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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)

OPINION ON REHEARING

James W. Brown, Judge
Superior Court County of Santa Barbara

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PERREN, J.

The ownership of mobilehome parks and individual spaces within them may take many forms. An individual or entity may own the park and lease spaces to residents who become tenants. In recent years, many mobilehome parks have become resident-owned with residents obtaining a legal interest in some or all of the park's real property. Resident-owned mobilehome parks have been established as condominiums, cooperatives, subdivisions, and ownership by nonprofit corporations.

As part of a legislative policy to encourage affordable housing, a statute was enacted in 1985 to exempt from reassessment, any "transfer . . . of a mobilehome park to a nonprofit corporation, stock cooperative corporation, limited equity stock cooperative, or other entity formed by the tenants of a mobilehome park, for the purpose of purchasing the mobilehome park." (Rev. & Tax. Code, § 62.1, subd. (a)(1).) A later amendment clarified that subsequent transfers of stock in a previously-formed nonprofit corporation by individual members were taxable changes of ownership "of a pro rata portion of the real property of the park." (§ 62.1, subd. (c)(1).)

A "pro rata portion of the real property" is defined as "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 [shares of stock] in, the entity which acquired the park." (§ 62.1, subd. (c)(2).) The dispute in this case concerns the methodology which must be used by assessors to determine the "pro rata portion of the real property of the park" which is sold when a resident sells his or her membership stock in the nonprofit corporation.

Appellant Assessor for the County of Santa Barbara (Assessor) reassessed the Rancho Goleta and Silver Sands Village mobilehome parks (the Parks) which were owned by Rancho Goleta Lakeside Mobileers, Inc., and Silver Sands Village, Inc. (the Nonprofit Corporations). The Assessor computed the reassessment by subtracting the value of the mobilehome from the total purchase price of the mobilehome and membership in the Nonprofit Corporations. The Assessor deemed the remaining amount to be the fair market value of the purchaser's "pro rata portion of the real property of the park." The Nonprofit Corporations appealed to the Assessment Appeals Board No. 1 (the Board) contending that such method of reassessment violated section 62.1, subdivision (c)(2) because it failed to apply the statutory definition of "pro rata portion of the real property" as a multiplication of the Park's total real property by a fraction consisting of the number of membership shares being sold divided by the total number of shares in the Nonprofit Corporation. The Board ruled in favor of the Nonprofit Corporations and, after the trial court denied the Assessor's petition for writ of administrative mandamus, the Assessor appealed. We agree with the Board and trial court and affirm.

FACTS AND PROCEDURAL HISTORY

The Parks were formerly owned by investors with residents of the Parks leasing the spaces underlying their mobilehomes from those investors. In 1992 and 1998, residents of the Parks formed the Nonprofit Corporations which purchased the Parks including the underlying

real property. After purchase, each resident who wished to do so purchased a membership in the Nonprofit Corporation. A membership included an undivided interest in the Nonprofit Corporation, but not a direct ownership interest in the real property, and no right to occupy a specific space in the Park. The right to occupy a space in the Park was conveyed by a lease between the Nonprofit Corporation and the owner of the mobilehome. 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. Rancho Goleta contains 200 spaces and its purchase price in 1992 was $9.4 million. Silver Sands Village 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 Nonprofit Corporations was a nontaxable event. But a change in assessment of the underlying real property is triggered by each subsequent sale of a membership in the Nonprofit Corporation which owned the particular Park. Although a mobilehome is typically sold with the sale of a membership, reassessment of the mobilehome is separate from the reassessment of the Parks. The mobilehome is assessed as personal property
(§ 5810), and despite the absence of any formal change in ownership of the real property, a pro rata portion of the real property is deemed to change ownership for purposes of reassessment pursuant to section 62.1, subdivision (c).

For the tax year 2002-2003, the Assessor reassessed the Parks based on the sale of memberships in the Nonprofit Corporations in 2001. The reassessments were based on a so-called "extraction" method for determining the value of a pro rata portion of the real property as if title to the space (real property) under a mobilehome was being sold along with a membership in the Nonprofit Corporation. The extraction method computes the fair market value of the underlying space by subtracting the value of the mobilehome from the total purchase price of the mobilehome with a membership.

The Nonprofit Corporations 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 according to the multiplication formula set forth in the statute.

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 Parks and calculation of the change in assessment of the Parks. The hearings took place over a period of three 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 methodology used by the Assessor to calculate the reassessments was invalid and that the methodology argued by the Nonprofit Corporations was required.

The Board construed section 62.1, subdivisions (c)(1) and (2), as requiring a change of assessment upon the transfer of a membership to be based on a pro rata portion of the fair market value of the membership relative 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 time of the membership transfers. In a separate 35-page opinion, the Board applied the formula it had adopted in phase one, and determined the value of the pro rata

portions of the Parks that had changed ownership for purposes of 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 Board's factual findings including its valuations of the Parks and the calculation of the changes of assessment of the Parks. This appeal followed.

DISCUSSION

1. Phase One--Construction of Section 62.1, Subdivision (c)

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.)

"[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

Section 62.1, subdivision (a)(1) provides that a "change in ownership" shall not include "[a]ny transfer, on or after January 1, 1985, of a mobilehome park to a nonprofit

corporation, stock cooperative corporation, limited equity stock cooperative, or other entity formed by the tenants of a mobilehome park, for the purpose of purchasing the mobilehome park . . . ." At the time of the reassessments, 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, or 63.1. [] (2) For the purposes of this subdivision, 'pro rata portion of the real property' means the total real property of the mobilehome park multiplied by a fraction consisting of the number of shares of voting stock, or other ownership or membership interests, transferred divided by the total number of outstanding issued or unissued shares of voting stock of, or other ownership or membership interests in, the entity which acquired the park in accordance with subdivision (a)."

As indicated above, 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. Board's Interpretation of Statute

The Board found that the plain language of section 62.1, subdivision (c), requires that the value of each change of ownership of a pro rata portion of the real property of the Parks must be determined by multiplication of the fractional interest in the Park deemed to have changed ownership by the appraised fair market value of the entire Park at the time of sale. The fractional interest of the real property deemed transferred is determined by dividing the number of memberships transferred by the total number of memberships. For example, a reassessment triggered by the transfer of one membership in the Rancho Goleta Nonprofit Corporation is determined by multiplying the fair market value (FMV) of that Park by 1/200. The formula is: Fractional interest x FMV of entire Park = FMV of fractional interest which has changed ownership.

E. Assessor's Interpretation of Statute

The Assessor contends that section 62.1, subdivision (c), states a method to identify the pro rata portion of the real property being transferred, but not a methodology to determine the fair market value of that interest, and that the Assessor must rely on other laws such as section 51, subdivision (d) to determine the appraisal unit and fair market value of the appraisal unit. The Assessor's so-called "extraction" method of valuation reaches the FMV of the pro rata portion of the real property deemed to have changed ownership by subtracting the FMV of the mobilehome alone from the total purchase price of the mobilehome plus membership. The

formula is: Purchase Price - FMV of mobilehome = FMVof real property deemed to have changed ownership.

This methodology is based on an advisory opinion by the staff of the State Board of Equalization (SBE) in 1999 which was issued as a letter to the assessor (LTA) No. 99/87. In describing a mobilehome sale, the letter states: "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."

LTA No. 99/87 interprets section 62.1 as intending that ownership changes in nonprofit corporation mobilehome 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 . . . , and then (2) assign the remainder of the purchase price to the interest in the park. . . . [] 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."

F. Plain Language of Statute Supports Board's Interpretation

We conclude that the Board's interpretation conforms to and embodies the plain meaning of the statute. Arguably, the Assessor presents a reasonable method for the taxation of changes in mobilehome ownership, but it is not the method set forth in section 62.1, subdivision (c). The Assessor is free to recommend a legislative change but not to ignore an existing statute.

The sale of a mobilehome in one of the Parks involves transfer of a membership in the Nonprofit Corporation and a change in ownership of a fractional interest in the Park which must be determined by the statutory formula. The words "pro rata" appearing in section 62.1, subdivision (c) have a long-established meaning. "These words pro rata have a defined and well-understood meaning. . . . It is well understood by persons of ordinary intelligence to denote a disposition of a fund or sum indicated in proportion to some rate or standard, 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." (Rosenberg v. Frank (1881) 58 Cal. 387, 405-406; see also Wright v. Coberly-West Co. (1967) 250 Cal.App.2d 31, 36 ["In

Webster's, Third New International Dictionary (Unabridged), the word 'prorate' is defined, 'to divide, distribute, or assess proportionately'"].) The Assessor's reliance on a definition of "ratable" is erroneous because "ratable" is not the term contained in section 62.1, subdivision (c), and fails to take into consideration the word "pro" which precedes the word "rata" in the statute.

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

G. LTA No. 99/87 Is Not Controlling

The Assessor argues that we must give great weight to LTA No. 99/87. We disagree. It is clear that LTA No. 99/87 expresses the opinion of the staff of the State Board of Equalization regarding its preferred method of assessing ownership changes in nonprofit corporation mobilehome parks under general principles of taxation, but it fails to follow the actual method of assessment expressly set forth in section 62.1.

LTA No. 99/87 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 No. 99/87 does not represent a consistent interpretation of the statute by the SBE nor is it one of longstanding. LTA No. 89/13 represents the SBE's contemporaneous interpretation of the statute, and LTA No. 99/87 was formulated more than 10 years after section 62.1, subdivisions (c)(1) and (2) were adopted. Also, it is not a regulation enacted after compliance with administrative notice and hearing procedures, but rather is an advisory opinion drafted by staff members. Because LTA No. 99/87 does not have attributes suggesting its correctness, we follow the instruction of our Supreme Court and give it little deference. (Yamaha, supra, 19 Cal.4th at p. 11; see also City of Palmdale v. State Bd. of Equalization (2012) 206 Cal.App.4th 329, 339-341.)

H. Board's Interpretation Supported by Legislative History and LTA No. 89/13

Section 62.1 was intended to permit mobilehome parks to be sold by their tenant resident to corporations formed by the tenants without incurring a change in ownership assessment. Prior to the amendment in 1988, section 62.1 contained loopholes which may have allowed mobilehome owners to avoid reassessment upon the subsequent sale of individual mobilehomes. 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 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 in LTA No. 89/13 issued a month after the amendment became effective was intended to guide county assessors in implementing the new statute and contains language substantially similar to that in the SBE's earlier Legislative analysis: "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."

The Assessor argues that the SBE's final legislative bill analysis deleted the language stating "any differences in value between mobilehome spaces . . . cannot be recognized under this method." The deletion, however, does not substantially alter the SBE's analysis or the legislative history of section 62.1 in general.

I. Board's Interpretation Consistent with 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, subdivision (c) which 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."

Under the Assessor's method, more taxes would be imposed on valuation of certain mobilehomes than others in the same mobilehome park. 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 and furthers the legislative goal of providing affordable housing.

J. Conclusion

The plain meaning of the statute and its legislative history support the Board's interpretation of section 62.1, subdivision (c). In addition to giving the word "prorata" its ordinary meaning, the Board's formula complies with the legislative direction that the "pro rata portion of the real property" means the "total real property of the mobilehome park multiplied by a fraction consisting of the number of . . . outstanding issued or unissued shares of voting stock

of . . . the entity which acquired the park." (§ 62.1, subd. (c)(2), italics added.)

The Assessor's interpretation, on the other hand, disregards the plain language of section 62.1, subdivision (c). It disregards the ordinary meaning of "pro rata" and renders the term "multiply" 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 and the Board expressly determined the full cash value of the total real property of the Parks prior to applying the pro rata fraction. (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 have so stated and not adopted a separate statute with a different methodology and appraisal unit. An existing statute, section 65.1, subdivision (b) covers the appraisal unit for reassessments of changes in ownership of condominiums, stock cooperatives, and subdivided mobilehome parks. We 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.)

2. Phase Two

Following hearing and decision in phase one, the Board held additional hearings and took evidence to determine the value of the changes in ownership of pro rata portions of the Parks 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 that 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 Nonprofit Corporations. 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 Rancho Goleta Park 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 Rancho Goleta Park 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 Nonprofit Corporations' 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 change in ownership under section 62.1 in the Rancho Goleta park that occurred in 2001 was $65,000. The fair market value of each change in ownership in the Silver Sands Village during the first appraisal period was $28,125 and 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, (2) the Nonprofit Corporations' 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 State Board of Equalization'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).)

Use of this method is proper because the Assessor used market rents rather than actual rents in its calculations of the income potential of the Parks. Although the Nonprofit Corporations receive rental income, they do not charge market rent and do not operate the Parks for the purpose of earning a profit. 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 generating income and the Parks, although not currently being operated for a profit, may be operated for a profit in the future.

The Assessor takes issue with the use by the Nonprofit Corporations' appraiser 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 an appraisal date range 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 Silver Sands Village park because substantial infrastructure improvements were made during 2001. The Silver Sands Village park had less value before the infrastructure improvements were completed and more value 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.

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

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PERREN, J.

I concur:

COFFEE, J.*

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).) 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 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.