Preparing Court Appraisals for the Land of Oz[1]

"Toto, I've a feeling we're not in Kansas anymore!"[2]

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At the end of a long day of testifying, when a property appraiser finally steps down from the witness stand, swings open the trial bar gate, and walks outside the courtroom at last, sometimes, if you listen carefully, you can hear the appraiser expert witness whispering under his or her breathe: "*There is no place like home…there is no place like home…there is no place like home*." Truly, the experience of *defending* your expert opinion of market value in court can be as disorienting and disconcerting as being swooped up by a tornado in Kansas and then being plopped down hard in the Land of Oz. The key for surviving this experience, let alone thriving in it, can only be found, like many treks into the far country, in the "crucible of preparation."

Such preparation usually begins with the reading of a good travel guide that explains the difference between appraising for an assessing authority or private client versus for a review by a court. When these differences are understood and appreciated, then the necessary changes in appraisal activity can be instituted right from the start of the appraisal work. The differences begin with the nature of a contest.

Property appraisals in court are part of a competitive contest between two parties with a judge deciding the winner. The criteria for winning is which appraisal and supporting testimony, after being relentlessly attacked by the Wicked Witch of the East (i.e., opposing counsel) with critical inquiry, objections, and alternative

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[1] **Disclaimer**: The information in this essay is not provided as a professional service or legal advice. The views, opinions, and other content expressed are solely intended to stimulate pedagogical dialogue and are not necessarily those of the author or any individuals or entities to which he is associated.
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[2] The Wizard of Oz (1939)

theories and approaches, presents the most compelling well-constructed series of arguments, in the opinion of the judge, in support of a specific amount of real (or fair) market value for the subject property. But unlike typical contests, the judge is likely not an expert in the science and art[3] of property valuation. And while the appraiser is a participant, the appraiser is not a contestant.

A number of features, as listed below, in a typical assessing appraisal practice contrast sharply with one conducted for The Land of Oz (i.e., courtroom):

1) a narrative written appraisal report is often not prepared;
2) the audience for a report, if written, is another appraisal expert;
3) given the limitations of time, resources, and access to subject property information, all three approaches to value may not be performed;
4) such limitations restrict the investigation and effort to develop multiple arguments in support of each significant conclusion;
5) any review of the appraisal work and subsequent inquiry is performed in a supportive collegial manner and venue without obscure and strict rules of dialog or with a goal to discredit you by the Witch; and,
6) the appraisal work does not compete with an alternate appraisal before a judge who is typically not an expert in the field of appraisal.

To address some of these differences, it can be helpful to think of the construction of your appraisal arguments just like constructing sturdy bridges—with span trusses the color yellow, of course! As a bridge needs to be able to handle real-life forces (e.g., compression, tension bending, sliding, shear, and torsion), (see Figure 1), an appraisal argument must also be able to handle the tornado-like forces which opposing counsel use to attempt to collapse your arguments.

Figure 1

[3] "However, as indicated, appraising is an art as much as science." *Brummel v. Dept. of Rev.*,14 OTR 303 (1998).

So anticipating such destructive forces before and during the construction of your argument is important.[4]

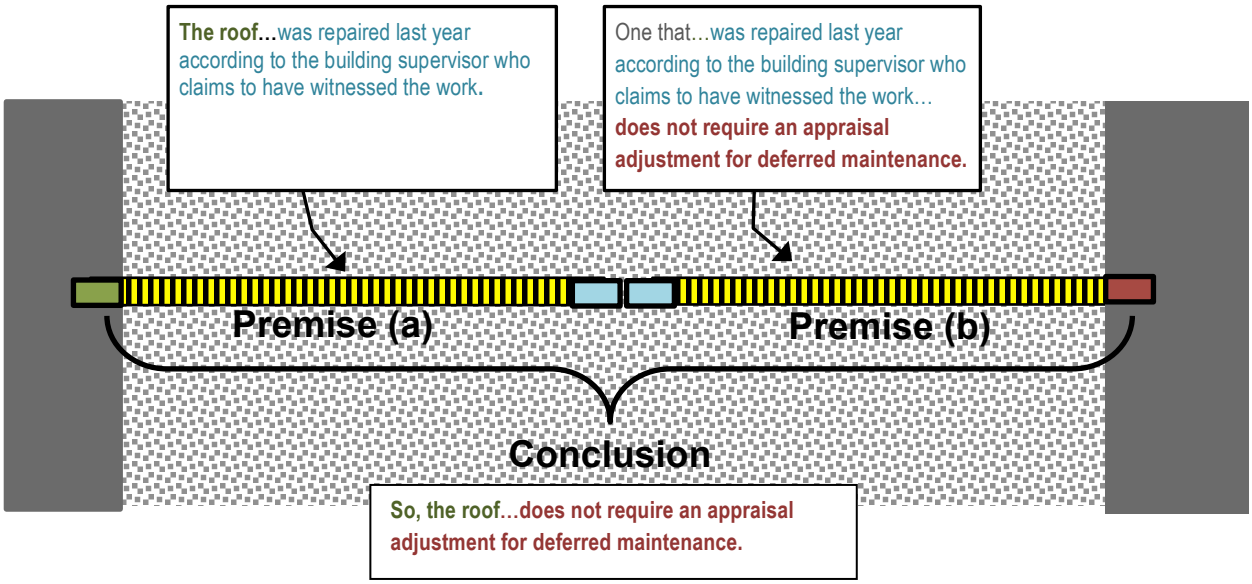

Figure 2 aerial view.

For example, consider the following single line of reasoning and conclusion as depicted in Figure 2 above as an aerial view of the yellow span argument bridge:

Reason 1:

Premise (a): **The roof** was repaired last year according to the building supervisor who claims to have witnessed the work.
Premise (b): One that was repaired last year according to the building supervisor who claims to have witnessed the work **does not require an appraisal adjustment for deferred maintenance.**

Conclusion: *Therefore,* **the roof does not require an appraisal adjustment for deferred maintenance.**

There are a number of ways to make this argument bridge stronger in anticipation of the Wicked Witch's (i.e., opposing counsel's) assaults. The first design feature is to make it wider with more parallel spans. This translates into constructing multiple lines of reasoning that all align and join together to form the same conclusion.

[4] An argument that anticipates objections in advance and answers them before actually being raised is called a proleptic argument. This rhetorical device is very helpful in court appraisals.

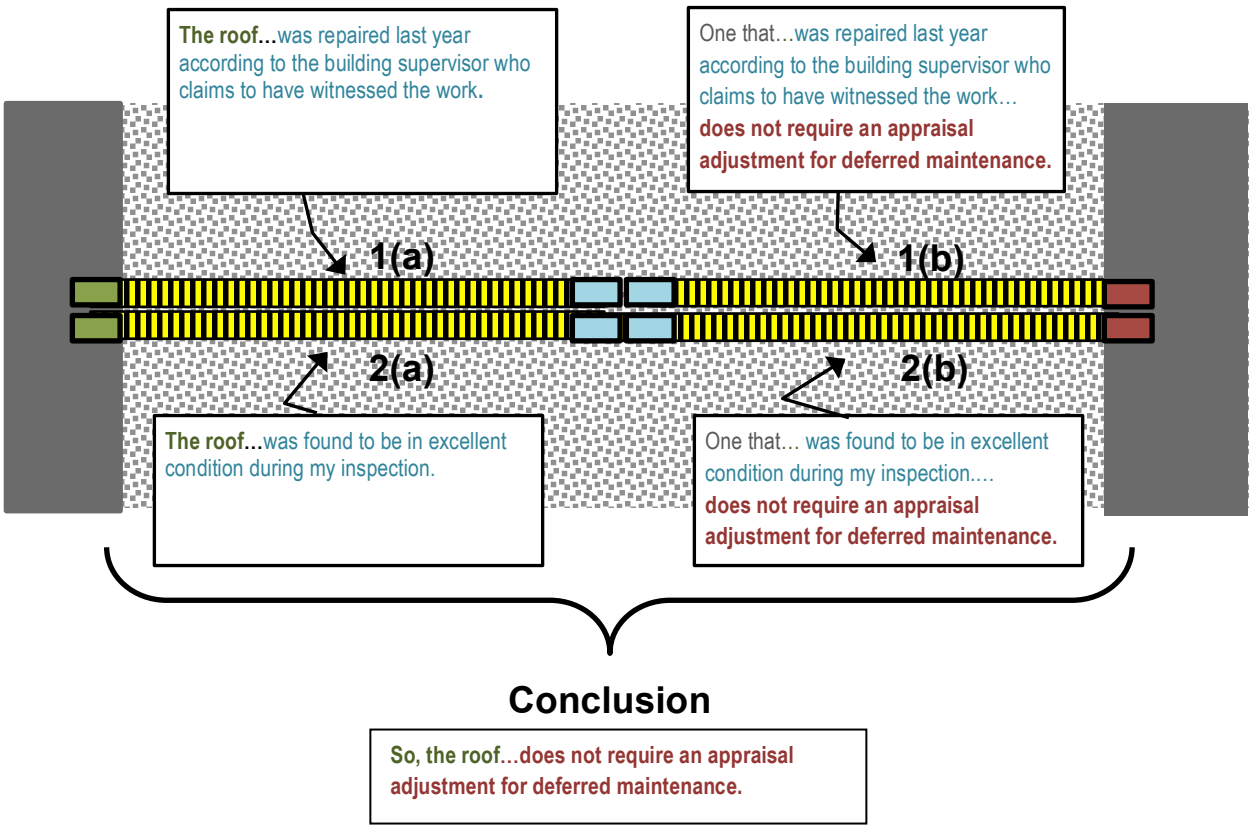

Figure 3 aerial view.

Reason 1:

Premise 1(a): **The roof** was repaired last year according to the building supervisor who claims to have witnessed the work.

Premise 1(b): One that was repaired last year according to the building supervisor who claims to have witnessed the work **does not require an appraisal adjustment for deferred maintenance.**

Reason 2:

Premise 2(a): **The roof** was found to be in excellent condition during my inspection.

Premise 2(b): One that was found to be in excellent condition during my inspection **does not require an appraisal adjustment for deferred maintenance.**

Conclusion: *Therefore,* **the roof does not require an appraisal adjustment for deferred maintenance.**

Another argument design feature is to make the length of the spans within a single line of reasoning shorter so that each span is stronger as depicted in Figure 4.

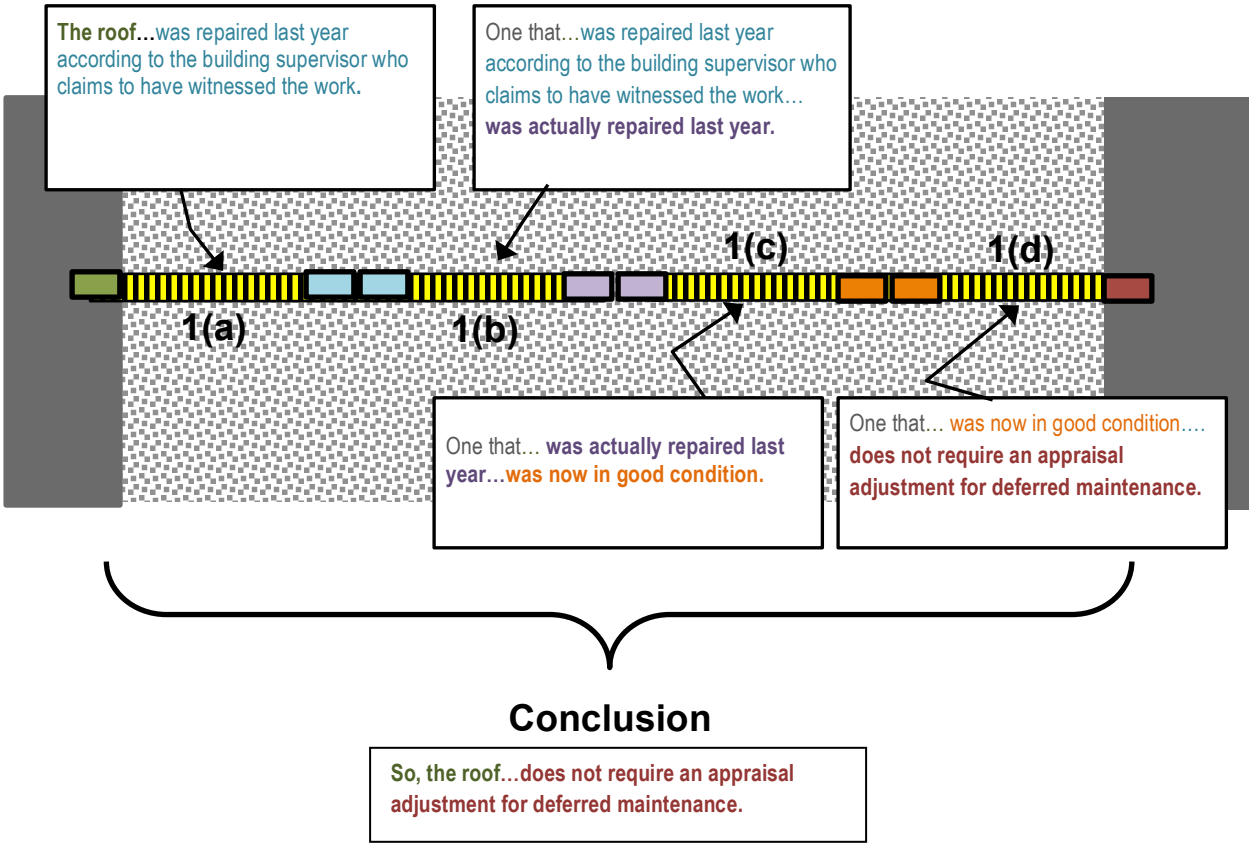

Figure 4 aerial view.

Reason 1:

Premise (a): **The roof** was repaired last year according to the building supervisor who claims to have witnessed the work.
Premise (b): One that was repaired last year according to the building supervisor who claims to have witnessed the work was actually repaired last year.
Premise (c): *One that* was actually repaired last year **was now in good condition.**
Premise (d): *One that* **was now in good condition does not require an appraisal adjustment for deferred maintenance..**

Conclusion: *Therefore,* **the roof does not require an appraisal adjustment for deferred maintenance.**

An argument bridge can also be made stronger by describing explicitly for the judge the other type of existing bridge component. For example, an argument bridge consists of more that spans trusses (i.e., premises). Like a cantilever span bridge, it also consists of foundation piers (i.e., supporting assumptions) underneath each of the span trusses (i.e., premises). (See Figure 5 lateral view.)

Figure 5.

A sample of supporting assumptions is depicted in Figure 6 (lateral view) below.

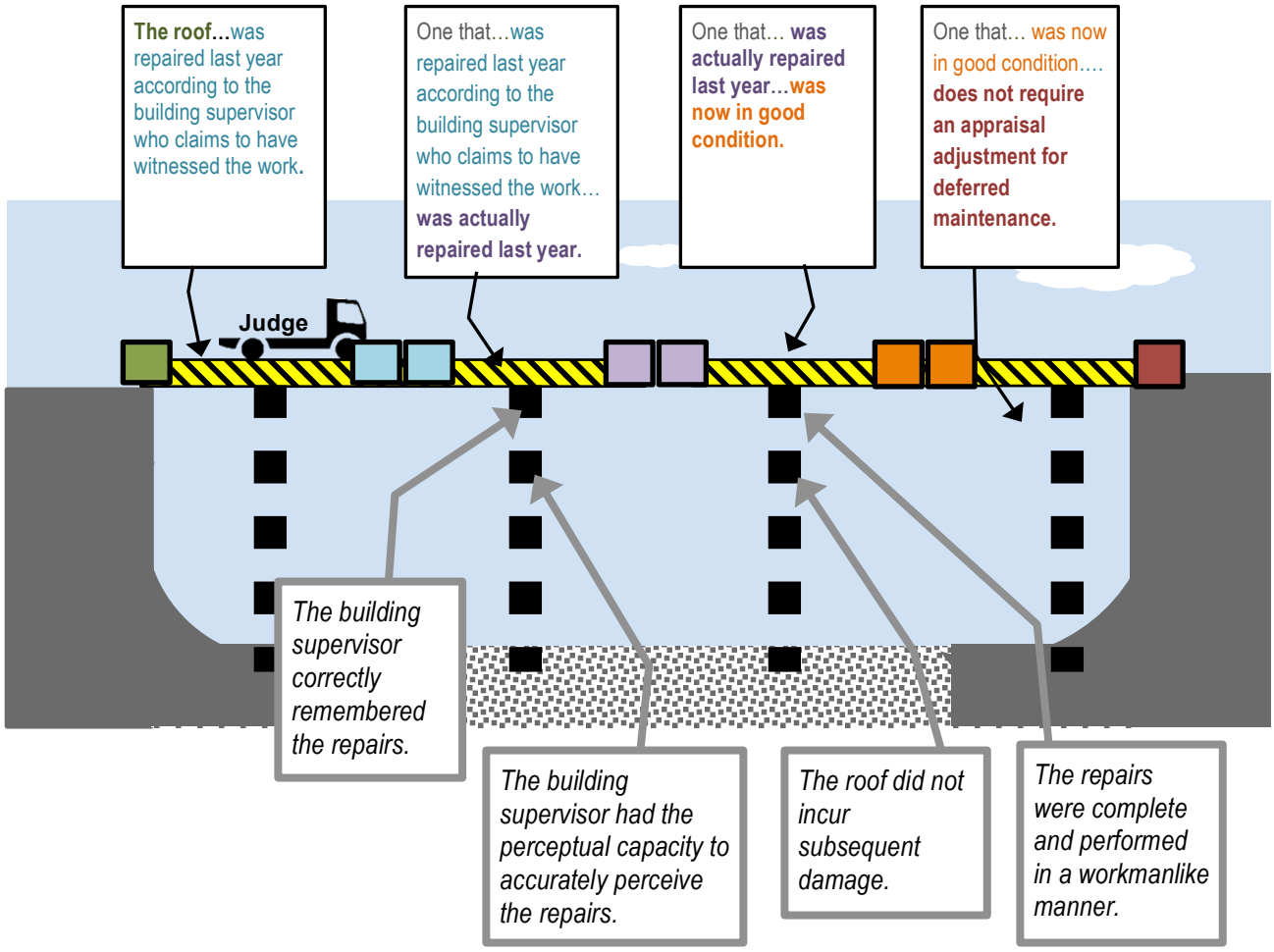

Figure 6 lateral view.

For ease in developing the design of your arguments you can use a simple DCIT logic template. (See Figure 7.)

TRANSITIVELY LINKED INFERENTIAL PREMISES				*Supporting Assumptions* to inferential premises
1		**The roof…**	…was repaired last year according to the building supervisor who claims to have witnessed the work.	1 (a) ?? (b) ??
2	One that…	…was repaired last year according to the building supervisor who claims to have witnessed the work.	...was actually repaired last year.	2 **(a)** The supervisor correctly remembered the repairs (b) The building supervisor had the perceptual capacity to accurately perceive the repairs. (c) ??
3	One that…	...was actually repaired last year...	...was now in good condition.	3 **(a)** The repairs were complete and performed in a workmanlike manner. (b The roof did not incur subsequent damage. (c) ??
4	One that…	…was now in good condition…	**...does not require an appraisal adjustment for deferred maintenance.**	4 (a) ?? (b) ??
CONCLUSION				DCIT logic template
Therefore,…		**The roof…**	**...does not require an appraisal adjustment for deferred maintenance.**	

Figure 7.

There is a simple pattern to be followed when using this Figure 7 argument design DCIT template. But understanding this pattern first requires a short memory trip back to your 3rd Grade Elementary School class on grammar discussing the *subject* and *predicate* of a sentence. Or you can just recall the *Schoolhouse Rock* television series of animated shorts with "*The Tale of Mr. Morton*." The relevant lyrics are as follows:

> *"Mister Morton is the subject of the sentence, and what the predicate says, he does. The subject is a noun, that's a person, place or thing. It's who or what the sentence is about. And the predicate [starts with] the verb. That's the action word that gets the subject up and out."*

That's it. You have to be able to remember the difference between the *subject* of a sentence and its *predicate*. I know it's a long time ago. And you probably hated grammar like I did. But if you want to be an engineer who can design fail-safe logical arguments, it's worth the time and effort.

What is revealed from this argument template example is the fact that each premise within the line of reasoning is linked back-to-front in a definite order. The *predicate* of one premise becomes the *subject* of the next premise. And the *subject* and *predicate* of the conclusion are found at the beginning and the end of the line of reasoning (see **bold** highlighting within the template). The supporting assumptions are determined through one's expertise, imagination, and understanding of how the world typically functions. And through the principle of transitivity (i.e., A=B, B=C, therefore, A=C) the conclusion follows inferentially from the premises.[5]

This template can be helpful in ensuring that all the necessary pieces of your argument are present. For example, let's look at an expert witness's failed appraisal argument that he claimed supported adjustments that he made in his comparable sales approach in a property valuation appeal to determine market value. *Chesterfield Assoc. v. Edison Township*, 13 N.J. Tax 195 (1993). In this trial, the taxable subject properties were residential townhouses. The comparable sales were 95 townhouses for which both the appraiser for the taxpayer and the county stipulated to the sales prices. In their court submitted appraisals, both appraisers then made adjustments to these sales prices to reflect the differences they perceived between the subject properties and the sales comparables.

As described by the court in its decision, the first adjustment at issue was for the alleged differences in physical condition between the subject property townhouses and the comparable sales.

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[5] While sounding complex, the DCIT form is actually simple: To fit any line of logical inference within a DCIT structure, four steps are followed (this explanation is when the students usually want to start running from the classroom…patience please):

a) The Subject of the first premise must be the same as the Subject of the main conclusion.
b) The Predicate of the last premise in the transitive string of premises must be the same as the Predicate of the main conclusion.
c) The remaining Predicates of each premise must be the Subject of the following premise prefaced by a universal quantifier (e.g., One who…, One that…; Any such who…, Any such that…) creating a transitively-linked chain of inferential premises in this distinct order.
d) For each transitively linked premise, any associated non-linking assumptions that provide some degree of support, necessary or ancillary, are appropriately added.

> "The first adjustment, suggested by plaintiff's [taxpayer's] expert to the stipulated values, was to account for the difference in physical condition of the 95 townhouses [subject properties] as compared to the sale properties that formed the basis for the parties' stipulated values by the sales comparison approach. According to plaintiff's expert, the stipulated values should be reduced by 10% *to reflect the fact* that the subject [property] townhouses were occupied by tenants rather than by owners."

Chesterfield Assoc. v. Edison Township, 13 N.J. Tax 195 (1993)

From the court's description, it is apparent that the taxpayer's appraiser made an argument.[6] The signal words "*to reflect the fact that*" in the decision alerts the court that what follows in the sentence is a reason to that supports a conclusion. So the following is taxpayer's appraiser's argument, more clearly divided into its conclusion and reason, for this first adjustment for alleged differences in physical condition:

Conclusion: The comparable sales need a reduction of 10% to their sales prices for the comparable sales approach.

Reason: The subject property townhouses were occupied by tenants rather than owners.

The court recognizes in its decision that this argument is really only an argument fragment. However, even after attempting to complete the construction of the expert's argument by speculating as to the missing premises, the court still finds it unpersuasive and rejects the 10% reduction.

> "Plaintiff asserts in its brief that the adjustment is appropriate "because a tenant tends to abuse property to a greater degree than an owner." There is nothing, however, in the stipulation of facts, the appraisal reports of plaintiff's expert, or the certification of plaintiff's expert that either explains the necessity for the 10% adjustment or provides a basis for the extent of the adjustment.
>
> Although this adjustment would appear to have a theoretical basis, it falls short of satisfying plaintiff's burden of proof. It would be reasonable to

[6] A simple *argument* equals a *reason* plus the *conclusion* that logically follows. A *conclusion* is a proposition that you want to court to accept. And a *reason* equals the *premises* or statements that lead to that conclusion plus the *supporting assumptions* for each premise. (Don't worry—the following analysis of this decision will, hopefully help make this terminology of logical reasoning clearer.)

> assume that tenants might not exercise the same care and maintenance that owner-occupiers would. The incentives in each case are different. The assumption, however, must be supported by proof, in light of the fact that Edison (assessor) maintains that no adjustment need be made for alleged differences in physical condition.
>
> There are a number of reasons why plaintiff fails to sustain its burden of proof on this issue. First, there is nothing in the record to demonstrate that all of the 45 comparable sales utilized were not also affected by existing tenancies. Plaintiff's appraiser seems to be assuming that all of the comparable sales properties were not previously occupied by tenants, but there is nothing in the record to support this assumption. There is no evidence at all on this point. Absent proof in this regard, there is no factual basis for an adjustment.
>
> Second, there is nothing in the record that demonstrates that plaintiff's appraiser inspected each of the townhouses at issue (or any of the comparable sales properties, for that matter) to determine the actual condition of each. Therefore, any adjustment with regard to these units is pure speculation.
>
> Moreover, there is nothing in the record to support the use of an average adjustment as employed by plaintiff's expert. It assumes that the condition of each of the subject townhouses is the same. Absent proof in this regard, that assumption is simply not credible. Lastly, there is nothing in the record to support the extent of the adjustment. Even if an adjustment for condition was appropriate, there is absolutely no basis upon which to determine the appropriate amount or percentage on the evidence submitted. The 10% adjustment for physical condition is, therefore, rejected."

Chesterfield Assoc. v. Edison Township, 13 N.J. Tax 195 (1993)

If the appraiser had used instead the argument DCIT template, his line of reasoning might have appeared similar to Figure 8.

TRANSITIVELY LINKED INFERENTIAL PREMISES				*Supporting Assumptions*
1	**The comparable sales**…	…were owner- occupied.	1	
2	Ones that… …were owner-occupied	…were better maintained than tenant-occupied property.	2	**(a)** A tenant tends to abuse property to a greater degree than an owner.
3	Ones that… …were better maintained than tenant-occupied property…	…were better maintained than the subject property	3	**(a)** The subject property townhouses were occupied by tenants rather than owners.
4	Ones that… …were better maintained than the subject property…	… need a reduction to their sales prices for the comparable sales approach…	4	
5	Ones that… … need a reduction to their sales prices for the comparable sales approach…	**… need a reduction of 10% to their sales prices for the comparable sales approach.**	5	
CONCLUSION				DCIT logic template
Therefore,	**The comparable sales**…	**… need a reduction of 10% to their sales prices for the comparable sales approach.**		

Figure 8.

Instead, the appraiser's explicit argument resembled Figure 9.

TRANSITIVELY LINKED INFERENTIAL PREMISES				*Supporting Assumptions* to inferential premises
1			1	
2	One that…		2	
3	One that…		3	**(a)** The subject property townhouses were occupied by tenants rather than owners.
4	One that…			
5	One that…		4	
CONCLUSION				DCIT logic template
Therefore	**The comparable sales**…	**… need a reduction of 10% to their sales prices for the comparable sales approach.**		

Figure 9.

Even if the appraiser had used the DCIT template as shown in Figure 8, Premise 5 appears to be, as noted by the court, a very weak premise. So the entire line of reasoning must be at least as weak. (A line of reasoning, like a bridge, is only as strong as its weakest structural component.)

Even the strongest argument bridge, however, may be useless. For example, a bridge to "nowhere" won't assist the court. The line of reasoning must be relevant to the ultimate issue of market value of the subject property. One technique to check for relevancy is to continually ask yourself, "*So what?*" It is certainly a question that the court asks itself. If the linkage between your reasoning and the ultimate issue of market value is not obvious, find out why not. The judge only has so much attention energy to expend. Don't exhaust that resource by asking the court to travel to "nowhere" and, worse, find him or herself lost.

Your argument may also be useless, regardless of strength, if the court doesn't see the turn off to an argument bridge. In a trial, the traffic can get heavy and congested making it difficult for the court to follow your directions. One technique to avoid this problem is to alert the court upfront to the five to seven most salient lines of reasoning in an Executive Summary at the beginning of the appraisal report. By alerting the judge ahead of time, the judge can be looking out for your most important arguments. Another technique is to use argument signal words in your narrative. Words such as "*since, because, and due to*" are helpful cues to the court to know where to find your reasoning; and, word such as "*consequently, thus, and therefore*," help the court locate your conclusions.

Argument strength may also be useless if the court does not understand it. Remember that the judge is likely not an expert in property appraisal. For this reason, making your reasoning and explanations easily understandable for a nonexpert is crucial. This begins with providing definitions when necessary for appraisal terms of art. Providing familiar concrete examples is also helpful. And chunking your analysis into manageable bite-sizes helps permit the judge to stay on course.

There is one weakness that is, however, often nearly insurmountable—the lack of a sufficient disposition toward critical thinking by the appraiser. Like corrosion spreading throughout a bridge, it eats away at the possibilities for a sound expert opinion of real market value. The positive personal attributes are easy to describe:

> "The ideal critical thinker is
> habitually inquisitive,
> well informed,
> trustful of reason,
> open-minded,
> flexible,
> fair-minded in evaluation,
> honest in facing personal biases,
> prudent in making judgments,
> willing to reconsider,
> clear about issues, orderly in complex matters,
> diligent in seeking relevant information,
> reasonable in the selection of criteria,
> focused in inquiry, and,
> persistent in seeking results which are as precise as the subject and the circumstances of inquiry permit."

Facione, Peter (2013) *Critical Thinking: What it is and Why it Counts.* The California Academic Press, Millbrae, CA
http://www.insightassessment.com/content/download/1176/7580/file/What%26why2013.pdf

But the lack of these dispositions is very difficult to uncover within oneself. There are, however, a few clues. The patina of a sense of *certitude*, especially in the early phases of appraisal investigation, is one telltale sign. Remember Oliver Wendell Holmes' description, "Certitude is not a test of certainty. We have been cocksure of many things that were not so." One antidote is to increase your tolerance for carrying a sense of *doubt* throughout your appraisal investigation and analysis.

Another clue is a lack of willingness or ability to clearly and rigorously articulate and acknowledge the weaknesses in your appraisal and the strengths of the opposing party's report. Remember that every appraisal assignment presents challenges. For example, the market sales may be less than adequately comparable, thus requiring extensive adjustments. Or the facts may be truly inconsistent or insufficient to draw highly probable conclusions. A true expert knows and respects the limits of knowledge known and the challenges in assessing its likelihood of truth.

One final clue is the lack of a sufficiently exhaustive and rigorous search, within the limits of available resources, for disconfirming information. Disconfirming

information is important because it only takes one fact to collapse your argument bridge. By contrast, often the search for finding confirming information is easy. In fact, we are neurologically structured to find it. Our reasoning processing swims across the currents of *confirmation bias and satisficing* tendencies. *Confirmation bias* is our natural tendency to seek and accept information that affirms our preexisting beliefs and to avoid and reject information that contradicts our beliefs. And *satisficing* is our natural tendency in our decision making processes to accept the first reasonable option or answer that appears before us rather than accepting the hassles, discomfort, and expenditure of sufficient time and energy needed to find an optimal option or answer.

There are two possible protective measures to help seal out such corrosion. The first is to postpone as long as possible in the appraisal process reaching any firm opinions or conclusions. Without a firm opinion or conclusion, there is nothing for the confirmation bias tendency with which to attach. The other protective coating is nurturing a healthy curiosity about seeking the best information and the optimal answer. Such curiosity is a helpful motivation to keep going when fatigue sets in during the long drive for information and the "very greasy spoon" diner starts looking "good enough."

In conclusion, remember how different is the culture and rules in the Land of Oz (i.e., courtroom). There really are witches and flying monkeys who want to make the court believe that you lack integrity and credibility. And, unfortunately, since the judge is likely not an appraisal expert, the court may find it necessary to consider factors that do not correlate well with appraisal expertise, such as, composure under cross-examination, presenting complex matters in an easily comprehended manner, professional organization office holding, and a self-confident manner that stridently asserts one's opinion and avoids an acknowledgement of the complexity, nuance, and grey areas that surround the appraisal process.

Appendix 1

MODEL APPRAISAL CHECKLIST – THE 5 C's OF PERSUASION

CREDIBILITY – Personal (honest, forthright, competent, confident)

-- Factual (accurate, complete)

CREDIBILITY A: All significant weaknesses and problems in the appraisal should be admitted and explained.

CREDIBILITY B: Do not make unsupportable claims (no hedging or overreaching). If a claim is speculation, say so. No claims are made that are not actually supported by some evidence or analysis.

CREDIBILITY C: All calculations are correct (proofed by someone else).

CREDIBILITY D: All similar calculations use the same factors and method (consistency).

CREDIBILITY E: All factual and historical information should be correctly copied or transcribed (e.g., roll values, book costs and net book values, dimensions and square footages, etc.).

CREDIBILITY F: Follow the standard elements of generally accepted appraisal authority and all statutory requirements including administrative rules.

CREDIBILITY G: Don't limit consideration of an issue (i.e., external obsolescence) just because the taxpayer ignores it, or fails to provide sufficient information. The report should be like a fee appraisal helping a purchaser decide what to pay.

CREDIBILITY H: Explain why your version of the facts is entitled to more weight than the taxpayer's version of the facts.

CREDIBILITY I: Answer any anticipated complaints or criticisms of the taxpayer.

CREDIBILITY J: All documents relied upon should be bates stamped and exchanged if required by the court rules.

CREDIBILITY K: Don't exclude any relevant information without explanation.

CREDIBILITY L: Essential facts should be supported by multiple sources, if possible, and confirmed in writing.

CLARITY – Precisely controlled meaning, organized, focused

CLARITY A: Use concrete, sensory specific descriptions (what you see, hear, touch, smell), not just adjectives which are conclusions. Ask "How do I know this adjective is true?" and "Why is it important?"

CLARITY B: Included an executive summary at the start of the report which 1) explains the organizational framework to the report, 2) focuses the reader on the key issues and areas of disagreement, and 3) describes what made the appraisal easy or hard. It is the guide map that prepares the reader ahead of time so the reader can anticipate and relax and knows what is important and where to focus attention. Provide a similar oral outline at the beginning of your testimony.

CLARITY C: In the report, included headings and subheadings to guide the reader. In testimony, provide guideposts (e.g., "Now we're going to discuss the cost approach.").

CLARITY D: There is a logical order to the information given.

CLARITY E: Include proper transitions between topics and ideas.

CLARITY F: Information is not misplaced under the wrong heading or in an inappropriate portion of your testimony.

CLARITY G: Anticipate questions that would naturally arise, in your report or in testimony and answer them right at that point.

CLARITY H: Maintain the focus of your writing on the key issues and what will best explain. Remember, the mind can only attend to a limited number of details.

CLARITY I: Try to keep explanations and discussions simple. Being obtuse is not persuasive. Clear writing is based on clear thinking.

CLARITY J: Fully explain all charts, graphs, photos and field notes

CLARITY K: Prepare illustrative exhibits that support the report for use at trial (i.e., large photos or charts).

CLARITY L: Extraneous material should be excluded from the body of the report, minimized or placed in addendum. Avoid long boilerplate definitions. Write as if the reader has a limited attention span. Similarly, in testimony, avoid overemphasis of peripheral point – follow the 80/20 rule.

CONGRUENCY – Harmony and fit between facts and conclusions

CONGRUENCY A: Make the logical relationship between facts and conclusions clear. Don't hint at the reason for your conclusion (i.e., "based on the forgoing facts I conclude. . ."). Rather, answer specifically why you conclude ("I conclude XYZ because . . . ").

CONGRUENCY B: All reasoning process is sound. Do not use statements such as "based on my experience" (rather, explain what was learned in that experience that would naturally lead one to the conclusion) or "it's the way we have always done it" (rather than why the method or approach used is appropriate and correct).

CONGRUENCY C: Any inconsistencies between some of the facts and a conclusion should be adequately explained

CONGRUENCY D: Explain why your reasoning process is entitled to more weight than the taxpayer's logic.

CONGRUENCY E: All reasoning processes should be proofed by another appraiser.

CONGRUENCY F: Explain why your conclusions should be entitled to more weight than other conclusion that might also reasonably be drawn. All conclusions should also be reviewed and proofed.

CONGRUENCY G: Address any known beliefs and biases of reader (i.e., if the court generally gives substantial weight to a sale of the subject, or the used equipment approach, explain why you did not do that in this instance.)

CONTEXT – Litigation is adversarial.

CONTEXT A: The report should be fully self-explanatory and complete. No testimony should be required. Similarly, your testimony should tell the complete story, although supported in detail by the report and exhibits.

CONTEXT B: No important information in the addendum (and no unimportant information in the body).

CONTEXT C: The report should be coil-bound or in a binder with section tabs and full pagination. Avoid starting pagination over at the addendum.

CONTEXT D: Charts, photos, spreadsheets should be placed in main body of the report where relevant so the court does not have to flip back and forth.

CONTEXT E: Keep some reasonable proportion between the length and complexity of a discussion and its importance to persuading the judge. For example, don't discuss your reasoning for the amount of physical depreciation you selected in two sentences and then talk about the definition of real market value for two pages (or twenty minutes of testimony).

CONTEXT F: Discuss the strengths and weaknesses of each indicator in its individual section rather than waiting until the reconciliation section where the indicators are compared. The merits of the indicator is a naturally occurring question that needs to be answered right then.

CONTEXT G: Discusses the relevant market environment in which subject property exists (i.e., economic climate, industry wide analysis, market cycle).

CONTEXT H: Remember the context of valuation litigation is that a factfinder will be comparing two different reports to decide which report is the most persuasive. Being "right" is not enough.

CONTEXT I: In the appraisal process and in the construction of the appraisal report, prepare for the fact that each point will be subject to scrutiny and attack by the opposition. Accordingly, you should reinforce and support critical points as necessary.

COMMON SENSE A: Keep an eye out for red flags of reality that are inconsistent with your conclusions. If it doesn't seem to make sense, then perhaps it really doesn't make sense.

COMMON SENSE B: Remember that an expert opinion of market value is based on assessing the hypothetical reasonable actions of market participants, not academic theories that lack a strong correlation with market activity.

COMMON SENSE C: Sometimes asking yourself what you would recommend to a friend how much to pay for the property helps.

Appendix 2

Sample Exercise

Reconstruct the appraiser's argument into a sounder line of reasoning.

SECOND ADJUSTMENT IN *CHESTERFIELD*

The second adjustment which plaintiff's expert deemed appropriate was a 15% reduction in the stipulated sales comparison approach values to account for the occupancy of the townhouses by tenants. Plaintiff's expert did not explain the basis for this adjustment other than to state that "[t]he sales were adjusted downward because the subject units were occupied by tenants on the date of valuation."

Plaintiff, in its brief, expresses the view that the 15% adjustment was made by plaintiff's appraiser because "the mere fact that a unit was occupied by a tenant would create some reluctance on the part of the prospective buyer which would have an impact on the sales price."

The taxing district maintains that no adjustment should be permitted for tenant occupancy in this case. I am in agreement with the position of the taxing district. To begin with, as previously noted, plaintiff's appraiser, in making this adjustment, is assuming that none of the comparable sales properties was occupied by tenants at the time of the sales. There is no evidence in the record to support this assumption. Therefore, any adjustment in this regard is pure conjecture and speculation.

Second, plaintiff's expert has not specified any statutory or regulatory provision in his appraisal reports or certification that would govern tenant occupancy or eviction with regard to any of the townhouses. Apparently, the adjustment is based on the unsupported assumption that the existing tenancies would affect market value.

Plaintiff seeks to support its expert's adjustment through its legal memorandum. Plaintiff argues that it is not clear whether the tenants of the townhouses in this proceeding would be entitled to a two-month notice for possession at the termination of the existing leases pursuant to N.J.S.A. 2A:18-61.1(l) and--61.2(f) [FN2], or a minimum three-year notice for possession pursuant to N.J.S.A. 2A:18-61.1(k) and -61.2(g). The latter statutory provisions of the anti-eviction law apply when an owner seeks to convert a building from the rental market to condominium or cooperative status. Inasmuch as the 95 townhouses in issue were approved and constructed as individual single-family dwellings, plaintiff does not seriously contend that the minimum three-year notice provision applies in this case, but rather asserts that the tenants might claim protection under this provision and seek extended tenancies from the

court. See G.D. Management Co. v. Negri, 182 N.J. Super. 409, 413, 442 A.2d 611 (App.Div.1982) (three-year notice only applies to pre-conversion tenants).

FN2 N.J.S.A. 2A:18-61.2(f) provides for two-months notice in cases where N.J.S.A. 2A:18-61.1(l) is used to evict tenants. N.J.S.A. 2A:18-61.1(l)(1) and (l)(2) allow for eviction with two-months notice after the owner has contracted to sell the unit to a buyer who wants to personally occupy it. See, e.g., Veltri v. Norwood, 195 N.J .Super. 406, 479 A.2d 931 (App.Div.1984).

Despite this notice requirement, the appraiser's adjustment is still not warranted. Considering the time to market the property, execute the contract and close title, two-months time should have no impact on market price. In any event, there is no evidence in the present record that shows that a two-month notice period affects market price or value.

There simply is no market evidence in the record that demonstrates that tenant occupancy has any effect on the price that a prospective purchaser would pay for one of the subject townhouses.

I find that there is no factual basis for the second adjustment made by plaintiff's expert. The alleged support is all supposition and speculation. There is nothing in the record to justify an adjustment for tenant occupancy much less one of the magnitude of 15%."

