

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH DAKOTA

ROOM 211

FEDERAL BUILDING AND U.S. POST OFFICE

225 SOUTH PIERRE STREET

PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

TELEPHONE (605) 224-0560
FAX (605) 224-9020

February 16, 1989

James Carlon, Esq.
Post. Office Box 249
Pierre, South Dakota 57501

Thomas Lloyd, Esq.
326 Federal Building
Pierre, South Dakota 57501

Re: Robert and Leona Speck
Chapter 12 87-30054
506 Valuation Hearing

Dear Counsel:

The above entitled matter came on for hearing. The Debtor appeared together with his attorney Jim Carlon. The Creditor, Farmers Home Administration, appeared through its attorney Tom Lloyd. Both sides presented testimony in support of their respective positions. The Court received as exhibits appraisals prepared by Appraisers Meisner and Kline, together with their testimony in support of the same. The Debtor also testified as to his opinion as to the value of the 388 acres, more or less. Also, FmHA presented testimony of Alan Faulkner, a soils scientist with the Soil Conservation Service. In fact, Mr. Faulkner's testimony proved to be most enlightening and beneficial to the Court. It in fact negated Appraiser Meisner's theory that 107 acres in the NW 1/4 now being cropped should be returned to grass. He also clarified the contention that rocks and water were problems indicating that if they were in fact as great as problems as contended, there would be symbols or a classification indicating that a condition such as stones or wetness would affect management. This is not the case with the land in question. In fact, in this case Mr. Faulkner testified
Re: Robert and Leona Speck
February 16, 1989

Page 2

that the subject's property had superior soils to all the

comparable sales used by Appraiser Meisner.

In the past this Court has given great deference to Appraiser Meisner's testimony by virtue of his long time residency in the area and experience of some 32 years as an appraiser and farm manager. However, in this case Appraiser Kline's qualifications are equal based upon his education and the number of appraisals done in Hyde and Hand Counties.

This Court cannot find any justification for using comparable sales over thirty miles from the subject property when there were comparable sales much closer. In fact, Appraiser Kline limited his comparable sales to a ten mile radius.

Once again it is interesting to note that out of the ten comparable sales used by the two appraisers, there was no commonality.

Also, Appraiser Meisner determined that the buildings had no contributing value while Appraiser Kline placed a nominal value of \$4,000. While it might be conceded that they are in need of repair, they are marginally functional.

This Court has chosen not to resort to a divining rod or a Ouija board to try and reconcile the wide disparity between the values testified by Appraisers Meisner and Kline. Nor is there any way to "Solomonize" the difference. Instead, I have determined that the greater weight should attach to the opinion of Appraiser Kline. However, the Court would lower the values indicated in the cost approach based upon the testimony and the evidence, accordingly, the Court would reduce the value attributed to 301 acres of class 11 cropland from \$225 per acre to \$200 per acre and the 10 acres of waste at \$50 per acre to \$25 per acre. This would result in the following values:

301 acres of Class 11 cropland at \$200.00 per acre	\$ 60,200.00
67 acres of native pasture at \$100.00 per acre	\$ 6,700.00
10 acres of waste at \$25.00 per acre. . .	\$ 250.00
Contributory Value of Improvements and Site	<u>\$ 4,000.00</u> <u>\$ 71,150.00</u>
	(183.38 per acre)

Re: Robert and Leona Speck
February 16, 1989

Page 3

Counsel for FmHa is directed to prepare findings of fact,
conclusions of law and a judgment in accord with this decision.

Very truly yours,

Irvin N Hoyt
Chief Bankruptcy Judge

INH/sh

CC: Bankruptcy Clerk