

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

**Held at the Village Hall  
December 19, 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:

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

Absent: None.

**Also Physically Present**

Charles Frey, Village Treasurer Rhonda Stewart, Lt. Belcher, Engineer Chuck Hunsinger, Deputy Houk, Jeff Allsup, Don Van Lyssel, Library Director Rachel Miller, Leo Morland, Sid Audiffred, Mike Lambdin, Village Vision Reporter Charlyn Brautigam, Attorney Darrell Woolums, Chris Lusvardi, Attorney Jeff Jurgens, John Hansen, Village Administrator Heather Kimmons, Bill Busbey, John Kottke, Jean Miller, Public Works Director Larry Coloni, Tara Morr, Clint Johnston, Village Clerk Kathy Mizer, Julie Lakshmanan, Kevin Breheny, Judy May.

**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 December 5, 2011.
2. Approval of Treasurer's Report – 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—Hubbard, Rasho, Johnson, Trachtenberg, Morr, Reed.

Nays: 0—None.

Absent: 0—None.

Motion declared carried by omnibus vote.

**Public Comment**

**ADMINISTRATION REPORT**

**LAW ENFORCEMENT—**

Lt. Belcher and Deputy Houk were in attendance to comment on recent activity in the Village that

officers have responded to.

- For the month of November, Lt. Belcher reported that 125 traffic stops were made, resulting in 83 citations being issued. He mentioned that there were four DUIs issued after investigating seven different accidents. Thirteen people were arrested for retail thefts, with a couple of people found to be on warrants.
- For the month of December, there have been 11 retail thefts reported. Officers believe the increase is associated with the approaching Christmas holidays. Forty-five citations have been issued, and there have been six accidents that have required officers to respond to. Officers have stepped up their patrols around the Poage Auto Mall, because there have been incidents of stealing tires and rims from cars on their lot. Lt. Belcher mentioned that it appears other dealerships in the county are seeing the same problem.

### **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:**

#### **Approval of Ordinance No. 837, An Ordinance Levying Taxes for All Corporate Purposes for the Village of Forsyth Macon County, Illinois, for Fiscal Year Beginning May 1, 2011 and Ending April 30, 2012.**

Village Administrator Heather Kimmons mentioned that Trustees have been provided with a copy of the 2011 Tax Levy Ordinance to review and consider accepting. The levy was set at the November 21, 2011 regular meeting. Heather mentioned that Trustees may notice that there has been one substantial change from the draft previously provided to them in November. She explained that in past years, specific amounts for FICA, Auditing Tax, and IMRF were levied from the Water and Sewer Funds. This potentially contradicts the idea that the Water and Sewer Funds are self-sustaining. Heather mentioned that after consulting with the Village's auditors on this issue, it was determined that by levying for these items in this manner, it may be causing confusion and require making some changes in the way Village revenues are budgeted and reported. To resolve this concern, Heather stated that the levy presented this evening, includes levying for IMRF, FICA, and the Auditing Tax out of the General Fund. However, she pointed out that the overall total of the levy has not changed. Heather recommended Trustees approve Ordinance No. 837, as presented.

Trustee Morr pointed out that the result of the proposed tax levy still reflects a rise in property tax. In response, Mayor Gilbert pointed out that even though the levy was going to be increased by 4.9%, it doesn't mean real estate taxes are going up by that amount.

Trustee Rasho moved, and Trustee Johnson seconded, to approve Ordinance No. 837, the 2011 Tax Levy, as presented and recommended by the Village Administrator. Upon a call of the roll, the vote was:

Yeas: 5—Rasho, Johnson, Trachtenberg, Morr, Reed.  
Nays: 1—Hubbard.  
Absent: 0—None.

Motion declared carried.

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

Village Administrator Heather Kimmons pointed out that as mentioned in her written report, the Board still has a couple of outstanding issues relating to this matter that need to be addressed. One issue is appropriate for Trustees to discuss in closed session, but the decision on whether or not to go into closed session is up to the Board. The other matter that should be addressed is for Trustees to continue talking about the options presented by Attorney Jeff Jurgens in his report. Heather acknowledged that Jeff was here this evening and was available for any questions Trustees may have concerning this issue.

Trustee Rasho mentioned that at the last meeting, he presented a written proposal which included four bullet points for the Board to consider in dealing with this situation. He remarked that in his opinion, his proposal is the best way to bring closure to this issue. It is time to put this matter behind the Village, and move on. Trustee Rasho pointed out that his proposal was included in the meeting notes from the December 5, 2011 meeting and also that copies were given to the public who were in attendance that evening.

Trustee Rasho remarked that at this time, he does not believe it is worth pursuing any repayment from the school district. Doing so, would only add an unnecessary burden on the community at large and would not serve the best interest of anyone. However, what is really important, are the lessons that can be learned from what has happened, and hopefully correct the problem as the Village moves forward.

Trustee Rasho acknowledged that the sales tax was increased by a half of a percent in 2007 for the purpose of building a new grade school. However, the ordinance the Village approved pertaining to the increase in sales tax should be revised to ensure the tax is rescinded once the current bonds are retired. The current ordinance is open-ended. Trustee Rasho explained that if the motion he plans to make is approved, the Village Administrator should be directed to draft a revised ordinance to clearly reflect rescinding the sales tax once the current bonds are retired. This will ensure that future Boards understand what the intent of this Board was at this time. Rescinding the sales tax once the bonds are paid off would only be fair for everyone.

Trustee Rasho mentioned that the second point outlined in his proposal calls for the Village to obtain a written commitment from the school board to retire the bonds *earlier* than their current schedule and that the school district will make this a priority in their future financial planning. The sales tax is not only paid by the residents of Forsyth, but by the community at large. It is the responsibility of *this* Board to resolve this issue. Trustee Rasho stated that in his opinion, the school district should make an honest effort to retire the bonds early and that it should be a priority for them to do so.

In his third recommendation, Trustee Rasho asked that the school board commit to providing quarterly reports to the Village regarding progress on the repayment of the bonds. The school district in good faith, should keep the Village abreast of their progress. Trustee Rasho remarked that he was hoping that by now, the Village would have heard something from the school board, but noted that he was not aware of receiving anything from them. From the statement the school board presented at their meeting held on December 12, 2011, school officials say that although they are willing to listen, they have no plans to negotiate with the Village. Trustee Rasho commented that if his interpretation or impression is wrong, he would be happy to listen to what school officials have to say.

Trustee Rasho explained that his fourth point he presented was that there should be no further discussion between the Village of Forsyth and the school district regarding the purchase of land, until the above-mentioned commitments have been agreed to. He explained that if the school district wasn't willing to compromise on these issues, then there is no sense in discussing anything further with them.

Trustee Rasho stated that he plans to make a motion, and if it is approved, the decision should be clearly communicated by the Village Administrator to school officials. The school district should be asked to provide the Village with an official response within two weeks, or at the latest, by the next regular Village Board meeting. If no official response is received by the January 2, 2012 meeting, Trustees should not consider working with the school district in the future.

Trustee Morr asked if there was anyone in attendance this evening on behalf of the school district. There was no one present. He then asked the Mayor if there was going to be any further discussion on this issue before Trustee Rasho makes his motion.

Mayor Gilbert replied that in his opinion, Trustee Rasho has laid the ground work for what he would consider "*a reasonable compromise*". He suggested that Trustee Rasho proceed with making his motion and then the motion can be talked about further. Mayor Gilbert explained that once the vote is taken, the motion will either pass or fail. If the motion fails, someone else can decide whether or not to make another motion.

Trustee Rasho moved, and Trustee Johnson, seconded, to approve the four points listed below, and if approved, ask the Village Administrator to communicate the Board's intent to the school district and ask them to respond in writing on or before the January 2, 2012 Village Board meeting.

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.*

Trustee Morr commented that what Trustee Rasho has proposed is good, and noted that he likes all four points. However, it is obvious that the Village is trying to negotiate from a standpoint of weakness and legally, at this point in time, there is not much the Village can do.

Trustee Morr suggested that the Village try and lock down a retirement date for the bonds. He explained that although Trustee Rasho calls for the school district to commit to paying off the bonds early, there is no end date for them to do so. A further compromise might be for the Village to only transfer the sales tax to the school district through 2025, at which point, the school district would be on their own to repay the remaining amount due. The current bond schedule goes to 2028. This would leave the school district with an approximate shortfall of \$4M, but would allow them thirteen years to plan for the shortfall on the payoff of the building. This idea would be in lieu of the \$15-\$25M payback to the Village.

Trustee Hubbard commented that in his opinion, the idea presented by Trustee Morr, may go against the referendum voters voted on. In response, Trustee Morr mentioned that the wording in the referendum was so ambiguous that the Village could continue collecting the additional sales tax forever. The current agreement states that the Village will transfer the half of a percent sales tax to the school district for twenty years (2028). Trustee Morr commented that what he has proposed, is to consider stopping the transfer a few years earlier instead of trying to obtain a commitment from the school district to retire the bonds early. This termination date gives the school district well over a decade to plan for the shortfall.

Trustee Rasho remarked that the bonding agency and school district attorneys wanted a very simple contract with the Village, and noted that this is why the draft of the transfer agreement did not include a repayment clause. Any compromise reached on the retirement of the bonds would also have to be negotiated with the bonding agency, who more than likely would not accept one. In response, Trustee Morr commented that it was the bonding agency that got the Village into this mess in the first place. He reiterated that a compromise is completely appropriate.

Trustee Hubbard asked what would be the incentive for the bonding agency to agree to any compromise. They probably don't want to own a grade school. Trustee Morr replied that although he can't answer this question, the Village is operating from a point of weakness. Mayor Gilbert commented that he doesn't believe the bonding company would agree to anything that may cause the bond holders to lose any interest on the bonds. He added that because of this, there probably isn't a lot of interest in changing the terms of the current agreement.

Trustee Reed remarked that in his opinion, it wouldn't mean a lot to try and obtain a "*commitment*" from the school district to pay off the bonds early. He explained that the Village *had* a commitment from the school district, and it doesn't appear that it worked out very well. One thing to consider is that if the receipts the school district receives from the Village are not high enough to cover the bond payments now, how could the bonds be paid off any earlier than what is planned. Trustee Reed commented that whether or not anyone wants to admit it, the Village is in the land business. He stated that it seems like the Village would be "*cutting off its nose to spite its face*", because the school district *did* buy a piece of land from the Village and they *did* fulfill their agreement to do so.

Trustee Hubbard asked Trustee Rasho if part of his motion included the Village waiving the idea of having the Maroa/Forsyth school district pay back any sales tax dollars transferred from the 0.05% sales tax increase collected by the Village. Trustee Rasho replied that his motion does imply this, but if Trustee Hubbard would feel more comfortable with modifying the wording of the motion, it would be fine. However, the intent of the motion is to revise the Village's existing ordinance in order to make it more iron-clad, and specifically tie it to rescinding the sales tax once the current bonds are retired.

Trustee Rasho stated that he believes it is very apparent that the school board has told the Village "*to go fly a kite*" by the contents of their written statement presented at their last school board meeting. If indeed this is their opinion, and school officials will not work with the Village on some sort of a compromise to benefit the community at large, then anything more should be moot.

Mayor Gilbert asked Trustee Rasho to restate his motion, to ensure everyone is clear on what is going to be voted on. Bob replied that his motion is:

*The Village Board will waive repayment of the approximately \$15-25M in sales tax transfers provided the following criteria are met:*

- 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.*

*Also, that a response is received in writing from the school district to the Village on or before the January 2, 2012 meeting.*

Mayor Gilbert asked if the school board was going to be meeting within the next two weeks. Trustee Hubbard replied that they probably would not due to the holidays. Trustees talked about the timeframe for asking for a response and agreed that the school district should be given until the January 17, 2012 Village Board meeting to respond.

Trustee Rasho explained that the purpose of making this motion was to ensure that future Boards know what happened regarding this situation, and to make sure there is proper documentation to show what action the Village Board took to resolve it.

Trustee Kerstin Trachtenberg asked what the retirement date was for the current school bonds. Trustee Morr replied that it was sometime in 2028, but noted that he was unsure on the exact date. Kerstin asked if it was possible to get a specific date to include in the revised ordinance indicating when the bonds would be retired. Village Administrator Heather Kimmons replied that she would recommend this date be included.

Trustee Morr commented that he would still like to see a compromise reached between the school district and the Village regarding this matter. He pointed out that if the school district would agree to retire the bonds earlier than what the payment schedule calls for, it *would* be a compromise. Trustee Rasho commented that since Trustee Hubbard and Trustee Morr were not involved with this issue in the beginning, he sees no problem with them contacting the school district to discuss some sort of a compromise. However, school officials should present their ideas or proposals to the Village Board.

### **Public Comment**

- *Sid Audiffred: 5244 Yavapai Drive*

Sid remarked that as a resident, he would like to state that he agrees with what Trustee Rasho has said. The school board should come forward and address concerns that have been raised. Sid commented that he was disappointed that no one from the school board was here tonight because this whole issue was a joint endeavor. It wasn't just the Village who was involved.

Sid commented that in his opinion, everyone seems to have forgotten that when the new school was first talked about, the plan was that the school would be a joint use facility. This part of the issue hasn't even been talked about. Sid pointed out that when the referendum was proposed there was a lot of talk about the new school having facilities in it that the

Village residents could use. This concept was an idea that would have benefited everyone. Sid mentioned that it is not a good utilization of “*our*” assets by the school sitting idle so much of the time. The school doesn’t belong to just the school district or the Village. The building belongs to the taxpayers and this issue should be addressed.

Sid mentioned that Mayor Gilbert says that school officials have repeatedly told the Village that the building can be used for non-school activities. He asked if anyone else, other than the Mayor was aware of this information. The concept of a joint use facility was used as a selling point part of how the new grade school was sold to the voters. Sid also asked the Mayor who he was speaking of, when he uses the term “*we*”? Another question raised was whether the details regarding the school were appropriately documented in any meeting minutes, and if so, which ones.

In response, Mayor Gilbert commented that he thought this issue was properly addressed at the last meeting. The concept of building a joint use facility was dismissed early on in the design of a new high school. When the new grade school plans were talked about, there was no discussion about the building being a joint use facility. However, there was talk about designing the new grade school in such a way that would allow the cafeteria or gymnasium of the school to be locked down in a way that would allow for Village use. Mayor Gilbert mentioned that school officials conveyed this information to the Village on multiple occasions. The school facilities are available for the Village to use if needed, and the school board is open and willing to work with the Village.

In response to the question about who knew about the repayment not being possible, Mayor Gilbert replied that he was not sure who all had been told about this. School officials report that this information was communicated to the Village at Board meetings, but Mayor Gilbert acknowledged that he could not recall when this occurred. He mentioned that when he uses the term “*we*”, he means the *Village*.

Trustee Morr asked if there was a written agreement in place that outlines the terms for the Village to use the grade school facilities. Mayor Gilbert replied that he didn’t think so, but was aware that the school board has verbally agreed to this concept. Trustee Morr suggested that if this is the intent of the school district, there should be a written agreement in place.

Village Administrator Heather Kimmons commented that she recalls recently, when there were questions on whether or not the meeting room would be sufficient in size to accommodate the number of people coming to a public meeting, an offer was made by school officials to use the grade school auditorium. School Board President Jimmy Peck stated that they would be happy for the Village to use their facilities if more space was needed. Heather mentioned that this was the only offer she was aware of.

Trustee Rasho commented that in his opinion, the more this issue is discussed the deeper hole the Village is digging for itself. There are many questions that need to be answered. However, so much of this issue is left to impression or interpretation of what happened in the past, but the end result is that there is very little documentation to show exactly what, and when things did occur. Trustee Rasho explained that what he has suggested is simply an attempt to bring closure to this issue. He added that personally, trying to negotiate anything further with the school board would be like negotiating with ourselves. It’s time to put an end to this entire situation. It has been discussed enough. What more can the Village expect of the school district?

Trustee Morr commented that he was intrigued with the idea of Trustee Rasho offering Trustee Hubbard and himself to try and negotiate something with the school district. However, Trustee Morr remarked that he would be willing to sit down with school officials to talk about this issue. It may be an opportunity to try and understand a little bit more about this situation and may give school officials a chance to explain some of the background on this matter. Trustee Morr mentioned that the Village should also consider what bond counsel has to say about all of this. No one has talked to them to see what they know. In Attorney Jeff Jurgens's report, he mentioned that he was unable to speak with counsel about this issue. Trustee Morr commented that he would be interested to see what their notes say. He pointed out that it was the bonding agency who apparently told school officials that a payback was not possible. School officials have repeatedly stated that this decision was clearly communicated to the Village.

### **Public Comment**

- *Charles Frey: 624 Cortez Drive*

Charlie mentioned that in the local newspaper, School Board President Jimmy Peck was quoted as saying *"school officials would talk with the Village, but they wouldn't negotiate with the Village."*

Charlie commented that many years ago during a conflict management course, he learned that there are really only three ways to resolve conflict. They include: accommodate, compromise, or confront an issue. Charlie explained that in this situation, the Village has chosen to *"waive the repayment"* or accommodate, *"negotiate"* or compromise, and *"litigate"* or confront, as a means to resolve this issue. Charlie remarked that Trustees should give it a lot of thought before making any decision on how to proceed. This is a bad situation and whatever Trustees decide to do, they should not make things worse. In a recent meeting, the Village Administrator was quoted as saying – *"fool me once, shame on you; fool me twice, shame on me;* because she does not want to see the Village get involved in another messed up situations. Charlie asked who was really deceived in this deal. Was it the Village Board, or was it the voters.

Attorney Jeff Jurgens asked that if Trustees go back to the school district and are told they cannot make the commitments the Village Board has asked for, is it still the Board's intent to waive the repayment. Whatever the intent is, it should be clarified in the motion.

Mayor Gilbert replied that his interpretation of the motion means that there would be no future deals made with the school district. Trustee Rasho added that if the school district wants to pay up front for some land to build a new school on, that would be fine. However, there would be no more *"deals"* like were made for the current school building or the school property.

Trustee Morr asked Trustee Rasho if the intent of his motion was that the Village would waive the repayment, no matter what. Trustee Rasho replied, *yes*, because by not doing so, would serve no purpose. Trustee Morr commented that although he doesn't mind waiving the repayment, he would still like to see both entities reach some sort of a compromise. However, since the contract is already in place, there is probably little chance of doing so.

Trustee Rasho asked that he be allowed to read an email sent to his wife concerning this issue. He explained that although the individual who wrote the email was present not here this evening, he did

attend one of the previous meetings where this issue was talked about. Mayor Gilbert agreed to this request.

*“I’m sorry I’m unable to attend the Village Board meeting tonight. Had I been able to attend, I would have liked to again address the elected officials as I had a few months ago.*

*It’s apparent to me that the Village feels some level of obligation to assist the Maroa/Forsyth School District. I hear these comments being made about future land acquisition or related transactions. The Village and the school district are two separate entities. Both have the ability to generate revenue independently, and distribute funds accordingly. The Village should not feel obliged to financially enhance the Maroa/Forsyth School system in any way as there are many other options for improving Forsyth.*

*Thank you,  
Roger Lester  
90 Hickory Point Ct.”*

- *Kevin Breheny: 847 Jasons Way*

Kevin commented that although he was really trying to understand this situation, it was confusing. He explained that he was here tonight to ask for clarification on the issue and see what the problems are from a spectator’s point of view.

Kevin asked how the school district was going to raise the funds to pay back the Village, if in fact, this was the intent. It appears that somewhere along the line, this issue went from the school district going to pay the Village back, to the school district not having to pay the Village back. Shouldn’t have all of the details been worked out before the referendum was placed on the ballot and voted on. Did the Village do its due diligence? Were all the details clearly communicated to the Village?

Kevin pointed out that this was a \$15-\$25M mistake. The sales tax could have gone to improve the streets or roads in the Village. It appears that the whole integrity of selling this referendum to the voters has been discounted. Kevin commented that as a resident, this situation was a little embarrassing. It is either a huge administrative mistake or there was some duplicity going on. It is either one or the other.

Kevin asked if the school district was aware they would not have to repay the Village, and if so, when did they know this. From a due diligence or a disclosure point of view, once the school district realized that the repayment was no longer possible because of some law, they should have clearly communicated this in writing to not only the Village Board, but also to the voters. The school district should have explained why the repayment was no longer possible, and provided the Village with a clear and complete paper trail to document everything. Another question is, why wouldn’t have the Village requested this information. It is no wonder why people reading about this situation in the newspaper are confused.

Mayor Gilbert replied that he would try to answer some of the questions raised and to the best of his ability recall what happened. Initially, when the Village first started talking about the idea of transferring the sales tax to pay the bonds, it was the intent for the Village to issue the bonds and for the school district to use what school officials called a “*lease levy*” tax they were collecting to make lease payments to the Village. Mayor Gilbert pointed out that although the levy would not equal

what the bond payments were going to be, the Village knew that if the school district was able to pay \$90-\$100,000 per year in a lease payment, it would be an effort to pay off the bonds. He added that if payments were made in this amount, it would take approximately 150-200 years to retire the bonds. At some point, bond counsel led the Village into changing this around so that the school district would own the building and would issue the bonds. This change also included the Village transferring the half percent sales tax money to the school district for payment of the bonds. In the event the sales tax receipts collected did not equal the bond payment, the school district agreed to make up the difference or the shortfall in the amount due. Mayor Gilbert mentioned that the Village has been transferring the additional sales tax to the school district for about 3 ½ years.

Mayor Gilbert commented that somewhere along the line bond counsel also told the school district that it would be illegal for them to use the lease levy money to pay back the bonds. What the school district is saying now, is that at some point school district officials communicated that information to the Village. However, Mayor Gilbert pointed out that no one in the Village remembers being notified of this fact. That's why the Village always thought the payback was still going to happen.

Mayor Gilbert explained that in October 2008, the lease levy funds became available and the school district approached the Village about purchasing the ground where the school is located at. The school district suggested using the lease levy money to pay for the land, and an intergovernmental agreement was executed for this purpose. The school district paid the Village in three installments, with the final payment being made this past October. That is why the lease levy funds have just become available for any type of repayment.

Mayor Gilbert commented that this is why the Village asked Attorney Jeff Jurgens to speak with bond counsel about all of this. He pointed out that it was bond counsel, who was directing both the Village and the school district through this process. One thing that is clear and has been learned, is that, in the future all of the agreements should be signed before any issue is put to a referendum. In response to the question about the sales taxes collected being used for other capital improvements, Mayor Gilbert pointed out that if the referendum had not been approved to build the new school, the Village wouldn't have had the money to use for other things. The increase in sales tax has been used exactly for what was planned. The sales tax was raised to finance construction of a new elementary school, and it was raised to avoid raising property taxes. Mayor Gilbert stated there was never any intent to defraud, or mislead anyone. It was only this fall that the Village learned in a letter from the school district, that it was illegal for them to use their lease levy money to repay the Village. Up until that point, the Village thought the repayment was still going to happen.

Village Administrator Heather Kimmons mentioned that when the school district approached the Village this past fall to inquire about purchasing additional land to build a middle school on, it was not the first time she had heard about the repayment agreement. Heather explained that when she first became the Village Administrator in May, 2010, she took the time to read through the annual audits. It was in doing this that she noticed that an outstanding agreement with the school district was outstanding. Heather reported that she went to the Mayor, the Treasurer, and Clerk to ask what this was all about. The response from the Mayor was "*oh yes, I need to talk with Attorney, Darrell Woolums about this*". The Treasurer and Clerk didn't know much about what was going on with this either. Heather stated that although she made attempts to find out what this was all about, no one seemed too terribly concerned about it. Since she had enough on her plate to deal with, Heather commented that she decided not to worry too much about it at that time. However, if Mayor Gilbert hadn't raised the issue this past fall when the school district approached the Village about purchasing more ground, Heather stated that she certainly would have.

Trustee Rasho reminded Trustees that in September, Mayor Gilbert asked that one of the Trustees make a motion to forgive the \$15-\$25M obligation from the school district and proceed with selling them more land. Thanks to Village Administrator Heather Kimmons, she stood firm and said she could not in good faith, recommend to the Village Board proceed with doing anything until this repayment issue was resolved. It was at that time, Trustees agreed to hire independent counsel to investigate this issue. Trustee Rasho encouraged everyone to thoroughly read the findings prepared by Attorney Jeff Jurgens.

Trustee Rasho commented that although he has made a motion to possibly try and put this matter to rest, he is not happy with it. However, in review of all of the documents Staff has prepared, it is time to move on. Pursuing anything further will not serve any purpose.

### **Public Comment**

- *Judy May: 882 Jasons Way*

Judy commented that she does not agree with what has been proposed. Sweeping this issue under the carpet is not the right thing to do. By waiving the repayment, Trustees appear to be making fools out of the public. Judy remarked that in her opinion, this entire situation was not handled appropriately. Somebody is being deceptive. It also isn't right to set this type of example for the school children. Kids feel like the school district got away with something that wasn't right. People do talk about.

- *Leo Morland: 765 Schroll Ct.*

Leo remarked that after listening to everything that has been said and written about this matter, it is disappointing to see that it has taken four years for this issue to rise to the surface. At the last meeting, Leo mentioned that he asked the Mayor why it took four years for this to happen. Mayor Gilbert's response was basically, that it didn't make a lot of difference because the money to make the repayment wasn't available. It was going to be a long time before the school district could start to make any payments, so there was no hurry. If these comments are correct, Leo remarked that he sees this is as spin. He commented that public servants should be held responsible for their actions. As a responsible, accountable person, maybe the Mayor should just say "he blew it" whether or not he feels like he did. Leo commented that in his opinion, by not bringing this matter to the attention of the Board, the Mayor did blow it. In the report prepared by Attorney Jeff Jurgens, it clearly indicates that school district thought. They used these four years against the Village. School officials stated that they felt that after four years, the repayment was a non-issue. Nobody paid any attention, so why should they. Leo remarked that as a resident, and as a taxpayer, there are individuals in public service who have significant responsibility and did not follow up on this matter four years ago. Taxpayers expect more, not only from the Mayor, but the Village Attorney, Trustees and school officials. This situation and how it has been handled, is disappointing.

- *Don Van Lyssel: 857 Cara Chris Ln.*

Don mentioned that there was one other person involved in this process, and noted that it was him because he was serving as a Village Trustee at that point in time. Don mentioned that he clearly recalls the closed session held on May 21, 2007, because it was his first closed meeting as a Trustee. At that meeting, Don stated that, Jimmy Peck, Mike Williams, Village Attorney Darrell Woolums, and Mayor Gilbert stood in front of the Board and stated that the

repayment process was going to take place. This was exactly what voters were also told would happen.

Don asked that as a former Trustee, and now as a resident of the Village, where has the Mayor been for the past four years. Where has the Village Attorney been for four years because *that* Board trusted these two individuals to do their job? The Village Board consists of six lay-people who are not legal experts. Each one has their own capabilities, but they trusted the Village Attorney and the Mayor to represent the voters and to represent the Trustees. Again, where were these two people for the past four years?

- *Mike Lambdin: 538 Lucas Ln.*

Mike referred to the independent report prepared by Attorney Jeff Jurgens, and commented that it shows the paper trail concerning the school issue is very limited. He mentioned that he finds it a little ironic that no one from the school board was here tonight to respond to any of the questions that have been raised. They have attended previous meetings. In summary, Mike stated that the buck stops here. Two people put this entire situation together, and things happened. It's amazing that no one other than the Mayor knows what happened concerning this issue. Things were done, things happened and questions remain unanswered.

- *Julie Lakshmanan: 80 Hickory Point Ct.*

Julie commented that in her opinion, Attorney Woolums should be fired. The Village needs to hire competent counsel and personally, feel that if she had made a \$25M mistake, she would resign. Give this some thought.

- *Jean Miller: 359 Forsyth Pkwy*

When this referendum was brought before the voters, wasn't there talk about there being a community center included in the school? Is this how it was sold to the voters? If the motion made is approved, the Village shouldn't worry about giving the school district extra time to respond. They should have two weeks, and a written response should be made. Extra time because of the holidays shouldn't be allowed.

Mayor Gilbert replied that there was talk about a community center being included when the high school was talked about, but not when the grade school was being discussed. In response to some of the other comments that have been made this evening, Mayor Gilbert commented that would try once again to answer or reply to some of them.

At the September 6, 2011 regular meeting, Mayor Gilbert expressed his regret to the Board and anyone else in attendance for not addressing this issue sooner. He also accepted responsibility for not doing so, and said he did this for a couple of reasons. One of the responsibilities of being the Mayor of a municipality, as defined in State statutes, is that if anyone in the Village "*screws up*", the Mayor is held responsible. It doesn't matter who it is, the Mayor is still held responsible. Mayor Gilbert acknowledged that he was well aware that the repayment issue was out there. He pointed out that this issue was mentioned in the annual audit beginning in 2007. The Finance Committee and the Board of Trustees received copies of the audit each year, so the information was out there. There are a lot of people that could have raised the issue and asked why nothing has been done about it. Mayor Gilbert pointed out that both the Village and the school district followed the lead of bond counsel. They were the experts.

Trustee Rasha cited the two following statements for everyone to think about:

*“Nearly all men can stand adversity, but if you want to test a man’s character, give him power.” Abraham Lincoln*

*“Government is a trust, and the officers of the Government are trustees, and the both, the trust and trustees, are created for the benefit of the people.” Henry Clay*

Trustee Hubbard referred to the report prepared by Attorney Jeff Jurgens and read the following statement from Page 11, of the report.

*“In sum, it is clear that part of the campaign in support of the referenda was based on the premise that the School District would repay the Village. However, there was apparently a breakdown in communication at some point after the May 21, 2007, Village Board meeting wherein all of the parties discussed the deal and appeared to be on the same page. It is further unclear whether the parties considered the practicality of repayment, since to repay the full amount transferred remains likely to exceed 200 years. Because this was a specialized area and a new concept for a non-home rule community, it is possible that terminology got lost in translation between the School District and the Village. The lack of an administrator during a key part of the transaction, also likely added to the confusion and possible misunderstandings. While lessons can certainly be learned from the transaction, we found no evidence to suggest that any official engaged in any improper conduct or intentionally misled other officials or the public.”*

Trustee Hubbard acknowledged that he doesn’t understand what has happened either. It is obvious that things were done wrong, but Trustee Hubbard stated that he believes that no one intentionally misled anyone.

Trustee Rasho moved, and Trustee Johnson seconded the Village Board will waive repayment of the approximate \$15-25M in sales tax transfers provided the following criteria are met:

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.

And that a response is received in writing from the school district to the Village on or before the January 17, 2012 meeting. Upon a call of the roll, the vote was:

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

Nays: 1—Morr.

Absent: 0—None.

Motion declared carried.

**Approval of Ordinance No. 838, An Ordinance Granting a Special Use Permit**

**for Nonconforming Sign, 134 Barnett Avenue, Forsyth**

Village Administrator Heather Kimmons referred to the draft ordinance included in the meeting packets, which was provided for review and consideration. She explained that Ordinance No. 838 grants the special use permit for VHB Hotels, LLC, (Comfort Inn), regarding signage for the business. The petition was approved at the last meeting and this ordinance is the formalization of that action. Heather recommended the ordinance be approved.

Trustee Hubbard moved, and Trustee Rasho seconded, to approve Ordinance No. 838, as presented. Upon a call of the roll, the vote was:

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

**Staff Request for Approval of Purchasing Policy**

Village Administrator Heather Kimmons referred to the revised purchasing policy included in meeting packets. She pointed out that although the policy was approved in substance on November 7, 2011, the pagination and numbering have been corrected in the copy presented this evening. Heather recommended the revised policy be approved.

Trustee Rasho moved, and Trustee Reed seconded, to approve the review Purchasing Policy, as presented and recommended by the Village Administrator. Upon a call of the roll, the vote was:

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

**NEW BUSINESS**

**Staff Request for Direction, Legislative Initiative Grant Surveys  
Release of Specified Closed Meeting Recordings and  
Potential Report to Public Access Counselor**

Village Administrator Heather Kimmons referred to copies of a legislative initiative grant survey that was included in the meeting packet, and asked for direction from Trustees on how the Board wants to proceed. The survey must be completed in order for the Village to progress further into the process of possibly receiving the \$200,000 grant from Representative Bill Mitchell's office, and the \$100,000 grant from Senator Bill Brady. At the time these grants were first talked about, the plan was to use these funds to help with the costs associated with construction of a community center. Heather reminded Trustees that a few months ago she had asked for help in completing the surveys, but noted that as of today, no one has responded to her request.

Last week, Representative Mitchell's Office called Village Hall to ask what the status was for completing the surveys from his office. Heather was told that failure to return the completed form was holding up some of the other possible recipients from moving forward with receiving any grant funds. At this point, Representative Mitchell is asking that either the Village complete the survey and submit it for consideration, or allow him to reallocate the funds to someone else. Heather asked Trustees for direction. Specifically, does the Board want to continue to pursue these grants, and if so,

Heather commented that she needs help to complete the forms. One of the things needed is for the Village to identify the project the funds would be used for. Representative Mitchell's grant allows for "all costs associated with infrastructure, public safety and security improvements." Senator Brady's grant is designated to apply to "all costs associated with construction of a community center". In speaking with Engineer Chuck Hunsinger about these surveys, he reports that his engineering firm has already done a lot of work on them. Chuck suggests that potentially the funds could be used for the Hundley Road Sewer Extension Project, or the Oakland Avenue Street Improvement Project. Heather reiterated that she needs direction on how to proceed.

Trustees briefly talked about this issue. It was mentioned that Mr. Mitchell appears to be promising funds the State does not have. The Village should set an example and say "no". Another comment made was that "the State of Illinois is bankrupt", and even if the Village pursues these grants, Forsyth will never see the funding. Trustees agreed not to pursue these grants.

Trustee Rasho moved, and Trustee Johnson seconded, to direct the Village Administrator to notify Senator Brady and Representative Mitchell's Office, to notify them that the Village of Forsyth will not participate in these legislative earmarks. Upon a call of the roll, the vote was:

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

### **Release of Specified Closed Meeting Recording(s) and Potential Report to Public Access Counselor**

Village Administrator Heather Kimmons commented that in review of the Closed Meeting Minutes from the May 21, and June 4, 2007 meetings, she found that although the Board went into closed session under a proper exception for doing so, the discussion that took place did not follow the exemption cited. Heather commented that in her opinion, it is clear that there was an Open Meetings Act violation in both situations. At this point, since the written minutes have been released, there is a good chance that no one may ever notice that there was a violation and the Village could get by with it. However, since the Village is aware of the error, Heather suggested the Village do a pre-emptive strike and report this mistake to the Attorney General's Office. Heather also recommended the Board consider releasing the audio records of these meetings.

Mayor Gilbert expressed his support for what Heather has suggested. Trustee Rasho moved, Trustee Johnson seconded to authorize the public release of the verbatim audio/video recordings of the closed meetings held on May 21, and June 4, 2007, and also authorize the Village Administrator to report this action to the Illinois Attorney General's Public Access Counselor. Upon a call of the roll, the vote was:

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

### **Miscellaneous Items**

### *Funding Request*

Trustee Hubbard explained that he was recently approached by the Decatur Swim Club, who is a non-profit organization. The group is hosting the “*Seth Dunscomb Swim Meet*” scheduled January 6-8, 2012. Trustee Hubbard reported that the Dunscomb family lives in Forsyth and the group is asking for \$2,000 donation from the Village to help prepare their meet packets. The Swim Club reports that this event will bring in about 300 swimmers and their families for the meet. Most of these participants are from outside of the Decatur area and the majority will be staying overnight. The group would like to include Forsyth hotels and restaurants in their advertising, so because of timing, Trustee Hubbard asked for input from Trustees.

Trustees talked briefly about this request at length, and agreed that it would qualify for use of Hotel/Motel Tax receipts. Village Administrator Heather Kimmons suggested Trustee Hubbard ask the Swim Club to submit a written request to her for this.

### *Chili Cookoff*

Mayor Gilbert reminded everyone of the upcoming Chili Cookoff, scheduled for January 14, 2012 at the Hickory Point Mall. Anyone interested in helping out should contact him as soon as possible. There are a lot of different areas for people to help out with for the event.

### **Motion for Closed Session**

Trustee Rasho moved, and Trustee Trachtenberg seconded, at 8:42 p.m. to go into closed session without Attorney Darrell Woolums being present, and invite Attorney Jeff Jurgens to attend, for the purpose of 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.*” Upon a call of the roll, the vote was:

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

Nays: 0—None.

Absent: 0—None.

Motion declared carried.

### **Closed Session**

### **Call to Order**

Mayor Harold Gilbert reconvened the meeting to order at 9:25 p.m.

### **Roll Call**

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

Absent: None.

### **Also Physically Present**

Attorney Jeff Jurgens, Village Administrator Heather Kimmons, Chris Lusvardi, Village Clerk Kathy Mizer.

Trustee Hubbard moved, and Trustee Rasho seconded, to task the Village Administrator to continue the process of sending out Request For Qualifications (RFQs) for legal counsel, with the intent of presenting a recommendation to the Board at the January 2, 2012 meeting. Upon a call of the roll, the vote was:

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

Nays: 0—None.

Absent: 0—None.

Motion declared carried.

### **Adjournment**

Trustee Hubbard moved, and Trustee Johnson seconded, that the meeting be adjourned. The meeting was adjourned at 9:27 p.m. on voice vote.

By: Kathy S. Mizer  
*Village Clerk*