

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

**Held at the Village Hall
December 5, 2011**

Call to Order

Mayor Harold Gilbert called the meeting to order at 6:30 p.m.

Pledge of Allegiance

Roll Call

Upon call of the roll, the following Trustees were physically present:

Larry Reed, Steve Hubbard, Bob Rasho, Marilyn Johnson, Kerstin Trachtenberg, Eric Morr.

Absent: None.

Also Physically Present

Bill Busbey, Terry Taylor, Attorney Darrell Woolums, Jim Peck, Gilbert Wood, Cheryl Lehman, Chris Lusvardi, Don Van Lyssel, Sid Audiffred, Mike Lambdin, Jeff Hendricks, Vik Bhakta, Amy Trostle, Leo Morland, Village Administrator Heather Kimmons, Engineer Chuck Hunsinger, Library Director Rachel Miller, Village Vision Reporter Charlyn Brautigam, Village Clerk Kathy Mizer, Public Works Director Larry Coloni, Village Treasurer Rhonda Stewart, Julie Lakshmanan, Mike Williams, Roger Lester, Everett Nicholas, Steve Langhoff, Steve Horve, Village Vision Editor Deb Kirchner.

Adoption of Consent Agenda

*** Consideration of items listed on the Consent Agenda under the omnibus vote designation:*

1. Approval of Minutes of the Regular Village Board meeting held November 21, 2011.
2. Approval of Minutes of the Special Village Board meeting, November 30, 2011.
3. Approval of Bills presented for payment, December 5, 2011. ***Invoices were always available for review upon request.*

Trustee Hubbard moved, and Trustee Reed seconded, to approve the Consent Agenda, as presented. Upon a call of the roll, the vote was:

Yeas: 6—Reed, Hubbard, Rasho, Johnson, Trachtenberg, Morr.
Nays: 0—None.
Absent: 0—None.

Motion declared carried by omnibus vote.

Public Comment

Sid Audiffred: 5244 Yavapai Drive

Sid asked why the Village Board meetings are not listed in the Decatur Herald and Review newspaper. Some people may need a reminder of when the meetings are held. Mayor Gilbert replied that he is not sure why some meetings are advertised and others are not. The annual schedule was sent to the Herald and Review in June, and an agenda of each meeting is faxed to the newspaper the Friday before each meeting. The agenda is also placed on the Village's website the Friday prior to each meeting.

ADMINISTRATION REPORT

LAW ENFORCEMENT—

No one was present.

ADMINISTRATIVE REPORTS —

Village Administrator Heather Kimmons mentioned that in addition to her report, Trustees have been provided with written reports or narratives to review from the Engineer, Library Director, and Public Works Director. Mayor Gilbert asked if there were any questions concerning any of these reports. There were none.

OLD BUSINESS:

Forsyth Sales Tax Assignment to Maroa/Forsyth School District No. 2

Village Administrator Heather Kimmons remarked that Attorney Jeff Jurgens, who presented the independent legal report at the last meeting, called late this afternoon to let her know his wife was in labor, and that he would not be able to be here this evening. Jeff states that if requested, he would be willing to attend the December 19th meeting to talk further about his findings outlined in the report.

Mayor Gilbert stated that his recollection from the last meeting was that the Board has a couple of issues to address this evening concerning the report. First, the Board needs to determine whether or not to release the written report presented from independent legal counsel. If the Board chooses to release the document, Trustees then need to also determine when this should be done. Secondly, the Board should talk about the options presented by counsel that the Board may want to pursue to bring closure to this issue.

Mayor Gilbert asked Village Administrator Heather Kimmons and Attorney Darrell Woolums if it was possible to release the report this evening in its entirety, since there are two sets of closed meeting minutes included in the report. Specifically, he referred to the May 21, and June 4, 2007 closed session minutes. Mayor Gilbert asked whether or not the Board has to go into closed session to release these minutes, and if so, when should this be done?

Heather stated that a closed session meeting is never required. However, this is an option, and to review closed meeting minutes is one of the appropriate reasons for going into closed session. Any lawyer would probably advise the Board to do so, although it isn't necessary as long as the entire Board agrees that the minutes can be approved as written. Heather commented that if there is to be any discussion on the minutes, she would advise the Board to go into closed session talk about them. Heather commented that at the last meeting there weren't necessarily any disagreements from the Board on what was contained in the minutes, but noted that Mr. Woolums mentioned that he had an issue with the way something was written in one set of them.

Attorney Darrell Woolums commented that he believes Village Clerk Kathy Mizer already took care of addressing his concerns. He explained that his issue was that the agreement mentioned in the May 21, 2007 meeting was going to be the most difficult one to draft because it related to the joint use of the new school building. Heather replied that Kathy went back and listened to the audio tape from that meeting and could not find the specific language Darrell was talking about. Kathy decided to keep the minutes as they were prepared. Heather mentioned that the tape is available for the Board to review this evening, in the event someone wants to verify whether or not the minutes are correct.

Mayor Gilbert remarked that if it is legal to do so, he would rather vote to approve and release the closed meeting minutes without going into closed session so that the report can be released this evening. This would alleviate having to ask the public to leave while the Board discusses the minutes. Trustees agreed.

Trustee Rasho moved, and Trustee Morr seconded, to approve and then release the May 21, and June 4, 2007 closed meeting minutes, as presented. Upon a call of the roll, the vote was:

Yeas: 6—Reed, Hubbard, Rasho, Johnson, Trachtenberg, Morr.
Nays: 0—None.
Absent: 0—None.
Motion declared carried.

Trustee Morr moved, and Trustee Hubbard seconded, to approve releasing the Independent Legal Report on the Village of Forsyth Sales Tax Assessment, dated November 30, 2011, which was prepared by Jeffrey R. Jurgens and John S. Simpson, from Sorling Northrup Attorneys. Upon a call of the roll, the vote was:

Yeas: 6—Reed, Hubbard, Rasho, Johnson, Trachtenberg, Morr.
Nays: 0—None.
Absent: 0—None.
Motion declared carried.

Copies of the report were given to those in attendance who wanted one. Heather mentioned that a copy would be on display at Village Hall, the Library, and an electronic copy would be placed on the Village's website for anyone who may not be here this evening and who would be interested in reading the report.

Mayor Gilbert mentioned that the next item of business would be for the Board to discuss the different options Mr. Jurgens suggested. There were three options mentioned in the report. They include: doing nothing or pass a resolution to say there is no repayment required, try to negotiate another agreement with the school district, or consider some type of litigation.

Trustee Hubbard pointed out that most of the people present this evening attended the Special Meeting held Wednesday, November 30, 2011, and heard the options presented. With that, Trustee Hubbard moved, and Trustee Reed seconded, to waive the notion to have the Maroa/Forsyth school district pay back any sales tax dollars transferred from the 0.05% sales tax increase collected by the Village. Trustee Hubbard read the follow statement to explain his reasons for making this motion:

- “1. There is no contract between the school and the Village that says otherwise and we have no recourse to get said money. This is per independent council (III Issues and Opinion #1, also IV, Options #2, B.)*
- 2. There is no legal standing for an individual or group of individuals to file suit against the Village (IV Options #1.)*
- 3. The intent of the 0.05% increase was to build a new grade school. This has been accomplished with the Village being out \$0. It is not the Village’s money to recoup.*
- 4. Some may ask what about the promise to repay the Village? A lot of people want to focus on the **timing** of what was said and what was presented in regards to repayment. The focus should be on **why!** The reason the statements were made initially was due to the possibility of being a joint use facility and the Village was to be the bond issuer giving us (the Village) the liability. Those dynamics changed drastically and the school became the sole owner/user and issuer of the bonds relieving the Village of any liability. At that point there was no reason for the school district to pay the Village back, even though it was first “promised” they were going to do so.*
- 5. You are going to hear talk about the option to renegotiate with the school district. I am opposed to this as well. Once again, the school district does not need to renegotiate. They have their signed agreements. There is going to be talk of accelerating payments to pay it off quicker so we can reduce the sales tax earlier. I’m not a bond expert, but I believe there are penalties involved in early payoffs and most bonds take years before you can consider accelerated payments.*
- 6. Along those same lines. If the school had “extra funds” to accelerate payments, which I don’t think they will, as a parent and resident I would want them to invest in the school, not accelerate those payments. Buy new textbooks, computers, and improvements to aging buildings, not repay a loan quicker when they have the guaranteed funds to pay the bonds off in the time allotted. I feel the Village would be hurting the education of Maroa/Forsyth students.*

In conclusion, it’s no secret I had one daughter graduate from Maroa/Forsyth Schools, who is currently attending Butler University and doing very well. I have another daughter currently in the 4th grade that loves going to school. Other Trustees have had kids who went there and I’m appealing to their sense of duty to the Village and pride in our school system. This was a wonderful arrangement we were able to undertake and I support and look forward to working with the school district on future endeavors. We have a great resource in our community and we used it to everyone’s advantage.”

Trustee Rasho commented that in his opinion, this is the most important issue that he has faced since being elected as a Trustee five and half years ago. He went on to say, that this is a complicated issue, and feels that the entire Board wants to put this issue behind them and move on. However, the decision on how to put this issue to rest is an important one that should be properly addressed. Trustee Rasho remarked that he did listen to Trustee Hubbard’s comments on this matter, but noted that he believes there are some fundamental issues that need to be addressed. The Board needs to understand how the Village got to this point, and what is the best way to address the issues to bring closure to this situation. Trustee Rasho commented that as he has done in the past on very important issues, and as Trustee Hubbard has done, he prepared a written statement that he would like included in the meeting notes. This statement outlines the facts and is an alternative way of dealing with this matter. Trustee Rasho remarked that when he wrote this statement, he was not aware Mr. Jurgens would not be here this evening. Copies of his statement were given to the Trustees and others in attendance before reading the following:

“I would like to extend my sincere gratitude and appreciation to Administrator Kimmons for her professionalism and openness in handling the difficult task of the Maroa Forsyth School Bond Issue.

Our Administrator took the position that the Board should not enter into another agreement with the School District for the purchase of additional land for a new middle school until the issue of the repayment agreement for the elementary school was resolved. This steadfast position was also reflected in the selection of an independent counsel to review and investigate this matter.

I would also like to compliment Attorney Jurgens for a job well done. I appreciate your thoroughness in reviewing and presenting facts accurately and professionally. I look forward to the closed session later this evening to hear your candid input regarding the role of the Village Attorney.

As we all know by now, the issue of repayment agreement surfaced earlier this year when the school board representatives approached the Mayor with their desire to purchase additional land. It was at this time that the Mayor informed the Administrator about the unexecuted repayment agreement. Subsequently, the School District solidified its position culminating in a letter to the village Board dated September 13, 2011 stating that "...the final agreements that have been entered into between the Village and School District and the enclosed legal opinions support the District's belief that this issue has been put to rest." In other words, there is no need to further discuss a repayment agreement.

At the September 6, 2011 Village Board meeting the Mayor accepted full responsibility for this matter not being addressed sooner because he is the only one currently here that played a hand in all of this. His solution to the issue was the suggestion that one of the Trustees makes a motion stating that the repayment of these bonds for construction of the grade school is not required and to continue the agreement with the School Board for the purchase of more land. The Mayor's suggestion was not acted on by the Board and, instead, the Board voted to accept the Administrator's recommendation to hire an independent attorney to investigate the facts before the Board makes any decision.

In my opinion the positions of the Mayor and the School District is not acceptable. At best, they indicate negligence in promoting the referendum to the voters and implementing the agreements between the parties. At worst, this was sold to voters as a "win-win" proposal but the repayment portion was never intended to be executed. An objective reader of the independent attorney's report will realize that there is no proper documentation of meetings and phone conversations, along with no witnesses to negotiations among the Mayor, Village Attorney and School District officials. However, there is enough information to indicate the Village Board has an ethical and moral obligation to see that the issue of repayment should not be swept under the rug and ignored completely—not to mention entering into another agreement with the School District without first resolving this issue. How the School Board deals with this matter is not in the control of this Board; it lies in the hands of their voters.

Attorney Jurgens briefed the Village Board on November 30, 2011. He "...uncovered no evidence to suggest that anyone intentially misled the public or the Village officials..." but stated "...there was clearly confusion and an apparent lack of communication and follow through on the repayment issue. The Village Board must now make a policy decision on how it wants to proceed." The Board will make the entire report public tonight.

To put this issue behind us I agree with the conclusion and recommendation of Attorney Jurgens. This Board has the responsibility tonight to make a decisive and clear policy decision on how to proceed. We have a responsibility to the Forsyth residents and the community at large, who are impacted by sales taxes, to fairly resolve this issue.

I propose the following:

- 1. The Village Board distinctly clarifies the ordinance for increasing the sales tax for the construction of the elementary school to reflect that the sales tax will be rescinded when the current school bonds are retired.*
- 2. Obtain a commitment from the School Board that retiring the bonds earlier than their current schedule will be a priority in their future financial planning.*
- 3. Obtain a commitment from the School Board that they will provide quarterly reports to the Village Board regarding progress in the repayment of the bonds.*
- 4. There will be no further discussion regarding future land purchase by the School District until the above commitments have been agreed to.*

Finally, the Village Board should also act on the recommendation of Attorney Jurgens and "...consider a self-assessment process to determine whether all staff and officials are operating within the expectations of the Village Board and have an understanding of their roles and responsibilities."

Signed: Bob Rasho"

Trustee Rasho stated that in his opinion, the Board not only owes it to the residents who elected each one of them, and the residents who have children in the Maroa/Forsyth school system, but Trustees also have a responsibility to residents who live in neighboring communities who pay the sales tax to address these issues and put this issue to rest. Trustee Rasho commented that he would defer any further comment and answer any questions presented to him.

Trustee Morr pointed out that Trustee Hubbard's motion was just to waive the repayment. He mentioned that this was not spelled out in Trustee Rasho's four bullet points. Trustee Rasho replied that if the Village clarifies the ordinance, the repayment issue will be put to rest. Trustee Morr reiterated that waiving the repayment was not stated clearly in the document that Trustee Rasho read aloud. He asked if this was implied in Trustee Rasho's first bullet point. Trustee Rasho replied that it was, and explained that he accepts the fact that the sales tax was for the construction of the new grade school. He stated that he wants to put the repayment issue behind him and move on, but only if Trustees commit to these four things.

Trustee Hubbard commented that he would be willing to add to his motion that the sales tax be rescinded when the current bonds are retired. When asked about including the other three points outlined by Trustee Rasho, Trustee Hubbard said no.

Trustee Reed stated that he would like to ask a couple of questions since he didn't have the opportunity to read these statements before tonight's meeting. First of all, in some of the agreements that were originally talked about, there was language included in them stating that the sales tax would be rescinded when the bonds were retired. He asked if this language was still in the current agreement to reflect this plan. Trustee Trachtenberg replied that the sales tax does not end when the bonds are retired. There is no end date.

Trustee Morr pointed out that only tonight was the report made public. Now Trustees have Rasho's proposal, and Hubbard's proposal, and noted that this gives Trustees a lot more to think about before taking any action. Trustee Morr pointed out that although he is not in favor of defunding education, he doesn't mind what Trustee Rasho has proposed. He suggested the Board wait until the next

meeting to vote on this matter, to allow time to digest everything that has been presented this evening.

Mayor Gilbert referred to bullet point No. 2 in Trustee Rasho's statement, and commented that this point is really all about entering into new negotiations with the school district. There is nothing the Board can do on its own. In regard to bullet point No. 4, the Board has already said they won't enter any future agreements until this matter has been resolved.

Trustee Reed referred to bullet point No. 3 in Trustee Rasho's statement concerning the school district providing the Village Board with quarterly reports to show the progress of paying off the bonds. He remarked that although he can understand Trustee Rasho would want this, he is not sure how this can be required. Although, these reports may be a moral obligation, Trustee Reed commented that he doesn't know how this idea could be enforced. Trustee Rasho referred back to bullet point No. 2, and reiterated that he is not asking for repayment of the bonds. That is not the right thing to do at this time. However, Trustees need to look at how this entire situation has been dealt with. The report speaks for itself. Trustee Rasho encouraged everyone to read the report carefully. Attorney Jeff Jurgens has suggested the Village "*clean up its house*". Trustee Rasho pointed out that there are things that have been done relating to this issue that have been done incorrectly. Trustee Rasho commented that in his opinion, it is not too much to ask that the school board retire the bonds earlier than what is required.

Trustee Reed referred back to the idea of putting an end date on collection of the sales tax, and said he would support adding this to Trustee Hubbard's motion. Mayor Gilbert suggested that before any vote is taken on this motion, the Board allow input from the the public.

Public Comment

- *Sid Audiffred: 5244 Yavapai Drive*

Sid pointed out that both the school district and the Village Board, sold the referendum to the voters with the understanding that the funds were going to be paid back. He commented that although he understands the school board doesn't have the funds to do so, both boards owe it to the community at large to resolve this issue and then move on. Sid mentioned that when the idea of a joint use facility was first proposed, he was excited. However, he is disappointed now to see how this has all worked out. Sid asked the Mayor what happened to the promises that were made regarding a "*proposed community center, swimming pool, track, etc.*" These ideas would have allowed everyone to share in the Village's growth and prosperity without having to raise property taxes to do so. Sid suggested that residents go to a school board meeting and ask them some of the same questions that have been raised to the Village Board. Why didn't the school board bring the repayment issue up to the Village before now?

Sid stated that he owes Trustee Rasho an apology. At the November 30, 2011 meeting, he basically was blaming Bob for some of the comments that were made. Sid was asking why Bob was building a mountain with this issue when it should have been put behind us a long time ago. He apologized to Bob. Trustee Rasho accepted Sid's apology.

Mayor Gilbert replied that when building the school was first talked about, the Village did talk about the possibility of a swimming pool and other amenities being built. This was during the timeframe when the Village was talking about the issue of "Home Rule", and also when officials were talking about building a new high school in the Village. Mayor Gilbert mentioned that from his recollection,

the only thing that was discussed when the Village was talking about building a new grade school being a joint use facility, was that the new facility would be designed in such a way that the Village could use the cafeteria and the gymnasium. He commented that this option is still available to the Village. Mayor Gilbert stated, that from his knowledge, the new grade school was never going to be a joint use facility that had a swimming pool, or a big space for the Village to use like a large meeting room. This was never the intention. The design was always for a grade school, but there would be areas that the Village would have access to. Mayor Gilbert stated a grade school was what was built. The tax dollars that have been collected since the referendum was approved, has been spent exactly how voters were told they would be spent. All of the money that was raised from the increase in sales tax has been given to the school district for the repayment of the bonds.

Trustee Morr pointed that when the referendum was voted on, the voters were told that the money was going to be paid back to the Village. It didn't matter whether or not it was going to take 250 years to do so. Mayor Gilbert acknowledged that this statement was made. However, it was never the intention to mislead voters. The intention all along was always for the Village to be repaid. Mayor Gilbert reiterated that this is why when the school district came to the Village about purchasing more land, the issue was brought up to the Village Administrator. This concept was discussed and agreed to. However, Mayor Gilbert stated that in his opinion, the circumstances have changed since the referendum was passed. Who was going to build the building, who was going to own it, and how the construction was going to be funded, are plans that have changed.

Trustee Morr commented that although he understands what the Mayor has said, he doesn't understand what changed fundamentally from the time the referendum was first discussed, to now. What changed to make the promises that were made, go away? Whether the building was going to be a joint use facility or not, there were promises or commitments made against future property tax.

Trustee Trachtenberg commented that she believes she understand what happened, but doesn't know exactly when it took place. She asked the Mayor if originally the plan was that the Village was going to build and own the new school. If this was the plan, how did this change, and when did it change. Mayor Gilbert replied that the repayment concept changed when bond counsel for the school district recommended the change be made. Trustee Trachtenberg then asked the Mayor how the Village knows the school district couldn't use the lease levy to repay the bonds. It doesn't make sense that the school district would be repaying the Village for sales taxes that were levied. Trustee Trachtenberg commented that in her opinion, if the school district repays anyone, it should be to taxpayers through a decrease in personal property taxes. This would make a whole lot more sense.

Mayor Gilbert replied that this was a ruling that came along later, but noted that at what point this happened, he does not know. Trustee Trachtenberg asked if the use for the "lease levy" was not clearly defined. Attorney Darrell Woolums replied that he does not think so. He added that in his opinion, no one had a "consciousness" of what this term really meant until the May 21, 2007, Village Board meeting was held. Darrell explained that the term "lease levy" is a school law that allows a school district to assess a levy. He added that in his opinion, there was no one on the Board at that time that had ever heard of this term before that meeting. Darrell acknowledged that personally, he had not heard of it.

Trustee Trachtenberg commented that she has talked with some people that are fully in support of forgiving the repayment and move on. However, she has also talked with others that are pretty upset about this issue and how it has been handled. Trustee Trachtenberg commented that the Village Board needs to also consider the kids who live in the Village, but attend Warrensburg/Latham

Schools. There are also the people who live in Maroa who received the benefit of a new school without paying anything for it. Trustee Trachtenberg pointed out that in her opinion, if the Village Board and the school district officials could just make a good faith effort and negotiate some type of a compromise, it would possibly help make the best of this entire situation. Then, if the Village decides to go forward with construction of another school, the Village should ensure that all of the agreements are in place before executing any of them. Trustee Trachtenberg expressed her support for abating the sales tax once the current bonds are retired.

Trustee Morr commented that he feels uncomfortable with voting on this issue tonight. He explained that there are a lot of options for Trustees to consider. Waiting until the next Board meeting would allow time to think about everything that has been discussed this evening. Trustee Morr mentioned that the Board just made the legal report public this evening, they just received two written proposals, and he personally would like time to think about all of this. Trustee Trachtenberg agreed.

Trustee Hubbard commented that in his opinion, a vote has waited long enough.

Mayor Gilbert pointed out that when this issue was first discussed back in 2006, the negotiations were between the school district officials, former Administrator Cheryl Lehman, Village Attorney Darrell Woolums, and himself.

Public Comment

- *Leo Morland: 765 Schroll Ct.*

Leo pointed out that since he just received a copy of the report, he hasn't had time to look through it carefully. He asked if there was something in the document as to why it has taken four years to make the repayment issue visible. Four years have passed, and no one apparently thought it was an important matter to pursue.

Mayor Gilbert replied that he has tried to find the answer to Mr. Morland's question. He explained that he has looked through meeting notes, and available records, but the only thing he can think of is that when everyone first began talking about using the lease levy to pay back the bonds, the lease levy money was tied up for other projects. Depending on the language of the repayment clause that was taken out of the original agreement, the school district was not going to start making payments back to the Village until the bonds were paid off. Then in 2008, school district officials asked the Board about purchasing the ground where the school is now located. In 2009, the lease levy was now available for use. The Village Board approved the school district to use the lease levy for purchasing the ground where the school is located. The property was paid off in October, 2011. Mayor Gilbert pointed out that the lease levy funds have just now become available, if the school district is going to start making payments to the Village to repay the bonds. Mayor Gilbert summarized his comments by stating that because the Village didn't hire a new administrator until July, 2007, it is possible that the Village didn't think about pursuing the repayment agreement because they knew the funds were tied up.

Village Administrator Heather Kimmons pointed out that when the Mayor mentioned the repayment agreement this spring, it wasn't the first time she had heard about it. Heather explained that this issue has been mentioned in the Village's annual audit reports each year since the referendum was passed. There has been a paragraph included in each audit that refers to the repayment issue:

“In 2007 the Village of Forsyth placed on the ballot an initiative to increase the non-home rule tax by .50% for infrastructure. The increase would be used to build additional infrastructure projects, for example, a new Forsyth Grade School. After the voters approved the increase, the Village then entered into an agreement with the Maroa/Forsyth School District for the Village to dedicate .50% increase in non-home rule tax collected to build a new school.The .50% non-home rule tax increase went into effect January 1, 2008. The Village received the increase in April 2008. The Village did make the first and second installment payments in May 2008 despite the fact that the agreement related to defining repayment terms had not yet been completed. The Village completed the second agreement with the Maroa/Forsyth School District on January 20, 2009. The second agreement provided for purchasing the 20.01 acres of land the Grade School was built on.”

Heather mentioned that when she first became the Village Administrator and first saw this statement, she started asking around about what this all meant. Heather reported that she couldn't get a definitive answer from anyone. Although the Finance Committee reviewed those reports each year, and the Board approved them, no comment was ever made regarding the repayment agreement. Trustee Morr asked how the Village auditors knew that this agreement was in play. Heather replied that the Treasurer had given them that information.

Trustee Trachtenberg asked if it was possible to schedule a joint meeting between the Village Board and School Board to discuss this issue before a decision is made and any vote is taken. Heather replied that if both parties were amenable to this idea, it would certainly be okay. However, the meeting would have to be open to the public. There is no reason for a closed meeting on this.

Trustee Rasho commented that in his opinion, the statements made by the Mayor concerning this issue, would be mean more if they could be substantiated with supporting documentation. He encouraged everyone that has a copy of the report to carefully read Page 8. Trustee Rasho commented that the more the Village Board talks about this issue, the worse it gets. As an elected official, there should be appropriate documentation on any item discussed involving Village business. The need and importance of properly documenting things was one of the issues former Trustee Jeff Allsup talked about when he was first elected.

Mayor Gilbert replied that he has been consistent in what he has said and has tried to be as candid as he can. He added that he has not changed his story and has told everything as accurately as he can recall. The only thing that really counts is what happens in the public meetings. Mayor Gilbert commented that when you are in a meeting with someone, no matter what the discussion is about, the things you talk about can change from day to day. The only thing that counts is what is presented to the public body and then voted on. Everything concerning the school issue was discussed and brought before the Board.

Trustee Johnson commented that in her opinion, that is why the Board needs to make a decision on this now. Waiting two more weeks to make a decision isn't necessary. Trustee Johnson acknowledged that the Board has been negligent in documenting what has gone on in the Village in relation to this issue. She expressed her support with the four bullet points Trustee Rasho presented. Trustee Johnson stated that in her opinion, it is time to put this issue to rest. She remarked that she feels it will be detrimental to everyone to wait another two weeks.

Public Comment

- *Steve Horve: 702 Stevens Creek Blvd.*

Steve commented that although some of those in attendance may not be aware of, was that when he first heard that Prairie Winds was going to be developed and the school was going to be built there, he told Village officials that the school shouldn't be placed on the east side of US Rt 51. Steve explained that he based this on the fact that all of the population growth in the Village that he sees is on the west side of the highway. He mentioned that he owns 140 acres of land that on the west side of US Rt 51, and had volunteered to give a piece of it away to build the new school. This would have been about 20-25 acres of land at no cost to anyone for the purpose of building a new school. Even though it was self-serving, Steve acknowledged that he could envision housing and bike trails around the new building. He remarked that in his opinion, the Village made a mistake by having the school built in Prairie Winds. Steve stated that housing will not work there because, the area is visually polluted by having the water plant and public works building located nearby. People don't want to have these facilities in their backyard.

Public Comment

- *Julie Lakshmanan: 80 Hickory Point Ct.*

Julie commented that in her opinion, since the public just received copies of the legal report this evening, she would encourage the Board to delay taking any action on its contents. The public has not had a chance to read the report. If Trustees vote on this tonight, they are basically ignoring the public and not allowing their input. Julie referred to the recommendations presented by Trustee Rasho, and asked what Ms. Kimmons's recommendation would be on this issue.

Village Administrator Heather Kimmons stated that in her legal opinion, the Board has a lot of latitude in this situation. These are policy decisions that are entirely up to the Board. Whether or not the school district chooses to agree to what the Board proposes is all together a different matter. Heather remarked that she sees no legal issue with anything that has been proposed. The Board has the authority to act on both proposals that have been presented this evening, as long as there is a majority vote. Heather commented that in her personal opinion, she does not see any danger in delaying a decision for another two weeks. It is up to the Board. From the time this issue was first raised, Heather remarked, that she has continually said "*let's slow down, let's look at our options, be realistic, be rational and not make any snap decisions*". There has been enough of that. Heather stated that she would not recommend rushing into any decision. Heather commented that she would support Trustee Trachtenberg's suggestion and ask for input from the school district. They have a meeting on Monday, December 12, 2011, to talk about a proposed property tax increase.

Trustees talked at length about whether or not to vote on any action this evening. There were missed opinions expressed on whether or not to do so. Mayor Gilbert asked the Clerk to restate the motion before voting on it.

Trustee Hubbard moved, and Trustee Reed seconded, to waive the notion to have the Maroa/Forsyth school district pay back any sales tax dollars transferred from the 0.05% sales tax increase collected by the Village and to clarify the ordinance for increasing the sales tax for the construction of the elementary school to reflect that the sales tax will be rescinded when the current school bonds are retired. Upon a call of the roll, the vote was:

Yeas: 2—Reed, Hubbard
Nays: 4—Rasho, Johnson, Trachtenberg, Morr.
Absent: 0—None.

Motion declared failed.

Public Comment

- *Mike Lambdin: 538 Lucas Ln.*

Mike asked where Trustee Morr and Trustee Trachtenberg stand on this issue, because he understands where Trustee Rasho and the Mayor stand. Something is slimy here. Where does the problem lie? Mike commented that in the business world, and as a business owner, everything centers on advice from your attorney. He stated that his attorney is there for advice and Mike commented that he doesn't do anything without an opinion from his attorney. Something is not right here. It is up to the attorney to lead, and somebody isn't leading.

Trustee Trachtenberg replied that she would encourage Mike to carefully read the report from the independent counsel. She recommended the Village and school district work out some sort of a compromise and then move on.

NEW BUSINESS

Planning and Zoning Commission Report and Recommendation

- Special Use Permit, VHB Hotels, LLC, dba: Comfort Inn of Forsyth

Chair, Steve Langhoff, was in attendance to present the report and recommendation from the Planning and Zoning Commission. Steve reported that a Special Use Permit application was received from the new owner of the Comfort Inn Hotel, which is located at 134 Barnett Avenue, Forsyth. The owner has asked for approval to continue the use of a tall pole sign that exceeds the height and square footage allowed as outlined in the Zoning Ordinance. Steven pointed out that in July, 2005 a special use permit was granted to this business which allowed the former owner to update the sign. The Zoning Ordinance requires that when ownership changes, all non-conforming signs shall be brought into compliance unless a special use permit is approved.

Steve reported that four members of the Planning and Zoning Commission were in attendance at the meeting. Three voted in favor of recommending the petition be granted, and one voted present.

Mr. Vik Bhakta, owner of the hotel was present to answer any questions Trustees may have. There were none.

Trustee Hubbard moved, and Trustee Johnson seconded, to grant the Special Use Permit for VHB Hotels, LLC, as presented. Section 8.3 L (2) (d). Upon a call of the roll, the vote was:

Yeas: 6—Reed, Hubbard, Rasho, Johnson, Trachtenberg, Morr.

Nays: 0—None.

Absent: 0—None.

Motion declared carried.

Staff Request for Approval of 2011 Street Improvement Project Change Orders No. 1 and 2

Village Administrator Heather Kimmons referred to the two change orders presented for approval. Both were included in the meeting packet for review. Heather reported that the project has been

completed. Change Order No. 1 is the adjustment of the contract quantities to equal the as-built quantities. Change Order No. 1 is for a decrease of \$23,932.04. Change Order No. 2 is for the repair of inlets, valve boxes, and the disposal of millings. Change Order No. 2 is for an increase of \$10,654.25. Heather reported that the final contract amount is \$540,796.91, and noted that this was \$13,277.79 less than the bid amount. She recommended both change orders be approved.

Trustee Morr moved, and Trustee Trachtenberg seconded, to approve Changer Orders No. 1 and 2 related to the 2011 Street Improvement Projects, as presented. Upon a call of the roll, the vote was:

Yeas: 6—Reed, Hubbard, Rasho, Johnson, Trachtenberg, Morr.

Nays: 0—None.

Absent: 0—None.

Motion declared carried.

Staff Request for Approval of Parking Agreement with the Forsyth United Methodist Church

Village Administrator Heather Kimmons remarked that Cheryl Lehman and Gilbert Wood, representatives from the church were present this evening in the event the Board has any questions pertaining to this item. Heather commented that it appears the terms of the agreement are amenable to both the church and the Village, as presented. The agreement states that the church will provide overflow parking for patrons using the library or community center, which are located across the street from the church. The Village has paid the church \$1,000 per year, for the last several years. Funds are used to help maintain the parking lot. Heather recommended the Board commit to another year of the shared parking agreement with the church.

Trustee Johnson moved, and Trustee Reed seconded, to authorize the Mayor to enter into a contract between the Forsyth United Methodist Church and the Village of Forsyth. The Village agrees to pay the church \$1,000 toward the maintenance of its parking lot. Upon a call of the roll, the vote was:

Yeas: 6—Reed, Hubbard, Rasho, Johnson, Trachtenberg, Morr.

Nays: 0—None.

Absent: 0—None.

Motion declared carried.

Forsyth Hotel/Motel Tax

Mayor Gilbert mentioned that at the last meeting Trustee Rasho asked if this item could be placed on tonight's agenda to talk about. He explained that Trustee Rasho has suggested that the Village either reduce or eliminate the hotel/motel tax the Village receives. Currently, the Village receives 3% tax on each hotel/motel room rented at each of the four hotels within the Village. Before opening up this item for discussion, Mayor Gilbert recognized Mr. Jeff Hendricks, who is here on behalf of the Decatur Area Convention and Visitors Bureau (DACVB). Jeff is the Director of the DACVB, and can answer any questions Trustees may have about tourism, and the affect that it has on economic development in the area.

Trustee Rasho mentioned that he asked that this item be placed on the agenda based upon what was talked about at the last meeting. The Village collects 3% hotel/motel tax for each room rented in each of the four Village hotels. The Treasurer prepared a spreadsheet for Trustees to review showing that the Village collects approximately \$175,000 per year, but only spends about \$95,000 each year. The spreadsheet also shows that the Village has a current balance in this fund of about \$345,000.

Trustee Rasho pointed out that these funds can only be used for tourism efforts. He commented that the Village has been very generous over the last several years in spending money. The Treasurer provided Trustees with a list of all of the agencies, organizations, and groups the Village has contributed funds to. Trustee Rasho remarked that in his opinion, if the Village wants to really send a message to the community at large, stating that taxes should only be collected if they have a purpose and in the amount to serve that purpose, then this tax should be either reduced or eliminated. Trustee Rasho commented that he calls this fund a “*slush fund*”. He explained that all it takes is for four Trustees to vote on any idea, or proposal presented, and that group will receive funds from this tax. As an example, someone could come to the Board supporting a tennis tournament, or a motorcycle ride through the Village, with the idea that participants will eat at Village restaurants, shop at the Mall, and stay overnight in one of the local hotels. All it takes is four votes to approve these requests.

Trustee Rasho commented that he considers himself as being fiscally conservative and doesn't believe in big government, and doesn't believe in government collecting and spending tax money with the thought that they can spend it better than the businesses that collect it. Hotel owners know better how to promote, how to compete in the market for their business, than what government does. The Village of Forsyth should get out of the business of making those decisions for hotel owners. They have far more experience in this than Trustees do. Trustee Rasho suggested the Village stop collecting the 3% hotel/motel tax, as soon as possible. Then, the Village should be very fragile in how the balance in this fund is spent.

Trustee Rasho commented that during next year's budgeting process he also plans to talk about the sales tax the Village collects. He asked Trustees to think about whether or not all of what is collected is really needed. If the Village doesn't need all of this revenue, why shouldn't the sales tax be reduced? Last year, during the budgeting process this issue was briefly talked about and the Mayor commented that there were a lot of good ideas presented. Trustee Rasho mentioned that in his opinion, the Village should move from talking about these ideas, to acting on them.

Trustee Morr asked where Bob was a month ago, when Trustee Rasho voted to increase the property tax levy by 4.9%. He pointed out that the Village is sitting on a bunch of reserves, and now Trustee Rasho comes up with this idea. Trustee Morr commented that he is not in favor of eliminating the tax, but would support a reduction in the amount assessed. However, to be clear, Trustee Morr stated that he is not in favor of reducing the sales tax.

Trustee Rasho replied that he has voted to incrementally increase the tax levy for the last five years. This has been a strategic move and the increase is a token amount. After seeing how the levy was developed this year, maybe this issue should have been explained better in the past. Reducing the sales tax is not a matter of compromise.

Mayor Gilbert commented that in his opinion, the Village should keep the hotel/motel tax at 3%. The DACVB is really the expert and know how it impacts the economic development in the area. If everyone would stop collecting the tax, the DACVB would be out of business. The things that they promote to keep Forsyth hotels filled, brings a lot of tourists and visitors to the area.

There was a lot of discussion and ideas presented on this issue from the public.

Jeff Hendricks commented that in a lot of ways, the Village of Forsyth is very fortunate to have these funds available. Other communities do not. Jeff pointed out that *for* the DACVB the hotel/motel tax

is all about economic development. This results in about \$200-\$240 per room night that is brought into the community. In addition, the Village receives sales tax, and also motor fuel tax from those who visit Forsyth. Tourism also increases the image of the local area.

Jeff explained that the DACVB is primarily funded with hotel/motel tax receipts, but does receive a grant from the State of Illinois each year for tourism efforts. If the Village of Forsyth eliminates their contribution to the DACVB, Jeff commented that he does not know if they could still do their job to promote the local community.

Trustee Reed suggested the Village ask the DACVB to do more than what they are currently doing for the Village. He suggested that representatives from the Village meet with the local hotel owners and ask them what Forsyth could do for them to increase their business. For example, the Village has learned that signs make a big difference to a business. He pointed out that there are four major highways coming into the Village. Maybe signs could be added along these roads to advertise the hotels. In addition, maybe the Mall or others businesses could be added to those signs as well. Another idea Trustee Reed suggested, was that the Village should maybe be more aggressive in doing some things to promote the hotels or ask the DACVB to be more aggressive on Forsyth's behalf. Trustee Reed commented that he doesn't think this issue should be voted on tonight. It should be given a lot of thought. There are a lot of things that should be considered first.

Trustee Trachtenberg asked if some of the excess hotel/motel tax receipts could be used to hire a part time person in the Village to promote tourism or work on economic development. Mayor Gilbert replied that these funds have to be used for tourism efforts, not necessarily economic development. Tourism is part of economic development, but not all of it. This idea would have to be investigated.

Trustee Johnson remarked that if Forsyth was "Home Rule", the Village wouldn't have any restrictions on these funds. However, since the Village is not "Home Rule", the use of these funds is restricted. They have to be used for tourism efforts.

Trustee Rasho commented that he hopes this discussion has stimulated everyone's our thinking. Hopefully, some of the issues raised this evening can be addressed during the upcoming budgeting process. This will begin next month. No action is needed this evening.

Miscellaneous Items

Trustee Morr suggested the Village consider adopting an ordinance to prohibit the sale of synthetic drugs in the Village as some municipalities have done.

Trustee Morr also asked what the status was of the abandoned railroad property along the east side of the Village. He explained that once again Fire Chief Dennis Downey has asked him about this matter, because the Fire Department would like to have a place to store the homeland security equipment they have.

Attorney Darrell Woolums stated that the last word that he has heard was that the Bureau of Land Management did not retain any further interest in any abandoned railroad right-of-way. The case was not appealed to the Supreme Court, so it appears this is the law right now. Darrell stated that it looks like the Village can proceed with this matter if they choose to do so. He suggested the Village give the Fire Department a quit-claim deed for a piece of this land. Another idea mentioned by Mayor Gilbert, would be to lease the Fire Department a certain amount of land. He suggested Staff look into this issue further and then bring back a recommendation to the Board to consider.

