

## Jim Palenick

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**From:** Jim Palenick [jpalenick@dallasnc.net]  
**Sent:** Friday, January 10, 2014 3:31 PM  
**To:** 'Rick Coleman'; 'ronniemorrow@att.net'; 'huggybarber@att.net'; 'hoylewithers@yahoo.com'; 'jcmalker@gmail.com'; 'jjerry2@att.net'  
**Cc:** 'mstroupe@dallasnc.net'; 'Gary Buckner'; 'Steve Lambert'; 'David Kahler'; 'dhuffman@dallasnc.net'; 'bill trudnak'; 'amartin@dallasnc.net'; 'J. Thomas Hunn'  
**Subject:** Town Manager's Weekly Report ( #60)  
**Attachments:** FFRF Letter.pdf

Mayor & Board of Aldermen(Women):

Please accept the following as the **Town Manager's Report for the Week-ended, Friday, January 10, 2014.**

- Earlier this week the Town received a letter from the Attorney representing the Freedom From Religion Foundation (copy attached), a national organization headquartered in Madison Wisconsin, objecting to the Town's holiday display of a nativity scene on the Town Square grounds in front of the Courthouse building. As you read it you will note that we have been asked for a response as to how the Town plans to take steps in the future to assure that this scene is no longer displayed on public property. The implication is that we are likely to face litigation on Constitutional grounds if we don't cease such displays in the future. Since this is clearly a matter of Policy for the Board to decide, I would ask for specific guidance prior to either a response from me or Attorney Hunn.
- On Monday, the Town's tree crew successfully removed the diseased tree along Trade street where the electronic reader board sign is to be installed. Thereafter, Mackey Tree Service was contracted to, and successfully ground and removed the stumps from both the removed tree and the series of three crepe myrtles that had been removed from the area in the Fall. This work was all done in anticipation of the sign installation occurring on Thursday. However, at midweek we learned that there had been confusion with the sign company as to who was to apply for and acquire the building permit. The sign company thought the Town was doing it, but since it was in fact their responsibility, they were unable to complete the process in time to perform any installation activities this week. Instead, the installation is now scheduled to occur beginning around 8:30 a.m. on Thursday, January 16<sup>th</sup>.
- It was learned this week that the back-up emergency generator for the Police Department, which appears was a poorly-spec'd and largely deficient model when purchased and installed, has since degenerated and/or been damaged to the point of requiring complete replacement. Because of the poor choice of equipment at the time, there is no effective or enforceable warranty or coverage from the vendor manufacturer, leaving the Town to now pick up the full cost of premature replacement. Electric Director Huffman is working with vendors and consultants to locate and price a proper replacement promptly since this is a critical piece of equipment in weather emergencies (and we are in the middle of winter). The likely cost will be around \$20,000 or more installed and we will come to the Board with final information as soon as we have it. We may have to add this as an item for approval at the upcoming January 14<sup>th</sup> Board meeting.
- The engineering firm assigned the task of designing the Wastewater interconnect line between Dallas and Gastonia's Long Creek wastewater treatment plant (Robinson Sawyer) began their efforts this week on behalf of Dallas and Gastonia jointly. Representatives from Robinson Sawyer were working with Director Trudnak to explore, examine, and document the precise location and condition of the point of exit from the Town's wastewater plant and system from which the interconnect line will originate.
- Mayor Coleman met with State Senator Harrington this morning to discuss, among other topics of interest to the Town, our desire to have the remaining \$50,000 in civil fines owed by the Town to the NCDENR, forgiven in light of our efforts (and costs) in moving forward with the actual design of the interconnect line to Gastonia. We have made such requests to the NCDENR in the past only to have them rejected, so we are detailing the issue in a letter from the Mayor to Senator Harrington so that perhaps she can take up our cause personally with the

Director of the Organization, who is a recent appointee of Governor McCrory, and different than the Director who presided over our earlier requests/rejection.

- Finally, we conducted our Bid Opening for the Courthouse building renovation project at 2:00 p.m. today in the Community Room of the Fire Hall. We had a total of 5 bidders, whose base Bids ranged from a low of \$914,884.00 to a high of \$1,220,000.00. The identified low bidder was Rehab Builders of Winston-Salem, NC at the bid of \$914,884.00. I am personally very familiar with Rehab Builders since they were the preservation/renovation contractors on both the Highland Hospital Apartments and Armstrong Apartments in Gastonia during my tenure as City manager and each project was incredibly well done given the buildings they started with were virtually beyond saving. They are arguably the best contractors in the State and perhaps the Southeast when it comes to preserving and restoring historic buildings. I would strongly recommend them. While their bid is approximately \$55,000 over our Budget, after having discussions with our Architect and Rehab's representative, I feel confident that, if approved, we can quickly agree on a few "value-engineering" items to get back to our budget without sacrificing anything of substance. We immediately identified that the generator (around \$20,000) was called out as a contractor item when the Town Electric Utility was going to provide, so that gets a portion of the amount needed even before any further review. I feel confident that we can approve the contract award as planned at the January 14<sup>th</sup> Board Meeting and just specify that staff is authorized to negotiate approximately \$55,000 in value-engineering to get the final contract price to \$860,000.00 +/-.

Thank You,

James M. (Jim) Palenick  
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100 N. Holland St.  
Dallas, NC 28034  
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[jpalenick@dallasnc.net](mailto:jpalenick@dallasnc.net)

# FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 • MADISON, WI 53701 • (608) 256-8900 • WWW.FFRF.ORG

January 7, 2014

SENT VIA U.S. MAIL AND EMAIL TO: [jpalenick@dallasnc.net](mailto:jpalenick@dallasnc.net)

Mr. Jim Palenick  
Interim Town Manager  
Town of Dallas  
210 N. Holland St.  
Dallas, NC 28034-1625

Re: Town-Sponsored Nativity Scene

Dear Mr. Palenick:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional concern with a nativity scene displayed in the Town of Dallas. FFRF is a national nonprofit organization with nearly 20,000 members across the country, including 450 members in North Carolina. Our purpose is to protect the constitutional principle of separation between state and church.

It is our understanding that this past December a large nativity scene was erected on Gaston Street, in front of the Old Courthouse. We were contacted by a concerned area resident who informs us that the nativity scene includes depictions of Mary and Joseph kneeling in reverence beside a baby Jesus with an angel overhead. We further understand that the nativity scene stands alone at the front of the pathway leading to the courthouse. An inflatable Santa and snowman off to the side of the building are far removed from the crèche. A picture of the display is enclosed for your review. We are unaware of any policy or permit given to a group or individual to erect this religious display.

The Supreme Court has ruled it is impermissible to place a nativity scene as the focus of a display on government property. *See County of Allegheny v. ACLU of Pittsburgh*, 492 U.S. 573 (1989); *Lynch v. Donnelly*, 465 U.S. 668 (1983). In *Allegheny*, the Supreme Court held that a county government's crèche displayed in the county courthouse was an unconstitutional endorsement of religion. The Court stated,

*Lynch v. Donnelly*, confirms, and in no way repudiates, the longstanding constitutional principle that government may not engage in a practice that has the effect of promoting or endorsing religious beliefs. The display of the crèche in the county courthouse has this unconstitutional effect.

492 U.S. at 621. The Court further determined that the placement of the crèche on the grand staircase of the county courthouse contributed to its illegality because "no viewer could reasonably think it occupies this location without support and approval of the government." *Id.* at

599-600. Moreover, the Court found that the nativity scene "sen[t] an unmistakable message that [the county] supports and promotes the Christian praise to God that is the crèche's religious message." *Id.* at 600. The display at the Old Courthouse, like the courthouse display in *Allegheny*, features a nativity scene as its focus. The display therefore constitutes a town endorsement of Christianity.

It is irrefutable that the crèche is a religious, Christian symbol. See *Lynch v. Donnelly*, 465 U.S. 668, 711 (1984) (Brennan, J. dissenting) (stating that the crèche is a "re-creation of an event that lies at the heart of the Christian faith"). Displaying an inherently Christian message on town property unmistakably sends the message that the Town of Dallas endorses the religious beliefs embodied in the display. When the town displays this manger scene, which depicts the legendary birth of Jesus, it places the imprimatur of the government behind the Christian religious doctrine. This excludes citizens who are not Christian—Jews, Muslims, Native American religious practitioners, etc.—as well as the almost 20% of the American population that is nonreligious.<sup>1</sup> Putting up a nativity scene sends the exclusionary message to these nonbelievers and non-Christians that they are outsiders in their community.

There are ample private and church grounds where religious displays may be freely placed by private parties. Once the government shows endorsement and preference for some religions over others, it strikes a blow at religious liberty, forcing taxpayers of all faiths and of no religion to support a particular expression of worship.

We request that the Town of Dallas ensure that this display is not placed on government property in the future. Please inform us in writing of the steps you are taking to address this constitutional concern so that we may notify our complainant.

Sincerely,



Patrick C. Elliott  
Staff Attorney

Enclosure

PCE:stg

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<sup>1</sup> "Nones on the Rise: One-in-Five Adults Have No Religious Affiliation," Pew Research Center, The Pew Forum on Religion & Public Life (October 9, 2012) available at <http://www.pewforum.org/Unaffiliated/nones-on-the-rise.aspx>.

