

**City of Leawood  
Planning Commission Work Session  
Research Services, Ltd. and Kansas Open Meetings Act  
Tuesday, November 13, 2012**

**In attendance:**

**Commissioners:** Mike Levitan, Ken Roberson, Kelly Jackson, Lisa Rohlf, Len Williams, Marc Elkins, Kip Strauss, Jim Pateidl, Mike Levitan and Bill Ramsey.

**Staff Members:** Debbie Brenner, Planning; Joe Rexwinkle, Planning; Mark Klein, Planning; Justin Peterson, Planning, Franki Shearer, Legal; Richard Coleman, Planning and David Ley, Public Works and Travis Torrez, Building Official, Community Development; Gene Hunter, Fire Marshal

**Research Services - Limited**

Mr. Klein: This is in regard to Research Services - Limited, which is something we brought forward at the October 9<sup>th</sup> Planning Commission meeting. At that time, there were a number of concerns expressed with regard to use, inspections, amount of chemicals and whether it was an appropriate use for Mixed-Use Development or Office. We tried to work with both the building official and the fire marshal to address some of those concerns. Travis Torrez is the building official and is here tonight to answer any questions, and Gene Hunter, the fire marshal, is also here. The way we structured the definition did reference terms used within the International Building Code and International Fire Code, which they should be able to address.

We already had a limit of no more than 25% of the floor area to be used for Research Services - Limited. Then we had limits on the occupancy types: "Research Services shall not include type F [Factory], H [High Hazard], S1 [Moderate Hazard Storage] or S2 [Low Hazard Storage]." Working with the building department and the fire department, we added two new requirements to the definition. One is that the amount of hazardous material has been reduced: "All quantities of hazardous materials shall be limited to a maximum of 10% per category of that which is allowed by International Building Code or International Fire Code for any specified occupancy type." The intent was to further restrict the amount of hazardous material allowed. We also changed the requirement for a Special Use Permit in that we made it clear that it would require annual inspections. It would require a third party to submit data to the fire department on their annual review of that particular type of use located there. We also made a modification to address a concern with the wording "conduction and establishment based on the conduction." Now, it states that, "An establishment engaged in the basic and applied research, including the production of prototype products, provided that per the currently adopted International Building Code and International Fire Code, no Type F [Factory], H [High Hazard], S1[Moderate High Hazard Storage] or S2 [Low Hazard Storage] occupancy shall exist and that the area dedicated to this use shall be no more than 25% of the total floor area of the business as determined through Final Site Plan submitted with the Special Use Permit application, required by Section 16-7.2 of this ordinance. All quantities of hazardous materials shall be limited to a maximum of 10% per category of that which is allowed by the International Building Code or International Fire Code for any specified occupancy type. The required Special Use Permit shall be conditional upon an annual review by the fire officials. In order to facilitate this review, the applicant shall engage an approved independent expert to submit documentation of the quantities of hazardous materials in the occupancy and processes in which they are used. The documentation shall be evaluated for compliance with the Fire and Building Code and the Leawood Development Ordinance prior to extending the Special Use Permit. Furthermore, research shall be limited to the minimum scale necessary for the full investigation of the merits of the product, excluding production of products used primarily or customarily for sale or for use in non-prototype production operations." That is the current proposal.

The second part of this ordinance proposes to define the term in Article 9 and then to allow that in the types of uses under Office. The MX-D District allows all the uses of the other districts within the MX-D

District with the exception of BP. That is what is before you currently to discuss. Does anybody have questions or concerns?

Comm. Elkins: Help me understand in the middle of the definition when you talk about a maximum of 10% per category of that which is allowed by the IBC or IFC for any specified occupancy type.

Mr. Klein: It's probably better if I leave it to either Gene or Travis. It is my understanding that the limitation is based on the occupancy type, and different types are allowed different chemicals.

Mr. Hunter: The general hazardous materials chapter of the International Fire Code allows you to have a certain amount of hazardous materials based on what type of occupancy you are. This is codified in Table 2703.1.1.

Mr. Torrez: It is the same in the IBC. In the IBC, it is Table 307.1

Mr. Hunter: That just spells out a number of different categories of hazardous materials and the allowable amounts. If you exceed the allowable amount, it kicks you up into the higher hazard category, and a new standard applies. Basically, we looked at that and did a "seat of the pants" analysis and looked at how much combustible or flammable liquids would be allowed, for example. Given flammable liquids, 60 gallons of gasoline are allowed. We thought, "Do we want to allow 60 gallons of gasoline in a Mixed-Use office building?" We also thought 499 gallons of sulfuric acid was absurd. We came up with the number of 10%, which takes them down from 60 to 6 gallons. You might think that 6 gallons of gasoline is an extraordinary amount to have in an office setting, but it is allowed and not all that uncommon for B-type occupancies. Think about a place where you get your nails done. They will have probably 5-6 gallons of acetone on hand, and it is allowed. These are in buildings with sprinklers. Basically, that 10% restricts them down far from where the fire code, which is adopted in a consensus process, believes is a safe amount. We tested it cognitively and adjusted it so someone could do some light industrial activity that would be compatible with an office use and a danger to no one.

Comm. Williams: This relates to the International Building Code and setting a limit of 10%. In the table we were just talking about is an allowable increase if the building is fully sprinkled. Will we allow for an increase if that is the case, so instead of 10%, we will now allow 20%?

Mr. Hunter: You get 10% of whatever the amount is. The math works out the same way. You give them the increase and then come back to 10%.

Mr. Torrez: I think it means you take the total you are allowed and you get the sprinkler increase. If it is in an approved storage cabinet with exhaust enclosures, you get another 100% increase. Then you take that total and take 10% of it. With the life safety codes adopted right now, you could have essentially 300% of what is in that table. That research lab would be an office. As long as you didn't see that 300% for a sprinkler building and it is being kept in the appropriate cabinets, they could have 300% of any value in this table. In this case, the way the ordinance is written, it would be far more restrictive than the National Life Safety Codes, really, because it will be 10% and also will restrict the area to 25%. There is a huge safety factor that everybody was on board with, especially in a Mixed-Use environment.

Comm. Williams: The key is that it would be 10% of what they would be allowed with all of the provisions of the International Building Code.

Mr. Torrez: Yes; basically, the code is set up to reward you for having a sprinkler system because it is an extra life safety measure, and it rewards you for using appropriate containers to store the materials.

Comm. Elkins: I'm still struggling a bit to tie the tables to the ordinance. We talked about specified occupancy type. What is that tied to in the table?

Mr. Hunter: If you look in the third column, you see the quantities you can have based on occupancy. When you exceed the allowable quantities, you automatically move up to a higher level of occupancy. For what it's worth, it encumbers you with other regulatory obligations beyond what we're talking about here as well. Your construction type might have to increase, as well as the separation between you and the next occupancy.

Comm. Elkins: In Table 307.1(1), the first row shows combustible. How do I figure out what occupancy type I'm talking about?

Mr. Torrez: If you are not going to exceed 120 gallons for a Class 2 combustible liquid, the code says, "The following shall not be classified in Group H but shall be classified in the occupancy that they most nearly resemble." That is on Page 25. It says that those buildings and structures that basically don't contain more than is allowed in this table are the type of occupancy they would have been otherwise. In this case for the lab with research, it is a B occupancy unless they exceed the amount allowed in that table.

Mr. Hunter: At which point they would become an H or an H2 or H3.

Comm. Elkins: So I work my way backwards in the document, and my building classifications are in Section 302 and 304.

Mr. Torrez: Yes, it is working in alphabetical order. You will see them on both sides of there. Lab and research is a B occupancy, but I highlighted factory occupancy to give an indication. Mark, we wanted to make it perfectly clear that these other types of high hazardous occupancies that are less than the table and mostly are storage occupancy are matching the Building Code and Development Ordinance.

Comm. Elkins: The intent here is to try to tie these limitations to specific groups in the code.

Mr. Torrez: Yes, so it is perfectly clear what is required if someone wants to meet the special use.

Comm. Elkins: That makes sense to me. The only thing I question a little bit is the use of the word "any" when we talk about 10% of what is allowed by the International Building Code or International Fire Code for any specified occupancy type. If you read on the face of it, that is going to tie to any one of these. I think what they are saying is the intent is to tie it to specified occupancy types. I would suggest to take out "any" and put "a" in its place. Otherwise, it's like a restaurant menu that you could pick whatever group you wanted and take 10%.

Mr. Torrez: I would agree that you could probably lose, ". . . for any specified occupancy type" because really, your occupancy type is going to be what you are most like unless you exceed the numbers.

Mr. Hunter: It still brings you to the same place in the code, thought.

Comm. Elkins: And it is important to bring you to that place in the code.

Comm. Ramsey: What was the issue from last time that caused us to table this?

Mr. Coleman: The commission wanted clarification of the definitions of Type F, Factory, Moderate Hazard and High Hazard because they aren't allowed. We are only allowing per the business occupancy or the B group in there. Factory is not allowed anyway.

Mr. Klein: There was also a question about how often it will be inspected, so we tried to address that as well.

Mr. Hunter: We are set up to do an annual inspection of every business occupancy in the city. In association with this with a special use, we can administratively handle this, and they would have to reapply every year to have their special use extended. Part of that is to give us a consultant's report indicating the processes they're going to use, the materials they have, the hazards that are included and what emergency plans and protective equipment are part of that. That also tells them how many hazardous materials they have. If, for some reason, they have changed their processes and are storing more of something than they are allowed, then we audit it and find out about it. Then they have the option to either reduce what they are storing, change their processes or find someplace else to do business.

Comm. Elkins: To make sure I am tracking this, by this approach, we would permit 12.5 pounds of consumer fireworks in an office space, correct?

Mr. Hunter: I think that is not applicable in that one. In any event, that would be overridden by our fireworks policy, which doesn't allow fireworks in Leawood, anyway. There is a blanket prohibition that would supersede that.

Comm. Elkins: Is it clear that the blanket prohibition would supersede this?

Mr. Klein: Yes, it would be based on the fire marshal's review.

Mr. Hunter: The way the Fire Code is spelled out is either the most restrictive applies or the most specific applies. With the fireworks, the section dealing with fireworks is more specific than the broad Hazardous Materials section.

Comm. Ramsey: And in a special use, aren't they going to specify which chemicals they will use?

Mr. Coleman: Yes, that is the reason for the SUP.

Comm. Ramsey: So if they were trying to hold fireworks, it would be advised at that time that it is not allowed.

Comm. Elkins: I agree with that. I just want to make sure we don't create an ambiguity here between the Fire Code and what we are doing with this ordinance.

Mr. Klein: As far as a lot of the tenant finishes and building permits, they do go through planning, but they also go through building and fire with separate reviews.

Comm. Pateidl: We're saying an annual review is required before a special permit is extended. Explain or outline the extension process, please.

Mr. Klein: It would be a Special Use Permit through the planning department. There would be a limitation as far as the amount of time, determined by Planning Commission and Governing Body. To renew that SUP, they would have to file a new SUP application and go back through that process.

Comm. Pateidl: So it will be on the Planning Commission to make the decision on the extension.

Mr. Klein: Yes, the Planning Commission and Governing Body would have the ability to renew that or not.

Comm. Pateidl: Commissioner Elkins referenced points on ambiguity. I am a little concerned about the ambiguity of the condition for this extension. It says, "The required Special Use Permit shall be conditional upon an annual review by the fire official. In order to facilitate the review, the applicant shall engage an approved independent expert to submit documentation of the hazardous materials and the occupancy in the processes in which they are used. This documentation shall be evaluated for compliance with the Fire and Building Codes, the Development Ordinance, etc." It can almost be read via this definition that no more than a review of an independent party's report is required for the annual review. There is nothing that really places the city official in the facility, making a review that is on behalf of the city and not somebody that is paid by the party. This concerns me.

Mr. Hunter: We work all the time with third-party reports. We evaluate those and the credibility of the person writing the report. If we are looking at a process or technology we don't understand, we reach out to people who do. Basically, we wait until we're pretty comfortable that they know what they're doing and then make a judgment whether or not we think it's safe. Administratively, that is what occurs. If we are unhappy with it, the thing that will happen at that point is we will recommend you deny the Special Use Permit until such time as they address whatever is troubling us.

Comm. Pateidl: The other heartburn I have is that we are focused a great deal on some hazardous materials, but I don't see any direction on things such as biological or other types of research and development that can certainly have an influence in a Mixed-Use area with restaurant and food service facilities. They can be very innocuous types of materials that don't fall within the explosive range.

Mr. Coleman: That is the reason for the Special Use Permit. If we had a research lab facility that was suggesting to occupy and had some kind of biological thing next to a restaurant, we could certainly say it is inappropriate.

Mr. Hunter: Within the definition of hazardous material is included highly toxic biohazards and whatever it is that is dangerous to human life. We could be talking about pathogens, bacteria, etc.

Comm. Pateidl: And your department has the expertise to identify and control these?

Mr. Hunter: No, that is the reason we are authorized to bring in consultants. In general, the Fire Code allows us to retain experts. Specifically in the way this ordinance is written, they have to provide someone that meets the qualifications that we think is suitable. They need to prepare us a report indicating what they are going to do, how they are going to do it and why it is going to be safe.

Mr. Coleman: If what they were doing was classified in a High Hazard category, they are not even allowed in here.

Comm. Pateidl: Currently, this activity is limited to Business Park, correct?

Mr. Coleman: Yes, the LDO doesn't anticipate every business that exists out there. We had a general research placed in the BP District. There could be research that might be on prosthetics or something. It would be putting everybody over there. This issue brought to light that there are appropriate research facilities that could go into office and business areas, and it is classified in the codes under business occupancy type. Our LDO is just not robust enough to include every situation out there.

Comm. Pateidl: I understand that and it is one of the good things with having it limited to the Business Park area for the greater safety of the citizens. What I'd like to hear is how this change in the development ordinance is for the greater good for the citizens of the City of Leawood. How does this help the citizens of Leawood in terms of whatever criteria you have, but specifically safety?

Mr. Coleman: I don't think it is any less safe than it was before at all. We have nail salons, and Dick's Sporting Goods stores all kinds of ammunition. Other businesses have oxygen tanks and other highly explosive gases. This particular use is certainly not putting the public in any greater danger than any of these other uses. We just didn't have a category for it in the LDO.

Comm. Pateidl: If I go to Mission Farms with commercial on the first level and residential above and I have whatever kind of research and development you want to take, you are telling me that having that take place below my feet is equally as safe as having that isolated in a Business Park?

Mr. Coleman: I am saying it is as safe as having the restaurant that is below the residences. It is, in fact, safer. You are not making the citizens less safe by allowing this in any way, shape or form. Those restaurants are much more dangerous to residents than this use. We can't just say we're going to move restaurants off and isolate them because they have fire and gas.

Mr. Hunter: Statistically, the residences themselves are the highest hazard. You make a good point that where you live ought to feel safe from other problems. The whole point of the ordinance and us restricting them to 10% and then the 25% assures that we have achieved a parity of safety with other uses that are out there already adjacent to different occupancy types.

Comm. Williams: If I understood you correctly, we are already allowing a larger amount of materials based on International Building Code and International Fire Code, so we are reducing the amount of those potentially hazardous materials.

Comm. Pateidl: Not for the restaurant, unless the restaurant is doing some research and development; it is not going to reduce how much the restaurant can have by the International Fire Code. It is only if your Special Use Permit incorporates research and development that these restrictions will apply.

Comm. Williams: Are you advocating that we apply this across the board?

Comm. Pateidl: No, you are saying it will be less than what we are allowing, but we are not allowing research and development in Mixed-Use or Office zones at this point; they are not allowed.

Comm. Williams: I understand, but I am saying that some of the instances that we do allow already are at higher risk of hazard. We are really not allowing a higher hazard use by comparison; we are identifying a specific type of use, and within that specific use, we are reducing the amount of hazardous material allowed that is already allowed by the code to be a much higher number.

Comm. Pateidl: In contrast to other uses, yes. My concern is the process and the potential health hazard that is unknown.

Mr. Hunter: I think that is why the safety factor was built in. You are taking what is allowed and taking 10% because of what is unknown.

Mr. Klein: We tried to create layers of protection. When we talked to the building and fire departments, we looked at other occupancies that are currently allowed in both of these districts that exceed what we are proposing. I do realize that this is a new use, but we tried to look at it with performance standards and restrict it as much as possible.

Comm. Pateidl: At some point in time, either the planning department or the Planning Commission conjunctively reviewed this deal and decided that this type of activity is best restricted to the Business Park

zoning application. I would happen to agree with that. What I would like to feel is that there is a compelling reason that benefits the citizens of our community to allow this type of activity in Office and Mixed-Use zoning. I am more concerned about the process than the contents.

Mr. Coleman: I think one compelling reason is it creates a better business environment that creates more flexibility to businesses to locate in Leawood and interact. I just think that it is something that was probably overlooked when the LDO was originally put together, like a lot of other things that we continue to find and adjust.

Comm. Williams: Unfortunately, I wasn't at the meeting when this was initially discussed, but I saw a reference to Quintiles in the Public Hearing. Does Quintiles deal with hazardous materials?

Mr. Klein: I think it is medical research, so they may be dealing with chemicals and possibly biological materials.

Comm. Williams: So for Quintiles to come under these rules, they would be limited to 25% of the floor area and not have any of the hazardous materials that would be classified or limited?

Mr. Klein: Yes, if they were research services. Research Services have two options: if it occupied more than 25% of your floor area, the only place to go is the BP District because it is the primary business, and if you happen to be less than 25%, you would be allowed in Office and MX-D.

Comm. Williams: Out of curiosity, in Overland Park, do we know what their zoning classification is?

Mr. Klein: I don't.

Mr. Coleman: I don't, but Vince Associates is Office.

Comm. Pateidl: If I recall the comments correctly, they have a separate standing building across the street from Sprint. He did make the specific point that it was their position it should be in a separate building.

Mr. Coleman: It was Mr. Barry's position.

Comm. Pateidl: I thought that was shared corporately by management.

Mr. Coleman: I don't think he was speaking for Quintiles; I think he was speaking for himself.

Mr. Hunter: We have a lot of medical offices that collect and keep tissue samples of one kind or another in office buildings now.

Comm. Pateidl: It may speak to the enforcement of our existing Development Ordinance.

Mr. Coleman: It is perfectly legal.

Comm. Williams: My other question is similar to Quintiles. If Sara's Institute were to relocate and come to Leawood, would they have to go to a Planned Business Park?

Mr. Coleman: That is probably correct because their primary business is a cancer research institute. That is probably the case unless they have other offices. They are located over on Troost and Cleaver Boulevard. There are houses right across the street. That is why I say that the LDO is not as robust as maybe we would ultimately want it to be.

Comm. Jackson: Does this allow any chemicals or any type of toxin that is not already in commercial use somewhere in the city?

Mr. Hunter: That is a tough question to answer. I don't know every toxin in the city, and I don't know everything that might be allowed in the future. It is really a case-by-case basis. When we perceive somebody is doing a type of activity that maybe we don't understand, at that point, we work through those issues. Leawood, overall, is a remarkably safe city because it has very few industrial uses. The overall level of toxic and hazardous materials in Leawood is at the very bottom of the list of cities across the nation.

Mr. Torrez: Every hazardous material has a hazard category. The NFPA categorizes all of those, so it is an infinite amount. There may be new ones produced every day. Something new coming in would be restricted by whatever hazard category it was in.

Mr. Coleman: We do have a list of every chemical they have and the quantities they would be proposing.

Mr. Torrez: That would be done for each special use occupancy that came in.

Mr. Coleman: We required it for this one, and we have it if it goes forward.

Chair Rohlif: You are talking about the situation that came up?

Mr. Coleman: The future case of SFP, yes.

Chair Rohlif: This obviously came to light during something else that this was going on over there.

Mr. Coleman: It came to light during building plan review.

Chair Rohlif: In the future, if this is put into place and there is now a Special Use Permit required, how will the tenant of that office building know that they need to go through the process? It is obvious we are talking about a company that is utilizing fertilizer, correct?

Mr. Coleman: Yes, in small quantities.

Chair Rohlif: But we would have not known that if it hadn't come up through something else. Were you told by them, or did you just discover it?

Mr. Coleman: No, we discovered it through the building plan approval process.

Chair Rohlif: Would that be where it is discovered again in the future?

Mr. Coleman: It could be, but it might not be.

Mr. Hunter: We are in all the buildings all the time.

Chair Rohlif: So you would see something like that, that may necessitate them coming back and getting a permit?

Mr. Hunter: Anytime we have a question about what someone is doing, we follow up and ask questions, do research and tell them they have an obligation to make it clear to us what they are doing. Moreover, I think

they have some federal obligations and right to know legislation that they have to alert us as well as the neighbors when they have hazardous materials.

Mr. Torrez: I think there is more awareness now, too, that the development ordinance does have a higher standard than the Building Code. These occupancies are so few and far between that there is more awareness now of that requirement.

Mr. Hunter: I think most of the cities around us regard us as being remarkably restrictive. Anyplace they go outside of Leawood, they would have an easier time doing whatever it is they want to do. As a result, frankly, we have a better, safer record over time than any of our neighbors.

Mr. Coleman: Yes, and some of the code provisions we have are not being adopted universally.

Comm. Elkins: I think this is generally a good idea, but Len has raised a question that I hadn't picked up on that is important. As I read this, if, for instance, the Harris Polling Group wanted to come in and make their headquarters in Leawood, even though they don't use any hazardous materials at all, we would say under our LDO that they would have to be in an Office Park, assuming it falls under the definition of basic research.

Mr. Coleman: I think we would go back to the definition on that and look at it. A political or historical research group might not fall into that category.

Comm. Elkins: I was using that as an example, but my point is there is a lot of basic research that doesn't use hazardous material. It seems over-the-top restrictive to say that they have to go into a Business Park as opposed to down Tomahawk Creek Parkway. That is the way we stand now, correct?

Mr. Coleman: We would have to look at the definition.

Mr. Klein: Right now, the way it starts out is "An establishment engaged in the basic applied research and production of prototype products." Obviously, that type of research would not produce a product.

Comm. Elkins: So it is basic and applied; I am with you.

Mr. Coleman: Are there additional questions?

Comm. Pateidl: This question is for Commissioner Jackson. In the course of the last meeting, you made comments that you felt completely unqualified to rule on this, not knowing if these different types are the only categories within the Building Code that we want to disqualify. You said we have no idea what else is in there and that we might be missing something. We've established that the extension or renewal of a Special Use Permit is going to fall under the purview of the Planning Commission, so in essence, this body is going to be the watchdog of what goes on based on the recommendations of the other city staff. Do you feel more comfortable? Do you know what you're doing now?

Comm. Jackson: What I felt I did not understand was they were excluding a few of the long list without knowing what we were not excluding. Now, having the code that they are citing from in front of me, I feel like I understand what is not allowed.

Mr. Hunter: You will have access to the report from the consultant, and you are certainly free to read through that if you have questions. You have opportunities to learn before you decide.

Comm. Jackson: Certainly, when it was brought to us last time and we didn't have the privilege of listening to the fire chief or seeing the ordinance we were incorporating into our ordinance, there was no way of understanding it. I don't feel I could give a lecture on it, by any means, but I feel the safeguards are in place for the community and that we have experts available to us so that we can understand the impact to the community.

Comm. Williams: Maybe part of the safeguards is the Special Use Permit that gives the city experts the opportunity to look at the use in detail and the products and materials, to check it on an annual basis, get the reports and make recommendations on the renewal. It may be an inconvenience for that tenant, but it keeps it in line. I have a question that goes back to comments about pathogens. I don't see laboratories in the approved list of uses in the LDO. It is a considered business use in the IBC. Do we allow laboratories?

Mr. Coleman: I think it references medical labs and dental labs.

### **Open Meetings Act**

Ms. Shearer: Patty, Mayor Dunn and I went to a meeting that the DA called about the Open Meetings Act. I'm sure you have read in the paper that a few cities have come under scrutiny lately for violating the Open Meetings Act, some of them, quite blatantly, others, feeling they had done the right thing but actually not having done the right thing. There is some heightened scrutiny around the Open Meetings Act right now in Johnson County. Feel free to review this on your own, and if you have questions, feel free to email or call me. It is probably best I answer them that way because they will probably be in the scope of giving legal advice, and I don't want to do that on the record. I'll go over the highlights.

On Page 2, "All meetings for the conduct of the affairs of and the transaction of business shall be open to the public, and no bonding action by such bodies shall be by secret ballot." I don't feel we have that problem here in Leawood. I think all of you and the Governing Body understand that we can't take a vote in private. They gave an example of a city that called and asked them what they should do with the secret ballots they took during an executive session.

Also on Page 3 is a definition of what a meeting is: "A gathering or assembly in person or through the use of telephone or any other medium for interactive communication." That includes emails. "By majority of the membership of the body for the purpose of discussing the business or affairs of the body or agency." This is why, often times, when I send an email out, I put very boldly at the top, "Do not reply all." Once you've done that, we are not liberating something and violating the Open Meetings Act. Please remember just to reply to me if you have a question.

Comm. Jackson: So if five of us sit around and talk but not four of us, is it a meeting?

Ms. Shearer: It is the majority of the body, not the majority of the quorum. Then on Page 4, they hit on the discussion of using telephone calls or progressive communications to come to a consensus. That would be if Kelly calls Lisa, who calls Mark, who calls Jim to get a consensus. A serial communication is also prohibited.

Comm. Jackson: But if Bill, Ken and I want to sit around and chit chat, we're okay? If three of us have a phone conference, it's okay?

Ms. Shearer: According to the law, it is a majority. You can't do that progressively. So Ken can't leave that conversation and then have a conversation with Len. To some degree, you listen to this lecture and wonder how they would ever find it out. You would be surprised. There are lots of email chains, and things get discovered. You just have to be mindful of these communications.

Chair Rohlf: Do you know the background on this? Was it Mission?

Ms. Shearer: Mission's issue, if I recall correctly, was that they voted to acquire property in an executive session. You are allowed to go into executive session to discuss acquiring property; you can't take the vote. It has to be done in public.

Chair Rohlf: I know we have had a couple executive sessions. What tips it in that direction? Is that a legal call for you to make?

Ms. Shearer: Normally, the city attorney knows when you need to be in executive session. On Page 5, it also talks about a social gathering that is subject to the Open Meetings Act if there is discussion of the business of the body. That is why, when we are here having dinner, we are very careful to say that there is no discussion of business because it could violate the Open Meetings Act. If you notice on the agenda, Mark always says, "No discussion of business items" because technically, since you are all here eating together, it is a meeting. Those are the main highlights. As I said, I feel this body does a good job of following the rules. Every once in a while, I have to say something because sidebar conversations we have during the meeting or after we are adjourned are not really allowed, not that I feel that it happens with any frequency, but I know the natural tendency is to chit chat. We need to be mindful that it is technically a meeting.

Comm. Williams: And that applies even to cases that may have been voted on, approved and moved forward?

Ms. Shearer: I don't think that so much matters because you're not deliberating anymore. Let me think about that and get back to you; I hadn't considered that.

Comm. Elkins: It may be coming back at us.

Ms. Shearer: Sometimes, that is the case. We had Slab N Pickle where we saw it two or three different times in different context. Feel free to look over this and email or call with any questions.

Chair Rohlf: If you do have a violation, is it punishable?

Ms. Shearer: Yes, there is a fine. I think the back page talks about it. If it goes to litigation, there could be award of attorney's fees as well.

Comm. Jackson: Are we covered for those things, or are they personal fines?

Ms. Shearer: That depends on the situation. Most of the time, the city insurance covers us under litigation, but if it is found that you really went out of your way and acted out of your scope, then it is possible. Of all the litigation I have been involved in, our insurance carrier has always covered it. That is a brief overview.

Chair Rohlf: Do you think this was a good idea? I think so.

Ms. Shearer: Yes, and as I told Richard, I am comfortable that you understand the law, and the times I have had to kind of throw a flag on the play, everybody understands and we move on. I don't feel like we have ever evaded the Open Meetings Act in this group at all, but we don't want it to happen in the future.

Chair Rohlf: I think the harder part is after the meeting was finished and there was a split decision or not a lot of agreement on a certain thing, and there is a tendency for people to talk. I think we probably do that more than discuss blatantly here at dinner.

Ms. Shearer: You just have to understand that if there are enough of you standing around doing that, it is technically a meeting.

*MEETING ADJOURNED*