

CITY OF MACCLENNY
Regular Meeting
November 13, 2012
6:00 p.m.

The City Commission met in regular session, Tuesday, November 13, 2012 with the following present: Mayor Gary Dopson, City Manager Gerald Dopson, Commissioners Tommy Johns, Richard Johnson, Phil Rhoden and Floyd V. Bennett.

Mayor Dopson called the regular session to order. The regular meeting was held immediately after the public hearing and there was not a repeat of the prayer or pledge to the United States flag.

Mayor Dopson recognized Mr. Tom Conley from the Florida League of Cities. Mr. Tom Conley said at the Florida League of Cities annual conference in August the Board of Directors issued a proclamation honoring Commissioner Floyd Bennett for his 25 years of service to the City of Macclenny. They issued a resolution that he read commending Commissioner Bennett for his service. He presented Commissioner Bennett with a framed copy of the resolution and a lapel pin. Mayor Dopson thanked Mr. Conley for making the effort to bring the award to our City.

Mayor Dopson recognized Mr. Spencer Nabors from In Touch Consulting, LLC to provide an update on the CDBG projects. He said there were some changes that had to be made. He had two homeowners that had to be withdrawn from the list. Ms. Elvie Mobley was on the original list but with all the rains and everything we had a few weeks back, she had an insurance claim to her roof. She had a lot of her stuff fixed through the insurance claim. She also stated that she wanted to withdraw from the program. We have a letter drawn up for her to withdraw from the program. With Mobley's drop from the program it allowed Truby Lee Harris to move up onto the list. Ms. Toliver is currently going through bankruptcy court and Mr. Nabors informed her that we could not go forward with her project until all of that is settled so we have pulled her out which moved Alene Thomas into the top 12 mix. He said currently, we have Coffell, Crawford & Valleca complete. Garcia and Hartline are 50% complete and Manuel is 70% complete. The bid out for round 2 with 5 homes is complete. A. Thomas, Moring & Harris are new constructions. Snell and E. Thomas are rehabs. We are already looking at bid out number 3 for Jacobs which is in the original write up submitted on the 12th of June. He is looking to possibly pick up one maybe two more on the list which would pull Stephen Williams into the mix as well. We have to see what change orders we have on the next round of bids. Moving on to the bid approval sheets, we had a real rodeo of bids today. The first home is Alene Thomas. Mr. Nabors estimated bid total was \$65,130. Dugard Construction came in as the lowest bidder at \$55,400. The CATF(Community Action Task Force) has met and approved the bids as they stand. He recommends the award goes to Dugard Construction for \$55,400. They were within the bottom 15%. Jimmie Snell's estimated bid total was \$25,350 which is a rehab job. This is where the rodeo started. The original low bidder on this project was Dugard Construction. He also won Truby Lee Harris which is a total of three. Three is the max. He spoke with Mr. Dugard and he said he did not feel comfortable with three jobs. He felt the time constraints would weigh on him with the 90 days for new construction and 45 days for rehab. He surrendered his bid for Jimmie Snell. At that point, the second lowest bidder was Foster Contracting at \$23, 500. Part of our due diligence, we go back and add up and make sure the bottom line dollar is the appropriate number that was submitted. When recalculating the bid, his actual bid was \$21,100 which dropped him below the fundable range. He was not awarded the contract. We then went to the third lowest which was Powell Construction at \$24, 600 and he feels very comfortable with that bid. For Truby Lee Harris, the winning bidder was Dugard Construction at \$55,400. For Betty Moring, in the beginning, we thought we could do a gut and rehab on her home. She had a decent foundation, a decent brick home but once we started adding up the reconstruction fees. The rehab dollar amounts that it was going to take ended up estimating over 50% of the estimated value of the structure. At that point when the rehab costs exceed 50 % of the value, we have to bring the whole structure up to code. That was quite frankly impossible. We bid her out as a new construction which we had in the budget to do so. She gets a 3 bedroom home. Powell Construction was the winning bidder at \$67,659. Whitney Construction originally won the bid at \$67,473 but once we tallied up the line items,

his actual bid was 65,473 and local staff for the record, is the ones that tallied the bids. The winning bid goes to Powell Construction at \$67,659. That will give him three. He currently has Pamela Manuel from the last bid out. It is under construction as we speak. The last one is Ethel Thomas. The estimated bid was \$29,775. Top of the Mountain Construction was awarded that bid for \$25,349. Commissioner Johns asked when we would start on this batch. Mr. Nabors said he was hoping to sign contracts next week right before Thanksgiving. Hopefully sign contracts on Monday and give some of them time to move out and start on the last week of the month pulling permits and giving the contractors notice to proceed. Commissioner Johns asked if all of them would have to move out. Mr. Nabors said the new constructions do because their lots are not big enough to support their current house and new house. Ms. Snell will stay in her house. Snell is the only one that can stay. Even Ethel Thomas will have to move out since we are redoing all the flooring and repainting so she needs to move and vacate the property. We will be able to have her back in her home before the Christmas holidays but the others will be out of their houses during the holidays. Commissioner Johns asked if the people know this now. Mr. Nabors said absolutely. They are aware and they don't care. It should not slow us down any. He has spoken to the contractors that won these bids and they are planning to work all the way up to Christmas. Most will just take that weekend off and be right back at it come Monday after Christmas. They are going to push it to get it done. City Manager Dopson said he thought he had said this before but it is important for transparency, Steven Williams is the nephew of the Mayor and himself. For the record, they have had no say so or recommendation. Steven applied and he qualifies. Truby Lee Harris is a City of Macclenny employee. He wanted everyone to know that and that they had nothing to do with the process. Truby Lee is one of the hardest working employees we have. Makes probably \$28,000 a year and is the sole provider of the home and he is doing the best he can. If you saw the condition of his home, you would understand he is doing the best he can. Just because he is a City employee doesn't mean he doesn't qualify. He wanted everyone to know so no one thought they were trying to cover something up or hide it. Mr. Nabors said that if we were able to get to Mr. Williams, the Mayor and City Manager will have to abstain from voting. We will go through the proper procedure if that happens. A motion was made to approve the new list with the changes of Mobley and Toliver coming off by Commissioner Bennett and seconded by Commissioner Johnson. Commissioner Johns asked if we needed to list the names. Mr. Nabors said if we can attach the list to the minutes, then we do not have to list the names. Ms. Hedrick said she would attach it to the minutes. Voting was unanimous. Motion carried. A motion was made to award the CDBG bids to the recommended bidders by Commissioner Bennett and seconded by Commissioner Johnson. Voting was unanimous. Motion carried. Mayor Dopson thanked Mr. Nabors.

City Manager Dopson asked if we could give Mr. Darabi, City Engineer, and Advanced Waste some kind of idea when a decision would be made. Mr. Darabi said we need authorization from the Commission to enter into negotiations towards a contract to bring it back to the commission for approval. He would like permission to begin negotiation. There was a motion made by Commissioner Bennett to give approval for Mr. Darabi and the City Manager to enter into a contract. Commissioner Johnson seconded the motion. Voting was unanimous. Motion carried.

Mayor Dopson recognized City Manager Gerald Dopson to discuss 2nd Street stop signs. City Manager Dopson said we have had complaints in certain areas of the City where, like this area, where there are three or four blocks without stop signs. We get constant complaints on speed. He wanted the Council's opinion. We had the same problem on 3rd street where they used to have four blocks where the tendency was to get on it a little heavier than what they should be and we turned the stop signs around. We required them to stop in a stretch no longer than two blocks. It has had a very positive effect on the tendency to speed. He has the same problem in front of his home. Not only looking at second street, he wanted to see if it was feasible to do a survey and rather than add more stop signs, have it where the longest distance between stop signs would be two blocks. That way it doesn't give it a thoroughfare. That is a tendency of all of us to do that. When we start adding stop signs, they are needed in some areas like Blair and Ohio. When we start adding stop signs to what we already have and making it a four way, if you make one you have to look at others. We have a difficult time with vandalism and keeping the signage maintained. It may be more practical to eliminate the stretches that the longest would be two blocks without having to stop for a stop sign. We are going to hear complaints on the other end as well. He would like the Council to think about it and look at it. If by doing it would be something positive or create

more issues. He promised the lady that called that we would bring it before the board that maybe instead of adding stop signs we could change them, around. Mayor Dopson recommended to think about it and put it on the agenda for next month. City Manager said we have talked about it several times where they wanted four way stop signs. If we could alter the intersections to not allow long run before you have to stop. Ms. Hedrick said we had notified the Baker County Sheriff's Department of the complaints especially with the number of walkers present to keep speed down. They will be out in force until the stop sign issue is addressed. Commissioner Rhoden said he would also like the opportunity to ride out there and look at it specifically 2nd Street. City Manager Dopson said we all get in the traffic flow habit and it is rough getting adjusted but it has become effective. Commissioner Johns said they have been effective in front of his house.

Mayor Dopson recognized City Manager Gerald Dopson to discuss the current situation in relation to the land purchase for the land application program. City Manager Dopson said he had sent out a letter to the Baker County Press and the Council trying to condense the transactions that have occurred since this board approved the purchase of a track of land on Steel Bridge Road in which Leywn Boyette had a contract with Rayonier. Since then, the letter explains once Rayonier found out Mr. Boyette was planning on selling it to the City they notified Mr. Boyette and the City they did not intend to go through with the execution of the agreement. We had a meeting with City Engineer, Mr. Darabi, Assistant City Manager, Mr. Roger Yarbrough and himself with Bill Watson and Kathy Tewilliger of Terre Pointe, the real estate agent for Rayonier. They told us they did not intend to go forward of selling of that piece of property since it was the entry of their other properties on Steel Bridge Road and the use of the land would devalue their other properties. They asked if we would be receptive to looking at an alternate piece of property that would be suitable for the City's use comparable in size and price. We had told them we would be more than willing to cooperate with them. All we wanted was to have a piece of property that would satisfy our needs. They left our meeting and told us they would be back with us in a short period of time. That never did come forth so their position is that they are not going to offer a piece of property in lieu of us not buying that piece of property unless they get an assignment of contract to eliminate that potential transaction. We have been meeting, talking and discussing. Because of the short time frame Rayonier requires to close a contract, we went ahead and prepared ourselves to purchase this land and we did the soil samples and the environmental review. We even had DEP to walk and look at it. We had a survey completed and a special type survey that Rayonier required that cost \$3,500 extra. At the moment, we have between \$25,000-30,000 in the property. We had our City attorney look at the contract that Mr. Boyette had negotiated with Rayonier and felt there was no part of the contract that required Mr. Boyette or anyone to get permission from Rayonier to be able to sell the property or dispose of the property in any way he felt like he wanted. We looked at the possibility of eminent domain which we have the authority. There are two procedures. One is quick taking. If we take it, it would go to mediation or court and they rule that the City has to pay then that is what we are stuck with. There is a slower mediation process that takes longer but the City has the right to go forward or reject. We could go with the specific performance option which involves the failure of Rayonier to perform the contract. Mr. Maloney said his feeling after reviewing and having other lawyers review it as well, is that we are all confident the contract was enforceable. There was no requirement for the buyer, Mr. Boyette, to get approval if he sold it the instant he bought it. Also, there was nothing in the contract to prohibit from assigning the contract to whoever he wanted to if he decided that he didn't want to do the closing and wanted to assign it to another party. The other lawyers we talked to all agree. His opinion is that specific performance is the way to go. The actual contract says that specific performance is one of our remedies. In law, breach of a contract to sell property can be enforced by enforcing the contract and making them sell the property at the contract price. In eminent domain there is always the possibility that we would not be able to stay at the contract price if they could convince a jury of 12 that the damage to the severed property would be so great they could not keep the price. His opinion is that we try to buy the contract from Mr. Boyette. Mr. Gerald Dopson, City Manager has been negotiating that. He has prepared a draft that was sent over to Mr. Boyette's lawyer yesterday. We should hear back from the attorney by in the morning. In the terms of the contract, there will not be any cost to the City unless the specific performance is approved and then we will be bound by the altered contract we got from Mr. Boyette. City Manager Dopson said if we can negotiate with Mr. Boyette an assignment to the City and we take any kind of legal action like failure to perform then if we lose there is a chance we would have to pay their attorney's fees. Mr. Maloney said no. Only in condemnation would we potentially have to pay that if

we lost as well as their experts to do appraisals. In specific performance, you say here is the contract and we want it performed. It would be up to the judge instead of a jury. Mr. Darabi said it is a public need. We have had a need for a while and his plea to the commission is to proceed with whatever avenue is available. It helps us in the process that they know we are serious and we need to get it done. We have a time issue. We have been extended in the time frame by DEP. Attorney Frank Maloney said legally we could have two counts with condemnation and specific performance but since they are conflicting remedies by the time we got to a trial we would have to select which remedy. If at that time, we chose to drop the condemnation, we could potentially still have to pay some attorney's fees which would still be a lot less than going through a 12 man jury trial. Commissioner Rhoden asked if we had no other course of action without purchasing the contract from Mr. Boyette. Mr. Maloney said there is no way to go with specific performance. We could go forward with condemnation. But as the City Manager said, if we took it in the quick take we would be at the mercy of whatever the jury decides. Commissioner Rhoden said he was not looking at that route but can we jump over him in enforcing this contract. City Manager Dopson said we are not just outright buying his contract. It is going on the basis of a reduced fee based on the chance that we are going to end up with the property. Mr. Maloney said he gets no money if we fail. Commissioner Rhoden said that was his concern. We are paying him but may not end up with the property. Nothing against him but we shouldn't pay him for something we didn't end up purchasing. Certainly we aren't going to exceed what the original amount of profit he was going to make. City Manager said we are not near what the original agreement was based upon. He was the first to admit that he was hoping to get this negotiated without legal action but we have come at it from several different angles and the land owner is not going to budge. There is a need and we were doing it in good faith and we could walk away and take our losses but we do need the land at some point and time. The existing facility is short term at best. That's where we are at. Mr. Maloney said the attorneys we spoke with were familiar with Rayonier and their dealing with the State in condemnation and that Rayonier was quite expert at getting the severance damages and that is one of the reasons that the City Manager decided to go with the specific performance on this contract. The contract was prepared by Rayonier not Mr. Boyette. The law says that any ambiguities are construed against the preparer of the contract. Mr. Darabi said the alternative is we would have to start this process over all over again. It has been tough so far to find a piece of property. We need to go forward or give up on it. If the City shows its seriousness, they also have to add their losses and benefits just as we have to add ours. Commissioner Bennett asked why we went through Mr. Boyette to buy the property if he didn't have the authority to sell it. Mr. Maloney said he did have the authority. He had a binding contract with Rayonier. Commissioner Bennett asked then how did Rayonier get involved. Commissioner Rhoden explained that he was buying it from Rayonier and selling it to us. Mr. Darabi explained we had an agreement with him to close at the same time. Rayonier decided to not go forward. He tried and Rayoneir suggested that we get the contract assignment and they would deal with us. Mr. Maloney said yes and they have backed out on that as well. They had prepared a draft of the assignment. Commissioner Rhoden asked where this would be handled. Mr. Maloney said due to law, the venue has to be where the property is located. By buying out Mr. Boyette, we eliminate the possibility that Judge Rosier would recuse herself. Mr. Boyette's attorney is John Cooper from Starke. He practiced law with Judge Rosier for years. According to the other lawyers we spoke with, they thought Rayonier would ask her to recuse herself from the proceedings. We are avoiding that as well. Mayor Dopson said it was pretty straight forward to him that we should go forward with the specific performance. Commissioner Rhoden made a motion to go forward with the specific performance action. It was seconded by Commissioner Johnson. Voting was unanimous. Motion carried.

In other business, approval of the Minutes from the Regular Meeting October 9, 2012. Commissioner Bennett made a motion and was seconded by Commissioner Johnson to approve the minutes. There were no questions or comments. Voting was unanimous. Motion carried.

In other business was the review of the bills for September. Questions were asked and answered. Commissioner Bennett made a motion and was seconded by Commissioner Johnson to approve the bills as paid. Voting was unanimous. Motion carried.

Mayor Dopson opened the floor for comments from the Commissioners.

Commissioner Rhoden asked that the veterans stand up and be recognized here tonight so we can show our appreciation this week. Ms. Hedrick said we would have a new change in the Council chambers at the next meeting. Mr. Marshall Mann has been working hard to get this put into place. We will have microphones and speakers by the next meeting and the trains will no longer be an issue. City Manager Dopson said we have had complaints over the years when we have a large crowd that the folks sitting in the back can't hear what's going on. It's important that everyone can hear. Commissioner Johns said he has trouble hearing those from the back so it goes both ways. City Manager said we will be able to assure everyone that all will be heard. Mr. Fidel Lido said he wanted to thank all the Veterans and everyone that participated in the last election. There were people that paid the price for your right to vote no matter who you voted for as long as you vote informed. On behalf of the homeowners and renters in Cypress Pointe he wanted to thank the Council for the sidewalks put in so that we can keep the kids on the sidewalk.

With no further business, the regular meeting was adjourned.


MAYOR GARY DOPSON

ATTEST:


CITY MANAGER/ CLERK GERALD DOPSON



City