

REPRESENTATIVES FOR PETITIONER: Brent Auberry, Benjamin Blair, Faegre
Baker Daniels, LLP
REPRESENTATIVES FOR RESPONDENT: Brian Cusimano, Attorney
Marilyn Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Nova Tube Indiana II LLC,)	Petition:	<i>See attached</i>
)		
Petitioner.)	Parcel:	<i>See attached</i>
)		
v.)	County:	Clark
)		
Clark County Assessor,)	Assessment Years:	2011, 2012, 2013
)		
Respondent.)		

Appeals from the Final Determinations of the
Clark County Property Tax Assessment Board of Appeals

June 30, 2017

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

INTRODUCTION

1. The Assessor presented the sale of the subject property as evidence in support of the current assessments. The Petitioner offered the appraisals of Lawrence Mitchell, MAI. We find the evidence better supports the current assessments than the values in the Mitchell appraisals.

PROCEDURAL HISTORY

2. Nova Tube timely filed notices for review for two parcels with the Clark County Property Tax Assessment Board of Appeals (“PTABOA”) for the 2011, 2012, and 2013 assessment years. The PTABOA issued determinations, which when combined, value the property as follows:

2011: Land:	\$191,600	Improvements:	\$4,461,500	Total:	\$4,653,100
2012: Land:	\$293,800	Improvements:	\$4,473,400	Total:	\$4,767,200
2013: Land:	\$297,300	Improvements:	\$4,470,000	Total:	\$4,767,300

3. Nova Tube timely filed Form 131 petitions with the Board. Our designated Administrative Law Judge, Andrew Howell (“ALJ”), heard the matter on January 25, 2017.

4. Lawrence Mitchell, MAI, and Charles Mills, MAI, testified under oath.

5. The following exhibits were submitted:¹

- Petitioner’s Ex. P-1: Appraisal Report prepared by Lawrence Mitchell for March 1, 2011 valuation date,
- Petitioner’s Ex. P-2: Appraisal Report prepared by Lawrence Mitchell for March 1, 2012 valuation date,
- Petitioner’s Ex. P-3: Appraisal Report prepared by Lawrence Mitchell for March 1, 2013 valuation date,
- Petitioner’s Ex. P-4: Property Record Cards for Parcel # 10-42-01-400-200.000-039,
- Petitioner’s Ex. P-5: Property Record Cards for Parcel # 10-42-00-600-150.000-039,
- Petitioner’s Ex. P-6: Corrections to Appraisal Reports,
- Petitioner’s Ex. P-7: Demonstrative exhibit illustrating testimony.

- Respondent’s Ex. A: Unsigned Sales Disclosure Form for 5/19/2014 sale of subject property,
- Respondent’s Ex. B: Advertising material from sale of subject property,

¹ The Respondent did not submit an exhibit C, D, E, or F.

Respondent's Ex. G: Market information on subject area prepared by Charles Mills.

6. The record also includes the following: (1) all pleadings, briefs², and documents filed in the current appeals, and (2) all orders and notices issued by the Board or our ALJ, and (3) a digital recording of the hearing.

OBJECTIONS

7. Nova Tube asked the Board to consider Mitchell an expert in industrial appraisal. The Assessor had no objection to Mitchell being considered an expert in real estate appraisal, but argued he should not be considered an expert specifically in industrial appraisal. The ALJ took the objection under advisement. We find that Nova Tube presented sufficient evidence regarding Mitchell's experience and education to qualify Mitchell as an expert in industrial appraisal.
8. During the cross-examination of Mitchell, Nova Tube objected to the relevancy of a question about market trends after the assessment dates. The Assessor responded that it was relevant because of the subsequent sale of the subject property. The ALJ took the objection under advisement. We agree with the Assessor, and overrule the objection. We note that Mitchell responded that he did not know the answer to the question.
9. Nova Tube made numerous objections to the testimony of Charles Mills. It argued that because Mills did not develop an opinion of value, he was not appearing as an expert witness. For that reason, it argued that his testimony should be restricted to facts within his personal knowledge, rather than any hearsay he may have relied upon in forming his opinions. The Assessor responded that although Mills did not develop an opinion of value, he was appearing as an expert offering opinions on the validity of the sale of the subject property, as well as the market conditions in the subject area. The ALJ took the objections under advisement.

² Only the Assessor submitted a post-hearing brief.

10. We agree with the Assessor. Nova Tube did not argue that Mills was not a qualified appraiser. And we do not take so narrow a view of appraisal expertise as to limit an appraiser to only offering an opinion of value. When a witness has knowledge and experience that would be beneficial to the trier of fact, they should be permitted to testify. *See Martin v. Roberts*, 464 N.E.2d 896 at 901 (Ind. 1984). Determining whether a sale is an arms-length (or “valid”) transaction is a crucial part of the appraisal process, as is researching and analyzing market conditions. We find Mills sufficiently qualified to offer opinions on those subjects. Moreover, Mills’ testimony about the steps he took to verify the sale, such as talking to the listing agent and buyer, was similar to testimony offered by Nova Tube’s own appraiser. Mills was ultimately offering opinions about certain components of an appraisal, rather than a final opinion of value. Nevertheless, he can testify about his research and methods. Thus, we admit Mills’ testimony over Nova Tube’s objections.³

11. Nova Tube objected to Respondent’s Ex. A, the sales disclosure form, because it was unsigned and not properly authenticated. It is unclear from the record why the Assessor was in possession of an unsigned sales disclosure form. Mills testified that he viewed the signed version of the form and that there were no material differences. We also note that the most significant facts in the document, the sale date, the sale price, and the identity of the buyer, are also contained in the property record cards submitted by Nova Tube. Although the lack of signature is troubling, in this case we do not find sufficient cause to exclude the sales disclosure form.

12. Nova Tube also made the same objection to Respondent’s Ex. G that it did to Mills’ testimony. In addition, it objected to the fact that this exhibit contained data not restricted to the assessment dates at issue, which we construe as a relevance objection. As stated above, we do not agree with Nova Tube’s assertion that Mills could not appear as an expert. Thus, Respondent’s Ex. G is admissible evidence as to what he relied on in forming his opinion of the subject market area. We also find it relevant to the assessment

³ We note that Nova Tube was offered the opportunity to brief this issue, but declined to do so.

dates at issue because the sale of the subject property was after the assessment dates. Market information about that period is relevant to determine the probative value of that sale for the assessment dates.

FINDINGS OF FACT

A. The Subject Property

13. The subject property is a light-industrial facility located at 1125 and 1195 Port Road in Jeffersonville, Indiana. Jeffersonville is across the Ohio River from Louisville, Kentucky and is part of the Louisville Metropolitan Statistical Area. The subject property has 29.1 acres of land and one 109,442 sq. ft. building, which sits on approximately 9.6 acres. As of the 2011 assessment date, the building was approximately 10 years old and in average condition. It was mostly devoted to manufacturing, with a small office area. A small portion of the property is in a flood zone, and another portion is occupied by a railroad. *Pet'r Exs. P-1, P-2, P-3; Mitchell testimony; Mills testimony.*

14. In the 2010, 2011, and 2012 assessments years, approximately 25-26 acres of the subject property were assessed as agricultural. For the 2013 assessment year, it appears the Assessor reclassified the land as non-agricultural, thus raising the assessment of the land by approximately \$1.3 million. The Assessor also lowered the value of the improvements, which eventually resulted in a total assessment increase of \$100 between 2012 and 2013.⁴ On April 15, 2014, the PTABOA considered the parcels under appeal. For the 2013 assessment year, the PTABOA ordered 25.00 acres returned to agricultural. The PTABOA decided not to change the assessed value for any year, including 2013. To accomplish this result, the value of the land was lowered to the agricultural rates, while the value of the improvements was raised almost back to the level of the 2012 assessment to offset this reduction. According to Mitchell, approximately 15-16 acres of the subject

⁴ The Assessor first lowered the assessment of the improvements by approximately \$1.5 million. Shortly after, that assessment was slightly raised, resulting in an assessment of \$100 more than the 2012 assessment.

land were dedicated to farming during the assessment dates at issue. *Mitchell testimony; Form 115s; Pet'r Exs. P-4. P-5.*

15. Nova Tube purchased the property out of a bankruptcy sale in 2009 for approximately \$900,000.⁵ It owned and used the property during the years at issue. The Ports of Indiana purchased the subject property on May 14, 2014, for \$6,125,000.⁶ The Ports of Indiana is a quasi-governmental entity that owns approximately 750-1,000 acres in the subject area. During the years surrounding the purchase, it had been buying much of the land and buildings around the subject property. It sometimes leases out this property, but it does not typically re-sell property after acquisition. According to Mitchell, when the subject property was marketed for sale, there was no interest by any party except for the Ports of Indiana. *Resp't Ex. A; Pet'r Exs. P-1, P-2, P-3, P-5, P-6; Mitchell testimony; Mills testimony.*

B. Mitchell Appraisal⁷

16. Nova Tube hired Lawrence Mitchell, of Valbridge Property Advisors, to appraise the market value-in-use of the fee simple interest of the subject property.⁸ Mitchell has been an appraiser for approximately 24 years, and holds the MAI designation. He is certified as an appraiser in Indiana, Ohio, and Kentucky, and has appraised numerous industrial properties. He is also a member of various professional organizations, and has previously served as the president of some of these organizations. He certified that he prepared his appraisal in conformance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Mitchell testimony; Pet'r Ex. P-1 at 65-66, 77.*

⁵ Mitchell did not consider this a market transaction.

⁶ This sale was considered invalid for mass appraisal purposes.

⁷ We note that Nova Tube presented a separate appraisal for each assessment year under appeal. All of the appraisals are substantively similar. Nova Tube chose to ask Mitchell primarily about the 2011 appraisal, with the understanding that his answers would reflect all three appraisals unless otherwise noted. We do the same in our analysis.

⁸ Michael Nitowski, an appraiser trainee, assisted Mitchell.

1. Mitchell's Research and Market Overview

17. The subject property contains two parcels, which Mitchell determined were used as a single economic unit. He noted most of the property beyond the footprint of the building was agricultural land. In addition, small portions were flood zone land or wetlands. Finally, a section of the property was occupied by a railroad, some of which was owned by the railroad company.⁹ Mitchell classified the land not supporting the building as surplus land because it was not suitable for sale separate from the primary site area due to lack of road frontage and access. *Mitchell testimony; Pet'r Ex. P-1 at 9-21.*

18. Mitchell examined the local market, including economic factors such as population, income, employment, and industrial occupancy. He identified the primary market area as the 50-mile radius around the subject property. He found that this market was performing similar to the Midwest regional market. But he found it had some weakness shown by low absorption and a barrier to entry caused by the difficulty of obtaining financing. *Mitchell testimony; Pet'r Ex. P-1 at 6-14.*

19. Mitchell considered all three approaches to value, but only developed the cost and sales comparison approaches. He determined that there was insufficient data to develop an income approach. *Mitchell testimony.*

2. Mitchell's Land Valuation

20. To value the surplus and agricultural land for 2011 Mitchell relied on the agricultural rate of \$1500/acre, which he reported was "reasonable." He applied that to 19.5 acres of the subject property. This included 15-16 acres of agricultural land, with the balance being wetlands and other surplus land. Mitchell made a number of comments about the value of the surplus land, as well as the differences between agricultural assessments and market value. These included:

⁹ Mitchell's testimony about the land owned by the railroad was somewhat unclear. Because the Nova Tube did not assert that it was being assessed for property it did not own, we presume all the property under appeal is owned by Nova Tube.

“...the land that we don’t consider primary...really doesn’t have a lot of value.”

“...regularly people will buy land that is assessed for ag, with the intention of turning it into an industrial building, and they’ll pay quite a bit more than what it’s assessed for as ag land.”

“...my experience is a lot of times surplus land has a market value to a buyer of something less than the primary land, but the discount is not \$55,000 an acre to \$1,700 an acre.”

Mitchell testimony; Pet’r Ex. P-1 at 32.

21. To value the 9.6 acres of primary land, Mitchell used a sales comparison approach. In selecting comparable sales, he considered factors such as location, physical attributes and property rights conveyed. For 2011, he chose four comparables:
1. Sale 1: 30.00 acres in Edinburgh, IN, sold for \$31,667/acre in October, 2010
 2. Sale 2: 16.86 acres in Cincinnati, OH, sold for \$35,587/acre in March, 2010¹⁰
 3. Sale 3: 11.02 acres in Milford, OH, sold for \$27,223/acre in September, 2009¹¹
 4. Sale 4: 10.92 acres in Louisville, KY, sold for \$38,919/acre in February, 2010

Mitchell testimony; Pet’r Ex. P-1 at 33.

22. Mitchell made market conditions adjustments of 1% per year. He also made adjustments for size, rail, and location. Mitchell did not adjust for the fact that the comparable properties had no flood plain because he determined he had no market evidence to show a difference in value. After adjustment, Mitchell’s sale prices ranged from \$31,082/acre to \$40,299/acre, with an average of \$36,214/acre. Although he had made no adjustments for flood plain, Mitchell concluded that he should reconcile to the lower end of his range to account for this difference between the subject property and the comparables. Thus, Mitchell reconciled to a value of \$31,000/acre. Mitchell applied this per acre price to the primary site area, then added in the value of the surplus/agricultural land. This

¹⁰ A governmental entity was the seller.

¹¹ A governmental entity was the buyer.

calculation resulted in a rounded land value of \$330,000. *Mitchell testimony; Pet'r Ex. P-1 at 35-39.*

23. Mitchell used similar data and methodology to develop his land value for 2012. The relevant data can be found below:

1. Sale 1: 69.47 acres in Jeffersonville, IN, sold for \$51,173/acre in March, 2012¹²
2. Sale 2: 7.50 acres in Dayton, OH, sold for \$53,333/acre in November, 2011
3. Sale 3: 4.96 acres in Louisville, KY, sold for \$30,242/acre in October, 2011
4. Sale 4: 9.30 acres in Mason, OH, sold for \$51,630/acre in March, 2012
5. Sale 5: 6.79 acres in New Albany, IN, sold for \$50,810/acre in March, 2011

Mitchell testimony; Pet'r Ex. P-2 at 32; Pet'r Ex. P-6.

24. After adjustment, Mitchell's 2012 sale prices ranged from \$33,380/acre to \$54,815/acre, with an average of \$48,966/acre. He again chose the lower end of the range because of the subject property's flood zone, reconciling to \$35,000/acre. Mitchell applied this per acre price to the primary site area. He again used the agricultural rates for the surplus/agricultural land, which in 2012 was \$1630/acre. This resulted in a rounded land value of \$370,000. *Mitchell testimony; Pet'r Ex. P-2 at 33-38.*

25. Mitchell used the same sales for 2013 as for 2012, with the only differences being the time adjustments. He again reconciled to \$35,000/acre, applied the 2013 agricultural rate to the agricultural/surplus land (\$1760/acre), and concluded to a rounded total of \$375,000. *Mitchell testimony; Pet'r Ex. P-3 at 30-38.*

3. Mitchell's Cost Approach

26. Mitchell then developed a cost approach by estimating a replacement cost, deducting depreciation, and adding in the land values. He relied on data from Marshall Valuation service to estimate his replacement costs. The Assessor made no significant criticisms of

¹² Pet'r. Ex. P-6 includes a corrected version of page 35 of Pet'r Ex. P-2. Mitchell testified that the only difference was the total sale price. However, the corrected version also differs in total acreage and price per acre for Sale 1. We rely on the corrected numbers found in Pet'r Ex. P-6.

his direct costs, so we do not detail them here. Mitchell testified that indirect costs typically range from 2%-10%. He used 2% because this was a “simple” property. He did not apply entrepreneurial incentive because he believed it was not appropriate for a property that is typically owner-occupied, which is the case with the subject property. After adding together the costs for the building and site improvements, Mitchell’s conclusions for replacement cost new were:

- 2011: \$3,832,569
- 2012: \$4,089,021
- 2013: \$4,043,130

Mitchell testimony; Pet’r Ex. P-1 at 40-42; Pet’r Ex. P-6 at 3-8.

27. According to Mitchell, the improvements suffered no functional or economic obsolescence. He used the straight-line method to calculate depreciation, which ranged from approximately \$958,000 to \$1.1 million depending on the year. After subtracting depreciation, adding in his land values, and rounding, he concluded to the following values under the cost approach.

- 2011: \$3,200,000
- 2012: \$3,450,000
- 2013: \$3,310,000

Mitchell testimony; Pet’r Ex. P-1 at 43-45; Pet’r Ex. P-6 at 3-8.

3. Mitchell’s Sales Comparison Approach

28. Mitchell also developed a sales comparison approach to value. He looked for properties in the subject’s market area that were used for industrial purposes both pre and post sale. Instead of adjusting for location, Mitchell used the land extraction method. To do this, he needed to isolate the contributory value of the land for each of the sales. Mitchell testified that he started by examining the assessments of each of the comparables. He then analyzed land sales in the areas, which he found showed the assessments were reasonable. He did not provide any further detail. *Mitchell testimony; Pet’r Ex. P-1 at 46-55; Pet’r Ex. P-2 at 44-53; Pet’r Ex. P-3 at 46-53.*

29. Mitchell did not rely on the 2014 sale of the subject property because it was well after the dates of value, and the purchaser was a government entity that owned adjacent property. For these reasons, he did not feel it was representative of an arms-length, typically motivated transaction. *Mitchell testimony.*
30. For each of the assessment years, Mitchell used various sales from Indiana, Kentucky, and Ohio. The comparables were between approximately 60,000 and 128,000 sq. ft., effective ages were between 5 and 25 years at the time of sale, with a tendency toward the high end of the range. After extracting his estimated contributory land values, Mitchell made adjustments for a number of factors, including market conditions, size, age/condition, clear height, and percent office finish. We note that for 2012 and 2013, Mitchell determined no market conditions adjustments were appropriate, even for a June 2010 sale. *Mitchell testimony; Pet'r Ex. P-1 at 46-55; Pet'r Ex. P-2 at 44-53; Pet'r Ex. P-3 at 46-53.*
31. After considering the adjusted sale prices, Mitchell concluded to values between \$23.00 and \$25.00 per square foot. He applied these to the subject property's building area, added in his land values, and concluded to the following totals under the sales comparison approach:
- 2011: \$2,850,000
 - 2012: \$3,000,000
 - 2013: \$3,100,000
- Mitchell testimony; Pet'r Ex. P-1 at 56; Pet'r Ex. P-2 at 54; Pet'r Ex. P-3 at 56.*

4. Mitchell's Reconciliation

32. Mitchell reconciled the cost and sales comparison approaches, giving slightly more weight to the sales comparison approach because of the quantity and quality of data available. He concluded to the following reconciled values:

- 2011: \$2,900,000
- 2012: \$3,000,000
- 2013: \$3,100,000

Mitchell testimony; Pet'r Ex. P-1 at 48; Pet'r Ex. P-2 at 54; Pet'r Ex. P-3 at 56.

B. Mills testimony

33. The Assessor called Charles Mills, a certified general appraiser, to testify. Mills holds a number of designations, including the MAI. He has extensive experience appraising properties in the Clark County area, including approximately 400 industrial properties. Mills did not perform an appraisal or a review appraisal. *Mills testimony.*
34. The Assessor asked Mills to examine the 2014 sale of the subject property to determine if it was a market or arms-length transaction. Mills talked to the manager of the Ports of Indiana, as well as the listing agent for the property. He also examined the listing information. He noted that it sold for \$825,000 less than the listed price, and included no personal property. After considering this information, he determined that the sale was an arms-length transaction. He also testified that he used this sale in his own appraisals. *Mills testimony; Resp't Ex. A; Resp't Ex. B.*
35. Mills also provided economic data for the Clark County Area. He discussed a number of factors including residential sales, population, income, and industrial vacancy. Most of the data he provided was from 2009 to 2013. Mills concluded that the market had static or little growth in 2011, growth in 2012 and 2013, and continued recession recovery for 2013-2014. *Mill's testimony; Repts't Ex. G.*

CONCLUSIONS OF LAW AND ANALYSIS

A. Burden of Proof

36. Generally, a taxpayer seeking review of an assessment must prove the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an

exception to the general rule and assigns the burden of proof to the assessor where (1) the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, or (2) the taxpayer successfully appealed the prior year's assessment, and the current assessment represents an increase over what was determined in the appeal, regardless of the level of that increase. *See* I.C. § 6-1.1-15-17.2(a), (b) and (d). If an assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year's level (as last corrected by an assessing official, stipulated to, or determined by a reviewing authority) or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b). Between 2010 and 2011 the subject property's assessment increased by more than 5%. There were no changes to the property. Thus, both parties agree the Assessor has the burden of proof for the 2011 assessment year. The burden of proof for the subsequent years depends on our determination for 2011.

B. Agricultural Land

37. The statutory and regulatory scheme for assessing agricultural land requires the Board to treat challenges to those assessments differently than other assessment challenges. For example, the legislature directed the DLGF to use distinctive factors, such as soil productivity, that do not apply to other types of land. Ind. Code § 6-1.1-4-13. The DLGF determines a statewide base rate by taking a rolling average of capitalized net income from agricultural land. *See* 2011 GUIDELINES, CH. 2 at 77-78; *see also* Ind. Code § 6-1.1-4-4.5(e). Assessors then adjust that base rate according to soil productivity factors. Depending on the type of agricultural land at issue, assessors may then apply influence factors in predetermined amounts. *Id.* at 77, 89, 98-99.
38. As discussed above, the PTABOA ordered 25.00 acres changed to agricultural, with no change to the overall assessment. Nova Tube essentially argues that the farmland held value over and above the statutory agricultural rates, and that that value was impermissibly transferred onto the improvements. We first note that the evidence shows that only 15-16 acres were farmed during the years at issue. In addition, the subject

property was 29.1 acres, with 9.6 acres supporting the building. Thus, some of those 25.00 acres the PTABOA ordered assessed as agricultural must have contained land supporting the building. Finally, we note that the PTABOA action resulted in a 2013 assessment very close to 2011 and 2012 assessments. That is, the majority of the land was classified as agricultural with most of the value found in the improvements.

39. We agree that if the market value of farmland is greater than the value derived from applying the agricultural rates, that excess value should not be transferred onto other property. However, we review appeals *de novo*. We note that Nova Tube provided very little evidence regarding the agricultural use of the property. Mitchell gave a conclusory statement that “15 to 16” acres were farmed during the three years at issue. He did not determine the precise acreage, did not identify the soil type, nor did he explain how the agricultural rates should have been applied. Instead, he applied the current agricultural assessments to 19.5 acres of surplus land. He did this because he believed there was no difference in value between the agricultural rates and the additional 3.5-4.5 acres of surplus land.

40. There is no dispute in the evidence that at least 15-16 acres of the subject land were farmed during the years at issue. The three assessments as last corrected classify 25 or more acres as agricultural land, which the evidence shows must have included land underneath or directly supportive of the building. It is problematic that neither party provided the exact acreage of the farmland. However, we find the evidence sufficient to order 16 acres classified as agricultural land. After applying the agricultural rates, the farm land would constitute approximately \$22,500 to \$26,400 of the current assessments. We make no determination regarding the classification of the other land that was classified as agricultural, but because there is no evidence that it was farmed, we will consider its value together with the improvements and remaining land.

C. Sale of the Subject Property

41. The Assessor argued that the sale of the subject property in April of 2014 was sufficient evidence to meet its burden for the 2011 assessment year, as well as sufficient support for

the 2012 and 2013 assessments. There are three main questions with this sale: (1) whether the purchase is relevant given that it included agricultural land, (2) whether it was an arms-length or “market” sale, and (3) whether it is sufficiently related to the assessment dates at issue.

42. As discussed above, Indiana law treats agricultural land separately from other types of land. The agricultural rates determine the assessments for the 16 acres we have ordered classified as agricultural land, not the purchase price or the market value. A purchase price can only be used to determine the value of mixed agricultural/non-agricultural land if there is sufficient evidence to show what the purchaser believed was the contributory value of the agricultural land. This is particularly important because in some cases the market value of agricultural land can be over and above the agricultural rates. In this case, the evidence shows that the agricultural land had little, if any, market value beyond that captured by the agricultural rates. Mitchell himself stated that the land “doesn’t have a lot of value” and that the agricultural rates were “reasonable.” Although Mitchell made some general statements that buyers may pay more for agricultural land than the agricultural rates, we credit his specific statements about the subject property over his statements about the general market. Thus, we find it more likely than not that the Ports of Indiana placed little, if any, value on the agricultural land above the agricultural rates. Using Mitchell’s highest value of \$1760/acre, the agricultural land would have represented only \$28,160 of the purchase price. Because the Assessor has only asked that we uphold the current assessments, not to set the assessments to the purchase price, the \$1.3 million difference between the purchase price and the current assessments more than covers the value of the agricultural land.
43. Mills testified that based on his research he believed it was an arms-length transaction. He also testified that he had used that sale in his own appraisal work. We find Mills generally credible on this point. Mitchell testified that he believed that it was not a market transaction because it was a sale to a government entity and adjacent property owner. He believed that government entities or adjacent property owners can pay non-

market prices. We agree with Mitchell that a sale of this nature may require some additional verification. However in this case, Mills did that verification, noting specifically that the subject property was exposed to the market. Mitchell's criticism is also somewhat hollow because he himself used a sale to a government entity without providing any additional testimony about how he verified that sale.

44. Finally, we address whether the sale was sufficiently related to the assessment dates at issue. Although the burden is on the Assessor for the 2011 assessment, we will begin by addressing the 2013 assessment year because it is closest in proximity to the sale of the subject property. We note that the sale is slightly over a year removed from the 2013 assessment date, and over three years after the 2011 assessment date. Although there was extensive testimony and evidence about the market leading up to and between the assessment dates, there was little presented by either appraiser for the time period between March 2013 and April 2014. Mitchell specifically stated that he did not know about the market conditions in that time. Mills gave some testimony about the trends in the market after 2013, specifically that it was in continued recovery from the recession. Neither appraiser trended the 2014 sale to any of the assessment dates at issue.
45. It is extremely troubling that the Assessor did not offer any evidence trending that sale to the assessment dates at issue. However, the purchase price of the subject property was \$6,125,000, or \$1,357,700¹³ more than 2013 assessment. The Assessor has not requested that we increase the assessment. We find the difference between the purchase price and the current assessment more than sufficient to cover the market recovery described by Mills. Thus, we find the sale price probative for the 2013 assessment date.
46. We now turn to the 2011 and 2012 assessment dates. Although these assessment dates are further removed from the 2014 purchase, the evidence regarding the market in this time is extensive. Mills described a market that was stable with some slight growth. Mitchell found 0-1% growth. In one case, Mitchell found that an improved sale from June 2010 required no adjustment to be used in a valuation for March 1, 2013. For these

¹³ This number would be reduced by \$28,160 were we to extract the contributory value of the agricultural land.

reasons, we find the sale of the subject property probative for the 2011 and 2012 assessment dates as well. Thus, we find the Assessor made a prima facie case for 2011, the year the Assessor had the burden of proof, as well as for 2012 and 2013. We analyze whether Nova Tube presented sufficient evidence to rebut the Assessor's claims.

D. Mitchell Appraisal

47. The Assessor makes several criticisms of Mitchell's appraisal, the most significant of which concern his land valuation. We note that Mitchell's land valuation is of particular importance, because he relied on that valuation for both his cost and sales comparison approaches.
48. The Assessor specifically criticized Mitchell's emphasis of the effect the flood zone portion of the property had on his valuation. None of Mitchell's comparables included a flood zone, and Mitchell did not adjust for this difference. Instead, Mitchell reconciled at the low end of the range of adjusted sale prices, citing the flood zone for support of this. The Assessor pointed out that Mitchell provided little justification for this decision. He did not do a paired sales analysis, or provide any other market evidence about the effect of flood zones. To the contrary, Mitchell stated during direct examination that he did not have sufficient market evidence to make an adjustment for the flood zone. When there is not enough market evidence to make an adjustment, we do not find that veiling that adjustment in the reconciliation is any more reliable.
49. The Assessor also pointed out a relative lack of similarity between Mitchell's comparables and the subject property in factors such as size and location. For 2011, none of the sales were from Clark County. For 2012-2013, only one was (although another was from Louisville). We find this somewhat detracts from the reliability of his opinions.
50. Addressing Mitchell's cost approach, the Assessor faults him for not including entrepreneurial incentive, and for choosing the low end of the range for indirect costs. The Assessor argues that Mitchell provided only cursory explanations for those decisions, despite their large effect on his conclusions. While we agree that more explanation

would have been helpful, given the absence of evidence to the contrary, we do not give these criticisms much weight.

51. Turning to Mitchell's sales comparison approach, the Assessor pointed out that for 2011, the comparable properties were significantly older than the subject property. The age differences were less stark in 2012 and 2013, though still present. We find this point somewhat troubling, given the large adjustments required.
52. The Assessor's main criticism of Mitchell's sales comparison approach is levied at his land extraction method. Mitchell used the comparable properties' assessments to extract the contributory value of the land. He testified that he confirmed those assessments were reasonable by performing a land sales analysis for each of the properties. But he did not present any of the data he used in making these determinations. As the Assessor points out, the foundation for this appeal is the taxpayer's contention that the original assessments are incorrect. It is somewhat inconsistent for Mitchell to then rely on assessments, particularly assessments from other jurisdictions, in developing his opinion of value. Although he testified that he performed a land sales analysis, he provided no detail on that. It is somewhat unclear why, if he did perform a full sales analysis for each comparable, he did not rely on land values derived from those analyses rather than on the assessments. Ultimately, we find his statement that he determined the assessments were "reasonable" to be conclusory, and that it seriously detracts from the reliability of his opinions.
53. Finally, we note that because Mitchell used this land extraction method, his sales comparison approach lacks independence from his cost approach. Both are dependent on the reliability of his land valuation.

E. Conclusions

54. As discussed above, 16 acres of the subject property should be assessed as agricultural. As to the rest of the property, we find both the Mitchell appraisal and the purchase price of the subject property have probative value. After considering the evidence as a whole,

we find the current assessments better supported than the conclusions of the Mitchell appraisal.

55. The Mitchell appraisal is not devoid of value, but there are significant problems. His land valuation is not very persuasive because of the weight he gives to the flood zone, a factor he admits he has insufficient market evidence to adjust for. Because the land valuation supports both his cost and sales comparison approaches, this is particularly concerning. We also find his land extraction method in the sales comparison approach to be largely unsupported, which weighs against his appraisal when comparing it to the purchase price of the subject property. Ultimately, Mitchell failed to persuade us that the subject property's assessments should be approximately half what the taxpayer sold the subject property for only 1-3 years after the assessment dates.
56. As the Assessor points out, an appraisal is just an opinion. In contrast, the purchase of the subject property is an objective fact and can be a good indication of value. *See Hubler Realty, Inc. v. Hendricks County Assessor*, 938 N.E.2d 311, 314 (Ind. Tax Ct. 2010) (upholding the Board's determination that the weight of the evidence supported a property's purchase price over its appraised value).
57. As discussed above, we give particular weight to the fact that the purchase price is over \$1.3 million more than the Assessor's requested outcome of the current assessments. We find this difference more than sufficient to cover both the potential growth in value of the subject property between the assessment dates and the purchase, as well as the value of the agricultural land that was included in the purchase. For these reasons, we find that the evidence better supports the current assessments than the values of the Mitchell appraisal.

We order no change to the assessments. This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.

ATTACHMENT

Petition #	Petitioner	Parcel #
10-039-11-1-3-00008	Nova Tube Indiana II LLC	10-42-01-400-200.000-039
10-039-12-1-4-00010	Nova Tube Indiana II LLC	10-42-01-400-200.000-039
10-039-13-1-4-00008	Nova Tube Indiana II LLC	10-42-01-400-200.000-039
10-039-11-1-3-00003	Nova Tube Indiana II LLC	10-42-00-600-150.000-039
10-039-12-1-3-00012	Nova Tube Indiana II LLC	10-42-00-600-150.000-039
10-039-13-1-3-00005	Nova Tube Indiana II LLC	10-42-00-600-150.000-039