

**MINUTES OF A SPECIAL MEETING**  
**MAYOR AND BOARD OF TRUSTEES**  
**FOR THE VILLAGE OF FORSYTH, IL**

**Held at the Village Hall**  
**November 30, 2011**

**Call to Order**

Mayor Hap Gilbert called the meeting to order at 6:31 p.m.

**Announcement**

Mayor Gilbert mentioned that it appears as though with people still coming tonight that we may be a little overcrowded. Therefore, we are going to start the meeting here, take the roll, and then take a short recess to relocate the meeting to the Community Center located at 268 S. Elwood Street. This may or may not be needed, but we will have to see. We want everyone to have a seat.

**Pledge of Allegiance**

**Roll Call**

Upon call of the roll, the following Trustees answered present:

*Physically present:* Eric Morr, Larry Reed, Steve Hubbard, Bob Rasho, Marilyn Johnson, Kerstin Trachtenberg.

Absent: None.

**Also Physically Present**

Library Director Rachel Miller, Village Administrator Heather Kimmons, Chris Lusvardi, Engineer Chuck Hunsinger, Phillip Reason, Terry Taylor, Pauline Rasho, Village Vision Report Charlyn Brautigam, Janet Calhoun, David Dunn, Village Vision Editor Deb Kirchner, Steve Horve, Mike Williams, Fred Brown, Everett Nicholas, Bud Wise, Cyndi Harris, Don Van Lyssel, Kristin Sowa, Robert Van Hook, Leo Morland, Charles Frey, Clint Johnston, Mike Mandrell, Jim Peck, Sid and Fay Audiffred, Kraig Ritter, Julie Lakshmanan, Bob Bischoff, Rick Speidel, Attorney Darrell Woolums, Attorney Jeff Jurgens, Village Clerk Kathy Mizer.

***Independent Legal Review and Report, Forsyth Sales Tax Assignment***

Mayor Gilbert announced that the purpose of tonight's Special Meeting was to listen to the presentation and report from Independent Legal Counsel Jeff Jurgens from Sorling Northrup Hanna Cullen & Cochran, Ltd. from Springfield, concerning the 2007 sales tax assignment from the Village of Forsyth to the Maroa/Forsyth School District No. 2. Mayor Gilbert added that following Mr. Jurgens' presentation, there would be time allowed for anyone from the public to comment on the issue, or ask any questions they may have. He introduced Mr. Jurgens and asked him to proceed with his presentation and report.

Jeff Jurgens began by stating he was retained to conduct a legal review of the sales tax assignment. He held up a copy of the actual report that was compiled and noted that the actual report was only about 14 pages in length. The majority of the document contains supporting documentation to the facts presented in the report. Jeff explained that what he would like to do is just provide a brief overview to Trustees and the public in attendance. However there are a few things that would be more appropriate to discuss in executive session. Jeff stated that once Trustees are in executive session, he would give each one a copy of the report.

Jeff explained that when he began working on this project, he reviewed the legislation and the applicable statutes. He reviewed the pertinent ordinances, the referendum that was approved, the intergovernmental agreements that were passed, all the drafts of those agreements, any correspondence that could be found, meeting minutes, some of the meeting tapes, and conducted several personal interviews. Interviews were done with several of the school district officials including Jimmy Peck and Mike Williams, and their attorney, Everett Nicholas. Interviews were also conducted with the Village Mayor, Village Attorney Woolums, former administrator Cheryl Lehman, Trustees Larry Reed, Jeff Allsup, Jeff Horve, John Walters, Marilyn Johnson, Don Van Lyssel, Bob Rasho, and Clerk Mizer. Phone conferences were held with former administrator Austin Edmondson, and David Pistorius from First Midstate, who was involved in issuing the bonds. Jeff pointed out that he tried to be as comprehensive as he could be in this.

Jeff mentioned that a lot of the basic background is familiar to most of those in attendance, but this issue really began in the summer of 2006. The issue began when officials from the school district approached the Mayor about a concept of using sales tax as a way to build a new school in the Village. Mayor Gilbert thought that was something that was worth exploring so the school district pursued a change in state legislation to allow the Village of Forsyth to use its sales tax for public schools. This change in the legislation is something that is unique to the Village. It is not available for all municipalities within the state. Under the legislation, Forsyth alone has the authority to use its sales tax for public school purposes. The legislation is very broad, and there are not a lot of restrictions with it. It basically says that public infrastructure can include public schools. Once the legislation was enacted on February 6, 2007, the Village adopted an ordinance to place the referendum on the ballot. The referendum asked voters to approve raising the sales tax in the Village by one half of percenta . This referendum question was placed on the ballot and was voted on and approved on April 17, 2007. On June 4, 2007, the Village approved an ordinance to impose the additional one-half of one percent sales tax. The ordinance also provided that the revenue generated by the increase in sales tax would be transferred to the school district to pay for the construction bonds.

Jeff pointed that these are the basic facts that most of the individuals involved with this issue agreed on. When you get past that, it appears that there were two different trajectories. The Village was on one, and the school district on another. This doesn't necessarily mean that this was intentional, but in reviewing the records and speaking with different individuals, Jeff remarked that he believes there were miscommunications and breakdowns in communication that led the Village believe one thing, and the school district to be thinking something else. Jeff mentioned that the public discussions that were held clearly indicated that repayment was a part of the Village's thinking on this. It was talked about at public forums; it was discussed in the media that throughout this whole process the Village was going to be repaid for the sales tax transfers. The Village Attorney was asked to prepare agreements regarding the repayment, and those agreements were prepared. Jeff pointed out the repayment issue was also discussed in

executive sessions. In a May 21, 2007, executive session, the Board discussed repayment with the school district and everyone at that point in time seemed to be in agreement with the deal. At the executive session held on June 4, 2007 the sales tax transfer agreement was approved. On July 13, 2007, the Village Attorney sent to the school district's attorney a draft of the repayment agreement. Jeff mentioned that at that point in time Attorney Woolums reported that he had sent the school district's attorney a draft of the agreement and was waiting on a response from him. Jeff reported that there was also an article placed in the Village Vision in July 2007 that states how the Village continues working with the school district on the repayment issue. Jeff mentioned that in speaking with Mayor Gilbert, it appears that he thought because the district's "lease levy" was going to be tied up for a certain amount of time, repayment wasn't really going to come to the forefront for at least a few years. Something happened, and the repayment side of this issue was not brought back to the Village Board to talk about until recently. Jeff reiterated, although the repayment agreement was prepared, it just sat. Nothing was done with it. The Village believed all along that repayment was going to be part of this. However, when the school district approached the Village about a new deal or doing something else with the Village, the Mayor pointed out that there is still an agreement hanging out there that has never been executed. The Mayor stated that this issue should be resolved prior to entering into a new agreement with the school district.

Jeff explained that in his opinion, the school district was on a different trajectory. Its representatives thought that they had clearly explained to the Village that repayment was no longer going to be an option. Jeff reported that school district officials recall discussions where initially the Village was going to issue the bonds. Something changed in the structure of the deal and the Village was no longer going to issue the bonds. At that point it was decided that the school district was going to issue the bonds. School district officials stated that this change was clearly communicated to the Mayor and the repayment was taken off of the table. Jeff mentioned that the school district appeared to be talking in terms of a lease levy, where it was talking about leasing the property and using its lease levy to repay the Village over a long period of time. However, the school district's attorney at some point according to the district, notified the district, that the school district could not use its lease levy for property that it owns.

Jeff reiterated that in his opinion there was an apparent breakdown in communications at some point after the May 21, 2007, meeting. It is unclear whether the parties considered the practicality of repayment, since to repay the Village the full amount transferred to the school district at its lease levy rate could exceed 200 years. The lack of having a Village Administrator during a period of time when this transaction took place could have also contributed to the confusion and misunderstandings.

In summary Jeff presented three recommendations for the Board to consider. They include:

- In the future when more than one agreement is necessary, the Village should ensure that all of the agreements are prepared in advance and approved at the same meeting.
- All meetings should be well documented and there should be at least two officials present at each one.
- Consider a self-assessment process to determine whether all staff and officials are operating within the expectations of the Village Board and each one has a clear understanding of what their roles and responsibilities are.

In conclusion, Jeff stated that he has found no evidence to suggest that anyone intentionally misled the public or Village officials, although there was clearly confusion and an apparent lack of communication and followthrough on the repayment issue. The Village Board must now make a policy decision on how it wants to proceed.

**Public Comment** –

Bob Van Hook: 303 W. Forsyth Parkway

- Bob pointed out that Forsyth has a combined school district, but it appears that only Forsyth residents are paying the additional sales tax. Why was Maroa not involved in this? Another question was why the county sales tax that was recently passed can't cancel the Village sales tax out. Bob stated that in his opinion, Forsyth residents are being taxed twice. Secondly, if the school district does pay the money back to the Village what will the funds be used for? Will the money just go into a large slush fund? Everyone knows Forsyth has plenty of money already. This makes no sense and is unethical.

Charles Frey: 624 Cortez Drive

- Charlie commented that it appears that the Board intends on going into Closed Session. That is probably when all of the excitement will happen and the public is going to get kicked out. Charlie commented that this means the public will not get to hear what happens. He stated that residents might as well have just stayed home tonight because we all know and have heard before what has been presented this evening.

Mike Mandrell: 414 Tyrone Drive

- Mike asked Mr. Jurgens to read the exact wording of the referendum that was passed. He commented that it appears there was a little confusion on exactly what the voters were voting on. Mike also asked Mr. Jurgens if there was any discussion of who eventually was going to own the new facility. Also, at what point ownership was going to change and what was the building going to be used for. Mike stated that originally, the plan was for the new facility to be a joint-use facility. The Village was going to own the building and that was the only way the lease levy certificates could be issued. This was the only way the school district could pay back the Village any money. Mike commented that he attended a lot of meetings and was in support of the referendum.

Jeff Jurgens read the ballot question –

*“Shall the Village of Forsyth adopt a Non-Home Rule Municipal Retailers Occupation Tax and Non-Home Rule Municipal Service Occupation Tax of one-half of one percent (0.50%) for the payment of funding expenditures on public infrastructure or on property tax relief or both?”*

Jeff Jurgens pointed out that the question does not reference what the building was going to be used for, nor does it state who was going to own it.

The school district placed a second question on the ballot –

*“Shall the Board of Education of Maroa/Forsyth Community Unit School District Number 2, Macon and Dewitt Counties, Illinois, build and equip a new school building?”*

Mayor Gilbert mentioned that both referendum questions were advertised together. He told Mike Mandrell that he has also been surprised that there wasn't clearer documentation of what exactly took place and when things took place since the talks began in 2006. The records are just not there. However, Mayor Gilbert did acknowledge that early on, it was thought that the Village would own the school building and the school district would lease it from the Village. The idea of a joint-use facility was something that was also talked about, but that went out the window fairly early in the discussion. However, there was always the thought that if the school was built in such a way that it could be secured during the evening hours, Village residents may be able to use the gym or cafeteria areas for various functions. The safety and security of students was the biggest concern with this idea. Another idea that was briefly talked about was for the Village to share the parking lot with the school in the event a community center was built in the future park in Prairie Winds. This concept would allow adequate parking for those using the facility without having to use so much of the park area for parking space.

In response to Mr. Van Hook's question about Maroa not being involved in this process, Trustee Hubbard remarked that the Forsyth Village Board can't control what Maroa does or does not do. In regard to the half percent sales tax that is being assessed by the county, he reported that the majority of those receipts go to the Decatur schools because the funding is based on enrollment. Trustee Hubbard pointed out that the Maroa/Forsyth School District receives a very small piece of those receipts.

Trustee Rasho commented that he would like to narrow down the timeframe when all of these discussions took place. He pointed out that although he was not a Trustee on the Village Board in 2006, and early 2007, he did attend a lot of board meetings. In addition, two public forums were also held, which he attended. One was held in Maroa and the other in Forsyth.

Trustee Rasho mentioned that his understanding of the timeframe of when things happened is reflected in the documentation prepared by Staff and presented to the Board at its October 3, 2011 meeting. The timeframe outlines factual information of when things pertaining to this issue happened. Trustee Rasho remarked that in his opinion, it is important for the public who came tonight to at least know and understand the facts. First, the state legislators approved the legislation to allow Forsyth to include schools as infrastructure. It was vetoed by the governor, and then overridden by the legislature in January 2007. The referendum was placed on the ballot, but was not actually voted on until April 17, 2007. Trustee Rasho asked the Mayor if there was any discussion about the repayment idea during the timeframe when the school district and the Village were working on trying to get the legislation passed. He explained that it is his understanding that during this time, it was the Mayor and the Attorney who were representing the Village on this issue.

Mayor Gilbert replied that it was he and the administrator who were involved with talking to the school district. The Village Attorney was not involved. His only involvement was only in preparation of the agreements between the two intergovernmental entities. However, to answer Trustee Rasho's question, yes, the repayment issue was talked about before the law was changed. Based on this fact, Trustee Rasho asked the Mayor if there was any documentation of those talks. Mayor Gilbert replied that this matter was talked about during the public meetings that were

held, and there is documentation of those meetings. Trustee Rasho acknowledged that there were articles in the Village Vision and the Herald and Review Newspaper, but again asked the Mayor if there was anything more. Mayor Gilbert pointed out that this is why when the school district approached the Village about purchasing more property, he brought this repayment issue up to the current administrator. This matter needs to be resolved before the Village moves forward. Mayor Gilbert commented that he felt an obligation to the Village to ensure that this issue was addressed.

Trustee Rasho asked the Mayor if after the law was passed there was any discussion between the school district and the Village on how the agreements were going to be structured, or the repayment was going to be made.

Trustees agreed to allow the public to continue making their comments before continuing their discussion.

Mike Mandrell: 414 Tyrone Dr.

- Mike pointed out that in every newspaper article stated that this sale tax increase was for the benefit of the Maroa/Forsyth Schools. He commented that he is hopeful that this what the Trustees focus on. As a group of citizens either from the City of Maroa, or the Village of Forsyth, the sales tax increase was for the benefit of the schools. The Village Board needs to let the issue go. Nothing is going to be resolved by beating the issue to death.

Kraig Ritter: 787 Christopher Drive

- Kraig remarked that when this issue first arose, became so he was confused he went back and did some research on his own. His intent was to determine the “*spirit*” at the time when this issue was being discussed. In review of the Herald and Review Newspaper archives, Kraig stated that he found several articles showing the timeline of when the school matter was discussed. They include:
  - January 10, 2007: “Forsyth voters might be able to choose soon whether they want to pay more sales tax in order to build a new grade school.”
  - January 15, 2007: “Forsyth voters will decide whether to raise sales tax half of a percent that will help build a new grade school” If the voters approve a sales tax increase, the funds would go for the construction of the new school. Another quote was, “This is a mechanism or an opportunity to decide on a different and unique way to fund the schools that isn’t ordinarily available.”
  - January 21, 2007: “The Village of Forsyth and the School District are asking shoppers from around central Illinois to help fund their new school and community center for them.”
  - February 11, 2007: “If voters approve the sales tax increase, funds would go toward the construction of a new school.”
  - March 26, 2007: “Should the school district build a school and should the Village raise sales tax to pay for it?”Another quote from a prospective Board member: “If elected, he will push for the Village to pass a resolution saying that when the extra sales tax is no longer needed to fund school costs, it will be scrapped.”

Kraig commented that in his opinion, the way this legislation was sold to him was that Forsyth would be building a new school using an alternative funding mechanism. The intent was to do so without raising property taxes.

Don Van Lyssel: 857 Cara Chris Lane

- Don commented that he also did some research on this issue. He commented that when this issue was first brought up in September, he felt the same concerns as have already been expressed. Don stated that he also went to the Herald and Review archives to research this issue. He commented that in his opinion, there are two clearly different perspectives on what was written.

January 15, 2007: "Voters to be hit up for new school. Officials promised no property tax increase in the Maroa/Forsyth School District." It also says in the article that "attorneys will draft agreements between the school district and the Village for repayment ...Peck said." "The school district is going to pay back the Village of Forsyth over a longer period of time than what normal bonds would be paid for ...Peck said."

March 14, 2007: "Forsyth meeting to discuss new grade school..." "The school district will retire lease certificates at years' end and the funds now used for that will go to repay the Village." "Attorneys will draft an agreement in which the school district would repay the Village for the sales tax revenue that was loaned to construct the school."

March 15, 2007: "Receptive audience likes Forsyth plan..."

#### Village Vision Articles

April 12, 2007: "A note from the Mayor's Desk." "The school district would pay the debt over a period of time." "Both votes are required to pass for us to move forward."

May 17, 2007: "Woolums is working on an intergovernmental agreement with the Maroa/Forsyth School District regarding a plan for a new elementary school facility. Trustees were given copies of the proposed agreement at the May 7, 2007 Board meeting and were asked to review its tenets to prepare for its adoption."

July, 2007: "The school district will make the payments on the bonds, Mayor Hap Gilbert said." The second agreement involves the procedure the school district will adopt to repay the Village. The school district will transfer the amount equal to the lease levy. It is a significant amount of money for a long time, Village Attorney Darrell Woolums told Trustees during a recent Board meeting." "Mayor Hap Gilbert said the school district will continue to repay the Village annually until the construction bonds are paid in full."

Don reiterated that Kraig had read these articles from one perspective, and he read them from another. Don commented that he feels that everyone in the room needs to hear both sides and then make up their own mind. As a fellow Trustee, this did happen on his watch. Don mentioned that he does recall the Board meeting Mr. Jurgens spoke about. It was Don's first closed session. The date was May 21, 2007, which was after the referendum was passed. Mike Williams and Jimmy Peck were both in attendance at that meeting. Mike, Jimmy, Darrell, and the Mayor told all of the Trustees that they were working on a repayment plan. Suddenly, it is a mystery how everyone has forgotten this, but Don stated that these are the facts.

Mayor Gilbert pointed out that although he brought up this issue in September, it doesn't necessarily mean that he still feels that the funds should be repaid to the Village. Circumstances have changed since May, 2007.

### **Public Comment**

- Bob Bischoff: 756 Christopher Drive  
Bob stated that in his opinion both the school district and the Village agreed that there would be a repayment. This plan was presented to the voters. The question he raised is why the school district has to repay these funds. These funds were raised for the purpose of building a new school. Bob commented that he agrees with the idea that after the school is paid for, the tax should be scrapped. If the building is paid for with sales tax, Bob remarked that he doesn't see the need to repay the Village.
- Steve Horve: 702 Stevens Creek Blvd.  
Steve mentioned that he has three sons who all went through the Forsyth grade schools. All three probably went through the temporary buildings that were used over at the old school because of overcrowding. Steve stated that he doesn't see anything wrong in building a new school. The concept of building a new facility without having to raise property taxes is a great idea. Steve remarked that he thought it was good thing. The school district doesn't have the mechanism to collect the tax. The new school is good for the entire community. Forsyth is where the growth is. How do you expect the school district to pay this back?
- Leo Morland: 765 Schroll Ct.  
Leo stated that he would like to make a subjective observation. He commented that he does not see this as an issue whether or not the school district should repay the Village. If you tell the voters it is going to be done, there is a responsibility that it should be as told. Leo stated that in his opinion, this is all about the management of the Village of Forsyth. Management is not keeping up with the growth in this community to make this a professionally-run Village. Things should be documented, not just talked about. Leo commented that in his opinion, had the school district not come to the Village about purchasing more land, none of this would have been discussed.
- Bud Wise: 775 Stevens Creek Blvd.  
Bud stated that if there was any part of the pitch to approve this referendum that included the idea of the school district paying the Village back, then the school district should follow through with that. This is a credibility issue. If you say you are going to do something, you should do so.
- Sid Audiffred: 5244 Yavapai Dr.  
Sid remarked that he agrees with a lot that has been said this evening, but also feels at the time this issue was raised, residents were anxious to get going on the idea of building a new school. A new facility was really needed. Sid commented that maybe some of the details slid by the way side. One question Sid asked was "who is driving this issue." "Let's do the right thing." Sid suggested the Village simply get together

with officials from the school district and try to work this matter out. This would alleviate the need for all of these attorneys to get involved.

Trustee Kerstin Trachtenberg commented that in her opinion, no one is trying to push for repayment. In her opinion, this discussion has been more about how such a big agreement lapse, and how and when did this fall through the cracks.

Trustee Morr remarked that there are Forsyth residents who have expressed their support for the school district to pay back the Village. They may not want to come forward, but they are out there.

- Janet Calhoun: 250 Hickory Point Ct.  
Janet stated that she was appalled with some of the comments that have been made this evening. Why would anyone want to push this matter under the rug? Janet also mentioned that because of the new Warrensburg-Latham school, her property taxes are higher than what they used to be. She stated that her problem is that voters were told one thing and they voted that way. It is unethical to tell voters one thing and then do another.

Trustee Rasho remarked that in his opinion, everyone should stick with the records that were presented in September and October. It is true what the Mayor has said: at the September meeting when the issue was brought before the Board, he accepted the responsibility for this matter falling through the cracks. However, the Mayor also at the same time wanted to entertain a motion to forgive this loan and move forward with making a new deal with the school district. Trustee Rasho mentioned that the school district wanted to move forward with purchasing more property for another school. Trustee Rasho stated that he wanted to give credit to the Mayor for bringing up the issue with staff that there was an outstanding agreement with the school district, which was not executed. He noted that as several individuals have indicated, there isn't a lot of documentation concerning this entire issue. Trustee Rasho commented that in his opinion, how could the Village embark on another deal without knowing what happened with the first deal. This has been his main objective, to simply find out what happened. Since, the Mayor and the Village Attorney were directly involved in the discussions with the school district; the Board unanimously agreed to hire an independent attorney to look into what transpired and complete an independent review. Trustee Rasho remarked that he believes the Board owes it to the voters to understand what happened and what the legal ramifications are for what happened. Right now Trustees do not know what their options are. One option may be to "gift" the school and move on. However, what happens if someone sues us. If we are going to pursue repayment, what are the ramifications of doing so? There are several questions that need to be asked of the Mayor and the Village Attorney. Trustees need to understand the facts and know how to proceed.

Village Administrator mentioned that no one on the Board has seen the report. Trustees are hearing what is in the report at the same time the public is hearing the information presented. Whether or not the report will be released to the public is a policy decision and will be up to the Board of Trustees.

- Fred Brown: 400 Hickory Point Road  
Fred commented that most of the discussion this evening concerns repayment and that the Board hired an attorney to give them a review of what happened. He remarked

- that he has heard nothing in relation to the boundaries for the school district. If there is a repayment, the school district would have a larger tax base for it. However, there was no information provided on how this would affect the Village residents who attend the Warrensburg/Latham schools. Why are they not benefiting from this tax increase? They pay sales tax, and what did they get? Residents were told before the vote “trust us, we have the vision, and we will take care of it”.
- Julie Lakshmanan: 80 Hickory Point Ct.  
Julie stated that she lived in the Warrensburg School District. The bottom line is that the voting public was duped. Julie stated that she only voted for this referendum based on what she was told about the repayment. Anyone that lives in the Maroa/Forsyth School District, they got a free \$25 M! That is excellent. The problem is that not all of the Forsyth residents benefited from building the new school. If the Village is going to “gift” this amount of money to the Maroa/Forsyth School District, they need to do something equivalent for Warrensburg-Latham kids. That would only be fair. Some have forgotten what the integrity of the Village really means. Residents trust their elected officials, but a \$25 M mistake is pretty egregious.
  - Rick Speidel: 240 Hickory Point Ct.  
Rick stated that he was raised where if you make a promise you act on it and fulfill that promise. He acknowledged that something is wrong here. If someone owes the Village \$25 M, the Village should get it. It is as simple as that. The voters voted for this with the understanding that the money would be paid back. The new school attracts people to the Village, but the residents who live in the Warrensburg School district do not benefit from it. A promise is a promise.
  - Clint Johnston: 695 S. Elwood Street  
Clint mentioned that he has three kids that attend Forsyth schools. He stated that he voted for the tax increase, but commented that he doesn't understand what has gone on here. He asked if the money raised by the sales tax increase has gone to the school district. Mayor Gilbert replied that every penny that has been raised has gone to the payment of the bonds. Clint then asked what this issue was all about. Who needs to repay the Village? Don Van Lyssel replied that it was sold with the intent that the money would be paid back to the Village. Clint reiterated that he just doesn't understand what this is all about.
  - Don Van Lyssel: 857 Cara Chris Lane  
Don commented that he voted on this matter based on how it was sold to the voters. He stated that he is not pushing for repayment. However, the moral obligations are pretty important. We teach our kids about leadership. We tell them that when they make a decision, they are responsible for the results. What kind of example would it be for someone to just acknowledge that mistakes were made. The reality is, someone made a mistake. Are we not responsible for our commitments? There is a moral obligation here. Someone has to take some responsibility for what has happened.

- Terry Taylor: 761 Christopher Drive  
Terry asked for help to understand why the public can't hear what is in the report and what the options are. He commented that he understands why the Trustees want to go into closed session to talk about the report, but doesn't understand why the public can't know at least the options that may be available. Mayor Gilbert replied that the Board will have to vote whether or not they want to go into closed session. Trustees don't know what the options are.

Jeff Jurgens explained that litigation is discussed in Closed Session in order to preserve the rights of the Board. He commented that any action taken will have to make any decisions on the report in open session.

- Attorney Everett Nicholas  
Everett mentioned that he was the attorney for the Maroa/Forsyth School District. He stated that he does not agree that the Board can go into closed session to discuss what the options are. The Attorney General has issued a written opinion which deals with this kind of issue. He read from that written opinion and stated that the Board needs to decide whether or not they plan to file a lawsuit in order to go into closed session. Litigation has to be pending or imminent. Everett stated that in his opinion, the Board has an obligation to discuss this issue publicly.

Jeff Jurgens commented that he agrees with what has been said on whether or not the Village can lawfully go into closed session. However, litigation has been threatened against the Village. Jeff explained that it was not his intent to go into closed session to discuss all of the options. Those are in the report. Jeff stated that what he would like to talk about in closed session is the potential litigation against the school district, the positives and negatives of that, and the liabilities to the Village for doing so. Mr. Everett is correct that once you go into closed session you have to make a *finding* of potential or probable litigation. The *finding* does have to be included in the Closed Session minutes. The meeting also has to be recorded. The other item listed on the agenda is "personnel", which is clearly a closed session topic.

Decisions on the options presented in the report include:

- Waiving the payment
- Not doing anything
- Negotiation something new with the school district

### **Public Comment**

- Fay Audiffred: 5244 Yavapai Dr.  
Fay urged the Board to really consider transparency. It is so important. Fay stated that in her opinion, what people see at the federal level, Forsyth should not subject the Village to what we see there.
- Kristen Sowa: 484 Greenbrier Lane  
Kerstin acknowledged that she was a school board member. The school board hasn't had a lot of discussion on this. When the sales tax issue was first talked about, it was presented as an opportunity to build a new school with funds from shoppers. Construction of the school was not going to cause property taxes to go up.

- Phil Reason: 410 S. Elwood

Phil remarked that he has lived here since 1965. He thanked the Village Clerk for explaining to he and his wife what they actually voted on. The referendum was very simple. It didn't talk about repayment. Before visiting Village Hall, he heard all kinds of rumors and was very confused.

Trustees talked briefly about the pros and cons for going into closed session. They agreed that at this point, they do not know all the facts and want to weigh all of their options before deciding on how to proceed.

### **Motion for Closed Session**

Trustee Johnson moved, and Trustee Reed seconded, to go into closed session at 8:32 p.m. for the purpose of IL ST CH 5 § 120/2 (c) (11) – “litigation, when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal, or when the public body finds that an action is probable or imminent, in which case the basis for the finding shall be recorded and entered into the minutes of the closed meeting.” Upon a call of the roll, the vote was:

Yeas: 5—Morr, Reed, Rasho, Johnson, Trachtenberg.

Nays: 1—Hubbard.

Absent: 0—None.

Motion declared carried.

### **Closed Session**

#### **Call to Order**

Mayor Harold Gilbert reconvened the meeting to order at 9:30 p.m.

#### **Roll Call**

*Physically present:* Eric Morr, Larry Reed, Steve Hubbard, Bob Rasho, Marilyn Johnson, Kerstin Trachtenberg.

Absent: None.

#### **Also Physically Present**

Attorney Darrell Woolums, Village Administrator Heather Kimmons, Mike Williams, Chris Lusvardi, Village Clerk Kathy Mizer, Jim Peck, Attorney Jeff Jurgens.

Mayor Gilbert informed those in attendance that the Board went into closed session for the purpose of discussing pending or imminent litigation. However, Trustees did briefly discuss the other item that was listed on the meeting agenda, which was a personnel matter. “IL ST CH 5 § 120 /2 (c) (1) the appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint ledged against an employee of the public body or against legal counsel for the public body to determine its validity.” Something may be mentioned in Open Session relating to that discussion.

Mayor Gilbert explained that now that the Board is back in Open Session, Mr. Jurgens is going to outline the options that were presented to the Village Board in going forward with this issue. He asked Mr. Jurgens to begin.

Mr. Jurgens explained that the options were outlined in the report he prepared. The first option presented is that the Board could choose to waive or not do anything and not require any repayment from the school district. Whether the Village adopts a motion to formally waive repayment or does nothing, the result is basically the same thing because at this point in time, the Village has no agreement with the school district regarding repayment. Jeff suggested the Board may want to consider adopting a resolution for this to properly document that decision. This would alleviate the issue being brought up again in the future when people who were not part of this discussion are looking at the records pertaining to this matter. Jeff stated that it is his opinion; the Village Board could choose to take that option. The decision would be a legislative determination and it would be something within the Board's authority.

The second option presented would be for the Board to try and pursue repayment claim from the school district. Under this option, Jeff explained that there are two basic subsets. One, the Village could try to negotiate something with the school district, or the Board could try and talk to them about using some form of their revenue to do some sort of a transfer either under their intergovernmental powers or perhaps through special legislation that would allow an extension of a lease levy or other revenue source. Another idea would be to talk to the school district about cancelling the transfer agreement early and use the new county sales tax to repay the bonds. The third and more unpleasant option would be for the Village to consider filing a law suit against the school district claiming that the Village is entitled to repayment.

Jeff stated that these are the three primary options discussed in closed session. He asked if there were any questions.

Trustee Rasho asked the Mayor if there would be another meeting to discuss these options. Mayor Gilbert replied that in his opinion, it may be wise to allow Trustees time to review the report and then meet again to make a decision.

Trustee Johnson commented that she hopes that a decision can be made soon. She stated she would be ready this evening, but does understand that some members of the Board want a little time to read through the report.

Trustee Rasho commented that if the Board is going to consider any repayment option, Trustees need time to talk about how to execute that decision. Trustee Rasho commented that personally, he would like a little time to study the document presented. He suggested this item be placed on the agenda for the December 5, 2011 for further discussion.

Mr. Jurgens pointed out that he has not talked with school district officials. Their response to any of these options is unknown.

Trustee Rasho mentioned that the ordinance and transfer agreement the Village adopted to implement the half percent sales tax transfer, is open-ended. The agreement is not tied to the expiration date of the bonds. Trustee Rasho stated that as a minimum, this should be corrected. He went on to say that there are all kinds of shortcomings with these agreements. Trustee Rasho

remarked that in his opinion, they appear to be one-sided. To protect the taxpayers, Trustee Rasho suggested the Village act more like a *banker* with the school district. Maybe, the Village should ask the school district to expedite the payments they are making to retire the bonds. The school district has talked about their five-year or ten-year plans for the future, but officials haven't talked about plans for retirement of the bonds. Trustee Rasho asked, *why not?* In the event the school district takes a hard nose approach regarding any of the options present, then the Village may not want to enter into any intergovernmental agreements with them in the future.

Trustee Morr commented that in his opinion, this is a topic that needs to be on the next Board meeting agenda. Village Administrator Heather replied that if the Board asks that this matter be placed on the agenda, she would do so. Trustee Morr asked Jeff if Trustees could discuss why the Board has decided not to release the final report. Mayor Gilbert replied that it was the Board's intent to vote at the next meeting whether or not to make the document public. One of the items in question was that there are copies of minutes taken from two closed meetings included in the report. These minutes have not been approved and have not been released. Trustee Morr commented that the alternative would be to release the report with redacted information, which was not his preference. Action on this matter is planned for the next meeting scheduled for December 5, 2011.

Trustee Rasho commented that he would also like the personnel issue placed on that agenda in the event the Board votes to go into closed session. He stated that he was very interested in hearing and following up with comments Jeff made earlier in closed session. Trustee Rasho remarked that he would like to discuss this matter further without one person being present. Heather asked Trustees if they wanted Jeff to attend the next meeting. Mayor Gilbert commented that in his opinion, if the Board is going to talk about any of the findings in this report, it would probably be a good idea for Jeff to be here. Trustees agreed that they would like him to be present. Jeff replied that he would plan to be here.

### **Adjournment**

Trustee Hubbard moved, and Trustee Morr seconded, that the meeting be adjourned. The meeting was adjourned at 9:38 p.m. by voice vote.

By: Kathy S. Mizer  
*Village Clerk*