

1 statement of compliance with the rule, but makes no attempt to comply. He requests that the Board
2 accept his objection without the required statement.

3 OAR 661-010-0026(1) requires parties to attempt to resolve objections prior to filing a
4 record objection with this Board. We have recognized that lack of adherence with this rule
5 frustrates the timely resolution of all appeals. *Nicholson/Keever v. Clatsop County*, 31 Or LUBA
6 535 (1996). In some cases where the required consultation did not occur, we have nevertheless
7 considered the record objections. *Casey Jones v. City of Lowell*, 33 Or LUBA 812, 812-13
8 (1997); *Nicholson/Keever v. Clatsop County*, 31 Or LUBA 535, 536 (1996). In those cases,
9 we treated violations of the rule as technical violations that would not justify denial of the record
10 objections absent a showing that substantial rights were prejudiced.

11 Intervenor-respondent notes that Sommer was previously ordered by this Board to comply
12 with this rule in another, related appeal. *Ghena v. City of Grants Pass*, ___ Or LUBA ___
13 (LUBA No. 2005-072, July 6, 2005, Order on Record Objection). In a more recent case, also
14 involving Sommer, we questioned our practice of requiring, in every case where the consultation
15 requirement was violated, a showing of substantial prejudice. *Lindsey v. Josephine County*, ___
16 Or LUBA ___ (LUBA No. 2005-112, Order, December 8, 2005). That skepticism arose from a
17 1998 amendment adding the last two sentences of OAR 661-010-0026(1). *See* n 1. The 1998
18 amendment added the requirement that a party include a statement of compliance with the
19 consultation requirement at the time the record objection is filed. The amendment also provides that
20 “[t]he Board may deny *any* objection to the record that does not comply” with the consultation
21 requirement.

22 In many circumstances, it may continue to be appropriate to deny record objections for
23 failure to comply with the consultation requirement only where there is a showing that substantial
24 rights have been prejudiced. However, we are no longer of the opinion that prejudice to a

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.”

1 substantial right must *always* be demonstrated in order to deny a record objection for failure to
2 comply with OAR 661-010-0026(1). Sommer has already twice ignored the consultation rule. He
3 was clearly aware of the requirement, as our order in *Ghena*, requiring compliance with the rule,
4 was issued July 6, 2005, and Sommer's record objection in this appeal was filed three months later,
5 on October 11, 2005. His failure to comply in this appeal was clearly not an "oversight."
6 Accordingly, denial of the record objection for failure to comply with the consultation requirement is
7 appropriate, without regard to whether that failure resulted in prejudice to a party's substantial
8 rights.

9 Accordingly, Sommer's record objection is denied.

10 The record is settled as of the date of this order. The petition for review shall be due 21
11 days from the date of this order. The response brief shall be due 42 days from the date of this
12 order. The Board's final opinion and order shall be due 77 days from the date of this order.

13 Dated this 31st day of January, 2006.

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Anne C. Davies
Board Chair