NOT DESIGNATED FOR PUBLICATION

No. 124,842

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Equalization Appeals of
NFM OF KANSAS, INC.,
for the Years 2018, 2019, and 2020 in Wyandotte County.

MEMORANDUM OPINION

Appeal from the Board of Tax Appeals. Opinion filed May 19, 2023. Affirmed.

Wendy M. Green, senior counsel, of Unified Government of Wyandotte County/Kansas City, for appellant.

Linda Terrill, of Property Tax Law Group, LLC, of Overland Park, for appellee NFM of Kansas, Inc.

Before ISHERWOOD, P.J., MALONE and WARNER, JJ.

PER CURIAM: Wyandotte County appeals a decision from the Board of Tax Appeals (BOTA) in which it found the County's expert violated the Uniform Standards of Professional Appraisal Practice (USPAP) and failed to put forth a credible report during the contested valuation of Nebraska Furniture Mart (NFM). In addition, the County argues that BOTA erred by excluding some of its evidence. Finding no error in BOTA's decision, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

This case arises out of a dispute NFM had with the ad valorem tax value assigned to its Kansas City, Kansas, location for tax years 2018, 2019, and 2020. That store was made by and for NFM and consists of a single tenant, free-standing, two-story retail building with an attached warehouse. The retail area occupies 443,418 square feet and the warehouse accounts for an additional 545,542 square feet. The building is divided into two separate parcels because two different taxing units—USD 203 and USD 500—are included in the area.

The County's Valuations

BOTA conducted a hearing to address the County's concerns, and Kevin Bradshaw, an employee with the Wyandotte County Appraiser's Office, testified on the County's behalf. He explained that the County relied on an income approach to assess NFM's total value which was then split 60/40 between the two parcels based on a percentage of the land area in each tax district. Bradshaw acknowledged that adding the split values together did not yield a sum equal to the total appraised value but attributed the discrepancy to a rounding error. He testified that the County believed the property should be appraised at $49,300,000 for tax year 2018 based on the appraisal completed by Robert E. Marx.

The record compiled for us includes Marx's report and we have reviewed the same. It reflects that he arrived at his appraised value by employing a three-part analysis which consisted of a cost approach, an income approach, and a sales comparison approach, with the greatest weight afforded to the income approach. The cost approach in Marx's report is determined by valuing the land, through a sales comparison technique, assessing the replacement cost of improvements using a published cost service, and calculating for physical depreciation, obsolescence, and other loss. Marx describes the cost approach as a "supportive indicator" for a property's value.

The sales comparison approach compares the property in question with sales of relatively similar properties, with adjustments made for measurable differences. Marx likewise designated this approach a "supportive indicator."

The income approach estimates the fee simple market rent for the property by analyzing market rental rates, market vacancy, and collection loss to determine an effective gross income. Expenses are then deducted and capitalization rates applied to arrive at an estimated value. Marx describes this theory as "adequate" and detailed enough to produce a "reliable value conclusion."

When appraising NFM in accordance with the cost approach, Marx estimated the value of the land at $4.25 per square foot, for a total of $13,100,000. He compared the property to similar sales, then estimated a replacement cost of the retail portion alone through use of the Marshall Valuation Service and arrived at a total of approximately $103 million. The combined retail and warehouse cost, plus the approximated land value, was around $118 million. After subtracting various forms of obsolescence from that total, the projected value of the property under the cost approach was $49,300,000.

The hybrid nature of the NFM property required Marx to split it into two portions for purposes of the sales comparison approach. A comparison of the retail portion with sales of other similar retail properties reflected a value of roughly $61 per square foot, resulting in a total value of around $27 million. The warehouse segment had an estimated value of $43 per square foot, which yielded a total of about $23.5 million, giving the property as a whole an estimated value of $50,500,000. But Marx considered the cost approach and the sales comparison approach values to simply be supportive indicators of the estimated value obtained through the income approach.

The income approach "measures value in terms of future financial benefits flowing from a property in terms of periodic net incomes and future reversions." As Marx explains it in his report, the "basic formula is: Income [divided by] Rate [equals] Value." In his report, Marx acknowledged there was a lack of directly comparable properties and that he had to expand his search to "relatively similar properties and tenants within the Kansas City Metropolitan and Regional areas for both the industrial and retail markets." One particular consideration was again, the hybrid nature of NFM. The fact not all retail is created equally raised another concern. That is, a "Warehouse Discount Store" will have a different value per square foot than a traditional "Retail Store." In his report, Marx used the inside of a Lowe's to describe a warehouse discount store and the inside of a Kohl's to describe a traditional retail store, and ultimately concluded that the retail portion of NFM was more akin to the latter.

For the warehouse portion of NFM, when considering size, age, and ceiling height, Marx located 11 comparable properties, 9 of which were in Kansas, which had more than 250,000 square feet, ceiling heights of at least 25 feet, and were built after 2000. The average and median rental rate was $3.84 per square foot. As Marx saw it, the rental rate was similar between first generation leases and subsequent generation leases. Because of the similarity, Marx found that "the functional nature of a structure and location are considered the primary determinant of market rental rates." Ultimately, Marx concluded that the warehouse portion of NFM had a fee simple rental rate of $3.75 per square foot.

For the retail portion of NFM, Marx compared the property with 45 others in the regional market that contained at least 80,000 square feet and determined that the average rental rate was $7.27 per square foot and the median rental rate was $7.56 per square foot. Of those 45 properties, 11 had comparable leases of at least 125,000 square feet. The average rental rate of those specific properties was $6.64 per square foot with a median rental rate of $6.74 per square foot. Returning to the 45 properties as a whole, 15 presented with comparable leases and were built within two years of NFM's 2003 construction date (for the retail portion). The average rental rate of that subset of properties was $8.28 per square foot with a median rental rate of $8.00 per square foot.

Using the income approach, Marx estimated the first floor level of NFM to have a rental rate of $6.50 per square foot. He noted that in the Kansas City Metropolitan Area, second floor retail spaces rented at rates between 68.8% and 74.6% lower than first floor spaces. Thus, he estimated a 70% lower rate for NFM's second floor and assigned a $4.55 per square foot rental value. Multiplying those amounts with their respective square footage and adding the warehouse and retail portions together resulted in a combined value of $4,493,584.

Marx then turned to other sources of income, such as "potential tenant reimbursements" which he estimated were valued at $2,671,130. He also considered vacancy and collection loss and used a stabilized vacancy and collection loss of 5%. Marx added the $2,671,130 to the $4,493,584 and then subtracted $358,236 to account for the 5% vacancy and collection loss to arrive at an effective gross income of $6,806,479.

Marx also calculated for expenses but noted that accounting practices can lead to highly variable results. He estimated annual expenses at $136,130 for management, $235,000 on insurance, $235,000 for repairs and maintenance, $1,150,000 on common area maintenance, $1,150,000 for utilities, and $100,000 on general and administrative costs. The gross income, minus the expenses, resulted in a net operating income (before real estate taxes) of $3,800,349.

Once the income of a property is determined, several methods can be used to convert that income into a property value. Marx found the Direct Capitalization method was the most appropriate. He prefaced the analysis in his report with the statement that "capitalization rates of leased fee estates can be equal to the capitalization rates of the fee simple estate." Given an adequate sample size, and proper consideration of average and median figures, the "indicated average and median capitalization figures for the leased fee estates are considered to be representative of income components that are in-line with the fee simple estate." According to Marx's report, a single-tenant retail survey suggested that capitalization rates ranged from 5% to 8.8% for more than 40 relatively similar properties. A large industrial survey showed capitalization rates ranged from 6% to 8% for over 20 relatively similar properties.

Marx also considered the PricewaterhouseCoopers (PwC) Real Estate Investor Survey when establishing his capitalization rate. While the PwC considers several different categories, NFM did not fit neatly into any single category, thus, Marx took a combined look at the "net lease, power center and industrial categories." He then determined that the power center was the most applicable based on the PwC survey definition: "'An open center dominated by at least 75.0% large big-box anchors, including discount stores, warehouse clubs, and value-oriented category stores, and a minimal amount of in-line store space.'" The PwC explained that in the 1st Quarter of 2018, power center had a capitalization rate ranging from 5.25% to 9%, with an average of 6.66%. The warehouse capitalization rate for the same quarter was 3% to 6.5%, with an average of 4.95%. Finally, the net lease rate was 5% to 8.5%, with an average of 6.6%.

Ultimately, Marx settled on a capitalization rate of 7.713%. He acknowledged this rate exceeded the average set out in the PwC report but believed the higher rate would "likely be considered reasonable by market investors" due to NFM's large size and two-story design. Taking the net operating income of $3,800,349 and dividing it by the capitalization rate of 7.713% results in a capitalized value indication of $49,271,995 which Marx rounded to $49,300,000 to arrive at an estimated value under the income approach.

As mentioned above, Marx also used a sales comparison approach to value NFM, but again, that approach was used to support the income valuation. Because of the hybrid nature of the property, Marx considered retail and industrial markets and completed a separate analysis for each portion of the property. He compared the warehouse segment with four distribution warehouse sales and made various adjustments for age, condition, location, access, and other similar factors to determine that the adjusted price per square foot ranged from $47.18 to $51.98. He concluded that the average price per square foot was $48.59, and the median was $47.60, then arrived at a final adjusted value of $43.00 per square foot for the warehouse segment of NFM.

He performed similar comparisons, calculations, and adjustments for the retail portion. The adjusted price per square foot of his selected comparison properties ranged from $66.01 to $76.24, with an average price of $69.04 and a median of $66.96. He arrived at a final adjusted value of $61.00 per square foot for the retail segment of the property. Marx then multiplied that figure by the applicable square footage and added it to his result for the warehouse portion to find an estimated value of $50,500,000 under the sales comparison approach.

Marx employed the same methods to calculate values for the 2019 and 2020 tax years. For 2019, Marx provided three estimates: $49,150,000 under both the cost and income approaches and $51,450,000 under the sales comparison approach, with a final valuation of $49,150,000. He did the same for the 2020 tax year with estimates of $50,600,000 under both the cost and income approaches and $52,800,000 under the sales comparison approach, with a final valuation of $50,600,000.

For the 2020 tax year, the County established its own appraisal value using a mass appraisal tool modeled after the income approach. For the warehouse portion of NFM, the County analyzed 10 other parcels and arrived at a median rental rate of $4.48 per square foot. But for similar properties with a gross buildable area of at least 500,000 square feet, the rate increased to $4.60 per square foot. The County decided on a rental rate of $3.75 per square foot for the warehouse segment. In assessing the retail portion of the property, the County considered "[p]rior appeals, prior appraisals, listings if [the

County] had them, and [the] Bliss report." The Bliss report was written by Bliss and Associates in 2018 about NFM.

The County estimated a 5% vacancy and collection loss rate for the property and included an expense of $0.47 per square foot. For its capitalization rate, the County used the Capitalization Rate Study developed by Keller, Craig & Associates. According to the study, the rate for similar properties fell between 7.75% and 8.25%. The County concluded a rate of 7.5% was appropriate and included an effective tax rate of 0.21%, for an overall capitalization rate of 7.71%. Its mass appraisal tool established a total value of $49,322,100 for 2020. Ultimately, the County requested that BOTA uphold its valuations of $49,300,000 for 2018; $49,150,000 for 2019; and $49,322,100 for 2020.

NFM's Valuations

Gerald Maier, the expert witness appraiser for NFM, testified about the appraisals he prepared for each of the three years at issue, 2018, 2019, and 2020. He began with the cost approach and explained that, as reflected in his report, the cost approach includes estimates for the market value of the property, the cost of replacing or recreating improvements, and depreciation, as well as an estimate he arrived at following subtraction of depreciation from the replacement or recreation cost, and an addition of the land value to the depreciated value of the improvements.

In an effort to adequately estimate the market value of the property, Maier compared it with eight other properties in the area that he believed to be similar, instituting any necessary adjustments for time, size, physical condition, zoning, and location. He ultimately concluded it was worth $3.25 per square foot and multiplied that by 3,080,530 square feet, for a total (rounded) value of $10,010,000. Maier, like Marx, used the Marshall Valuation Service to estimate replacement cost and determined $97,816,124 was an appropriate figure. He then sought to estimate NFM's depreciation value starting with its functional and external obsolescence. Functional obsolescence relates to factors such as poor floor plan design and inadequacies in building design, size, or style, while external obsolescence includes such things as changes in the land use, legislation, or property type. He ultimately estimated that NFM was burdened with $31,480,000 in functional/external obsolescence. Maier also considered the depreciation of the physical structure based on its effective age and useful life and determined that $36,983,686 was a reasonable estimate for that factor.

Maier then addressed the "cost to stabilize" or the principle that "fair market value" as articulated in K.S.A. 79-503a pertains to the fee simple estate, assuming the subject is available for new occupancy. He estimated that the costs associated with that would be approximately $23,533,305 and would include expenditures for leasing commissions, tenant finish, opportunity cost, and entrepreneurial incentives.

At the conclusion of his cost approach analysis, Maier arrived at a final estimated value of $39,360,000. But he also made clear that he considered it to be "the least reliable" of the three he used in preparing his report.

Maier then turned to the sales comparison approach and explained that he considered the sale of nine properties from different parts of the country. Eight of those were considered fee simple sales; the outlier was a property encumbered by a lease at the time of the sale. Maier made adjustments to account for variances in the property rights involved, changes that occurred between the respective sales and the appraisal date, the age and condition of the properties, as well as their locations, sizes, quality, and utility. Following those modifications, Maier determined that the comparable sales were valued from $19.42 to $38.88 per square foot, with an average of $32.09 per square foot. Maier estimated NFM's value at $37.50 per square foot, which resulted in a total rounded value of $37,930,000. Maier noted that he assigned the greatest weight to this approach.

Finally, Maier addressed the income approach and detailed how he used comparable rents from second generation leases, which is the term used to identify leases on buildings that were originally designed for a specific tenant but were vacated and leased to a subsequent retailer after renovations were made. In making his comparisons, Maier noted that some of the higher end rentals were buildings that were significantly smaller than NFM and the higher price would be "indicative of rents anticipated for [NFM] if it were demised for multi-tenant occupancy." Maier also considered leases in the nearby Legends Shopping Center, which contains properties that are also much smaller than NFM yet "indicative of rents for larger spaces in the immediate area." He ultimately estimated that NFM had a market rental rate of $5.00 per square foot for a total potential rental income of $5,056,850. He noted that if reimbursed taxes and insurance were also included, the value would increase to $6,810,814.

Following his income estimation, Maier discussed the vacancy of the property and explained that the Kansas City metropolitan area had a vacancy rate of 5.9%, if you included both small tenants and big box tenants. For his estimations relating to NFM, Maier used a vacancy factor of 7.5% with one added percentage point to allow for the possibility of a tenant not succeeding and terminating their lease prior to the expiration of its term. He then considered various expenses such as real estate taxes, insurance, utilities, common area charges, maintenance, and management, to estimate that total expenses would run about $2.08 per square foot or $2,099,346 per year.

To develop a capitalization rate, Maier considered data from the Boulder Group and PwC surveys, along with the sale of two Kohl's stores in Johnson County. He placed the greatest emphasis on sales that did not have long-term leases in place and selected a capitalization rate of 10.50% "for use in estimating the market value assuming the subject is available for new occupancy." Maier also noted that the capitalization rate reflected anticipated costs associated with re-leasing the property.

Maier employed a direct capitalization method and a discounted cash flow analysis to arrive at estimated values for NFM. He determined that the discounted cash flow analysis, which produced an appraisal value of $37,630,000, was preferable because it accounts for graduated changes in market rental rates and other factors. The direct capitalization method resulted in an estimated appraisal of $37,400,000. Ultimately, Maier concluded that NFM had an appraised value of $37,600,000 under the income approach.

After considering each of the approaches, Maier assigned NFM a final appraisal value of $37,900,000 for the 2019 tax year. His report for that year included his appraisal for the 2018 tax year as an addendum which reflected that he used similar methodology to arrive at his estimates for that year. His 2018 cost approach resulted in an estimated value of $37,180,000; for the sales comparison approach he estimated a value of $37,930,000; and his income approach yielded an estimated value of $35,300,000. His final appraisal of NFM for 2018 was $37,500,000. Maier's tax year 2020 appraisal was conducted in much the same manner and resulted in a final appraisal of $37,900,000. His final value estimates for each year were premised on the theory that the property would be vacant at the time of the hypothetical sale.

BOTA fully considered the totality of the evidence presented by both parties and issued a decision which noted that, to some extent, both appraisers relied on the income approach for their final appraisal values and that both estimated similar net operating incomes for the property yet differed in their capitalization rates. As BOTA saw it, "Maier developed his capitalization rate from an examination of sales comparables, [while] Marx's expert report indicated that he selected his capitalization rate from the *PWC Real Estate Investor Survey*." BOTA found that "Marx's decision to rely primarily on an investor survey for derivation of his capitalization rate is contrary to both USPAP standards (USPAP Standard Rule 1-4(c)) and accepted appraisal practice." Thus, it did not consider Marx's estimates under the income approach to be reliable.

BOTA also considered the appraisers' differing opinions under the sales comparison approach. It noted that Maier afforded this method the greatest weight, while Marx merely considered it as additional support for the result produced by his income approach. BOTA observed that Maier's sales comparison focused on properties that were not leased at the time of sale which meant there was no underlying contract right considerations that went into the sale price. It further found that Maier focused his analysis on retail sale comparables, which often have a higher price per square foot than warehouse properties, while Marx looked at warehouse and retail sales alike.

Ultimately, BOTA found Maier's sales comparison approaches were the better indicator of value—in large part, at least for the 2018 and 2019 tax years, because Marx did not competently compile his capitalization rate. For the 2020 tax year, BOTA found Maier's more specific report contained greater persuasive value than Marx's reliance on a mass appraisal income approach, especially when Marx's approach did not appraise NFM as if it would vacate upon sale.

BOTA determined that the appraised value of NFM in 2018 was $37,500,000; $37,900,000 in 2019; and $37,900,000 in 2020.

The County timely petitioned for judicial review.

LEGAL ANALYSIS

The County seeks resolution of two main issues in this appeal. First, it argues that BOTA erred by finding that Marx solely relied on a survey to determine his capitalization rate and that in doing so he violated standard appraisal practices. Second, it asserts that BOTA also erred by relying on or otherwise emphasizing the importance of the use of sales with no leases or close to lease end as the best comparable properties when determining the value of a property like NFM for ad valorem tax purposes.

Standard of Review

The Kansas Judicial Review Act (KJRA) controls appellate courts' review of BOTA decisions. See K.S.A. 74-2426(c). The County, as the party challenging BOTA's decision, carries the burden to show its invalidity. K.S.A. 77-621(a). The KJRA permits judicial relief only if certain statutorily set out conditions are present. K.S.A. 77-621(c). Relevant to this appeal, appellate courts can grant relief if

> "the agency has erroneously interpreted or applied the law;
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> . . . .
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> "the agency action is based on a determination of fact . . . that is not supported to the appropriate standard of proof by evidence that is substantial when viewed in light of the record as a whole." K.S.A. 77-621(c)(4), (c)(7).

A court's review of BOTA's application and interpretation of the law is unlimited and performed without deference to the agency. *In re Tax Appeal of River Rock Energy Co.*, 313 Kan. 936, 944, 492 P.3d 1157 (2021).

As to BOTA's factual conclusions, we must determine whether the evidence supporting those findings is substantial when considered "in light of the record as a whole." K.S.A. 77-621(d) defines this concept to include evidence that may support or detract from an agency's findings. To the extent that BOTA's findings of fact are found to be so supported, those findings "cannot be disregarded or contradicted on appeal." *In re CIG Field Services Co.*, 279 Kan. 857, Syl. ¶ 2, 112 P.3d 138 (2005); see also K.S.A. 77-621(d) ("[T]he court shall not reweigh the evidence or engage in de novo review.").

Discussion

Before addressing the County's specific arguments, a brief discussion of the Kansas Supreme Court's decision in *In re Equalization Appeal of Walmart Stores, Inc.*, 316 Kan. 32, 513 P.3d 457 (2022), will be useful in explaining the roles of BOTA and appellate courts in tax appeals. But to address *Walmart*, an overview of the overruled decision *In re Equalization Appeal of Prieb Properties*, 47 Kan. App. 2d 122, 275 P.3d 56 (2012), *overruled by Walmart*, 316 Kan. at 34, is necessary.

In *Prieb*, this court held build-to-suit leases did not reflect market conditions and that rental rates relying on or reflected by build-to-suit leases could not be used for appraising the value of a property without first disentangling the value of the lease from the value of the property. 47 Kan. App. 2d at 135-36.

The Kansas Supreme Court overruled *Prieb*, holding that its rationale "invades BOTA's longstanding province as the fact-finder in the statutory process for appraising real property at its fair market value for ad valorem tax purposes." *Walmart*, 316 Kan. at 34. The *Walmart* court made it clear that relying on leased fee arrangements, including build-to-suit leases, when appraising a property is permissible, even if it requires more analysis of whether "the leased fee reflects the fee simple value." 316 Kan. at 56. The problem with the *Prieb* holding was that it "effectively prohibit[ed] BOTA from relying on any expert opinion that build-to-suit rents reflect the market rent for a property unless the expert 'adjusted' or 'disentangled' the data." *Walmart*, 316 Kan. at 57. *Prieb* made "no allowance for when an expert testifies adjustments are unnecessary under the circumstances." *Walmart*, 316 Kan. at 57.

In essence, the Kansas Supreme Court acknowledged that there will be differing opinions and evidence offered in support of those opinions by opposing experts in tax cases and those differences should be "resolved by BOTA—the agency statutorily charged with the decision-making." 316 Kan. at 59. As "the highest administrative tribunal established by statute to determine controversies relating to assessments of property for ad valorem tax purposes" BOTA alone occupies the role of fact-finder and appellate courts must be careful to not usurp that role. 316 Kan. at 61-62.

With that as our backdrop, we turn to the issues the County brought to us for review.

The County's expert failed to adhere to standard USPAP principles when developing his capitalization rate for the appraisal of NFM.

Kansas law requires that the appraisal processes used to assess ad valorem taxes "conform to generally accepted appraisal procedures and standards which are consistent with the definition of fair market value unless otherwise specified by law." K.S.A. 79-503a. The Director of Property Valuation is required to "adopt appraiser directives prescribing appropriate standards for the performance of appraisals in connection with ad valorem taxation." K.S.A. 79-505(a). The directives are required to at least comply with the uniform standards of professional appraisal practice (USPAP). K.S.A. 79-505(a)(1).

In its full opinion, BOTA noted that USPAP Standard 1-4(c) states:

> "When an income approach is necessary for credible assignment results, an appraiser must:
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> . . . .
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> "(i) analyze such comparable rental data as are available and/or the potential earnings capacity of the property to estimate the gross income potential of the property;
> "(ii) analyze such comparable operating expense data as are available to estimate the operating expenses of the property;

"(iii) analyze such comparable data as are available to estimate rates of capitalization and/or rates of discount."

Beyond that, BOTA, quoting The Appraisal of Real Estate, found that when determining a capitalization rate for use in an income approach, the appraiser should only use investor surveys as support, rather than primary evidence, of a capitalization rate.

BOTA reviewed one of Marx's reports and the statement contained there, that the PwC survey "represents investors' investment expectations and does not reflect actual property performances, or leased fee components." It gleaned from that report that "Marx chose his capitalization rate from the [PwC survey]" but failed to "utilize any comparable market data (sales) for his capitalization rate development, or to the extent that such analysis was done in support of his conclusions," he did not make it part of his expert appraisal for the Board for review as support of his conclusions. Thus, BOTA found that Marx's capitalization rate development was "done in a manner contrary to both USPAP Standard 1-4(c) and accepted appraisal practice."

On appeal, the County first endeavors to refute the allegation that Marx simply picked his capitalization rate from a survey. A review of his report reveals that the section addressing income capitalization mentions that multiple techniques can be used to arrive at a capitalization rate, including: "*Market Extraction Method* (Derivation from Comparable Sales), financial methods based upon subjective market factors and commercial real estate market studies and investor surveys."

The portion of the report devoted to the Market Extraction Method is rather sparse. The method was described as "reflective of investor attitudes in the market," yet there is very little information detailing how the method was actually implemented to produce a capitalization rate. Marx stated that he looked at over 40 properties in a "single-tenant retail survey" which showed capitalization rates ranging from 5% to 8.8%. Similarly, he looked at more than 20 properties in a "large industrial survey" which revealed capitalization rates between 6% and 8%.

During cross-examination, Marx acknowledged that his expert report did not offer a detailed accounting of the actual market sales he analyzed to extract his capitalization rate. He explained that a list was retained in his work file but that he "relied mostly on PwC." He also acknowledged that neither of the surveys he relied on were included in his report. Further, as for the financial methods alluded to in his report, Marx noted they contained "too many variables that vary widely depending on the specific project and investor, which lead to significantly subjective assumptions." For that reason, he opted to not rely on them or develop them further.

The record before us seemingly substantiates the conclusion that Marx's capitalization rate stems from his reliance on the PwC survey. There was no background information about his Market Extraction Method outlined in his expert report. To the extent he used comparable sales market data or otherwise undertook an analysis of that nature to develop his capitalization rate, it was not evident from the materials he presented to BOTA for its review. Thus, there was very little available for BOTA to analyze beyond his reliance on the survey. As BOTA noted in its full opinion, when an appraiser uses an income approach to arrive at a value, the appraiser must "analyze such comparable data as are available to estimate rates of capitalization and/or rates of discount." While Marx claims he used such data, he failed to include any comparables in his expert report and therefore deprived BOTA of the ability to engage in any meaningful examination of that data.

The County argues that any contention Marx's report violated USPAP because it failed to include the details of the comparable market data relied on is erroneous because, in their view, Marx was only required to analyze comparable market data, not make it available as part of his expert report. It is their position that USPAP only requires an appraiser to maintain a record supporting his or her conclusions in their own personal work file so BOTA's conclusion that the lack of such information adversely affected the credibility of his report is flawed. The USPAP is clear that an appraiser must "analyze such comparable data as are available to estimate rates of capitalization and/or rates of discount." Uniform Standards of Professional Appraisal Practice, 2020-2021 Edition, Standards Rule 1-4(c)(iii), p. 18. And as the County points out in its brief, nothing in Standards Rule 2, the reporting rule, strictly requires the inclusion of a full list of properties used as comparables. Instead, the requirement is generally more concerned with providing "sufficient information to indicate that the appraiser complied with the requirements of STANDARD 1" by, in part, "summarizing the information analyzed and the reasoning that supports the analyses, opinions, and conclusions, including reconciliation of the data and approaches." Uniform Standards of Professional Appraisal Practice, 2020-2021 Edition, Standards Rule 2-2(a)(x)(5), p. 21. Finally, the USPAP requires an appraiser to keep a work file for each appraisal and the work file must include "all other data, information, and documentation necessary to support the appraiser's opinions and conclusions and to show compliance with the USPAP." Uniform Standards of Professional Appraisal Practice, 2020-2021 Edition, Record Keeping Rule, p. 10.

Thus, strictly speaking, BOTA was likely premature when it determined that Marx violated the USPAP. Marx testified that he used comparable market data when formulating an estimate for a market extraction capitalization rate and such use or analysis is all that was required of him. The USPAP does not specifically mandate that he provide detailed information in his report about those comparables, only that it be available in his work file. Marx testified that the information was present in his work file and as such, he complied with the governing standards.

Nevertheless, as articulated at the outset of our opinion, BOTA is "free to decide whether one appraisal or methodology is more credible than another." *Walmart*, 316 Kan. at 34. While BOTA's statement that Marx's report deviated from the USPAP standards might have been erroneous, the rest of BOTA's concerns with his appraisal remain valid. Based on the information available to BOTA, Marx relied on the PwC survey to arrive at his capitalization rates and there was no other information for it to consider that might otherwise yield a contrary conclusion.

The County failed to meet their burden to show that BOTA erroneously interpreted or applied the law or that its decision was not supported by substantial evidence. See K.S.A. 77-621(c)(4), (c)(7). BOTA did not err when it found that Marx's report failed to contain particularized information that the agency clearly would have preferred to have at its analytical disposal and that its absence compromised Marx's credibility.

BOTA did not erroneously emphasize one variation of evidence over another when arriving at its determination of which expert report was more credible.

For its second issue on appeal, the County argues that BOTA erred by emphasizing and relying on the use of sales with no leases or close to lease end as the best comparable properties for the determination of value. As support it relies on *Walmart*, where, as discussed above, the Kansas Supreme Court held that BOTA may consider appraisals which use comparable properties that are subject to leases when determining the value of a property. *Walmart*, 316 Kan. at 56.

The County contends that because *Walmart* allows BOTA to consider appraisals that are based on leased comparables, BOTA's decision to give more weight to properties with no or nearly completed leases was erroneous. In essence it asserts that BOTA excluded the County's evidence, rather than considering its weight and credibility. We do not share the County's interpretation of BOTA's opinion. Rather, we find that a fair reading of its ruling reflects that BOTA did not feel like it had to, or did, exclude the County's evidence based on the comparables. BOTA clearly stated that "[b]oth experts analyzed each of the comparables and performed appraisal adjustments where necessary." BOTA simply determined that Maier's "selection of sales comparables, appraisal adjustments, and overall sales approaches [were] more comprehensive and more persuasive than that of Marx." Nothing in BOTA's opinion supports the conclusion that it committed a legal error and impermissibly limited itself based on the now overruled holding in *Prieb*. The County's argument essentially implores us to reweigh the evidence offered below, which this court cannot do. K.S.A. 77-621(d) (when reviewing the evidence, appellate court "shall not reweigh the evidence or engage in de novo review").

The County also argues that by stressing the importance of properties with no leases, BOTA ignored that Maier's comparable properties were different from NFM. But this argument, again, asks this court to reweigh the evidence. As the fact-finder, BOTA was in the best position to consider the expert reports, opinions, and testimony to decide which report carried the greatest degree of credibility. Our careful review of the record satisfies us that there is substantial evidence to support BOTA's decision.

Affirmed.