200 spaces and its purchase price in 1992 was $9.4 million. SSVP contains 80 spaces and its purchase price in 1998 was $1.5 million.

Pursuant to section 62.1, subdivision (a), the transfer of ownership of the parks to the non-profit corporations was a nontaxable event. A change of assessment is triggered upon subsequent sale of an individual mobilehome. The mobilehome and the space underlying it are reassessed separately. The mobilehome is subject to reassessment as personal property. (§ 5810.) The space underlying the mobilehome is deemed real property and is subject to reassessment pursuant to section 62.1, subdivision (b).

For the tax year 2001-2002, the Assessor reassessed the spaces underlying mobilehomes in the parks sold during 2001 based on a methodology contained in a letter to the Assessor (LTA) No. 99/87, an advisory opinion issued by the staff of the SBE in 1999. The letter sets forth a so-called "extraction" method for determining the value of an underlying space for purposes of reassessment. The extraction method computes the value of the underlying space by subtracting the fair market value of the mobilehome from the actual purchase price of the mobilehome.

The parks appealed to the Board challenging the reassessments. They asserted that the methodology used by the Assessor disregarded the plain language of section 62.1, subdivision (c), which requires that the value of an underlying space be calculated based on a "pro-rata" portion of the fair market value of the entire park.

The Board heard the appeal in two phases. The first phase involved construing the meaning of section 62.1, subdivisions (c)(1) and (2). The second phase involved valuation of the underlying spaces and calculation of the change in assessment. The hearings took place over a period of two years and involved many days of testimony and argument. At the conclusion of phase one, the Board issued a 58-page opinion concluding that the reassessments were not valid.

The Board construed section 62.1, subdivisions (c)(1) and (2), as requiring that a change of assessment of an underlying space be based, not on the purchase price of the mobilehome, but on its fractional value in relation to the value of the entire park. In phase two, the Board relied on the testimony of a certified mobilehome park appraiser as to the fair market value of each of the parks at the beginning of the tax year. In a separate 35-page opinion, the Board applied the formula it had adopted in phase one, and determined the value of the spaces underlying the mobilehomes and the resulting changes in assessment.

The Assessor filed a petition for writ of mandate. Following extensive hearings, the trial court issued statements of decision upholding the Board's decisions. It found that the Assessor's construction of section 62.1, subdivisions (c)(1) and (2), was contrary to its plain meaning, inconsistent with the statute's legislative history, and would

lead to absurd results. The trial court also affirmed the valuations of the parks and the changes of assessment of the individual spaces as determined by the Board in phase two. This appeal followed.[3]

DISCUSSION

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

I. Phase One

A. Standard of Review

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

B. Principles of Statutory Construction

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

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

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

C. The Statute

At the time the Assessor reassessed the underlying spaces, section 62.1, subdivisions (c)(1) and (2) provided:

"(1) If the transfer of a mobilehome park has been excluded from a change in ownership pursuant to subdivision (a) and the park has not been converted to condominium, stock cooperative ownership, or limited equity cooperative ownership, any transfer on or after January 1, 1989, of shares of the voting stock of, or other ownership or membership interests in, the entity which acquired the park in accordance with subdivision [¶] (a) shall be a change in ownership of a pro rata portion of the real property of the park unless the transfer is for the purpose of converting the park to condominium, stock cooperative ownership, or limited equity cooperative ownership or is excluded from change in ownership by . . . Section 62, 63, and 63.1. [¶] (2) For the purposes of this subdivision, 'pro rata portion of the real property' means the total real property of the mobilehome park multiplied by a fraction consisting of the number of shares of voting stock, or other ownership or membership interests, transferred divided by the total number of outstanding issued or unissued shares of voting stock of, or other ownership or membership interests in, the entity which acquired the park in accordance with subdivision (a)."

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

D. The Board's Interpretation

The Board found that the plain language of section 62.1, subdivision (c), required that the value of the underlying space be determined by multiplying the fractional interest in the park represented by the underlying space by the appraised value of the entire mobilehome park at the time of sale. The number of spaces in the park is used to calculate the fractional interest. Thus, in the RGP, the value of an underlying space is determined by multiplying the fair market value of the park by 1/200. In the SSVP, the value of the underlying space is determined by multiplying the fair market value of the park by 1/80. This method is represented by the following formula: "Fractional interest x FMV of real property of park=FMV of fractional ownership interest."

E. The Assessor's Interpretation

The Assessor contends that section 62.1, subdivision (c), does not contain a method for valuing the underlying space for purposes of calculating a change in assessment, but only for valuing the ownership interest in the corporation that is transferred upon sale of the mobilehome. The Assessor asserts that statutory provisions other than section 62.1, subdivision (c), provide the methodology to be used in valuing the underlying space. The Assessor's method begins with the purchase price of the mobilehome and arrives at the fair market value of the underlying space by subtracting from the purchase price the fair market value of the mobilehome established by an authorized valuation manual such as Kelly's Blue Book.[4] This so-called "extraction"

[4] Section 5803, subdivision (b), provides that the fair market value of a mobilehome may be determined by reference to the sales prices listed in the Kelly Blue Book

method is expressed by the following formula: "Purchase Price - Fair Market Value of Mobilehome = Fair Market Value of Underlying Space."

The rationale for this methodology is contained in LTA 99/87 which states in part: "Under a typical scenario, a park is acquired by a non-profit corporation formed by the former tenants. Subsequent purchasers pay an established price for a share in a corporation, where each share gives its holder the right to occupy a specific space in the park. A share in the corporation may be transferred only in combination with the purchase of a mobilehome. The purchase price for a share may represent consideration for both the mobilehome and the fractional interest in the corporation. In addition, the price may be said to cover a special assessment for infrastructure in the park.

"In amending section 62.1 in 1987 to provide for treatment of entity-owned mobilehome parks, the Legislature intended that transfers of ownership interests in such parks be treated on a par with transfers of other forms of 'share' ownership (i.e., condominiums or stock cooperatives) and with stick-built homes. Thus, while each share in the corporation may be said to afford its holder the right, for example, to participate in the governance of the corporation and a management of the park, such rights are merely incidental to that which the share conveys to its holder in substance: (1) the outright ownership of a particular mobilehome, and (2) the exclusive right to occupy a particular space within the park. With this backdrop in mind, if the reported purchase price was negotiated in the open market at arm's length, then it is our view that the entire amount should be reflected in the combined assessments of the mobilehome and the underlying interest in the park.

"The most reasonable way of allocating the value between the two assessments would be to (1) extract from the reported purchase price the value of the mobilehome itself, using the N.A.D.A. Manufactured Housing Appraisal Guide or another recognized value guide, and then (2) assign the remainder of the purchase price to the interest in the park. . . .

Manufactured Housing and Mobilehome Guide or other recognized value guide for manufactured homes.

". . . . . .

"Assuming that the purchase price represents the collective fair market value of the manufactured home and the underlying space, the assessor should (1) allocate that purchase price between the manufactured home and the fractional interest in the real property of the park and (2) calculate separate supplemental [assessment] amounts for each."

At the hearings before the Board, a representative of the SBE further explained the extraction method. He stated that LTA 99/87 was an effort to place section 62.1, subdivision (c) in context and to harmonize it with other taxation statutes. Section 62.1 does not set forth the valuation methodology to determine the fair market value of the interest transferred in the change of ownership. It merely sets forth a method to allocate that portion of the ownership interest in the entity that was transferred. In other words, section 62.1 provides an allocation methodology. The allocation method identifies what constitutes the "pro rata portion of the real property" that was transferred in the acquisition of the ownership interest in the entity that owns the park. After identifying or isolating the "pro rata portion of the real property" that was transferred, the Assessor turns to different provisions of the Revenue and Taxation Code to determine the appraisal unit and the valuation methodology in order to determine the fair market value of the appraisal unit.

Section 62.1, subdivision (c) also does not identify the appraisal unit for purposes of determining the fair market value of the fractional change of ownership interest in the entity that owns the park. The concept of an appraisal unit is different and distinguishable from the concepts of fractional interest in the park and valuation methodology. The appraisal unit, as defined in section 51, subdivision (d)[5] is the object on which value is placed. In effect, section 62.1 does not in itself identify the appraisal unit or the valuation methodology to determine the fair market value of that portion of the

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

appraisal unit that transferred with the acquisition of an ownership interest in the entity that owns the park.

F. Analysis

1. The SBE's Administrative Interpretation Is Not Controlling

The Assessor argues that we must give great weight to the SBE's interpretation contained in LTA 99/87. We disagree. The SBE's interpretation meets none of the standards set forth by our Supreme Court to determine the weight to be given an administrative interpretation. "The . . . factors . . . suggesting the agency's interpretation is likely to be correct—includes indications of careful consideration by senior agency officials ('an interpretation of a statute contained in a regulation adopted after public notice and comment is more deserving of deference than [one] contained in an advice letter prepared by a single staff member'. . .), evidence that the agency 'has consistently maintained the interpretation in question, especially if [it] is long-standing' [citation] ('[a] vacillating position . . . is entitled to no deference' [citation]), and indications that the agency's interpretation was contemporaneous with legislative enactment of the statute being interpreted." (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12-13 (*Yamaha*).)

LTA 99/87 does not represent a consistent interpretation of the statute by the SBE nor is it one of longstanding--LTA 89/13, in effect for 10 years, represents SBE's contemporaneous interpretation of the statute. It was not formulated contemporaneously with enactment of the statute--it was formulated more than 10 years after section 62.1, subdivisions (c)(1) and (2) were adopted. It is not a regulation enacted by the SBE after compliance with administrative notice and hearing procedures, but rather is an advisory opinion drafted by staff members. Because LTA 99/87 does not have attributes suggesting the correctness of the SBE's opinion, we follow the instruction of our Supreme Court and give it little deference. (*Yamaha, supra,* 19 Cal.4th at p. 11.)**6**

6 The dissent believes we should uphold the Assessor's interpretation because it is entitled to great weight and its interpretation promotes the goal of increasing tax revenues. We differ because, as discussed, the Assessor's interpretation is not entitled to deference by this court because it does not meet the criteria set forth in *Yamaha.* In addition, we are

2. The Board's Interpretation is Consistent with the Plain Language of the Statute

The Board's interpretation is based on a determination of the pro rata value of the underlying space. "Pro rata" appears in section 62.1, subdivision (c), and has a well-established meaning as recognized long ago by our Supreme Court in *Rosenberg v. Frank* (1881) 58 Cal. 387: "These words *pro rata* have a defined and well-understood meaning. . . . It is well understood by persons of ordinary intelligence to denote a disposition of a fund or sum indicated in proportion to some rate or standard, fixed in the mind of the person speaking or writing, manifested by the words spoken or written, according to which rate or standard the allowance is to be made or calculated." (*Id.* at pp. 405-406; see also *Wright v. Coberly-West Co.* (1967) 250 Cal.App.2d 31, 36 ["In Webster's, Third New International Dictionary (Unabridged), the word 'prorate' is defined, 'to divide, distribute, or assess proportionately'"].)

The Assessor's reliance on a definition of "ratable" merits little discussion. That term is not contained in section 62.1, subdivision (c), the definition of "ratable" proffered by the Assessor as meaning "not equal" appears in an out-of-state case, and the Assessor's analysis fails to take into consideration the word "pro" which proceeds the word "rata" in the statute.

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

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aware of no authority that permits interpretation of a statute to be based on conditions existing at the time of interpretation rather than on Legislative intent at the time of enactment.

subdivision (c), refers only to a pro rata interest in the ownership of the corporation--section 2188.10 makes clear that it is the pro rata portion of the real property that is subject to assessment.

3. The Board's Interpretation is Consistent with the Legislative History Of the Statute and LTA 89/13

Prior to the amendment in 1988, section 62.1 contained loopholes which permitted transfers of individual mobilehomes in resident-owned mobilehome parks to escape a change of ownership assessment. To remedy this omission, the SBE sponsored a bill (Sen. Bill No. 1885 (1988 Reg. Sess.) § 1) that added subdivision (c) to section 62.1. In connection with its sponsorship of Senate Bill No. 1885, the SBE prepared and submitted an analysis which was submitted it to the Chairman of the Revenue and Taxation Committee and the bill's author. The analysis states in part:

"The proposed new subdivision (c) . . . provide[s] that a transfer of stock or an ownership interest in a mobilehome park is a change in ownership of a pro rata portion of the real property of the park, if the park had previously been in a transaction qualifying under Section 62(a) and it had not been converted to condominium or stock cooperative ownership. . . .

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

"Thus, any differences in a value between mobilehome spaces . . . cannot be recognized under this method. Further, since the allocation is based on the ownership interest in the corporation rather than in specific property, the proposal does not require that any increase in taxes be allocated to the particular tenant-shareholder as required in

Section 65.1(b). This should not work any real hardship, however, since the nonprofit corporation, through its bylaws and rental agreements has the power to provide for a pass-on of the tax to the appropriate parties."

The SBE issued an opinion letter, LTA 89/13, a month after the amendment became effective which was intended to guide county assessors in implementing the new statute. LTA 89/13 contains language substantially similar to that in the SBE's prior Legislative analysis and contains the following explanation:

"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."

G. The Board's Interpretation is Consistent with the Legislative Policy Of Providing Affordable Housing

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

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

"Tax schemes which favor a particular class may be justified on the basis of administrative convenience and in furtherance of legitimate state interests. [Citations.]

'Legislative judgment as to the adequacy of a distinction to justify a classification for tax purposes will not be set aside on equal protection grounds unless it is palpably arbitrary. . . .'" (*Shafer v. State Bd. of Equalization, supra,* 174 Cal.App.3d at p. 431.)

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

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

H. Conclusion

The plain meaning of the statute and its legislative history support the Board's determination that the value of a space underlying a mobilehome in a resident owned mobilehome park must be based on fractionalized interest of the value of the mobilehome park. In addition to giving the word "prorata" its ordinary meaning, the Board's formula utilizes multiplication and thus complies with the Legislative direction

that the "total real property value of the mobilehome park [be] multiplied by a fraction consisting of the number of . . . membership interests." (§ 62.1, subd. (c)(2).)

The Assessor's interpretation, on the other hand, disregards the plain language and import of section 62.1, subdivision (c). It disregards the ordinary meaning of "pro rata" and renders the term 'multiply' completely meaningless since no multiplication occurs under the SBE's approach. The Assessor's justification for its method based on conformance with sections 110 and 51, subdivision (d), has little merit. Those general statutes have no application where, as here, a specific statutory provision covering the subject has been enacted. (See, e.g., *Woods v. Young* (1991) 53 Cal.3d 315, 325 ["'A specific provision relating to a particular subject will govern a general provision, even though the general provision standing alone would be broad enough to include the subject to which the specific provision relates'"].) If the Legislature had intended to tax the spaces underlying mobilehomes in resident-owned parks in the same manner as other types of common interest developments, it would not have been necessary to adopt a separate statute. An existing statute, section 65.1, deals with reassessments when changes of ownership involve condominiums, stock cooperatives, and subdivided mobilehome parks. We must assume that in enacting a statute, the Legislature acted with full knowledge of the state of the law at the time. (*Palos Verdes Faculty Assn. v. Palos Verdes Peninsula Unified Sch. Dist.* (1978) 21 Cal.3d 650, 659.)

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

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

II. Phase Two

Following hearing and decision in phase one, the Board held additional hearings and took evidence to determine the value of the spaces underlying a mobilehome in each park using the formula adopted in phase one.

A. Standard of Review

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

B. Methods of Valuation of Mobilehome Parks

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

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

The income approach, also referred to as the capitalization approach, is based on an estimated net income stream that the subject property is likely to produce for an investor during the probable remaining economic life of the subject property. It is a method of determining the present worth of monetary profit to be received from the property in the future. Property tax rule 3, subdivision (e), and rule 8, subdivision (a), provide that the income approach is used with other approaches to determine value when the property is purchased for its anticipated income and where the property "either has an

established income stream or can be attributed a real or hypothetical income stream by comparison with other properties." Rule 8, subdivision (a), further states that: "It is the preferred approach for the appraisal of improved real properties and personal properties when reliable sales data are not available and the cost approaches are unreliable . . . ."

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

C. The Evidence

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

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

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

the fair market value of the SSVP during the first period was $2,250,000. For the second appraisal period, the income approach and comparable sales approach both yielded a value of $3.4 million.

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

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

The Board accepted the conclusions of the parks' appraiser as to the values of the parks. Using the formula it approved in phase one, the Board determined that the fair market value of each of the underlying spaces in the RGP for which a change of ownership occurred in 2001 was $65,000. The fair market value for the spaces which

were sold in the SSVP during the first appraisal period was $28,125 and the single sale that occurred during the second appraisal period was $42,500.

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

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

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

The Assessor cites no authority precluding use of this method when the subject property is not currently earning income. Property tax rule 3, subdivision (e), states the income approach is "[t]he amount that investors would be willing to pay for the right to receive the income that the property would be expected to yield, with the risks attendant upon its receipt . . . ." Case law describes the income approach as one that "'estimates current fair market value of a property by attempting to determine the amount

that an investor would be willing to pay for the right to receive the future income the property is projected to produce.'" (*Freeport-McMoran Resource Partners v. County of Lake* (1993) 12 Cal.App.4th 634, 640, quoting *Union Pacific Railroad Co. v. State Bd. of Equalization* (1991) 231 Cal.App.3d 983, 989-990.) "Since a property's 'full value' must be determined by reference to the price it would bring on an open market, '[t]he net earnings to be capitalized . . . are not those of the present owner of the property, but those that would be anticipated by a prospective purchaser.'" (*Freeport-McMoran,* at p. 642, quoting *DeLuz Homes, Inc. v. County of San Diego* (1955) 45 Cal.2d 546, 566.) Thus, because it is the future income stream that is relevant, the income approach may be appropriate where, as here, the subject property is not currently income producing.

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

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

"Standards of comparability [however] can never be treated in absolute terms. Even relatively poor data can 'fairly be considered as shedding light on the value of the property being valued' (Rev. & Tax. Code, § 402.5) if it is the best or only data available." (*Midstate Theatres, Inc.* v. *County of Stanislaus, supra*, 55 Cal.App.3d at p. 880.) Where, as here, exact comparable sales are not available, it is appropriate to use the best market data available. Thus, even if there are "major dissimilarities, it cannot be said use of the comparables violated . . . section 402.5 or rule 4." (*Ibid.*)

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

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

D. Conclusion

From our review of the entire record and the applicable law, we conclude the Board applied the appropriate valuation method correctly and its findings are

supported by substantial evidence.[7]

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

CERTIFIED FOR PUBLICATION.

PERREN, J.

I concur:

COFFEE, J.*

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

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

Yegan, J. Dissenting

I respectfully dissent.

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

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

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

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

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

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

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

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

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

CERTIFIED FOR PUBLICATION

YEGAN, Acting P.J.

James W. Brown, Judge

Superior Court County of Santa Barbara

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