

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 LO 138, LLC, SAVE OUR VILLAGE
5 and EVERGREEN NEIGHBORHOOD ASSOCIATION,
6 *Petitioners,*

7
8
9 vs.

10
11 CITY OF LAKE OSWEGO,
12 *Respondent,*

13
14 and

15
16 EVERGREEN GROUP, LLC,
17 *Intervenor-Respondent.*

18
19 LUBA No. 2014-092

20 ORDER

21 **MOTION TO INTERVENE**

22 Evergreen Group, LLC, the applicant below, moves to intervene on the
23 side of respondent. No party opposes the motion, and it is granted.

24 **RECORD OBJECTIONS**

25 The 5,000+ page record in this appeal was received by LUBA on
26 November 20, 2014, in digital format only. Under OAR 661-010-0026(2), the
27 14-day deadline for filing record objections expired on December 4, 2014.
28 Late on December 4, 2014, the attorney for petitioners LO 138, LLC and Save
29 our Village advised the city by e-mail message that he had record objections to
30 discuss with the city, and later that day he filed and served record objections.
31 Petitioner Evergreen Neighborhood Association's attorney similarly advised

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.¹ 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.² We therefore deny intervenor's request to deny the

¹ 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.”

² 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 10th day of December 2014.
20
21
22

23 _____
24 Michael A. Holstun
25 Board Member

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. * * *