



1 the city that he had record objections to discuss, and separately filed record  
2 objections late on December 4, 2014.

3 Under OAR 661-010-0026(1) petitioners were required to attempt to  
4 resolve their record objections with the city before filing those record  
5 objections.<sup>1</sup> For the reasons set out in intervenor-respondent Evergreen Group,  
6 LLC's (Evergreen Group's) response to those objections, there is some reason  
7 to believe petitioners might not have made a good faith effort to comply with  
8 the OAR 661-010-0026(1) prior consultation requirement. Evergreen Group  
9 argues the record should be settled immediately, and petitioners should have no  
10 more than seven days to file and serve their petition for review, because that is  
11 the time that remained for them to file their petition for review on December 4,  
12 2014.

13 The record is this appeal is of sufficient length and complexity, that the  
14 14 days provided by OAR 661-010-0026(2) to review the record and comply  
15 with the consultation requirement in OAR 661-010-0026(1) easily might not  
16 have been sufficient.<sup>2</sup> We therefore deny intervenor's request to deny the

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<sup>1</sup> OAR 661-010-0026(1) provides:

“Before filing an objection to the record, a party shall attempt to resolve the matter with the governing body's legal counsel. The objecting party shall include a statement of compliance with this section at the same time the objection is filed. The Board may deny any objection to the record that does not comply with this rule.”

<sup>2</sup> OAR 661-010-0026(2) provides in part:

“An objection to the record or an objection to an amendment or supplement to the record shall be filed with the Board within 14 days of the date appearing on the notice of record transmittal sent

1 record objections for failure to consult in good faith under OAR 661-010-  
2 0026(1). However, to facilitate a speedy resolution of the pending record  
3 objections, we deny the 38 objections under the heading “Incorrect dating of  
4 correspondence/documents in Table of Contents” set out on pages 3-5 of  
5 petitioners LO 138, LLC’s and Save our Village’s Record Objection. Those  
6 objections appear to be based solely on minor date discrepancies between the  
7 table of contents and the documents listed in the table of contents, and the  
8 discrepancies appear to be immaterial. If we are wrong, and those  
9 discrepancies have legal consequences in this appeal, petitioners may explain  
10 how the discrepancies are material and renew the objections, after first  
11 consulting with the city.

12 The city shall have 14 days from the date of this order to respond to the  
13 remaining record objections. In that regard, OAR 661-010-0026(2), *see* n 2,  
14 imposes a continuing obligation on petitioners to continue to attempt to resolve  
15 their record objections with the city. LUBA will make an effort to settle the  
16 record as quickly as possible upon receipt of the city’s response. Petitioners  
17 will be given 21 days from the date the record is settled to file and serve their  
18 petition for review.

19 Dated this 10<sup>th</sup> day of December 2014.  
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24 Michael A. Holstun  
25 Board Member

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to the parties by the Board. A party may file a record objection  
while continuing to resolve objections with the governing body's  
legal counsel. \* \* \*