

## Jim Palenick

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**From:** Jim Palenick [jpalenick@dallasnc.net]  
**ent:** Friday, December 21, 2012 11:37 AM  
**to:** 'Ricky Coleman'; 'ronniemorrow@att.net'; 'JOHN BEATY'; 'Martin, Scott'; 'huggybarber@att.net'; 'hoylewithers@yahoo.com'  
**Cc:** 'Maria Stroupe'; 'Gary Buckner'; 'dhuffman@dallasnc.net'; 'slambert@dallasnc.net'; 'Bill Trudnak'; 'A Martin'; 'David Kahler'; 'jthomashunn@aol.com'  
**Subject:** Town Manager's Weekly Report (#11)

Mayor & Board of Aldermen:

Please accept the following as the **Town Manager's Report for the Week-ended Friday, December 21<sup>st</sup>, 2012.**

- I received both a telephone call and follow-up letter this week from Bob Sledge with the compliance and permitting unit of the NC Department of Environment and Natural Resources (NCDENR), regarding last week's written request for clarification on the Town's payment obligation (in January, 2013) toward the next installment of the Wastewater Treatment Plant Settlement Agreement. In summary, he officially confirmed what I had expected, which is that....because the negotiations with Gastonia (Two Rivers) over the possible wholesale treatment of Dallas wastewater flows have reached an impasse, the NCDENR is not willing to defer or forego a single year's (\$10,000) installment payment, and we are instead obligated to make such payment on its regular schedule prior to January 15<sup>th</sup>. As such, we will now process the \$10,000 NCDENR invoice for payment as submitted. The conversation I had with Mr. Sledge was very cordial and he requested I provide him a letter documenting the status of negotiations with Gastonia – what was offered; responses; etc. That Letter was completed and forwarded on and I have attached copies of both it and Mr. Sledge's letter herewith for your review.
- As a result of our passage of the Pole attachment Ordinance and supporting Resolution enacting pole attachment fees, along with my individual letters to both Charter Communications and Time Warner Cable informing them of same; I received certified letters this week from attorneys (in New York and Washington D.C. respectively) representing each Corporation. In each case, the Attorneys invoked the North Carolina statute triggering a mandated 90-day period in which to "negotiate" pole-attachment fees, rather than accepting or acquiescing to our Ordinance. This is exactly what I expected, and a positive step forward. Prior to the Ordinance, the Companies were simply ignoring us altogether and paying nothing. Now we have effectively compelled them to negotiate with us, over a short (legally-required)time frame—with the end-result being we will push them to the highest-magnitude fees possible up to and potentially equaling that which we have enacted in our Ordinance. They also must pay retroactively to the time negotiations began, regardless how long the negotiations or agreement execution take. In the case of Time Warner, they only have about 50-60 attachments, but Charter maintains upwards of 700. Stay tuned.
- Bill Trudnak and I met with Johnny & Kim from Diamond Engineering this week to go over an updated estimate of the total costs associated with the construction of the inter-connect line between Dallas and the Long Creek Wastewater treatment plant (Gastonia). We wanted to do this because in working with Gastonia's Staff to potentially reach an agreement on the construction of the line, they have consistently suggested our total cost estimates were low (at \$175,000 +/-). It turns out, they appear to have been correct. The new estimate places the expected cost closer to \$246,000 +/- with approximately \$200,000 in work on the Dallas-controlled side, and the remainder of costs arguably assigned to the Gastonia side. With this in mind, we are going to see if we can't craft an agreement whereby if Gastonia "fronts" the full cost of the project, and pays for their controlled portion, we might then repay them our approx. \$200,000, without interest, over four budget years, in equal 25% installments. I think if we could get such an agreement it would be fair and in the Town's best interest.
- Mayor Coleman and I met this week with the Government Relations and Marketing/Communication Directors for Caromont Health. They are both relatively new to their positions and are doing outreach to the various municipalities throughout the County. We did accomplish two positive outcomes from the meeting in that we made a request that the Caromont charitable foundation consider a donation to the Dallas Historic Courthouse

Foundation capital campaign; and, we asked that the health care insurance arm of the Caromont organization submit a bid in this upcoming year's solicitation for employee health care coverage. They responded positively to both and we expect to continue the dialogue.

- You may have read that the North Carolina Supreme Court overturned the earlier Court opinion that the electronic sweepstakes games/parlors cannot be outlawed as a matter of constitutionally-protected free speech. Instead the Supreme Court did firmly and unequivocally declare the games to be outlawed, and further denied an appeal to temporarily postpone enforcement of the ban as submitted by the software companies supplying the industry. As such, there will be no lawful sweepstakes devices permitted in the Town of Dallas, and our fee structure for such permitting is no longer valid.
- Since this is the last report prior to the Christmas Holiday, please allow me to wish each and every one of you and yours a very happy and blessed Christmas, and express my sincere appreciation for the gracious opportunity you have provided me throughout this past year.

Thank You,

Jim Palenick  
Interim Town Manager



North Carolina Department of Environment and Natural Resources

Division of Water Quality

Beverly Eaves Perdue  
Governor

Charles Wakild  
Director

Dee Freeman  
Secretary

December 18, 2012

Mr. Jim Palenick, Interim Town Manager  
Town of Dallas  
210 North Holland Street  
Dallas, North Carolina 28034

Subject: Settlement Agreement and Payment Schedule Status  
Town of Dallas WWTP  
NPDES Permit NC0068888  
Gaston County

Dear Mr. Palenick:

This letter is to serve as a summary of our telephone conversation of yesterday afternoon. My call to you was in response to the Town's question regarding its need to submit the \$10,000.00 annual payment by January 15, 2013, as stipulated in the settlement agreement between the Town of Dallas and the Division of Water Quality that was established in May 2010. The Town requested clarification in this matter in light of the content of Division Director Charles Wakild's April 13, 2012 correspondence to you.

As we discussed, the Director's April 13, 2012 letter did not constitute a modification of the settlement agreement, but instead proposed a framework for discussions regarding modification of the settlement agreement. The potential modification would have held the payment plan for one year (2013), which would allow the Town opportunity to finalize negotiations with Two Rivers Utilities, complete the sewer interconnection, and rescind the Town's NPDES permit. The Town was told that if the conditions were found to be acceptable, a modification of the settlement agreement could quickly be drafted. Since that time, the Division has not received a formal response to its proposal from the Town. As a result, the settlement agreement has not been modified, and the terms of the original agreement are binding. Per those terms, a \$10,000.00 payment is due by January 15, 2013.

During our conversation, the question was raised as to whether modification of the settlement agreement might still occur. My reply to you was that there appeared to be no justification for such an action. You had informed me that negotiations between the Town and the City of Gastonia (Two Rivers Utilities) had reached an impasse over the cost the Town would have to incur for wastewater service, and that no additional negotiations appeared to be forthcoming. Such a situation does not meet the conditions for progress toward interconnection as established in the Director's letter, and provides no basis for negotiation between our two parties to modify the settlement agreement.

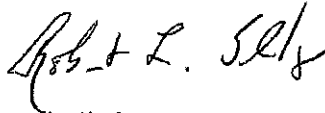
Mr. Jim Palenick  
Dec. 17, 2012 Phone Summary  
p. 2

As we concluded our conversation, I stated that the Division would be pleased to review any additional information the Town would wish to provide regarding this matter, but repeated, as things stood at the moment, the \$10,000.00 payment is due, as stipulated by the terms of the settlement agreement. I told you I would prepare and send this letter, and you told me that upon its receipt, you would reply with a summary of the Town's points, progress, and actions to date.

I hope that you find this to be an accurate summary of our conversation.

If you have any questions about this letter, please contact me at (919) 807-6398, or via e-mail at [bob.sledge@ncdenr.gov](mailto:bob.sledge@ncdenr.gov).

Sincerely,



Bob Sledge  
Environmental Specialist  
Compliance & Expedited Permitting Unit

cc: Don Laton - Attorney General's Office  
Matt Matthews - Surface Water Protection Section  
Mike Parker - MRO/SWPS



December 19, 2012

Mr. Bob Sledge  
Environmental Specialist  
NCDENR – CEPU  
Water Quality Division  
1617 Mail Service Center  
Raleigh, NC 27604

Re: Town of Dallas Settlement Agreement – Progress update.

Dear Mr. Sledge:

Having now received and reviewed your correspondence of December 18, 2012 regarding the NCDENR's position on the Town's (Dallas) Settlement Agreement yearly payment status and terms, please allow this correspondence to serve as the promised, written reply follow-up detailing the Town's progress and status to-date regarding negotiations with Two Rivers Utilities (Gastonia).

Early in 2012, the Board of Aldermen adopted the approach that we would aggressively and proactively pursue a negotiated agreement with Two Rivers (Gastonia) Utilities to send 100% of the Town's wastewater for treatment to the Long Creek plant through a to-be-constructed/rehabilitated inter-connect line. If same could be agreed to through a long-term, wholesale treatment contract, the Dallas plant would then be abandoned and the NPDES permit relinquished. To this end, two separate and distinct formal, written proposals were made to Two Rivers, on April 27<sup>th</sup> and May 31<sup>st</sup>, 2012 respectively.

The first proposal contemplated a 40-year agreement whereby Dallas would pay Two Rivers for all flows treated, per-thousand-gallons, based upon a to-be-established and regularly-updated all-inclusive "cost-to-treat", plus a 15% return-on-investment; as well as a standard readiness-to-serve charge and customer charge (combined this amounted to approx. \$2.87 per-1000-gallons). This proposal was rejected by Two Rivers as insufficient with the "counter" that the only sufficient rate was that which was being charged to other wholesale customers of Gastonia (\$3.80 per-1000-gallons) –which, if accepted, would have raised Dallas' cost-to-treat some 30+% higher than current operations.

The second proposal attempted to assist Two Rivers with its concern over maintaining "equity" among wholesale treatment customers by offering to actually purchase .6MGD of capacity at the Long Creek treatment plant (at a rate of \$7M per MGD) with payment of that purchase amortized over the 40-year term of an agreement at 2.75% interest. In addition, we offered to then pay a treatment cost per-1000-gallons (using our owned proportionate share of the treatment asset) made up of both an "operations and maintenance" component, as well as a "reserve and replacement" component (combined to equal \$1.62 per-1000-gallons). This proposal was also rejected as insufficient, with a similar "counter" that Dallas would have to pay a final rate which equaled that of other wholesale users.

Seeing that Two Rivers (City of Gastonia) was not likely to budge off its position that

**Mayor**  
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**Town Clerk**  
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J. Thomas Hunn

**Public Works**  
Bill Trudnak

**Electrical**  
J. [redacted] Huffman

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**Planning**  
David Kahler

**Fire Chief**  
Steve Lambert

**Recreation**  
Anne Martin

Town of Dallas  
210 N. Holland St.  
Dallas, NC 28034

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**Fax:**  
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**Web Page:**  
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a "cost-plus-industry-standard-return-on-investment" methodology was insufficient in generating revenue as a wholesale provider; and nothing short of simple rate-equity with other, historic wholesale treatment customer agreements would suffice; negotiations, in effect, stalled.

As a result, in our last written offer to Two Rivers, as dated August 20<sup>th</sup>, 2012 we simply focused on completing the inter-connect line which would allow the Town's collected wastewater to flow to the Long Creek plant for possible future treatment. In that correspondence we acknowledged that the two sides stated positions remained too far apart to continue meaningful negotiations toward a long-term wholesale agreement, but sought to agree on the construction of the inter-connect. We offered to pay for 50% of the total costs if Two Rivers paid an equal share. We (the Town of Dallas) have yet to receive any written response to that formal offer. We are nonetheless still trying to get some type of reasonable agreement to move forward with the interconnect line.

Hopefully, this chronology is helpful in understanding the Town's efforts over the last year. However, should you have questions, or seek additional information, please don't hesitate to contact me at your convenience.

Sincerely,



James M. Palenick  
Interim Town Manager

Cc: Mayor & Board of Aldermen  
Bill Trudnak, Public Utilities Director



Davis Wright  
Tremaine LLP

27th Floor  
1633 Broadway  
New York, NY 10019-6708

Jill Valenstein  
212-603-6426 tel.  
212-489-8340 fax

jillvalenstein@dwt.com

December 17, 2012

**Via Certified Mail-Return Receipt Requested**

Mr. James Palenik  
Interim Town Manager  
Town of Dallas  
210 N. Holland St.  
Dallas, NC 28034

**Re: Town of Dallas Pole Attachment Ordinance**

Dear Mr. Palenick:

My name is Jill Valenstein. I am outside counsel for Charter Communications ("Charter"). Charter requested that I write to you regarding the Town of Dallas's recently adopted Pole Attachment Ordinance (hereinafter "Ordinance") and request to pay pole attachment fees on January 1, 2013.

While Charter agrees that pole-owning municipalities should be reasonably compensated for the use of their poles, the Town of Dallas may not be aware that the North Carolina General Assembly passed a law in 2009 regulating municipal pole attachments. *See* N.C. GEN. STAT. Art. 3, § 62-55, *et. seq.* The law requires that "[a] municipality . . . that owns or controls poles, ducts, or conduits shall allow any communications service provider to utilize its poles, ducts, and conduits at just, reasonable, and nondiscriminatory rates, terms and conditions *adopted pursuant to negotiated or adjudicated agreements.*" *Id.* § 62-55(a) (emphasis added). Therefore, it appears that Dallas was not at liberty to pass the Ordinance and instead must negotiate pole attachment agreements with each of its attachers. To that end, Charter would like to meet with you to discuss entering into a pole attachment agreement, consistent with applicable law. Charter has a template agreement it uses with other municipalities that it would be happy to use as a starting point with Dallas. Mr. James Corrin, Direction of Government Relations for Charter, will be calling you to set up a meeting, most likely after the Holidays.

Once the parties agree on a reasonable pole attachment agreement and rates, Charter will pay any mutually-agreed to rate for the entire year, *i.e.*, back to January 1, 2013.

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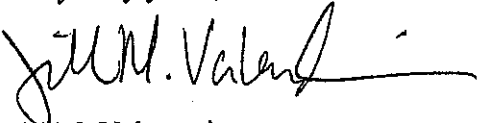
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Mr, James Palenick  
December 17, 2012  
Page 2

Please do not hesitate to contact me if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jill M. Valenstein", with a long horizontal flourish extending to the right.

Jill M. Valenstein

cc: Sue Weiske, Esq.  
James Corrin  
Ronnie McWhorter





December 19, 2012

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Mr. Gardner F. Gillespie  
Hogan Lovells US LLP  
Columbia Square  
555 Thirteenth St., NW  
Washington, DC 20004

Re: Pole Attachment Fees for Time Warner Cable -Town of Dallas, NC

Dear Mr. Gillespie:

In your correspondence of December 11<sup>th</sup>, 2012, in response to my letter to Nestor Martin of Time Warner Cable noticing the Town of Dallas, NC adoption of a "Pole Attachment Ordinance and Schedule of Fees", you have formally requested the negotiation of "new mutually acceptable rates, terms, and conditions pursuant to North Carolina's pole attachment statute (N.C.G.S. 62-350)" and hence triggering the 90-day period for negotiations. This is acknowledged and accepted and we expect to proceed forth with all due dispatch on said negotiations.

Further, you suggest that your continuing discussions/negotiations with Electricities of North Carolina should substitute for individual negotiations with the Town of Dallas, and that we (Dallas) should postpone any individual negotiations until you first develop a "template agreement" with Electricities, purportedly which will then become a model for all North Carolina electric municipalities to rapidly reach similar agreements. We unequivocally reject this offer/proposal and insist that the negotiations remain with Dallas, on behalf of Dallas, and that the 90-day clock established by statute remain in effect.

Additionally, you claim that the "current per-pole rate paid to the Town (Dallas) for pole attachments is \$5.24 per-year", and that you propose paying "this rate on an interim basis for 2013 subject to true-up to the rate set forth by the new agreement between Time Warner cable and the Town (Dallas)". In fact, we can locate no current agreement with Time Warner Cable and the Town of Dallas for any pole attachments, and, if one exists and it calls for payment to the Town as described, then it is clearly in breach since no evidence exists that the Town of Dallas has ever received payment from Time Warner, in any magnitude, for as long as the Town can access and research electronic, financial records. As such, we suggest that Time Warner pay the rate specified in our Ordinance (\$15.00 per-year) for 2013, subject to "true-up" to the rate ultimately set forth by any new agreement subsequently reached between Time Warner and the Town of Dallas.

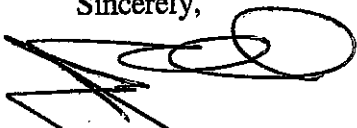
If you have documentation of any agreements currently in effect between the Town of Dallas and Time Warner Cable, or evidence of any payments made by Time Warner to the Town of Dallas, we welcome the production of same. If not, we look forward to your response and to working with you and representatives of Time Warner to come to a mutually beneficial agreement.



Page 2. Time Warner Pole Attachments cont.

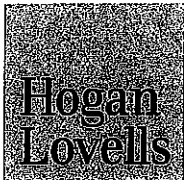
Perhaps it is appropriate, in this case, to realize that currently in the Town of Dallas the total number of pole attachments maintained by Time Warner on Town electric poles is between 50 and 60. So, at the established \$15.00 per attachment fee the yearly payment would amount to \$750.00 to \$900.00 .....equal (my guess is) to slightly more than one hour of your firm's fees.

Sincerely,

A handwritten signature in black ink, appearing to read 'James M. Palenick', with a stylized, looping flourish at the end.

James M. Palenick, Interim Town Manager  
Town of Dallas, NC

Cc: Bob Thomas, Progressive Engineering  
Doug Huffman, Electric Director  
J. Thomas Hunn, Town Attorney  
Mayor & Board of Aldermen



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December 11, 2012

**By Certified Mail**

Mr. James M. Palenick  
Interim Town Manager  
Town of Dallas  
210 N. Holland St.  
Dallas, NC 28034

**Re: Notice of Termination of Pole Attachment License Agreement**

Dear Mr. Palenick:

We write in response to your letter of November 21 to Mr. Nestor Martin of Time Warner Cable providing written notice of the Town's adoption of Ordinance Section 52.18, "Pole Attachments", as well as the "Resolution to establish and set pole attachment fees," which together set forth terms, conditions, and rates for attachment to the Town's poles.

Because the rates, terms, and conditions for attachment to the Town's poles were unilaterally imposed by the City in its Ordinance and Resolution, Time Warner Cable hereby requests negotiation of new mutually acceptable rates, terms and conditions pursuant to North Carolina's pole attachment statute (N.C.G.S. 62-350). The statute provides for a period of 90 days (from the date of request) for a cable operator and municipality to negotiate rates, terms and conditions of a pole attachment agreement, and for review by a Business Court if either party believes that an impasse has been reached prior to the expiration of this period. Time Warner Cable hopes to be able to come to agreement that is acceptable to both parties and hereby requests an opportunity to negotiate subject to the provisions of the statute.

In addition, Time Warner has commenced discussions with representatives from ElectriCities of North Carolina to develop a new template pole attachment agreement and rate methodology for use with North Carolina municipally-owned and operated electric utilities. The purpose of these discussions is to provide

December 11, 2012

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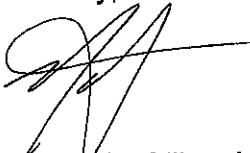
cable companies and municipalities with the ability to quickly reach agreement on the rates, terms, and conditions applicable to the attachment of cable facilities on municipal poles in North Carolina pursuant to the North Carolina pole attachment statute.

Although we are triggering Time Warner Cable's right to negotiate a new agreement pursuant to the North Carolina pole attachment statute here, we propose that we postpone such discussions pending completion of the template agreement, which we believe will serve as a suitable basis on which to commence negotiations.

Time Warner Cable's records indicate that the current per-pole rate paid to the Town for pole attachments is \$5.24 per year. We propose to pay this rate on an interim basis for 2013 subject to true up to the rate set forth by the new agreement between Time Warner Cable and the Town.

We will provide additional details as well as a copy of the template agreement as soon as they are available. We look forward to working with you to come to a mutually beneficial agreement.

Sincerely,



Gardner F. Gillespie  
Ray Rutngamlug

GFG/gs

cc: Mr. Bob Thomas, Progressive Engineering