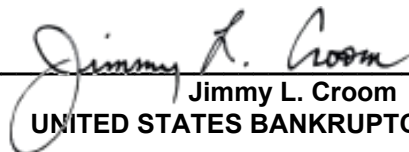


This Opinion is not intended for full-text publication



Dated: November 14, 2013
The following is SO ORDERED:


Jimmy L. Croom
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE**

In re)	
)	
DENTIS SISSON and)	Case No. 11-12502
CATHY SISSON,)	
)	
Debtors.)	Chapter 11
)	

**MEMORANDUM OPINION RE: VALUATION OF REAL PROPERTY FOR PURPOSES OF
PLAN CONFIRMATION**

Before the Court is the issue of valuing real property belonging to the debtors, Dentis and Cathy Sisson (hereinafter "Debtors"), which is subject to a mortgage in favor of First Bank (hereinafter "Bank"). The Debtors and the Bank seek a valuation of the real property for purposes of plan confirmation pursuant to 11 U.S.C. §§ 506(a) and 1129(a)(7)(A)(ii). The Court conducted a hearing on this matter on September 26, 2013. Fed. R. Bankr. P. 9014.

This proceeding arises in a case referred to this Court by the Standing Order of Reference, Misc. Order No. 84-30 in the United States District Court for the Western District of Tennessee, Western and Eastern Divisions, and is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B). This Court has jurisdiction over core proceedings pursuant to 28 U.S.C.

~~This opinion is not intended for full-text publication.~~
§§ 157(b)(1) and 1534 and, thus, may enter a final order in this matter. This memorandum opinion shall serve as the Court's findings of facts and conclusions of law. Fed. R. Bankr. P. 7052.

I. FACTS

The Debtors filed their voluntary Chapter 11 petition for bankruptcy relief on August 17, 2011. On June 12, 2013, the Debtors filed their second amended plan of reorganization (hereinafter "Second Amended Plan"). The Debtors listed their property at 21 Sherman Blankenship Road, Beech Bluff, Tennessee 38313 in the Second Amended Plan as collateral for debts with CB&S Bank (formerly Community South Bank) and First Bank. According to the Second Amended Plan, the Beech Bluff property includes a home and five acres (hereinafter "Residence") and over sixty additional acres of land (hereinafter "Farm Land") (collectively "Property"). The Farm Land has several improvements including a horse barn, two garage buildings, an equipment shed, a storage building, a gravel driveway, and a fence (collectively "Improvements").

The Residence is subject to a first mortgage in favor of another creditor, CB&S Bank. First Bank has a second lien on the Residence by virtue of a Forbearance Agreement signed on August 7, 2009. When describing the treatment of this collateral in their Second Amended Plan, the Debtors indicated they intended to surrender the Residence to satisfy CB&S Bank's first mortgage in the amount of \$189,168.00.

At the valuation hearing in this matter, the Debtors also proposed separating the Farm Land from the Residence and retaining the Farm Land. In order to retain the Farm Land, the Debtors proposed refinancing the property and applying \$120,000.00 of the funds received from the refinancing to the Bank's secured claim of \$521,178.53.¹

The Bank objected to the Debtors' proposed treatment of their lien on the Property. The Bank suggested that the Residence and the Farm Land have a higher value when sold together. The Bank further argued that severing and selling the Residence without the Farm Land impairs the value of the Bank's interest in the Residence.

¹The Debtors derived the \$120,000.00 amount for the property from a previous valuation of the real property conducted by Judge Emerson in April 2013. See note 2, *infra*.

~~This Opinion is not intended for full-text publication~~

The parties requested a hearing to determine the value of the Farm Land for the purposes of confirming the Second Amended Plan.² The parties also sought a determination as to whether severing the Residence from the Farm Land impairs the value of the Bank's interest in the Residence. Both the Debtors and the Bank presented expert testimony from appraisers who conducted independent evaluations of the Farm Land. Both experts provided the Court with appraisal reports and photographs of the Farm Land at the September 26, 2013 hearing.

The Debtors' expert was James P. Murdaugh ("Murdaugh"). Murdaugh testified that he is a Tennessee State Certified General Real Estate Appraiser and a Tennessee Department of Transportation Class Three Appraiser. Murdaugh testified that the total acreage for the Property is 68.3 acres according to Madison and Henderson County Tax Assessor's records.³ Murdaugh stated that 5 of the 68.3 acres are reserved for the Residence and the remaining 63.3 acres represent the Farm Land. Murdaugh appraised the 63.3 acres of Farm Land and the Improvements thereon on September 3, 2013.

In order to appraise the property, Murdaugh first gathered legal documents concerning the Farm Land such as the Deed of Trust, maps, and tax records. Murdaugh also inspected and photographed the Farm Land and Improvements and gathered sales data for comparable vacant land sales.

When appraising the Farm Land and comparable vacant land sales, Murdaugh defined fair market value as:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller

²On April 15, 2013, Judge Emerson issued an Interim Order on Motion to Authorize the Sale of Real Property Pursuant to 11 U.S.C. § 363 and Motion to Allow Debtor in Possession to Obtain Credit. In this order, Judge Emerson determined that the Residence had a value of \$348,000.00 and the Farm Land and Improvements had a value of \$120,000.00. Judge Emerson based these values on the Debtors' previous intention to sell the Farm Land and refinance the Residence. After the issuance of that order, the Debtors decided to keep a portion of the property rather than sell it. In light of that change and upon request of the parties, the Court conducted a second valuation hearing.

³ The appraisers disagreed on the exact acreage of the property. The Bank's appraiser testified that the property is 66.34 acres while the Debtors' expert contended that the property is 63.3 acres.

This Opinion is not intended for full-text publication.

each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) Buyer and seller are typically motivated; (2) Buyer and seller are well informed or well advised, and acting in what they consider their own best interests; (3) A reasonable time is allowed for exposure in the open market; (4) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and (5) The price represents the normal consideration for property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Using this definition, Murdaugh concluded that the fair market value and price per acre for the Farm Land was \$1,500.00 and that the value of all 63.3 acres of the Farm Land was \$94,950.00. Murdaugh derived the price per acre from an analysis of two comparable vacant land sales: (1) 40.12 acres of land on Diamond Grove Road in Madison County, Tennessee priced at \$2,256.00 per acre (hereinafter "Diamond Grove Road") and (2) 41.39 acres of land on Mifflin Road in Madison County, Tennessee priced at \$2,899.00 per acre (hereinafter "Mifflin Road").⁴

In order to arrive at the \$1,500.00 per acre value for the Farm Land, Murdaugh first computed the sales price of the comparable properties by multiplying the total acreage for each property by the price of land sold. After doing this, Murdaugh arrived at a sales price of \$90,000.00 for Diamond Grove Road⁵ and a sales price of \$120,000.00 for Mifflin Road. Murdaugh then adjusted the sales prices in order to approximate the characteristics of the Farm Land. Murdaugh's adjusted sales prices for the comparable properties were \$82,500.00 for Diamond Grove Road and \$100,500.00 for Mifflin Road.⁶ Murdaugh then added the

⁴ Murdaugh's appraisal report also included a property located at Old Hart Road in Lexington, Tennessee, containing 54.00 acres and priced at \$1,361.00 per acre. However, Murdaugh excluded the sale from his analysis after determining that the land sold was not sufficiently similar to the Farm Land.

⁵ Murdaugh's appraisal report indicated that the sales price for Diamond Grove Road property was \$90,000.00. However, multiplying the 40.12 acres of the property by the reported \$2,256 per acre sales price for the property results in a sales price of \$90,510.72.

⁶ Murdaugh testified that the Farm Land is situated in a flood zone and in a rural environment. However, according to the flood maps submitted into evidence, neither the Farm Land nor the Diamond Road and Mifflin Road properties appear to be located within a flood zone. Despite this, Murdaugh subtracted \$7,500.00 from the sales price of each comparable vacant land sale which was not located within a zone to make them comparable to the Farm Land. Murdaugh also subtracted an additional \$12,000.00 from

adjusted sales prices for the comparables together and divided that figure by two for an average value of \$91,500.00.⁷ Murdaugh then divided the \$91,500.00 figure by 63.3, the acreage for the Farm Land, to arrive at a price per acre for the Farm Land of \$1,445.49.⁸ Murdaugh rounded this figure up to \$1,500.00.

Murdaugh used a cost approach analysis to value each Improvement added to the Farm Land. To determine each Improvement's total replacement cost, Murdaugh used the following approach: (1) assigned each Improvement a replacement cost per square foot; and then (2) multiplied each item's replacement cost by the amount of square feet in each Improvement. Murdaugh then depreciated each improvement's total replacement cost by a percentage to account for flooding and aging. After making these calculations, Murdaugh arrived at a fair market value for each Improvement.

Murdaugh assigned the horse barn a cost of \$18.00 per square foot and multiplied that cost by the 1,730 square feet in the horse barn for a total replacement cost of \$31,300.00. Murdaugh then depreciated the horse barn by 50% and determined that the horse barn had a fair market value of \$15,600.00.

Murdaugh assigned the two garage buildings a replacement cost of \$6.00 per square foot which he then multiplied by the 2,500 square feet in each garage for a total replacement cost of \$30,000.00 each. Murdaugh then depreciated the total replacement cost by 50% for a combined fair market value of \$15,000.00 or \$7,500.00 each.

Murdaugh assigned the equipment shed a replacement cost of \$5.00 per square foot which he then multiplied by the 500 square feet in the shed for a total replacement cost of \$2,500.00. Murdaugh then depreciated the replacement cost by 50% for a fair market value of \$1,250.00.

the Mifflin Road property. Murdaugh stated that he subtracted \$12,000.00 from the Mifflin Road property, which Murdaugh testified was in an urban location, in order to approximate the reduced value of the Farm Land, which Murdaugh believed to be in a rural environment.

⁷ Murdaugh testified that he divided the adjusted sales prices by two in order to derive the average sales price of the comparable properties.

⁸The Court has difficulty discerning how Murdaugh arrived at his calculations because his methodology appears to be flawed.

~~This Opinion is not intended for public publication.~~ Murdaugh assigned the gravel driveway a replacement cost of .50 cents per square foot which he then multiplied by the 10,000 square feet of the gravel driveway for a total replacement cost of \$5,000.00. Murdaugh then depreciated the total replacement cost by 40% to arrive at a fair market value of \$3,000.00.

Finally, Murdaugh assigned the fence a total replacement cost of \$8,000.00, which he depreciated by 50% for a fair market value of \$4,000.00. According to Murdaugh's report, the Improvements have a combined value of \$38,850.00.

Murdaugh concluded that the 63.3 acres of Farm Land have a value of \$1,500.00 per acre, or \$94,950.00 for all 63.3 acres, and the Improvements have a combined value of \$38,850.00. Murdaugh assigned the Farm Land and Improvements a total value of \$133,800.00.

As for whether severing the Residence from the Farm Land impairs the value of the Residence, Murdaugh testified that selling the Residence without the Farm Land would not reduce the value of the Residence. Murdaugh stated that, according to his research, 75 of the 134 parcels of land sold in Madison and Henderson counties contained less than 6 acres of land. Thus, he concluded that selling the Residence with 5 acres of land would not be unusual or make the property unmarketable in Madison or Henderson county.

On cross-examination, Murdaugh testified that he did not use a formula to determine the \$1,500.00 price per acre for the Farm Land. Rather, Murdaugh stated that the calculations and adjustments he used to determine the value of the Farm Land were based upon his professional judgment and experience with valuing real property.

The Bank's Expert was David M. Whalley. Whalley testified that he is a Tennessee Certified General Real Estate Appraiser and a MAI Member of the Appraisal Institute. Whalley testified that the total acreage for the Farm Land, excluding the Residence, consisted of 66.34 acres. Whalley determined the acreage of the Farm Land by performing an independent title search for the Farm Land to find all of the deeds for the land. Whalley then plotted out the Farm Land on a computer program with the information provided in the property deeds in order to determine the Farm Land's acreage. According to his report, Whalley evaluated the Farm Land and Improvements on January 1, 2013.

~~This Opinion is not intended for full-text publication.~~

In order to value the Farm Land, Whalley indicated that he inspected the Farm Land and Improvements, gathered public documents including local and national periodicals and local market surveys, interviewed individuals with knowledge of the Property, and collected regional, city, county and neighborhood data.

Whalley, like Murdaugh, used a sales comparison approach to value the Farm Land. Additionally, when appraising the Farm Land and vacant land sales, Whalley used the same definition of fair market value as Murdaugh. In so doing, Whalley identified four comparable vacant land sales: (1) Diamond Grove Road; (2) Mifflin Road; (3) 47.25 acres of land on Roberts Lane in Madison County, Tennessee priced at \$2,116.00 per acre (hereinafter "Roberts Lane"); and (4) 159 acres of land on Sand Ridge Road in Henderson County, Tennessee priced at \$2,176.00 per acre (hereinafter "Sand Ridge Road").

To account for inflation, Whalley adjusted the per acre sales price of the comparables upwards by 2% for the properties that were sold more than two years prior to 2013. Thus, Whalley adjusted the sales price for the Diamond Grove Road property, which was sold in 2010, up by \$34.00 per acre. This adjustment resulted in an adjusted price per acre of \$2,290.00. Whalley adjusted the sales price for the Mifflin Road property, which was sold in 2009, up by \$29.00 per acre. This resulted in an adjusted sales price per acre of \$2,928.00. Whalley also adjusted the Sand Ridge property, which was substantially larger than the Farm Land, upwards. Whalley adjusted the Sand Ridge property upwards because, according to Whalley, it is a generally accepted theory that smaller parcels of land have higher values. Therefore, Whalley adjusted the Sand Ridge Road property upwards by \$109.00 per acre which resulted in a price per acre of \$2,285.00. Whalley did not make any adjustments to the Roberts Lane property.

Whalley testified that he did not make any adjustments for flooding because neither the Farm Land nor the comparables were located in a flood zone according to Federal Emergency Management Agency ("FEMA") 100-Year flood maps.⁹ Whalley acknowledged that even though the Farm Land was not located within a flood zone, the property did in fact flood in May of 2011. However, Whalley also testified that the May 2011 flood was likely a 500 year flood,

⁹Dentis Sisson also testified that the Farm Land was not located within a flood zone. However, Sisson indicated that certain parts of the Farm Land have in fact flooded. He produced photographs showing one such occasion in order to support his claim.

and therefore not likely to happen regularly. Furthermore, Whalley testified that he did not make any adjustments for location because, in his opinion, the comparable vacant land sales were sufficiently close to the Farm Land such that location adjustments were not necessary.

After making his adjustments, Whalley arrived at a price per acre for each of the comparable vacant land sales as follows: \$2,116.00 for Roberts Lane; \$2,285.00 for Sand Ridge Road; \$2,290.00 for Diamond Grove Road; and \$2,928.00 for Mifflin Road.

After considering all of the adjustments to the comparable properties, Whalley determined that the price per acre of the Farm Land was \$2,400.00. Whalley testified that the value of all 66.34 acres is \$160,000.00.¹⁰

As for assigning value to the Improvements on the Farm Land, Whalley also used a cost approach.¹¹ In so doing, Whalley followed a procedure which included determining the cost of replacing each Improvement, assigning a depreciation percentage to each Improvement's replacement cost to account for age and use, and finally, subtracting 25% from the total depreciated replacement cost of all of the Improvements to account for functional obsolescence¹² due to the May 2011 flood.

Using this process, Whalley determined that the horse barn had a replacement cost of \$23.96 per square foot which he multiplied by the 1,728 square feet in the horse barn for a total replacement cost of \$41,402.00. He then depreciated the replacement cost by 50% for a fair market value of \$20,701.00.

Whalley assigned the two garage buildings a replacement cost of \$16.00 per square foot which he then multiplied by the 2,592 square feet in each garage to arrive at a total

¹⁰The price for all 66.34 acres at \$2,400.00 per acre is \$159,216.00. Whalley rounded the sales price up to \$160,000.00.

¹¹Whalley and Murdaugh based their valuations of the Improvements on different measurements. The square footage of all the Improvements in Whalley's appraisal report exceeds that of Murdaugh by 358 square feet.

¹²Black's Law Dictionary defines "obsolescence" as "[t]he process or state of falling into disuse or becoming obsolete; A diminution in the value or usefulness of property, esp. as a result of technological advances." BLACK'S LAW DICTIONARY 1107 (8th ed. 2004). "Functional obsolescence" is defined as "[o]bsolescence that results either from inherent deficiencies in the property, such as inadequate equipment or design, or from improvements in the property since its use began." *Id.*

replacement cost of \$41,471.00. Whalley depreciated the total replacement cost by 50% for a fair market value of \$20,736.00 each.

Whalley assigned the equipment shed a replacement cost of \$11.00 per square foot, which he then multiplied by the 512 square feet in the equipment shed for a total replacement cost of \$5,632.00. Whalley depreciated the total replacement cost by 40% for a fair market value of \$3,379.00.

Whalley assigned the storage building a replacement cost of \$8.00 per square foot, which he then multiplied by the 256 square feet in the storage building for a total replacement cost of \$2,048.00. Whalley depreciated the total replacement cost by 40% for a fair market value of \$1,229.00.

Whalley assigned the gravel driveway a replacement cost of \$1.00 per square foot, which he then multiplied by the 10,000 square feet of the driveway for a total replacement cost of \$10,000.00. Whalley depreciated the total replacement cost by 40% for a fair market value of \$6,000.00.

Finally, Whalley assigned the fence a replacement cost of \$10,000.00 which he then depreciated by 50% for a fair market value of \$5,000.00.

Per Whalley's appraisal report, the Improvements have a combined value of \$58,787.00, which includes \$1,711.00 of "soft costs."¹³ After deducting 25% from the Improvements' combined fair market value for functional obsolescence, Whalley concluded that the Improvements have a cumulative value of \$44,067.00.

Whalley determined that the Farm Land has a value of \$2,400.00 per acre or \$160,000.00 and the Improvements have a contributory value of \$44,067.00, leaving the Farm Land and Improvements with a cumulative value of \$204,067.00. Whalley rounded this figure up to \$205,000.00.

Finally, Whalley testified that severing and selling the Residence without the Farm Land and Improvements would impair the value of the Residence. Whalley based his opinion on his observation that high quality homes are typically found on larger tracts of land, while lower

¹³ "Soft cost" is a term associated with the construction industry, and it refers to expenses that are not directly for construction, i.e., financing and legal fees.

~~This Opinion is not intended for full-text publication.~~
quality homes are usually found on smaller tracts of land. Based upon this pattern, Whalley concluded that the Residence would be more marketable and perhaps worth more when sold with more acreage.

II. ANALYSIS

The Debtors in this case are seeking to retain property over the Bank's objection. As a result, the Court may only confirm the plan if it meets the "cramdown" requirements outlined in 11 U.S.C. § 1129(b)(1). Pursuant to these provisions, a court may confirm a plan "if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan." 11 U.S.C. § 1129(b)(1). When debtors propose to retain property over a creditor's objection, the debtor's plan is considered fair and equitable if:

- (i) the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and
- (II) . . . each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property.

11 U.S.C. § 1129(b)(2)(A)(i). In light of these requirements, the Court must determine the value of the Farm Land in order to determine the amount the Debtors must pay to the Bank in order to retain the property pursuant to § 1129(b).

Bankruptcy Code Section 506(a)(1) explains how a secured claim must be valued. Specifically, §506(a)(1) states:

An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's . . . is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of the property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest

11 U.S.C. § 506(a)(1). When applying § 506(a)(1) to value property, courts often follow a two-step process. The first step of the process calls for the division of the secured creditor's claim

~~This Opinion is not intended for full text publication~~
“into secured and unsecured portions, with the secured portion of the claim limited to the value of the collateral.” *Assocs. Commercial Corp. v. Rash*, 520 U.S. 953, 961, 117 S. Ct. 1879 (1997) (citations omitted). Furthermore, “[t]o separate the secured from the unsecured portion of the claim, a court must compare the creditor’s claim to the value of ‘such property,’ i.e., the collateral.” *Id.*

The second, and often more complicated, step in the valuation process requires courts to determine how to value the creditor’s interest in property, such as whether to use foreclosure value or replacement value. 4 Collier on Bankruptcy, ¶ 506.03 (16th ed. 2012). In order to determine the appropriate standard for valuation under this second step, courts must consider the debtor’s proposed disposition or use of the property. Specifically,

[T]he debtor has two options for handling allowed secured claims: surrender the collateral to the creditor, or, under the cram down option, keep the collateral over the creditor’s objection and provide the creditor, over the life of the plan, with the equivalent of the present value of the collateral. The “disposition or use” of the collateral thus turns on the alternative the debtor chooses - in one case the collateral will be surrendered to the creditor, and in the other, the collateral will be retained and used by the debtor. Applying a foreclosure - value standard when the cram down option is invoked attributes no significance to the different consequences of the debtor’s choice to surrender the property or retain it. A replacement - value standard, on the other hand, distinguishes retention from surrender and renders meaningful the key words “disposition or use.”

Rash, 520 U.S. at 962. Although *Rash* involved chapter 13 debtors, courts have determined that the methodology employed in *Rash* and its progeny applies equally in Chapter 11 cases. *In re Heritage Highgate, Inc.*, 679 F.3d 132, 141 (3d Cir. 2012).

In the case at bar, the Debtors have indicated that they intend to retain their Farm Land. In light of this proposed use of the property, the Court concludes that the appropriate standard for valuing the Farm Land is fair market value as determined by comparable arm’s length sales. See *In re Creekside Senior Apartments, LP*, 477 B.R. 40, 55 (B.A.P. 6th Cir. 2012). Determining fair market value by referencing comparable arm’s length transactions is appropriate in this case because doing so “reflects whatever premium the debtor assigned to the property which prompted the debtor’s decision to continue using the property rather than surrendering it.” *In re Williams*, 480 B.R. 813, 817 (Bankr. E.D. Tenn. 2012). In the case at bar, both appraisers used a sales comparison approach to determine the fair market value of the Farm Land.

This Opinion is not intended for full-text publication.

When considering expert testimony on real estate values, courts consider numerous factors:

A nonexclusive listing of these factors includes: the appraiser's education, training, experience, familiarity with the subject of the appraisal, manner of conducting the appraisal, testimony on direct examination, testimony on cross-examination, and overall ability to substantiate the basis for the valuation presented.

Buckland v. Household Realty Corp. (In re Buckland), 123 B.R. 573, 578 (Bankr. S.D. Ohio 1991). "A bankruptcy court is not bound to accept the values contained in the parties' appraisals; rather, it may form its own opinion on the value of subject property after considering the appraisals and expert testimony." *In re Smith*, 267 B.R. 568, 572 (Bankr. S.D. Ohio 2001). "This is because '[a]n appraisal of a property is not the result of scientific analysis,' but is, rather, a subjective opinion which can and does differ from the next appraisal even though both may be based on real estate market trends." *Webb Mtn, LLC v. Exec. Realty P'ship, L.P. (In re Webb Mtn, LLC)*, 420 B.R. 418, 435 (Bankr. E.D. Tenn. 2009) (quoting *In re Rehbein*, 49 B.R. 250, 252-53 (Bankr. D. Mass. 1985)).

At the hearing on this matter, the Court determined that both experts were qualified to offer their opinions and testimony as to the value of the Farm Land and Improvements. The Court also noted that the experts conducted their appraisals at different times. Murdaugh conducted his appraisal of the property on September 3, 2013, while Whalley conducted his appraisal several months earlier in January 2013.

During the hearing, the appraisers discussed their strategies to determine the acreage of the Farm Land. Murdaugh accepted the acreage reported in tax records, while Whalley used a computer program to determine the Farm Land's acreage. Whalley's testimony regarding his independent assessment of the Farm Land, however, did not provide the Court with sufficient information on the method or computer program he used to determine the Farm Land's acreage. The Court believes that the tax records for the property provide a reliable assessment of the Farm Land's acreage, and therefore accepts Murdaugh's claim that the Farm Land consists of 63.3 acres.

As for the fair market value of the Farm Land, both experts used two of the same vacant land sales to compute a price per acre of the Farm Land: (1) Diamond Road and (2)

~~This Opinion is not intended for full-text publication~~
Miffin Road. Murdaugh based his appraisal entirely upon the common comparable vacant land sales after eliminating an inferior land sale from consideration. Whalley, on the other hand, considered two additional vacant land sales in his appraisal: (1) Roberts Lane and (2) Sand Ridge Road. After analyzing and adjusting the comparable vacant land sales, Murdaugh concluded that Farm Land had a value of \$1,500.00 per acre and a total acreage of 63.3 resulting in a total value of \$94,950.00. Whalley, on the other hand, found that the Farm Land had a value of \$2,400.00 per acre and a total acreage of 66.34 resulting in a total value of \$160,000.00.

After reviewing the testimony of the appraisers, the Court also determines that the fair market value of the Farm Land is \$2,400.00 per acre. The Court examined evidence each appraiser provided concerning the value of the Farm Land and comparable properties and noted that the comparable vacant land sales had sales prices between \$2,100.00 and \$2,800.00 per acre. The Court agrees with the appraisers' assessment that the Farm Land is comparable to the vacant land sales the appraisers identified. Therefore, the Court concludes that the Farm Land's value lies between the range of sales prices set out by the comparable vacant land sales. Although both experts used two of the same comparable properties to determine the fair market value of the Farm Land, the Court concludes that Whalley's valuation best approximates the fair market value of the Farm Land because Whalley's value falls within the range of prices set out by the comparable vacant land sales he used in valuing the property. Murdaugh's \$1,500.00 per acre valuation is significantly less than the sales prices of every comparable vacant land sale the appraisers considered. As the Court does not believe that the Farm Land is inferior to all of the comparable vacant land sales, the Court concludes that the \$1,500.00 per acre does not adequately represent the Farm Land's fair market value.

Turning to the fair market value of the Improvements, Murdaugh determined that the Improvements had a value of \$38,850.00, while Whalley determined that the Improvements had a value of \$44,067.00. The Court reviewed the testimony regarding the Improvements and noticed that both experts used similar approaches in assigning value to the Improvements. Both appraisers used a cost comparison approach followed by depreciation to arrive at a value of the Improvements. Both experts also arrived at similar values for each Improvement. While there is a \$5,217.00 difference between the appraisers' values, the discrepancy appears to be largely the result of the fact that Whalley's value included soft costs of \$1,711.00 and a

~~This Opinion is not intended for full-text publication~~
storage building with an approximate value of \$1,299.00. Murdaugh did not include these items in his valuation. The Court therefore concludes that the Improvements have a fair market value of \$41,458.50, which is a value between the \$38,000.00 to \$44,000.00 range set out by the appraisers' analysis.

With respect to the issue of whether severing the Farm Land from the Residence impairs the value of the Residence, the Court considered the parties' arguments on the matter. Murdaugh stated that severing the Farm Land from the Residence would not impair the value of the Residence, while Whalley testified that it would. The Court concludes that neither of the appraiser's testimony on this matter provided sufficient data to substantiate either claim. Therefore, notwithstanding the arguments, the following values set out by the Court for the Farm Land and Improvements are suitable.

Based on the evidence presented at the valuation hearing, and the Court's analysis thereof, the Court determines that the Farm Land consists of 63.3 acres and that fair market value of the Farm Land is \$2,400.00 per acre or \$151,920.00 for all 63.3 acres. Additionally, the Court finds that the fair market value of the Improvements is \$41,458.50. The Farm Land and Improvements have a collective value of \$193,378.50.

The Court will enter an order in accordance herewith.

Mailing list

C. Jerome Teel, attorney for Debtors
Laura Williams, attorney for First Bank
United States Trustee