

1991

Board of Equalization v. Utah State Tax Commission : Unknown

Utah Supreme Court

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Robert A. Peterson; Van Cott, Bagley, Cornwall & McCarthy; Attorneys for Respondent Benchmark, Inc.; Paul Can Dam, Esq.; Attorney General for Utah; Attorney for Petitioner/; Leon A. Dever, Esq.; Assistant Attorney General; Attorneys for Respondent Utah State Tax Commission.

David E. Yocom; Salt Lake County Attorney; Bill Thomas Peters; Special Deputy Salt Lake County Attorney; Attorneys for petitioner/Appellant Salt Lake County.

Recommended Citation

Legal Brief, *Board of Equalization v. Utah State Tax Commission*, No. 910310.00 (Utah Supreme Court, 1991).
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**UTAH COURT OF APPEALS
BRIEF**

DAVID E. YOCOM - #3581
Salt Lake County Attorney
BILL THOMAS PETERS - #2574
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UTAH
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DOCKET NO.

FILED
910310
AUG 1 1991

CLERK SUPREME COURT,
UTAH

Attorneys for the Board of Equalization of Salt Lake County

IN THE SUPREME COURT OF THE STATE OF UTAH

BOARD OF EQUALIZATION OF	:	
SALT LAKE COUNTY, STATE OF	:	
UTAH,	:	
	:	DOCKETING STATEMENT
Petitioner,	:	
	:	
-vs-	:	
	:	Docket No. 91-0310
	:	
UTAH STATE TAX COMMISSION, ex	:	State Tax Commission
rel, BENCHMARK, INC.,	:	Appeal Nos. 87-0315/87-0362
	:	88-0531/88-0574/89-0405
Respondents.	:	89-0449 and 89-0767
	:	
	:	

Petitioner, Board of Equalization of Salt Lake County, pursuant to Rule 9, Utah Rules of Appellate Procedure, hereby submits the following Docketing Statement:

I.

This petition is for review of the Findings of Fact and Conclusions of Law and Final Decision of the Utah State Tax Commission, dated June 28, 1991 which is attached hereto. The petition for review was filed July 11, 1991 and is attached hereto.

II.

This court has jurisdiction to decide this petition for review

pursuant to Utah Code Annotated, Section 78-2-2(3)(e)(ii), Utah Code Annotated, Section 63-46b-16 (1988), and Rule 14, Utah Rules of Appellate Procedure.

III.

This Petition is for review of the Findings of Fact, Conclusions of Law and Final Decision of the Utah State Tax Commission. The facts material to this consideration are those found by the Commission as they relate to the entitlement of the developer of a subdivision receiving a discount on unsold lots within that subdivision, based upon the period of time it takes to sell the remaining lots in the subdivision, thereby allowing the retained lots to be taxed at a value substantially less than comparable lots in the same subdivision that have been sold to individuals and are taxed based upon their market value, rather than at a discounted value. The properties that are the subject matter of this appeal are developed subdivision lots within a subdivision identified as Benchmark Subdivision, located within Salt Lake City, Salt Lake County, Utah, and owned by the respondent, Benchmark, Inc. During the period of times applicable to this appeal, within the Benchmark Subdivision, are lots that were sold by Benchmark to individual purchasers, some of which contain homes and others which are individually owned, but do not have homes build upon them. During the tax years in question, the County Assessor valued each of the subdivision lots using the comparable sales methodology of valuation. At the formal hearing, both parties' expert witnesses agreed upon the fair market value of

the individual lots under the comparable sales approach to valuation. However, respondent further asserted that an additional discount should be given to the lots within the subdivision owned by Benchmark, Inc., during the years in question, to reflect the period of time required for Benchmark to dispose of all of its lots and the income received therefrom. Salt Lake County asserted that such a discount would be contrary to principles of equalization because it resulted in comparable lots having comparable sales prices being taxed at a value substantially less than individually owned lots, and that to allow such a discount does not address the value of the property but values the developers business interest in the property, and that such an allowance is contrary to the provisions of the Utah Constitution requiring equality and uniformity of assessment.

The Tax Commission determined that as of the end of 1989, there were 44 lots remaining to be sold and accepted the respondents projection that it would take eight years for the respondent to be able to sell all of the lots that were under appeal. The Tax Commission then essentially applied an income approach to valuing the subdivision lots in the hands of the developer, and concluded that each of the lots in the subdivision held by the developer were entitled to a discount from the agreed fair market value, based upon the period of time it would take for the developer to dispose of the remaining lots in the subdivision. The result of such a discount means that individual lot owners owning comparable lots are taxed upon the fair market value of

those lots based upon the comparative sales method, and are not given a discount from that fair market value as is given to the respondent in these proceedings.

IV.

This petition presents the following issues for judicial review:

- A) Is it appropriate to use different valuation methodology on comparable properties which results in disparate treatment of comparable lots in the same subdivision.
- B) Does the granting of a bulk discount or the recognition of an absorption period based upon the character of the owner of the property and the number of lots owned produce a result that is contrary to the provisions of the Utah Constitution and the Utah statutes that require equality and uniformity of assessment for tax purposes.

V.

Constitutional provisions, statutes, rules and cases believed to be determinative of these issues are:

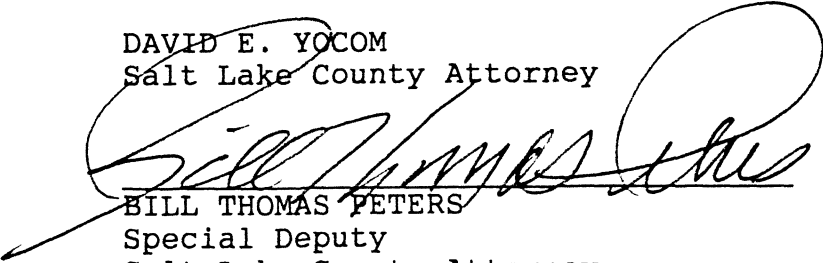
- 1. Article XIII, § 2 of the Constitution of the state of Utah;
- 2. Utah Code Annotated § 59-2-102, § 59-2-103 and § 59-5-4.5.
- 3. Supervisor of Assessments v. St. Leonard Shores Joint Venture. 486 A.2d 207;
- 4. Charles J. and Charlotte Mathias v. Department of Revenue, state of Oregon, Oregon Tax Court Case No. 2910, decision

filed April 10, 1991;

5. Glen Point Associates v. Township of Teaneck, 10 N.J. Tax
506 (Tax Court of New Jersey, 1989).

DATED this 1st day of August, 1991.

DAVID E. YOCOM
Salt Lake County Attorney



BILL THOMAS PETERS
Special Deputy
Salt Lake County Attorney
Attorneys for
Board of Equalization of
Salt Lake County

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the
foregoing Docketing Statement was mailed, postage prepaid, this
1st day of August, 1991, to the following:

Benchmark, Inc.
c/o Rodney M. Pipella
648 East First South
Salt Lake City, Utah 84190
Respondents

Utah State Tax Commission
Heber Wells Building
160 East Third South
Salt Lake City, Utah 84111

R. Paul Van Dam, Esq.
Attorney General
State of Utah
236 State Capitol
Salt Lake City, Utah 84114
Attorney for Utah State Tax Commission



BILL THOMAS PETERS

DAVID E. YOCOM - #3581
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#9 Exchange Place, Suite 400
Salt Lake City, Utah 84111
Telephone: (801) 364-8644

Attorneys for the Board of Equalization of Salt Lake County

IN THE SUPREME COURT OF THE STATE OF UTAH

BOARD OF EQUALIZATION OF	:	
SALT LAKE COUNTY, STATE OF	:	
UTAH,	:	
	:	DOCKETING STATEMENT
Petitioner,	:	
	:	
-vs-	:	
	:	Docket No. 91-0310
	:	
UTAH STATE TAX COMMISSION, ex	:	State Tax Commission
rel, BENCHMARK, INC.,	:	Appeal Nos. 87-0315/87-0362
	:	88-0531/88-0574/89-0405
Respondents.	:	89-0449 and 89-0767
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Petitioner, Board of Equalization of Salt Lake County, pursuant to Rule 9, Utah Rules of Appellate Procedure, hereby submits the following Docketing Statement:

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II.

This court has jurisdiction to decide this petition for review

FILED

JUL 1 1991

CLERK SUPREME COURT,
UTAH

DAVID E. YOCOM - 3581
Salt Lake County Attorney
BILL THOMAS PETERS - 2574
Special Deputy Salt Lake County Attorney
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IN THE SUPREME COURT OF THE STATE OF UTAH

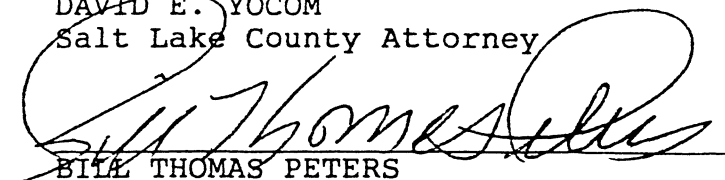
BOARD OF EQUALIZATION OF	:	
SALT LAKE COUNTY, STATE OF	:	PETITION FOR REVIEW OF
UTAH,	:	AGENCY ACTION
	:	
Petitioner,	:	
	:	Docket No. 91-0310
-vs-	:	
	:	State Tax Commission
UTAH STATE TAX COMMISSION, ex rel,	:	
BENCHMARK, INC.,	:	Appeal Nos. 87-0315 through
	:	87-0362, 88-0531
Respondents.	:	through 88-0574
	:	89-0405 through
	:	89-0449 and
	:	89-0767

Pursuant to Section 63-46b-16, Utah Code (1988), and Rule 14 of the Utah Rules of Appellate Procedure, Petitioner, Board of Equalization of Salt Lake County, by and through its attorneys, Davie E. Yocom, Salt Lake County Attorney and Bill Thomas Peters, Special Deputy County Attorney, petitions the Utah Supreme Court to

modify and reverse the Final Decision of the Utah State Tax Commission dated June 28, 1991.

DATED this 10th day of July, 1991.

DAVID E. YOCOM
Salt Lake County Attorney

A large, stylized handwritten signature in black ink, which appears to read "Bill Thomas Peters". The signature is written over the printed name of the signatory.

BILL THOMAS PETERS
Special Deputy Salt Lake County
Attorney

CERTIFICATE OF SERVICE

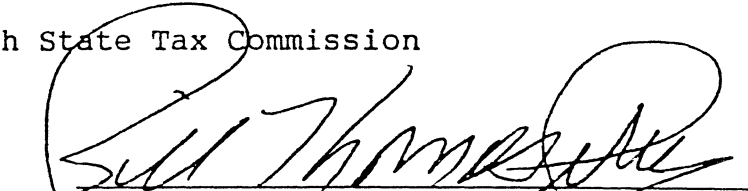
I hereby certify that a true and correct copy of the foregoing Petition for Review was mailed, postage prepaid, this 10th day of July, 1991, to the following:

Benchmark, Inc.
c/o Rodney M. Pipella
648 East First South
Salt Lake City, Utah 84115
Respondents

Utah State Tax Commission
Heber Wells Building
160 East Third South
Salt Lake City, Utah 84111

R. Paul Van Dam, Esq.
Attorney General
State of Utah
236 State Capitol
Salt Lake City, Utah 84114

Attorney for Utah State Tax Commission



BILL THOMAS PETERS

BEFORE THE UTAH STATE TAX COMMISSION

BENCHMARK, INC.,)	
	:	
Petitioner(s),)	FINDINGS OF FACT,
	:	CONCLUSIONS OF LAW,
v.)	AND FINAL DECISION
	:	
COUNTY BOARD OF EQUALIZATION OR)	Appeal No. <u>See Attachment</u>
SALT LAKE COUNTY,	:	
STATE OF UTAH,)	
	:	Serial No. <u>See Attachment</u>
Respondent.)	

RECEIVED

JUL 8 1991

COUNTY ATTORNEY
CIVIL DIVISION

STATEMENT OF CASE

This matter came before the Utah State Tax Commission for a formal hearing on October 23, 1990. G. Blaine Davis, Commissioner, Joe B. Pacheco, Commissioner, and Paul F. Iwasaki, Administrative Law Judge, heard the matter for and in behalf of the Commission. Present and representing the Petitioner was Robert A. Peterson, Attorney at Law. Present and representing the Respondent was Bill Thomas Peters, Attorney at Law, Special Deputy, Salt Lake County Attorney.

Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax in question is property tax.
2. The periods in question are the lien dates of January 1, 1987, January 1, 1988 and January 1, 1989.
3. The subject properties are vacant, residential building lots owned by the Petitioner in Salt Lake County, Utah.

Post-it™ brand tax transmittal memo 7671		# of pages ▶
To Bill Peters	From	KARL H.
Co. KDC	Co.	
Dept	Phone #	223-20

The individual properties which are at issue for each of the years in question are set forth on Exhibit 3, page 39 of Exhibit 2 and the fourth page in, prior to the numbered pages on Exhibit 6.

4. Exhibit 3 shows a comparison of the total values determined by the Petitioner and Respondent, and demonstrates that the parties determinations of value for all of the parcels involved is less than five percent for each of the years in question. This five percent difference is within a reasonable range of difference for qualified appraisers.

5. The real dispute in this case is not over the values of the properties if they were to be sold on the open market today, but is over whether the values should be discounted to allow for an absorption period to permit the properties to be sold over an extended period of time.

6. The properties in question are located on the east side of the Foothill Boulevard. The south side of the subdivision overlooks Interstate 80.

7. The subdivision would constitute an exclusive residential area, where the incomes would have to be above average to be able to afford to live in that location.

8. The subdivision slopes from the west end upward toward the east. The slope of the individual lots varies from gentle to moderate to steep. The steeper lots would require substantial development expenses to permit homes to be built on those lots.

9. The property was originally subdivided and improved between 1979 and 1980. Between 1983 and 1990, there have

been 56 lot transactions, which are set forth by year as follows:

<u>YEAR</u>	<u># SOLD OR TRADED</u>
1990	4
1989	5
1988	5
1987	4
1986	7
1985	19
1984	8
1983	4
	56

10. As of the end of 1989, there are 44 lots remaining to be sold, and Petitioner projects that it will take an additional eight years to sell all of the lots. The Commission accepts the projected period as reasonable and finds that eight years is a reasonable absorption period for the Petitioner to be able to sell all of the lots under appeal in this proceeding.

11. The Petitioner then estimates the value of all of the lots pursuant to a discounted cash flow analysis as is contained on page 51 of Exhibit 2.

12. The position of the Respondent is that it is not appropriate to value the properties pursuant to a discounted cash flow analysis, but if such a valuation analysis were to be used, the Respondent does not dispute the methodology used by the Petitioner, but continues to maintain that each lot should be valued at its current total value.

13. A reasonable return on capital is 12 percent

and a reasonable discount rate is 13 percent.

14. The value of a lot sold today for a given price is greater than the value of a lot sold years into the future for the same price.

Based on the foregoing findings of fact, the Commission now makes and enters its:

CONCLUSIONS OF LAW

The Tax Commission is required to oversee the just administration of property taxes to ensure that property is valued for tax purposes according to fair market value. (Utah Code Ann. Section 59-1-210(7).)

The Petitioner has the burden of proof to establish that the market value of the subject property is other than that as determined by the Respondent. The Petitioner has sustained that burden of proof.

In prior cases, the Commission has determined that for property which contains a number of parcels which are too numerous to be sold at fair market value within one year, an absorption adjustment must be made to allow for the time value of the investment in the property.

Based upon the foregoing findings of fact and conclusions of law, the commission now makes and enters the following:

DECISION AND ORDER

1. The value of all of the lots in question for the year 1987 is \$890,000.

2. The value of all-of the lots in question for the year 1988 is \$880,000.

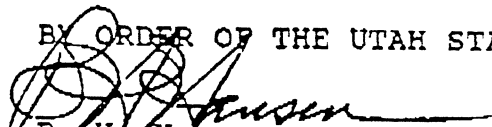
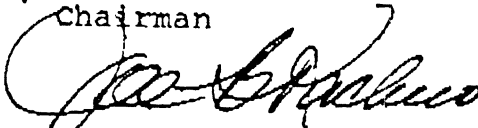
3. The value of all of the lots in question for the year 1989 is \$900,000.


4. The value of each of the lots for each of the years in question is to be adjusted on a uniform basis pursuant to the schedule attached hereto as Schedule A.

5. The county Auditor is hereby directed and ordered to adjust the values on the county records to reflect this decision.

DATED this 28th day of June, 1991.

BY ORDER OF THE UTAH STATE TAX COMMISSION.


R. H. Hansen
Chairman

Joe B. Pacheco
Commissioner


Roger O. Tew
Commissioner

(See concurring opinion)
G. Blaine Davis
Commissioner

NOTICE: You have ten (10) days after the date of the final order to file a request for reconsideration or thirty (30) days after the date of final order to file in Supreme Court a petition for judicial review. Utah Code Ann. Sections 63-46b-13(1), 63-46b-14(2) (a).



I CONCUR,

In a previous decision from this Commission, Upland Industrial Development Co. & County Board of Equalization of Salt Lake County, Appeal No. 85-1640 through 85-1659, the absorption method was approved by a majority of the Commission. I dissented from that decision because I believe that the absorption method violates the "uniform and equal" requirements of the law. (Article XIII, Section 2 of the Utah Constitution and Section 59-2-103, Utah Code Ann.)

My opinion remains as stated in that earlier dissenting opinion. In fact, my opinion has been reinforced by a decision from the Oregon Tax Court, Mathias v. Department of Revenue, No. 2910 dated April 10, 1990. In that case, the Oregon Legislature passed a bill which provided for a "developer's discount" for owners who owned four or more lots within one subdivision. In holding the statute unconstitutional, the Oregon Tax Court made the following statements:

"This court cannot find any rational basis for the distinctions made".

and

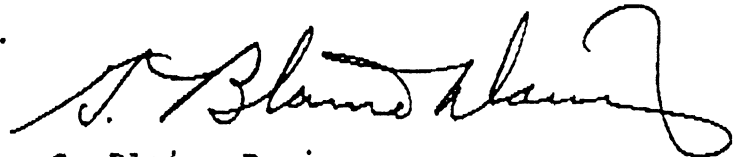
"The court finds that the statute directly violates the basic protection afforded by Article I, Section 32 of the Oregon Constitution. Property of the same class, i.e., lots in subdivisions, are not subject to uniform taxation. Owners of lots of equal true cash value would not pay taxes on equal values....It is difficult for this court to imagine a more discriminatory scheme."

Regarding the statute the court concluded:

"It discriminates against those owning fewer than four lots in one subdivision by reducing the tax burden of those who own more than four lots. If the uniformity provisions mean anything, they must prohibit this type of discrimination."

The principles discussed above in the Mathias decision are, in my opinion, applicable to this case. In my opinion, the absorption method violates the "uniform and equal" requirements of the law as stated above, and it should not be used in determining fair market value for ad valorem tax purposes.

However, I recognize that a quorum of this commission has held otherwise and has validated the absorption method for ad valorem tax purposes. That principle is therefore applicable in property tax hearings before this Commission until such time as a court may invalidate that method. I therefore concur with the majority opinion.



G. Blaine Davis
Commissioner

BENCHMARK, INC.
SCHEDULE A

Lot Number	1987 Value	1988 Value	1989 Value
6	19382	20935	21287
8	17229	18609	18922
9	17229	18609	18922
10	20029	21632	21996
12	18952	20469	20814
21	20545	-	-
22	18952	20469	20814
23	19382	-	-
26	18521	20004	20341
27	20029	21632	-
28	20029	21632	-
32	17229	18609	18921
36	18306	19772	20104
44	18306	19772	20104
45	20675	22330	22706
49	18306	19772	20104
50	18090	19539	19868
51	17789	19213	19536
52	17229	18609	18921
53	18952	20469	20814
54	18090	19539	-
55	27997	30240	30747
56	23690	25587	26017
57	24982	26983	27436
58	16798	18143	-
59	16798	18143	18448
60	16367	17678	17975
61	15937	17212	17502
62	15937	17212	17502
63	15937	-	-
64	15937	17212	17502
65	15506	16748	17029
66	15506	16748	17029
67	15506	16748	17029
68	15506	16748	17029
70	18089	19539	19868
71	18521	20004	20341
72	18521	20004	20341
73	18521	20004	20341
74	19382	-	-
75	18952	20469	20814
79	18650	20144	20482
82	19382	20935	21287

BENCHMARK, INC.
SCHEDULE A

Lot Number	1987 Value	1988 Value	1989 Value
83	19382	20935	21287
84	19382	20935	21287
85	19382	20935	21287
86	18952	20469	20814
87	17229	18610	18921
91			14191
92			<u>14191</u>
93			14191
94			14191
95			14191
101			16556
TOTALS	890,000	880,000	900,000

CMB/wp

MAILING CERTIFICATE

I hereby certify that I mailed a copy of the foregoing
Decision to the following:

Benchmark, Inc.
c/o Rodney M. Pipella
648 East First South
Salt Lake City, UT 84102

Robert L. Yates
Salt Lake County Assessor
2001 South State #N2323
Salt Lake City, UT 84190

Mike Reed
Salt Lake County Auditor
2001 South State Street, #N2200
Salt Lake City, UT 84190

Karl Hendrickson
Salt Lake County Attorney
2001 South State Street, S3600
Salt Lake City, UT 84190

Marc B. Johnson
Tax Administrator
Government Center
Salt Lake City, UT 84190

DATED this 5th day of July, 1991.

Louise L. Wolf
Secretary

ATTACHMENT

APPEAL NUMBER: 87-0315	SERIAL NUMBER: 16-23-132-007-0000
APPEAL NUMBER: 87 0316	SERIAL NUMBER: 16-23-132-008-0000
APPEAL NUMBER: 87 0317	SERIAL NUMBER: 16-23-132-019-0000
APPEAL NUMBER: 87 0318	SERIAL NUMBER: 12-23-132-020-0000
APPEAL NUMBER: 87 0319	SERIAL NUMBER: 16-23-132-021-0000
APPEAL NUMBER: 87 0320	SERIAL NUMBER: 16-23-133-010-0000
APPEAL NUMBER: 87 0321	SERIAL NUMBER: 16-23-176-009-0000
APPEAL NUMBER: 87 0322	SERIAL NUMBER: 16-23-177-001-0000
APPEAL NUMBER: 87 0323	SERIAL NUMBER: 16-23-177-002-0000
APPEAL NUMBER: 87 0324	SERIAL NUMBER: 16-23-177-005-0000
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APPEAL NUMBER: 87 0326	SERIAL NUMBER: 16-23-177-015-0000
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APPEAL NUMBER: 87 0331	SERIAL NUMBER: 16-23-179-018-0000
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APPEAL NUMBER: 87 0337	SERIAL NUMBER: 16-23-329-001-0000
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APPEAL NUMBER: 87 0340	SERIAL NUMBER: 16-23-330-002-0000
APPEAL NUMBER: 87 0341	SERIAL NUMBER: 16-23-330-005-0000
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APPEAL NUMBER: 87 0343	SERIAL NUMBER: 16-23-330-007-0000
APPEAL NUMBER: 87 0344	SERIAL NUMBER: 16-23-330-008-0000
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APPEAL NUMBER: 87 0357	SERIAL NUMBER: 16-23-331-005-0000
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APPEAL NUMBER: 88 0541	SERIAL NUMBER: 16-23-179-003
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APPEAL NUMBER: 88 0544	SERIAL NUMBER: 16-23-179-009
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APPEAL NUMBER: 88 0546	SERIAL NUMBER: 16-23-179-018
APPEAL NUMBER: 88 0547	SERIAL NUMBER: 16-23-179-019
APPEAL NUMBER: 88 0548	SERIAL NUMBER: 16-23-179-020
<u>APPEAL NUMBER: 88 0549</u>	<u>SERIAL NUMBER: 16-23-179-021</u>
APPEAL NUMBER: 88 0550	SERIAL NUMBER: 16-23-179-022
APPEAL NUMBER: 88 0551	SERIAL NUMBER: 16-23-329-001
APPEAL NUMBER: 88 0552	SERIAL NUMBER: 16-23-329-002
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