

LAW SEMINARS INTERNATIONAL
Successful Permitting Strategies

BUILDING AND MANAGING THE TEAM

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In more than 20 years of land use planning in Oregon, the most dramatic change in the way land use applications are handled is in the number of people required to meet approval criteria. The days where a land use practitioner could put together the entire case all alone are fading fast. Today, you are more a director of a high-budget action thriller than a bard in a one-person play. These days, it takes a village (not just the village idiot) to overcome the burden of showing compliance with approval criteria. The permitting process is complicated, the decision-makers and opponents have gotten more sophisticated and the need for a team of experts in order to achieve success is almost a foregone conclusion.

I. HISTORICAL PERSPECTIVE

In the mid 1970's as comprehensive planning was being developed and zoning laws were in their infancy, property owners did everything themselves. There were no planning consultants, or land use lawyers for that matter! None were needed. Property owners would go to the building department, which still predominated over planning departments, and all would be handled.

As we approached the late 1970's and comprehensive plans and zone codes were being adopted and reviewed for acknowledgment by LCDC, the new regulations and complex provisions were such that realtors became the "go between" for property owners. Realtors were self interested as most development projects in those days involved some sort of sale or marketing activity - so out of necessity and self protection of their commissions the realtor became the land use advocate. After all the realtor was the one person in the community that knew about the land!

As a Marion County Land Use Hearings Officer from 1980 through 1982, I handled hundreds of hearings and reviewed that many more administrative decisions. During that entire time I encountered only three attorneys, two of which had several different cases. Lawyers were involved in a total of probably less than 10 cases. Of the remaining cases, realtors handled about half and property owners themselves handled the other half. Aside from an occasional surveyor, an insurance agent and one engineer, all cases involved a sheet or two of written material, a map or two and the testimony of the realtor and the property owner. Even in contested cases, the arguments were always between the lay neighbors - and never a battle of the touts.

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Although the law continued to become more complex and involved in the 1980's with the advent of LUBA, more LCDC opinions and new legislation every two years, the presentation style of cases didn't change all that much until the early 1990's. Part of the reason for this is the economy of the period - which was dismal and little development activity took place. This period did see the advent of land use planning consultants. For years the entire Salem/Marion County/Polk County area had only one independent planner!

The team approach was never considered economically feasible, nor warranted by the results that might be obtained from using a team of experts rather than taking the "risk" of denial based on material put together by the applicant and one representative (realtor, planner or attorney - but never all 3). The one exception of an early² team involved the siting of the waste to energy facility (garbage burner) in Brooks, Oregon. In that case I put together a "team" that consisted of a land use planner, an engineer, an architect and myself as the land use attorney. I can think of no other case in the mid-Willamette valley that utilized a team approach during this period.

Enter the 1990's, with the wide spread use of computers, CAD systems, and the internet, not to mention increased pollution, degradation of our environment, fax machines, cellular telephones, El Nino, La Nina, 7,000, 8,000, 9,000 and 10,000 Dow Jones numbers, economic expansion, unparalleled development, traffic gridlock and of course the Macerana.

Our land use system kept up with all this by changing and adding new levels of inquiry every two years; new tests and determination interpretations every month, and new demands on substantial evidence requirements seemingly every day. The number of approval criteria has skyrocketed. The amount of technical information necessary to meet that criteria has escalated to the point where almost every case required a team of experts to deal with the application.

Twenty years ago I could handle any type of land use case out of one manila file folder. Today even the simplest of cases take an entire 3"-5" redweld file jacket, and any case of significance will occupy at least one complete file drawer and sometimes two or three file drawers. Cases that I used to handle by myself now involve experts in the fields of traffic, groundwater, air, wetlands, geology, noise, archaeology, biology, soils, forestry, agriculture, economics and surveying.

This presentation is intended to delve into the team concept - to work through when to assemble the team, how to choose and employ the team members and how to get the most out of the team during the presentation of the case.³

II. ANALYSIS OF THE PROJECT

The first step a land use practitioner must take in any land use application is to assess the project. That is to say you must scope the work, develop a plan and determine means to carry out

²*Circa 1984.*

³*We are assuming that the reader has a basic understanding of the Oregon land use laws, and therefore do not spend significant time in basic explanation of the permitting or approval process.*

that plan in such a way as to achieve the ultimate goal.⁴

A. Introduction.

The initial case assessment involves a consideration of a number of traditional "factors". These factors are locational, historical, developmental, and future considerations, environmental, financial and miscellaneous issues. As these factors are considered, the needs of the team begin to emerge.

Locational factors determine the controlling jurisdiction(s) and zoning that will be involved in your case. Personalities and code provisions need to be assessed in order to determine who needs to be on the team. Historical factors determine whether the parcel is legal and whether there are grandfather rights, vested interests, encroachments or buried conditions present. To the extent the practitioner is unable to deal with such information or research, team needs are identified. Developmental factors such as the zone code, comprehensive plan and subdivision and partitioning ordinance requirements and restrictions, street access standards, sign codes, and whether there are private restrictions on use and development must be reviewed.

Future factors involve issues such as whether the property is capable of being divided, whether a zone change and/or comprehensive plan amendment is necessary to accommodate expansion and whether there are long range planning changes proposed in the area. Environmental factors, must be looked at, such as hazardous waste, wetlands, groundwater, underground storage tanks, and asbestos are often key considerations. In almost every case where these issues appear experts will need to be obtained and join the team.

Financial factors, such as late comers fees, street assessments and systems development charges, should be considered, and the need for expert help assessed. There are also a variety of miscellaneous factors at work, such as urban /rural considerations, case law interpretations and local interpretations and policies. Together, these land use factors help determine the scope of the project, the approval criteria and what types of experts will be needed for the team.

⁴*For purposes of these materials, we assume that the practitioner is representing an applicant for a quasi-judicial land use approval. However, with few exceptions, the concepts discussed here regarding assembling and managing a land use team apply equally to the practitioner who is mounting a challenge to an application.*

B. Do You Need a Team at all?

After the scope of the project comes into focus, you need to ask whether you even need a team.⁵ Although becoming more rare, not every land use project requires a team. The following factors help determine whether you need a team:

1. Complexity of the Case. Some land use projects are relatively simple. For example, a replacement dwelling in an exclusive farm use (EFU) zone entails only a handful of fairly objective review criteria and is processed, at least initially, as an administrative (no public hearing) type decision. On the other hand, siting a large industrial park in the EFU zone adjacent to an urban growth boundary requires many interrelated applications, such as an amendment to the urban growth boundary, a comprehensive plan amendment, a zone change, annexation and site plan requests. Such a project requires a series of public hearings before multiple jurisdictions. In addition to the local land use regulations, the Statewide Planning Goals need to be addressed and state agencies, such as ODOT and DLCD, will be involved. The more complex the case, the more likely a team approach is required to address the multiple dimensions of the approval criteria.

2. Extent of the Approval Criteria. The land use regulations of a jurisdiction include the comprehensive plan, a zone code, a subdivision and partitioning ordinance, and a set of background and inventory reports and master plans. Some applications, for example, those requiring comprehensive plan amendments also include the Statewide Planning Goals as approval criteria. The approval criteria will, to a large extent, determine the complexity of issues and therefore the need to assemble a team to cover them. For example, the approval criteria should tell you whether a traffic impact analysis is required. If so, you will know you need a traffic engineer for your team. Many jurisdictions have unwritten policies regarding what is required. A pre-application conference with planning staff is recommended to help you define the scope of the approval criteria.

3. Financial Considerations. A team of experts is expensive and every project has a "bottom line". The amount of money to be spent to obtain the land use approval is often limited, especially in cases where the approval is uncertain and the risk is high. Even though the complexity and review criteria indicate a team approach is appropriate, money talks. When the you are dealing with limited resources, creativity sets in to make it happen. Knowing your budget is essential to determining if you can assemble a team, and if so what type of team can you put together.

4. Timing. The project timeline determines whether a team approach is necessary, or even available. If the schedule is tight, and the project complex, more people may be needed to address the issues. That is if the people are available at all. Caution must be exercised when presented with a case that needs some expert attention and you can not find any expert able to get a report together on such short notice. On the other hand, some moderately complex land use projects can be handled by a competent lone-wolf practitioner if given enough time.

Although the above factors, to a large extent, determine whether a team is needed, there is, in one sense, always a team in any land use case for which you are hired. The team is made up of

⁵*It should be noted that even two people (the property owner and the attorney) make a working team. This outline focuses on the broader notion of team involving bringing in of different experts in various fields to assist in putting on a quality land use presentation.*

you and the client. Some clients take very active roles in the process and some trust you to get the desired result. In any event, you should always keep your teammate(s) informed about the process and progress of their case. Between the starting gate and the finish line, there are many strategic decisions to be made. Unforeseen obstacles are part of the game and involving your client in the process is part of good teamwork.

III. ASSEMBLING THE TEAM

After defining the scope of the project and determining who needs to be acquired for the team, assembling the team is a process unto itself. There are a number of issues to consider in finding, choosing, and hiring team members.

A. Finding the Team Members.

It is critical to find the right mix of team members. The team must have the right stuff in terms of credentials and qualifications, availability, knowledge of the land use permitting process, and ability to play well with others. Good team members can be found, in order of preference, from the following sources:

1. Past Experience. Previous experience provides first-hand knowledge of someone's ability to deliver for the team. If someone has been on your team before, you know their qualifications, their ability to write, speak and deliver on time. You also know something about their personality and how they might react when questioned during a public hearing. Past experience is by far the best way to gauge a potential team member's ability to contribute to your current project.

2. Referrals/Word of Mouth. The next best way to find the right fit for your team is by referrals or word of mouth. Ask colleagues if they can recommend someone for your team. Referrals or word of mouth from other land use practitioners, or governmental planners who see the whole range of experts on a regular basis, generally provides a good resource for finding good team members.

3. Yellow Pages or Internet. Look in the yellow pages under the various categories (i.e., "architects" or "engineers") for the type of team member you are seeking. Likewise, search the internet for such information. A webpage would have more information about the qualifications of an individual consultant than the yellow pages. With no first hand experience or word of mouth, it is important to meet with and informally interview candidates prior to choosing or hiring them. Ask for and check references.

4. Licensing Boards. Some licensing boards have referral services (ie OSB). They also have valuable information regarding the qualifications of its members and any disciplinary matters that might in the experts file. A partial list of Oregon licensing boards for professional areas that seem to traditionally deal with land use regulations is attached hereto as Appendix 1 for ease in reference.

B. Choosing the Team.

Once you have determined your needs and have found the potential players for your team, you need a strategy for draft day. There are a number of considerations to employ in selecting your team. It is not a science, (Remember: La Rue Martin or Sam Bowie⁶) but the following items should be considered, and can lead to good picks:

1. Qualifications. The qualification concept has many components. A potential team member must have the credentials and technical expertise you are looking for. If you need a traffic engineer, that person should be currently registered as a professional traffic engineer, and hold all licenses and certificates necessary to issue an expert opinion on transportation issues. However, the qualification inquiry does not stop there. Experience is also a factor. Experience in a technical area is important, but so is experience in land use proceedings. Given a choice between two engineers, the engineer experienced in land use proceedings will be more capable of performing well on your team than one who has never graced the hallowed halls of a public hearing. The experienced person will know more about using the right buzzwords and directing their written and oral presentations to the land use audience. Writing and speaking skills are tremendously important in the land use context. Assess those skills to determine who should be on your team.

2. Cost. This is always a factor. Some projects simply require the best players, and they do not come cheap. While there is an element of direction a team leader can provide to an expert, I have not generally encountered the ability to "buy any opinion you want". More often, you are looking at ways to do less than the expert wants in order to fit your project budget.

3. Availability. The expert who you wanted as your first-round pick may have already been drafted by another team, be on vacation, be too busy, not like your project or any one of numerous other reasons for not being available to work on your team. It could be as simple as hours of work. Many public hearings are at night, and your expert may or not do night work, so would not be available to testify.

4. Location. Should you choose a local expert or hire an outsider? If you anticipate lots of face-to-face meetings, the local person will be the more workable choice. However, in the age of the virtual office, phones, faxes, e-mails, teleconferencing, etc., location is becoming a less important factor. A local expert may have a reputation or contacts that could help or hinder your cause. Be mindful of this in selection decisions.

5. Miscellaneous. In addition to those listed above, there are a variety of other factors that go into the team selection process. A candidate's personality and demeanor, consciously or unconsciously, factors into the equation. Sometimes political or special interests come into play. You might want to choose an expert that you know has a good rapport with the local council or board. You may want to hire an expert to play on a key decision-maker's pet issue.

Consider the support staff behind the candidate. Is there a large consulting firm backing up the consultant or does the consultant work out of his or her home? There may be times when a consultant's support staff makes the difference between choosing otherwise equal candidates. Size

⁶*Both are former first round draft picks of the Portland Trailblazers who did not produce significantly. Sam Bowie is a trivia question all to himself as he has the dubious distinction of being picked ahead of Michael Jordan. A testament to the importance of picking the right players for your team!*

matters, but bigger is not always better. No matter who you choose, a well thought out selection process should be used to help assure a good fit with your overall land use goal.

C. Special Provisions for Expert Employment Agreements.

Akin to pre-nuptial agreements, there are certain team relationship factors that should be formally addressed so expectations are aligned and goals achieved. It is always recommended that the parties enter into a comprehensive independent contractor agreement. This is not always the form agreement provided to you by the expert either, as certain anomalies are present in land use cases that are not covered in standard boiler plate form agreements. What follows are some areas that should be covered in any agreement:

1. Who are the Parties? Is the consultant hired by the attorney, or the developer, or the property owner? While discovery is not well developed in land use, if the attorney hires the expert it can be considered privileged and not be discoverable. If it is not the attorney who is the contracting party, make sure there is provision that assigns the attorney as agent for the contracting party so that as team leader you can control the actions of the expert and do not have to go through your client to get control of the expert.

2. Who pays the Bill? If the attorney hires the consultant, make sure the retainer is large enough to cover all billings, or you risk holding the bag. In addition, if your client is paying directly, make sure they do so. There is nothing that will sour an expert quicker to a project than not getting paid. You do not want to be in a position where your star witness either quits at the last minute or won't give you the report or testify because they have not been paid. A good contract will also specify how an expert is to be paid and when.

3. Scope of Work. In addition to the normal specification of the technical requirements of the project, the scope of work section should include any limitation that you might have either as to how much you are going to pay, or how far the project will go. Scope of work will traditionally specify if a written report is needed, and the format of the report. Whether testimony will be required should also be specified. Be careful in scoping work between experts to avoid duplication, as it is wasteful and sometimes can produce inconsistencies in data that could set up an evidentiary challenge during the hearing process or on appeal.

4. Setting Deadlines. Almost every land use case will have built in deadlines. Some self imposed, others imposed by statute or code provision. To the extent you are aware of the deadlines, put them in the contract. To the extent you do not know actual dates, put in provisions that require the expert to follow deadlines as you become aware of them. Deadlines are critical in filing initial applications in a timely manner, and in meeting 120 day timelines and especially in responding on short notice during 7 day open record periods. Experts need to understand the importance of deadlines in land use cases and be prepared to follow them.

5. Editing Material. It is very important to discuss with your expert your role in editing any material they may present. Some experts are "user friendly" and invite the team leader to redraft

or edit written materials so that it more directly aligns with the approval criteria.⁷ Others are very protective of their work, and will not allow any editing. You need to know this, and cover it in your contract if at all possible.

6. Confidentiality. Some experts do not have professional responsibilities or ethical guidelines to control their allegiance. It should be a standard part of any contract that requires strict confidentiality of the experts information and research, as well as the content of any team meetings or client contacts. Your experts need to be schooled in their obligation to maintain confidentiality, and reaffirm this in the contract itself. Similarly, many experts do not have conflict of interest rules to live by, so that one firm may be working on any number of different studies for all kinds of different private and public clients, some of which may overlap. Your contract should specify at a minimum that your expert will not go work for the other side at any time during your case.

7. Role of Subordinates. Experts come in many forms, from the large offices full of credentialed suits, to the flannel shirt working out of the bedroom of the house. Where a large office is used it is more than likely that several experts will work on your project. Be aware if this is happening and find out who all the subordinates are and what their role will be. If you order meat, you might luck out and get filet mignon, or you might end up with ground chuck. If you order the porterhouse, and get hamburger, you have a right to complain. Avoid the unknown by specifying who is to do what and write it into the contract.

8. Presentation Materials. Experts are generally worse than attorneys when it comes to generation of paperwork. Technical studies can be a most tedious read. Traffic studies and hydrology reports just by way of example may have several pages of text, a few cute maps and a chart or two, then 150 pages of tiny type computer generated numbers that look impressive but mean absolutely nothing to anyone but another expert in that field. Planning staffers aren't going to read it, decision makers aren't going to read it, in most cases the attorney and the client won't read it either! Require all expert reports to have an Executive Summary. A one or at the most two page summary of the assumptions, findings, conclusions and recommendations. Critical people in the process will take the time to read an Executive Summary. Require your expert to include an Executive Summary, and specify this in your contract from the outset.

If you have a preferred style of submission of your application or presentation materials, discuss that with your expert and put it in the contract. For example, I have adopted a 3 ring binder approach to presentation materials. I will gather all my supporting data in a 3 ring binder, tab each different report or memo or issue. I will include a table of contents at the beginning for ease in reference, and a synopsis of the qualifications of all my team members at the end. I then make up enough of these binders to give one to each staff member that is involved in the governmental review, and one for each decision maker. In some cases this might be 10 to 12 copies. Add in a couple for your client and for you and you can be making 15 copies. This can be a daunting task if you are given a spiral bound report with critical color coded charts, graphs or photos. Your staff has to take it apart, go to the local color copier store, back to the office and then copy it all and finally 3 hole punch it over the spiral holes that are already there. When you are on deadline this

⁷*Any editing done by the attorney should only go to semantics and presentation approach and never to the technical side of the experts materials. Aside from formatting or suggestions as to how to lay out data so that it is easier to understand and explain, the attorney should refrain from dabbling in the data itself.*

is an expensive and time consuming process that can easily be avoided by advance planning. Advise your expert in advance how many copies you will need of their materials and in what form you need them. It is much easier for the expert to produce the copies from the originals than it is for the team leader to do it from a copy. Put it in your agreement so everyone knows at the outset how the presentation materials are supposed to look upon conclusion.

If your expert is going to testify from a script that is not included in the actual report, I suggest you turn in that script as additional evidence. If this is to happen, put it in the contract.

9. Ownership of Work Product. Who owns the research and the rights to the material that is being purchased from the expert. I have encountered experts who routinely copyright their reports under their own name, and others who never copyright anything. While it must be remembered that any time you turn in a report to a local government, it essentially becomes a public record and can be reviewed, used or abused by anyone looking at it, it is still an important area to discuss with your expert and to place in a contract.

10. Representations. Your contract should specify that the expert represents that they have all requisite credentials and professional licenses to perform the assigned tasks. While this is not as important at the outset of a case, presuming that you have done your background check on the expert, it might become critical as the case moves forward. Where complex cases can take years, lots of things can happen. If one of your experts comes under fire six months into your case, you need to be sure your contract requires that expert to notify you. You certainly do not want to learn from your opposition in the middle of a hearing that your star expert witness just had their license revoked or suspended. You need to know that ahead of time so you can plan. Other traditional representations regarding good and quality workmanship are important as well.

D. Type of Experts that Traditionally are Used.

As previously discussed, who you need on the team will depend on the extent of the approval criteria and the "hot issues" of the particular case. Over the years I have teams that included the following professions:

Acoustical Engineer	Biologist	Environmental Consultant
Attorney	Chemist	Farm Consultant
Archaeologist	Civil Engineer	Geologist
Architect	Economist	Geotechnical Engineer
Hydrologist	Manufacturer's Rep.	Soil Scientist
Hydrogeologist	Mechanical Engineer	Timber Consultant
Landscape Architect	Realtor	Traffic Engineer
Land Use Planner	Sanitarian	Transportation Planner
		Well Driller

Not every case will require every expert, however some cases will require multiple peer review even within one discipline. I have had teams that include over thirty different people, and teams that numbered 4 or 5. Let the case dictate your team.

E. Who is NOT on the Team.

Almost as important as forming the team is determining who is not going to be on the team. The "team" as used in these materials means that application decision making group -- the folks hired on behalf of the property owner/developer to get a particular project approved. In team meetings, confidential information is openly shared. Strategy is discussed and formulated. Personalities and politics are explored. It is important that these types of discussions be confidential.

There is by necessity a liaison function of the team however. Open and continuing communication must be had with local planning staff, neighborhood groups, supportive neighbors, and agencies, such as ODOT or DLCD. These people and groups, even if supportive of the project, are not part of the team, but are a part of the approval process the team is trying to comply with. These people should be included in generalized meetings or discussions, and as early in the process as you can, but not made part of the inner circle where confidential strategy discussions take place.

There are always exceptions to every rule. I have had some of each of these groups on teams at various times on different projects, however I am always nervous. This classification of people are not under contract and there is little or no control over them on any of the topics discussed above, especially confidentiality and access to inside information. Not to mention the potential for a misread and allowing a "spy" into the inner sanctum.

IV. MANAGING THE TEAM

Once your team is together, there are a number of techniques useful for helping the team to gel and perform well together. A team needs to perform well on at least three different stages for the typical land use project. A team needs to be effective during the pre-hearing stage, at the public hearing and after the public hearing. As a team leader, you will need to manage the team using different techniques depending on what stage you are in the process. It is the team leader's job to determine the best strategy for the situation given the direction of the client and the information provided by the team.

A. The Pre-Hearing Stage.

The pre-hearing stage is where the team first comes together. Here, issues and strategies are further defined and refined, a timeline is established, the application and supporting materials are prepared, and a pre-application conference with planning staff may be held. During this developmental stage of the project ideas and strategies are formulated that you will either revel in or be stuck with during the entire process. All of the "what if" assessments are done here. Failures are noted and set aside, options are explored. As the project takes shape it is important to keep everything focused and moving forward.

What follows are some basic techniques that have been used successfully to establish a good team work approach to land use applications:

- 1. Develop a Team Roster.** Typically, a team is comprised of experts that are located in different offices in different cities. Face-to-face communication will be rare so everyone on the team needs a team roster that includes contact information. All of the players should be included

on the roster and it should include mailing and physical addresses, office phone numbers and cell phone numbers, fax numbers, e-mail addresses and notes regarding any limitations on availability. (Some people do not work everyday, some have alternative hours or have different business locations) Distribute this information to all the players. Be sure to include subordinates where they are identified as being a part of the designated experts crew.

2. Develop a Strategy for Meetings. Always have an agenda, or at a minimum an outline of topics that need to be covered. Circulate this agenda in advance to all participants at the meeting. Designate someone to take notes of the meeting and send around a summary of the meeting (minutes if you will) of the meeting. Oftentimes support staff can be brought in to perform this function without imposing on one of your team who might otherwise be distracted taking notes when they should be participating in the discussion.

Determine who should be at the meeting. Sometimes a full-team meeting is necessary. There may be times where a meeting is focused on one issue and it does not make sense to involve everyone. Sometimes you may just want to meet with the client.

Conference calls can be an effective way to reduce costs and to include people for only a part of the meeting that is relevant to them. Some team members may have the ability to hold meetings via video-conferencing.

Figure out the best place to meet. Consider the accommodations available the cost of travel and the convenience to the team members in setting the meeting location. You need to make sure the room is big enough to accommodate the team and that it has the special equipment needed for the meeting such as TV/VCR, computer and modem, speakerphone, or overhead projector.

3. Develop a Strategy for Communications. Besides face-to-face meetings, team members can be informed through phone calls or conference calls, e-mail, faxes and letters. Technology now allows us to develop group e-mail lists or group-faxes that allow you to mass mail instantly from one original document. Discuss communication with your team. See what their technological capabilities are, as well as their preferences and adapt from there.

If your approach to this application is not every decision needs to have the input of the entire team, make sure everyone knows that up front. There is no quicker way to alienate a team member than to exclude them from a meeting when they thought they were supposed to be involved. It makes little sense to have a traffic engineer and a biologist at a meeting where you are discussing options and strategies related to placement of a building in such a way as to avoid the need for a setback variance. Most experts will appreciate this as long as they know it in advance. It is also helpful to send meeting summaries of all meetings to all members of the team, even if they were not invited or in attendance at that particular meeting. This fosters the team approach and serves to keep everyone apprised of what is happening.

Care must be exercised however in making sure that everyone is at the meeting that needs to be. For example there may be an inter-relationship between the traffic engineer, the geologist and the acoustical engineer if you are trying to figure out internal road patterns on a site that is in a landslide area and near a noise sensitive use.

4. Develop a Timeline. A project timeline, identifying key tasks, their deadlines and the team members responsible for performing those functions, is a great tool for managing the project and the team. Expectations are defined and there is a certain amount of peer pressure when there are published deadlines and delegated responsibilities. A timeline is the team's road map for reaching the goal. Timelines can be set up on software developed for this purpose or you can simply use your word-processing program. An example of a timeline is attached hereto as Appendix 2.

Be sure that your timeline is complete. I like a timeline that includes all lead time dates, as it demonstrates the inter-relationship between the team members and the team leader pulling it all together for submission. I also believe it to be important to identify the legal requirement applicable to the particular task. This assists everyone in identifying if the deadline is artificial (self-imposed) or is real (set by code or statute). My timelines also contain a check off for when that task is completed. This acts as a good checks and balances to make sure nothing is missed along the way, and allows everyone on the team to measure progress.

The timeline should be updated on a regular basis. I always keep the entire timeline together even though prior tasks have been completed. The full timeline is like a road map that shows you not only where you are going, but also where you have been.

5. Dealing with the Inevitable. Change is the only constant in a land use proceeding. If a team member is a rogue, you may need to replace that person. Be aware of the signs: substantive technical differences; not returning phone calls; missing meetings; habitual complaining about client or project or amount of work to be done; complaining about money; not meeting deadlines; or simply not getting along with other members of the team. Move on it if you have to but assess the impacts of removal carefully before acting. I have only had to get rid of a team member once and it was a significant set back to that project.

There may be new issues that crop up during the course of the case requiring you to fill a void. An existing team member may be able to handle the new issue, you may need to find a new player or you might be forced to ignore the void depending on the circumstances. As the team leader, you need to be ready to deal with any contingency.

B. The Hearing Presentation.

After all of the pre-hearing work is completed, the team must prepare for the critical public hearing. The importance of a solid professional presentation to the decision should never be overlooked. Most decision makers will not delve into the reams of paper that is submitted to them, especially the technical reports. Instead they will rely on what they are being told in the hearing itself. Therefore preparing your team for a good presentation is critical.

1. Determine Order of Presentation. It is important to put together the presentation in a manner that best tells the story you need to have heard. Your presentation needs a beginning, a middle and an end. Like a good novel or movie you should have a catchy introduction that peaks the interest of the decision makers, a sustained middle that fills in the story line without confusing them or putting them to sleep, and finishes with a bang.

The most traditional format involves the team leader as master of ceremonies. The MC does

the catchy beginning, introduces the players as they appear and provides the big bang ending. The property owner/developer usually goes first or towards the beginning to put a face to the application. Your "hot issue" (the one issue your case will turn on) generally goes last, right before the big finish.

Make your order adapt to your case. Evaluate the strengths and weaknesses of your witnesses, both in the technical information they are to convey, and in the speaking abilities of the expert. That is to say how do they come across. Some experts are very good public speakers, others are not. Consider these abilities in determining whether or not to use an expert at the hearing, and if so where in the script should they appear.

2. Rehearsal. A few days before your hearing you should conduct a rehearsal. The extent of the rehearsal (whether it should be a full dress rehearsal or just a walk through) will depend on the circumstances. At a minimum however it is highly recommended that any audio-visual aid be previewed to make sure it is set up properly and that the equipment all works and is not too noisy and how you get in it and out of it without significant disruption to the flow of the presentation.

It is important to have the rehearsal close enough to the hearing to be sure you have all the information available. That is, your experts have submitted all their reports and cleared their oral presentation, and you have assembled your hearing booklet. You also need to have available the staff report to go over during rehearsal, and that is not required to be ready until 7 days before the hearing, and quite often is not ready until 3 or 4 days in advance. You also need to schedule it far enough in advance of the hearing to be able to fill holes you discover from the staff report or by reviewing the local government file and reading a just submitted opposition expert report. Normally 2 to 3 working days before a hearing is best for rehearsal.

3. Hearing Demeanor. It is important that all members of your team comport themselves professionally during the entire public hearing process. This may take some advance preparation of your team members, especially those that have never appeared in a land use case before. It takes a certain amount of thick skin to sit through an opposition presentation where you are called every name in the book by a layman who knows everything and isn't afraid to share that with the public. Hearings can become ugly, and it is imperative that your team not stoop to that level. Even such subtle things as shaking ones head in the negative as an opponent makes some outrageously wrong statement can be misinterpreted by the decision maker and should be avoided. Bite the tongue, bow your head and take copious notes or otherwise keep cool and professional. Decision makers will appreciate this approach and benefits of the doubt might flow from it.

4. Presentation Constraints. Be aware of any constraints that might be placed on your presentation and adapt to those constraints. The following are just a few of the issues that come up in limiting the way you can make your presentation.

a. Time. There are very few local governments that allow a team to take as much time as they want to in presenting their case. Time constraints need to be expected, identified and programmed into the presentation. Time limitations generally take the form of minutes for the entire presentation. Most local governments will set the time at between 30 minutes and one hour. It is your job in managing the team to make your script fit within that timeline. Rehearsal's help to pare down presentations to fit the allotted time. All experts need to be apprised of the allotment of time given to them and then follow up to make sure that all salient points are addressed in the given time.

After the initial presentation, there will be rebuttal and normally some kind of continuance or open record period thereafter. Generally time constraints are not as strictly applied or enforced after the initial hearing. Have a plan to deal with time overruns. Prioritize your experts so you can adapt if need be.

Be mindful of the overall circumstances in the timing of your presentation. If given latitude don't abuse it. If you run out of time don't forge ahead anyway - find that convenient stopping place and give it up. Local governments are very appreciative of cooperative teams.

b. The Hearing Room. Not all hearing rooms are created equal. The facilities for a public hearing in the City of Salem or Marion County can accommodate hundreds of people and they are equipped for multi-media presentations. On the other hand, you have to leave the room in the City of Turner just to change your mind. The room is important as it provides you with some idea of how your presentation can flow.

Traditionally, where there is a counsel table or presentation podium, the team leader would go up alone, or maybe with the client. Upon conclusion, the next speaker would be introduced, come to the table and speak and then leave and the next is introduced, etc. The style is very herky jerky and provides for much disruption and loss of valuable time.

Recently, where the room will allow it, I have adopted the round table approach. This involves all team members coming to the counsel table at the beginning of the presentation, and remaining there throughout the entire program. The appearance of the entire team sitting at the table can be comforting to a decision maker and daunting to an opponent. Not having to waste time moving around is helpful and the continuity of the presentation is excellent. Questions can be deferred and consultations can be made without any disruption at all. The room will dictate whether the team can sit at a table together. You and your team should be familiar with the room well before your hearing.

5. Be Flexible and Prepared. All members of the team should be prepared to take detailed notes of questions asked by staff and decision makers during the hearing. In addition, if there are opposition statements or questions from citizens, notes of those comments need to be taken and answers and responses developed on the spot for use in rebuttal. Most issues will have already been considered during rehearsal, and responses already known. However there is always something that comes up, usually wild theories or unsubstantiated facts that need to be addressed "on the fly."

Experts need to communicate during the hearing with the team leader regarding answers to questions, strategy approaches and who is to handle the rebuttal and when. Side bar whispers can be detracting and might alert the room that something is up, perhaps added more validity to the issue that it merits. Discreetly passing notes from expert to team leader is a better approach. If needed, a team leader can always ask for a short recess prior to making rebuttal comments in order to have time for the group to quickly meet and sort out the response. In the event an issue simply can not be answered at that hearing, a continuance can be requested, and will usually be granted, to allow time to obtain the information and have it meaningfully presented to the decision maker.

6. The Hedge. A team leader should always hedge against the inevitable. The primary problems always seem to be getting last minute materials in place and folks either not showing up

or being late to the hearing. The best hedge against both of these is to schedule a brief gathering immediately prior to the hearing, either at a central location or at the hearing site if there is a room available there that would afford some privacy. Go over the final details and go into the hearing together. If someone is going to be late, it is better they be late for the gathering than the hearing itself. If you need copies or to assemble last minute documents you can do it here, and not in the middle of a crowded hearing room with papers flying all over and no office supplies or staff to assist.

C. Post-Hearing Management.

Keeping the team together and in communication is vital even after the vigors of the initial public hearing. Many a good strategical decision has been made in the post-mortem conference after that first hearing. People and issues and questions are fresh in everyone's mind.

1. Hearing Summaries. It is always helpful to have each member of the team prepare a hearing summary. A synopsis of observations of the expert on the presentation, the opposition, reaction of staff and decision makers, as well as identifying parts of the presentation that worked, or didn't work.

This summary might take place at the local tavern after the meeting in the form of unwinding, or it might take a more formal written memo. The form is not as important as the substance. Everyone observes differently and the beauty of a team is that you have an array of experts to draw from in order to assess how the presentation went.

The summary is also important in determining post-hearing tasks, timelines and responsibilities. For example if a hearing was kept open in order to assess the LOS at a particular off-site intersection that wasn't included in the traffic study, it is important that the traffic engineer indicate that they understand what is needed and by when. This can be included in the summary and then transposed on the next edition of the official project timeline.

2. Open Record Period/Continuance. In almost every complex case there will be an automatic extension of the first hearing. That could take the form of an open record period, where only written materials are accepted. Or, it could take the form of another hearing, where testimony and written materials are accepted. The team needs to be prepared and ready to act and react to what happens during the open record period. This involves periodic review of the local government file and communication with staff.

3. Appeals or Mandatory Second Hearings. Some cases automatically involve two hearings (Comprehensive Plan Amendments for example), others will be initially heard by a planning commission or hearings officer and then be appealed to the Board of Commissioners or City Council for final decision. Some local governments have appeals which generate an automatic public hearing. Others allow the council or commission to decide the matter on the record without holding another hearing.

If you know you will have two hearings, use the first hearing as a discovery tool. It is a good dress rehearsal for the hearing that counts. The team should be aware of this and be prepared to adapt their presentations depending on what went over well and what didn't. In the second hearing,

issues can be anticipated and addressed that were surprises in the first hearing. Assuming your outcome in the first hearing was positive, your second presentation can accentuate that fact and remind the decision maker that their own people assigned to review this at the lower level did so and agreed with what your team presented.

4. Preparation of Findings. Most local governments will allow the applicant to present a proposed draft order of approval which contains the findings and conclusions necessary to support and justify the decision requested.

Drafting defensible findings is an artform, and there are few artists in residence. My experience has been that most experts can not write land use findings. Planners and attorneys have hard enough time doing the job right. I try to take the reports and the testimony of all the experts and create a set of draft findings based on all that information. I then circulate the findings that related to a particular expert for their opinion, comment and edit. What needs to happen here is that you put the language and relationships together necessary to make the data fit the criteria, and let the expert verify the facts you used in your finding.

Most team members will appreciate not having to do the tedious job of reducing all the information down to its lowest common denominator as is required in findings drafting. Do use the expert however to make sure you have a good evidentiary record of all the facts you use in your findings. It is imperative that you not cite to information that was not submitted to the decision maker. This results in almost an automatic remand if the case gets to LUBA.

V. CONCLUSION

The essential concepts for building and managing the team is to know the scope of the project so you can identify who is needed for the team. Find and hire the best players within your constraints. Either be the team leader yourself, or identify a team leader and delegate to them. Teams need to be led by someone who has the big picture knowledge of the project and process, who is skilled at listening and understanding technical information, who knows how to give effective presentations at public hearings and who can manage a diverse team of experts.

Although there are no guarantees in land use permitting, having an effective team in place to overcome the substantial burdens placed upon the applicant is the best approach for success. You can never be too prepared!