

1. CALL TO ORDER

Chairman Ruffatto called the meeting to order at 6:30 p.m. on Thursday, November 30, 2017.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Present were Commissioners Blinova, Creech, Dorband, Johnson, Kalis, Powers and Ruffatto. Also present were Andrew Jennings, Director of Community Development, Brooke Jones, Associate Planner and Mallory Milluzzi, Village Attorney.

4. CHANGES TO THE AGENDA - None

5. CITIZEN CONCERNS AND COMMENTS - None

6. CONSENT ITEMS - None

7. ITEMS FOR REVIEW - None

8. OTHER BUSINESS

A) Workshop Regarding the Plan Commission Role and Responsibilities and Other Planning and Zoning Topics

Mr. Jennings explained that every couple of years a workshop was held to focus on the role of the Plan Commission and Commissioners. A lot of the discussions have been on the legal background for the reviews done by the Commission and the advice from the attorneys on how to handle the reviews and findings of fact. Staff thought of a different approach for this year's workshop so they found an outside group who could help the Plan Commission with more of a practical aspect of being a Plan Commissioner.

Ms. Jones introduced the representatives from the Chaddick Institute, DePaul University, Laurie Marston, FAICP and Andy Cross. They have hosted similar workshops in dozens of communities.

Ms. Marston reported that this was the 77th or 78th workshop they had done. They started the

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program in 2011 and is done jointly by the Illinois Chapter of the American Planning Association and the Chaddick Institute of DePaul University. They find the workshops are most successful if the group gets involved in the discussion. Ms. Marston referred to the three handouts that were distributed - PowerPoint presentation, general background and an anonymous evaluation.

Mr. Andy Cross introduced himself. He is a city planner in Highland Park and has been a planner for about 15 years. He started as a planner in Minnesota and has been with Highland Park for 9 years.

Ms. Marston is from the Chaddick Institute of DePaul and is a planning consultant. She spent the first 20 years of her career as a public sector planner. Her last position was the community development director for the Village of Wilmette. She also served as a citizen volunteer planner on the Evanston Plan Commission.

The Plan Commissioners introduced themselves.

Ms. Marston started the presentation.

The Comprehensive Plan is a vision for the Village's future. The difference between the Comprehensive Plan and the Zoning Ordinance is that the Comprehensive Plan will tell the general future policy and the Zoning Ordinance is much more specific and is looking at the current situation. They should be somewhat consistent but don't have to be identical.

When developing a plan, it is always important to get the public involved so they understand what is in the plan and can provide input in developing the plan. When the public is engaged in developing or amending the plan, they will feel ownership and more likely to participate and help move the Village forward.

There are different ways to implement a Comprehensive Plan. There are the big picture policy issues, attraction, retention, financial tools, TIF Districts and revising the plan when needed. A completely built up community with virtually no land available for development or redevelopment doesn't need to update the plan as often as a greenfield community. When there is a sense that the plan is no longer serving the Village's purposes, an amendment is done to the plan.

Chairman Ruffatto questioned the influence the Plan Commission has on the TIF Districts. Ms. Marston explained it was typical where the Plan Commission looks at the land uses around town and the EDC or Village Board is more involved in the financial issues. The financial tools are still a way to help implement the plan even if the Plan Commission is not intimately involved in working on the financial tools.

Commissioner Creech referred to a previous discussion regarding an amendment to the Comprehensive Plan. Mr. Jennings explained it had been discussed at the joint meeting with the Board and there was consensus from both groups to look at an update to the Town Center area. He confirmed an update was on the horizon.

Ms. Marston noted that at times the updates were done in house by staff or by hired consultants.

Mr. Cross referred to the Comprehensive Plan and explained that the development regulations help the Village. There are different layers of development regulations. The Zoning Ordinance starts broad and then the Building Code ensures safe development and structure within the Zoning Districts. Design guidelines guide the Building Codes. The goal of the regulations is to provide a clear structure for development. When there is a clear structure in place and objective codes that are applied consistently, that can help shape development and help the Plan Commission work within the framework of the development regulations. It facilitates positive development in the Village. Mr. Cross explained that predictability was huge and Staff's job is to facilitate the predictable execution of the plan and help the Plan Commission carry it out.

Mr. Cross explained the bottom line was that there was no right or wrong answer. The tools can be shaped by the Commission and Staff to be as effective as they can and respond to local concerns. There are legal limitations for development regulations but they can be catered to respond to localized needs.

The Zoning Ordinance is to protect the homeowner. It limits what the neighbor can do on their property so your property value is protected and continues to grow. The Zoning Ordinance is a protector and not a limiter.

The Zoning Code is a broad document. It regulates what can be done on land and the intensity of the use. There are different zoning districts that help developers with expectations. The Zoning Ordinance helps set expectations in the different areas. Zoning approvals include text and map amendments. When the Zoning Code doesn't reflect the Comprehensive Plan's visions, a change is done to make the tool of the Zoning Code more accurately reflect the visions of the Comprehensive Plan.

Permitted uses are allowed. Variations respect the spirit of the Zoning Code but allow it to adapt to a new scenario or new situation. When there are repeated variation requests to a part of the Zoning Code, it is time to revisit it. A Zoning Code is a living document and is meant to further the vision of the Plan Commission and the Village's leadership.

Special Uses are a way to broaden what can be done in a Zoning District but still put conditions on it.

Planned Unit Developments are a powerful tool and allow a customized Zoning Code to operate on a very case by case basis but still respecting the surrounding area.

Special Uses in Planned Developments can incorporate conditions that need to be associated with the property. Conditions can come in very handy for Special Uses to relate to the scale.

A Planned Unit Development is a great tool because it is great for the development community because they can customize the Village's Zoning Code to their project. It also gives the Village a chance to look at it to see how it can benefit the area around it. If variations are incorporated to the Zoning Code as part of a Planned Development, it gives the Plan Commission and Village's

leadership a chance to say OK but can discuss limitations.

Mr. Cross explained the Plan Commission looks at a project in light of the Zoning Code and tools. It is OK for Plan Commissioners to have feelings about a project since they are dedicated members of the community. However, when they accept the responsibility of being a citizen planner, a broader range of responsibilities is also accepted. The project should be viewed through the established tools. If the conversation becomes that the Commission just doesn't like it, it becomes a dead-end. It doesn't tell the development community where to go and it doesn't further the dialogue. If the Commission states that they are not comfortable with the density in the multi-family zoning district it's a broader discussion. It is important to keep in mind as citizen planners, the role is to use the established development regulations in place to evaluate projects and rely less on their own feelings.

It is important to discuss the land uses allowed in the Zoning District. When discussing a multi-family project, it is OK to discuss site plan but if a project is multi-family and meets the underlying land uses in the Zoning District that are allowed and it doesn't matter if it's rental or owner occupied. You can ask the developer if they plan to rent or sell them but it isn't something that should form the discussion of the standards because if the sales model doesn't work out it could change.

Chairman Ruffatto referred to maintenance issues and asked for Mr. Cross to expound on it. Chairman Ruffatto gave an example of a petitioner coming in front of the Plan Commission and is requesting a building addition but their landscape had not been kept up-to-date per their landscaping plan. Chairman Ruffatto questioned if the Commission could discuss maintenance issues. Mr. Cross explained if there were ongoing property maintenance issues on a property, there is an existing mechanism to work with it. It can be discussed as a concern of the Commission with the intent to work with Staff on an enforcement case moving forward. When discussing a variation, the standards for it don't include property maintenance or fulfilling previous obligations. The variance decision should be based on a hardship impact on neighboring properties but it can be made clear that the Commission is aware and concerned about the maintenance of the property.

Commissioner Kalis questioned if the track record of a petitioner could change a Commissioner's view on a variation. Mr. Cross confirmed it would not be the time to handle the maintenance issue. Ms. Marston explained a Plan Commissioner can state the issues and make sure it is completely reflected in the record that is being sent to the Village Board and then make the decision in front of the Commission. The Village Board could then decide to table it for another meeting or two until the owner has replanted the missing landscaping and shown good faith. The Village Board has more latitude with it than the Plan Commission.

Commissioner Johnson referred to the interior design bullet and mentioned that the Commission had reviewed interiors in the past. Mr. Jennings mentioned that Staff had discussed it with Ms. Marston prior to setting up the workshop. He explained the way the Village handled a Special Use application where there was a relationship between the interior and the standards for a Special Use. The Village has been somewhat lenient in allowing it to be part of the record that the Plan Commission is making. The Village has always adopted the philosophy that if the

interior had some concerns that were related directly to the standards of the Special Use, a review of the floor plan where it makes sense was appropriate. Some things may need to be adjusted in the future.

Ms. Marston explained sometimes the developer or the retailer may provide the interior layout. She agreed there were times where there was a connection between the interior of the building and the site plan. If there is a security issue, Staff could ask the Police Department to review it.

Commissioner Powers mentioned there were times when the seating was reviewed for a restaurant use and how it would impact parking. Ms. Marston explained the number of seats was a concern relating to the number of parking. How the restaurant laid out the seating within the restaurant was not a concern for the Plan Commission since it was more of an operational decision.

Mr. Cross questioned if there was an established Sign Code with a buy right sign program. Mr. Jennings confirmed there was an appearance review for every sign. Mr. Cross explained that signs were a huge part of municipal planning. It is important for Commissioners to protect and uphold the public realm and allow the business community to feel they will have effective signage.

In reply to Chairman Ruffatto's question, Ms. Milluzzi explained by right meant a sign was automatically approved if it met the code. The Village of Wheeling did not have it.

Chairman Ruffatto referred to the maintenance issue and explained the Commission had always looked it has a hammer to ensure that the petitioner was adhering to what had been approved in the past. Conditions have been added to the approvals that go to the Village Board. He was not in favor of stopping it.

Mr. Jennings explained the discussion of the tradeoff between density that may exceed what the Code allows and what happens on the ground was part of the PUD. Ms. Milluzzi explained it was a unique and specialized zoning procedure versus a Special Use or variation. PUDs are negotiated and not allowed by right.

Commissioner Creech believes there should be some flexibility or tradeoff.

Ms. Marston explained that some communities require a bond from the petitioner before the owner gets the building permit to make sure the landscaping gets installed and stays healthy.

Ms. Marston reiterated that the record should include that the petitioner had not done what they were suppose to do since the Village Board has a little more latitude on how they review the project. The Plan Commission is limited to the standards of review in the zoning ordinance. Mr. Cross explained it was a recommendation from the Commission to the Village Board and not a condition.

Commissioner Powers mentioned conditions of parking lots were also a big issue. Chairman Ruffatto referred to a recent Special Use for a limousine company that had a parking lot in

horrible shape. A condition was added to reseal and restripe the parking lot. Ms. Marston explained if it was a new use going into the site then it was very reasonable.

Mr. Cross explained that a lot of times it was tough to tie into the use.

Ms. Marston explained for the limousine company, the Plan Commission could say they would approve the Special Use but were directing staff not to issue the building permit until the parking lot situation was addressed. This is possible because it was clearly related to the use. She explained you need to be careful to not get into a situation that was not legally defensible.

Commissioner Johnson questioned if a lot of the current conditions should be listed as recommendations directed to the Village Board. Mr. Cross agreed unless there was a real rational nexus between the condition and the zoning petition.

Ms. Marston asked for questions. Chairman Ruffatto mentioned the issue with maintenance was usually with existing properties and not new developments. Ms. Marston explained property maintenance was ultimately a code enforcement issue and would involve staff time. If the adjudication is done in house locally it saves staff time.

The Plan Commission has the luxury of looking at more long-term horizon than anyone else in the Village. They also have the luxury of looking at the Village as a whole. The Village Board looks at public safety, public works, capital improvements, budgeting, risk management, personnel all of which is important to the running of a well managed village.

The role of the Plan Commission was to prepare plans for the future of the community and preserve property values. A developer sometimes has to go through three separate bodies to get approval and in Wheeling it is normally just one Plan Commission meeting. Part of the roll is also to keep informed about the Village's issues and to keep up with current tools and techniques. Ms. Marston mentioned that the National APA had a lot of publications and Webinars. She suggested that the Commission go back and look at a project after completion to help with similar projects in the future.

The elected officials in Wheeling are the final authority on the land use matters. They provide policy direction from time-to-time. They also appoint qualified members to the Commission.

CMAA is the regional planning agency. It addresses regional issues - rails, roads, air quality, water supply, etc. GO TO 2040 is the current regional plan with an expectation to adopt GO TO 2050 in 2018. CMAA can only make recommendations. The authority for land use issues is at the municipal level. Chairman Ruffatto mentioned that the Commission had used CMAA a couple of times.

The role of the planner works with citizens to explain the process of planning and can guide them through the codes and hearings.

The Staff Report provides information to the Commission regarding the basic facts of the case, any background issues, Comprehensive Plan objectives, Zoning Ordinance requirements and the

standards of review.

Mr. Jennings referred to the role of the Staff recommendation. He explained that over the years they have gone back and forth between the Staff making recommendations that were purely neutral and the Plan Commission may wish to review the following. There have been time periods where the Staff recommendation had been much stronger...Staff recommends this should be denied/approved and then there have been times Staff stays neutral. He asked if there was a best practice. Ms. Marston confirmed it was an issue everywhere so there has been a lot of debate within the profession about how to do it best. Some people say since the Staff are the professionals, there should be a positive or negative recommendation in the Staff Report. The other side is if Staff recommends approval of a project and ultimately if the Village Board denies it and the applicant decides to litigate, Staff would be the first to be called to the witness stand. Mr. Cross mentioned the best and most powerful tool is that the Staff recommends and the Plan Commission considers the project on its merits and refers to the standards above. Ms. Marston and Mr. Cross both agree that phone conversations with the Village Staff can be helpful.

Mr. Cross noted that the Village Attorney was a great resource. It is not the Commission's role to make everybody happy. He explained that meetings at times can get unruly but it was imperative that courtesy be shown.

Developer's Role – Development in the Village was not done by the city very often. It is done by the outside development community. The development needs to provide good information. Staff planners work to get the information out there. Some developers are not good at providing it or unwilling to provide it. Information received the day of the meeting or brought to the meeting will not work. Mr. Cross explained the Chair can accept it but the Commission should not take time to review it at the meeting. He suggested if new information was brought to a meeting it was OK to say that the Commission wants Staff to review it and bring it to the next meeting. The Commission can then request Staff to give a report on it at the next meeting. If the Commission was not comfortable with the answers they were getting from the developers, it was OK to say that they were not comfortable with the answers they were getting.

Commissioner Creech questioned if a Commissioner could inform the Chairman that they were uncomfortable with something coming up at the last minute or didn't understand something. Mr. Cross agreed a Commissioner could refer to the Chair or explain their concerns to the developer and tell them that they were uncomfortable and wanted more information.

The developer is responsible for knowing the Village's rules and coming to the Village informed about their code. It is not up to Village Staff to inform a petitioner of all of the rules.

Developers work in different communities so having information online and accessible was helpful and necessary.

It is part of the Plan Commission and Staff's job to help a development be successful and help a profit be reasonable in a return on investment but at the same time look out for the public interest.

Mr. Jennings referred to the Plan Commission's joint meeting with the Village Board. The gap in this process is currently being addressed. Mr. Jennings wants to know how to fix the PUD process to insert some predictability so that the finance side doesn't walk away halfway through.

The Village of Wheeling does not have the Staff time available to analyze it and make a thorough recommendation. How can enough predictability be added to the density side of the land use review process so that the financial side stays in through the whole 6-9 month PUD. Mr. Cross explained that when a multi-family zoning district allows a certain density that should be the expectation of the developer but it should also be the expectation of the Plan Commission to allow the density.

Mr. Jennings explained the Village had an issue that was somewhat unique to Wheeling. The issue is how to determine predictability when developments were going to need roads. Wheeling does not have a grid. He referred to a panel he was on at Chaddick along with a planner from Oak Park and two developers. The developer's take on predictability of density in a development was he called the town to determine the number of units he could get and closed on the financing immediately and built the development. It compares to a year long discussion at the Village of Wheeling. He wants to be able to figure out how to take a large site with no streets and turn it into predictability so they can attract the caliber of developer that was easily navigating the code elsewhere.

Ms. Marston provided an example when a developer comes to the Village and provides the amount of money they paid for the land and tells the Village the number of units they need but it was higher than the Code allows. She suggested responding with "The value of the land is determined by the market and zoning and if they chose to go ahead and overpay for the land ignoring the zoning, they're sorry but the large variation would not be granted." Ms. Milluzzi stated the example in Wheeling was a PUD.

Mr. Jennings reported the Mixed Use Districts is where all of the developments were currently being built. The MX Districts have a PUD requirement at a certain acre. Everything is a PUD in the Town Center area. There is the demand for it but he questioned how to handle the demand. It is a challenge for the Village.

Responsibilities of members of the Commission – The Commissioners should read the packet prior to the meeting. Ms. Marston suggested visiting the site. Know the ordinance and call Staff with any questions prior to the public hearing. Make sure the Commission understands the proposal prior to voting on it. If it is not clear, keep asking questions. All comments should be on the record made at the Public Hearing so that everybody in the room understands the reason the decision was made. A comment does not need to be repeated if another Commissioner had already made it. Discussions with the members of the Commission should only happen at the public hearing. There should be no discussion prior to the meeting. It needs to be on the record.

The Chair is the most important person at the meeting. Make sure people at the meeting are given the opportunity to provide their comments. Focusing the discussion on the topic at hand and not allowing comments that were not relevant to the petition.

Mr. Cross mentioned that the Chair in Highland Park announces that they will limit comments to 3-5 minutes and doesn't allow any repetitive comments. Ms. Marston suggested being flexible

on the timeframe if someone speaking is representing a group or if they are speaking as an expert. Chairman Ruffatto explained the public is required to sign in prior to the Plan Commission meetings in Wheeling. Ms. Milluzzi reported that only in the case of anticipated large hearings have rules been adopted.

Ms. Marston suggested having the Chair explain the process and rules at the beginning of a big meeting. There should be a set procedure for the meeting. Sometimes the petitioner or staff will go first, then the public will provide testimony or questions and then the Commission members will ask their questions of the developer and then discuss amongst themselves on the record. Just before the vote, the Chair very briefly restates the request. Mr. Jennings explained the way the Village of Wheeling's Plan Commission runs a hearing. The practice of the Commission has been for the Commission discussion and questions to happen after the public has had their opportunity. Ms. Milluzzi stated the hearing is not closed until after the vote in case additional questions come up. The public portion is closed after they have made their comment. Ms. Marston confirmed the Village of Wheeling's process was perfectly OK.

Mr. Cross asked if the Commission had completed the Open Meetings Act training. Ms. Milluzzi reminded the new Commissioners to complete it.

Mr. Cross warned the Commission to be aware of talking about items on an agenda outside of a meeting.

Ms. Milluzzi reminded the Commission not to reply to all in e-mails. Two can talk about Plan Commission business without being an Open Meetings Act violation. More than two, will be a violation. Mr. Cross suggested blind copying the Commission. Ms. Milluzzi confirmed that is also done in Wheeling.

Findings of Fact – Ms. Jones confirmed there was a response to the standards in the Staff Report. The Findings of Fact include the standards and the summary minutes taken by the Staff Secretary. Mr. Cross stated the best way to memorialize the Plan Commission's recommendation to the Village Board is through the Findings of Fact.

Ms. Marston referred to a case (LaSalle National Bank) in Illinois from 60 years ago that went to the Illinois Supreme Court and it involved Cook County. The Supreme Court of Illinois found that zoning was constitutional and can't be arbitrary and capricious and it has to relate to the health, moral, safety and general welfare of the public.

Special Uses were OK to have in a particular Zoning District but the Plan Commission should review certain things about them because it could have an impact on surrounding properties. One of the standards for a Special Use is "It will not impact the essential character of the locality". Ms. Marston provided a hypothetical example – There is a new use going into an existing space and an existing shopping center. The shopping center already has adequate utilities, parking and access and the particular retail use is compatible with the other retail restaurant and office uses in the center.

Ms. Marston referred to one of the standards for Special Use – Parking areas shall be of adequate

size and for the particular use, properly located, and suitably screened from adjoining residential uses and the entrance and exit drives shall be laid out to prevent traffic hazards and nuisances. Ms. Marston provided a hypothetical example – The place of worship had been in the area for many years but the new parking lot will remove parked cars from the public street and worshippers will not have to cross the busy street to get to the place of worship. The parking lot would be adequately screened with landscaping and the lighting will be correctly aimed and shielded from the adjacent residential properties.

Variations provide relief from the requirements in the Zoning Ordinance. It typically relates to a number. Use variations are prohibited. A single family neighborhood with a use that is permitted and someone wants to build a car wash, a use variation cannot be granted because the use would be changing in the Zoning District. The only way a use can be changed is to amend the Zoning Ordinance. Mr. Cross agreed and mentioned that land use can't be changed on a variation.

Ms. Marston referred to the first standard of Wheeling's Zoning Ordinance that relates to present actual physical conditions on the piece of land being discussed and it creates a difficulty or hardship as distinguished from an inconvenience. It is often hard for the petitioner to understand that it is just an inconvenience and not a difficulty or hardship. Ms. Marston provided a hypothetical example – There is a stand of mature oak trees on a particular property involved so the petitioner because of the oak trees cannot put their addition in a conforming location. Having a whole stand of mature oak trees is unusual and unique and creates a difficulty or hardship for the petitioner.

Ms. Marston referred to another standard – the conditions are exceptional, extraordinary and are unusual that would not apply to a bunch of other lots in the particular zoning district. A hypothetical example – There is a property with a rear yard is sloping down to a creek that adjoins the Forest Preserve District. There is not enough flat land on the particular lot to actually build the house so the Commission might grant a small front yard variation to allow the house to be a little closer to the street than normally would be allowed.

Ms. Marston referred to another standard – the conditions that were creating the difficulty or hardship were not caused by the applicant. A hypothetical example – A person bought the house, the house was built before the current Zoning Ordinance and so now the house was currently non-conforming. In order to build their addition, they would need a variation. They are not doing it because it was just an inconvenience but there was something that happened on the lot before they owned it that was creating the difficulty or hardship.

Mr. Cross explained that a financial concern was not a hardship.

Conflicts of Interest – Mr. Cross explained that sometimes there was a gray area. When in doubt, discuss it with Staff. Mr. Cross explained if there was a conflict of interest, the Commissioner would recuse themselves. It is standard and not a sign of weakness. Mr. Cross stated that perception was everything. Commissioner Kalis questioned if he could excuse himself during the middle of a meeting if he recognized someone. Mr. Cross explained there were standards for a conflict of interest. Just because you know someone, doesn't make it a conflict of interest.

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Commissioner Kalis mentioned he may know some of the developers because of his business as a realtor. Mr. Cross suggested announcing the relationship on the record but stating that there was no financial interest.

When is it not a conflict of interest - Mr. Jennings asked about "Request from organization in which you are a member versus a homeowner association where you are a part owner". Ms. Marston explained there would be a conflict if you were an employee or someone building the particular building. She felt there may not be a financial gain for a homeowner association. Ms. Milluzzi felt if the Commissioner was a board member in the homeowner association thus making the decisions she would advise to recuse.

Ethics – Ms. Marston reported that the State statute and information in the Village Code controls the ethics. Both apply to elected officials and appointed officials. They limit gifts and certain political activities. There are times when petitioners or staff may have confidential information. The Commissioners are prohibited from disclosing the confidential information or using the information for personal gain.

Ms. Marston reported that EPA has a short document on ethical principals in planning. The National EPA website is planning.org.

Ms. Marston personally felt it was terrific that the Village makes sure that the Village Attorney attends the meetings. She mentioned there were many communities that don't do it.

Open Meetings Act – Ms. Marston warned the Commission to be careful if texting during a meeting. If something happens and there is a lawsuit, they can ask to see all of the texts that were sent during a public hearing.

There is a difference between a public hearing and a public meeting. The workshop is a public meeting but when discussing a particular case for a specific parcel of land it is a public hearing. Both are covered by the Open Meetings Act.

Ms. Marston provided a list of websites. She mentioned Pete Pointner who is an architect, engineer and planner and is well recorded in the professional field. Mr. Jennings thought the Village's law firm had used him in the past.

The Commission thanked the guests.

9. APPROVAL OF MINUTES - None

10. ADJOURNMENT

Commissioner Johnson moved, seconded by Commissioner Powers to adjourn the meeting at 8:50 p.m. All were in favor on a unanimous voice vote and the meeting was adjourned.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steve Powers". The signature is written in a cursive, flowing style with a large initial "S".

Steve Powers, Secretary
Wheeling Plan Commission

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