

May 11, 2008

To the Members of City Council:

My name is Vicki Kerman, and I am writing to ask each and every one of you how much longer we as residents must tolerate the untenable level of service we have been receiving under the contract that city staff negotiated for our solid waste removal. We were promised a “smooth transition” to a “first-rate” level of service comparable to what we experienced with city employees, and this has not materialized. That was the city’s justification for using the “emergency clause” when enacting the ordinance. Based on the results of this past week, it is getting worse, not better.

The website, www.uatrash.org, was started in March to document the inappropriate process that city staff and Council used to hijack our ability to vote on this vital service. A petition is circulating to remediate that. Since then, this website has become a focal point for documenting not only “trash” developments, but also those involving other major issues, including “Tremont Rezoning.” Once the “trash thing” has been resolved, the site will not go away; it will be pursuing this same approach with other city-sponsored initiatives as they develop.

What started out as a focus on “trash” has evolved into an overarching mission to insure that the City of Upper Arlington is governed in a manner that is both responsive and responsible.

Back to the “trash issue.” Why are we in such a bind? Because from its very inception, the decision to outsource solid waste collection has been riddled with mistakes and oversights on the part of both city staff and members of Council.

- In the July 2 conference session, members of Council were told by the Assistant City Manager how “critical” it was that a decision be made by the end of 2007 due to a “window” that existed in the contract with the city workers. This claim was unfounded; there was no such stipulation in the agreement. What is of more concern is that while this statement was being made, the City Manager, a signatory on the agreement, sat in silence while Council was being told clearly misleading information.
- During the November 5 and 19 conference sessions, members of Council were provided an incorrect financial bid comparison by the Finance Director. The calculation mistakes, which would have shaved nearly \$2.3 million off of the city service scenarios, were obvious, but were shielded in tables that were confusing at best. What is of concern here is that these mistakes were not caught during Council’s deliberations. No one questioned the numbers presented, even though they couldn’t possibly have made sense.

The missteps continued on through the transition period, January 31 through April 7. In the contract is a “Deployment Schedule” provided by the contractor, outlining twenty milestones that were to be achieved in preparation for service start.

Was this schedule met? No.

- **Leasing a Facility.** According to the contract, a facility was to be leased 90 days before service start. The contractor’s current location at 811 Kinnear was secured with less than a month to go before service commencement.

- **Hiring a Project Manager.** According to the contract, a Project Manager was to start 50 days before service start. A letter written by the contractor's Project Manager on April 13 indicates that he was not hired until April – one week before service start.
- **Shadowing of City Workers.** The contracted schedule stated that route personnel would begin driving the routes two weeks before service commencement. Contractor personnel never – not once – shadowed city workers to learn the routes before “going live” on April 7. As the Assistant City Manager stated in the April 14 conference session, contractor personnel “learned on the fly.”
- **Equipment Purchase.** And yet, on December 3 -- a week before the city manager had been given your approval to enter into the contract -- the contractor's representative told you that the equipment had already been placed on order "ummm ... not for this job ... but for safety purposes." That does not make sense.

It is clear that the contractor was not adequately monitored, nor was it held accountable for not meeting the “Deployment Schedule” provided in the contract. Indeed, the contract states that from contract award onward, weekly meetings were to be held to “evaluate the Contractor’s performance in implementing the Agreement” (p. 8 of 18). Only two such meetings were held, one in January and one in March.

Now that service has started, the contract is proving to be inadequate in providing the leverage the city needs to insure adequate performance.

- The contract provides an incomplete scope of work; it lacks a host of restrictions and service features that were present under the previous system, and that city employees had perfected based on their extensive experience.
- The majority of the stipulated financial penalties require constant real-time monitoring of the contractor’s performance in the field; this is unrealistic in application.
- But most importantly, the contract has no provision to insure resident safety. There is no requirement for criminal background checks on contractor employees. As a result, the city is impotent in enforcing Codified Ordinance 507.18, “Employment Restrictions for Sexual Predators,” and has placed residents at unnecessary risk.

In summary then, the city’s trash service change:

- Was based on incorrect assumptions and financial data provided by city staff,
- Was inadequately monitored by city staff during the pre-service commencement period, and
- Was founded on an inadequate contract that is now causing a plethora of problems for the city in holding the contractor accountable for providing the level of service that was envisioned.

The level of service that we as residents are receiving is unacceptable. Trash is not being picked up as promised, the trucks are causing long-term damage to resident driveways, and most importantly, residents have absolutely no assurance regarding the safety of our homes, our families, and our children each and every day.

So ... what have we learned?

1. Council’s decisions are only as good as the information it is provided by city staff. Council has been undeservedly trusting of the data they have been provided, and this has led to poor decisions. Staff needs to be questioned more closely and held accountable for providing supportable data.

2. When outsourcing, close attention must be paid to contract terms. A thorough investigation of all of the performance requirements and restrictions must be conducted before entering into such a commitment. Once a contract is signed, the leverage that the city holds in mandating envisioned performance requirements is only as strong as the contract terms themselves.
3. Members of city government – both staff and Council – serve as stewards for their residents; these entities have the power to enter into commitments, the results of which residents must live with even though they, themselves, did not make them. At what point is it your duty as stewards to admit that a mistake has been made and that because of the responsibility you have to your residents, a decision must be reconsidered?

Finally, what are our options?

- The first is to stick with the decision “because that is what we decided.” In this case, both the city and the contractor will continue to struggle indefinitely, trying to force performance and quality levels that are unrealistic given the business model with which the contractor bid the job. Residents’ patience will grow increasingly thin as each week goes by, and Council members will continue to lose their credibility.
- The second is to revisit the decision, recognizing that it was made with incorrect information provided by city staff, and to bring back the service we had prior to April 7. The contractor is clearly in default of contract terms. The buggies are still in the city’s possession. And, the now-ex solid waste division personnel are still within reach. The old system could be recovered without too much trouble.
- The third is to try it again with yet another private company. In so doing, however, the city should first consult with persons intimately knowledgeable about the subtleties of the old system and draw up a contract that truly represents all of the features that we had enjoyed.
- And yet a fourth is to work with professionals who had perfected the service based on years of experience to arrive at a method that would achieve all of the city’s goals in solid waste collection, and implement their recommendations. There are no personnel better qualified to do this than the now-ex city workers.

In no uncertain terms, this change has been a fiasco. As residents, we expect members of city Council to prioritize the needs of voters over their own sense of pride. It will serve you well to abide by Proverbs 16:18, “Pride goeth before destruction, and a haughty spirit before a fall,” because the outcome of the “trash thing” as well as other key initiatives will determine your fate in coming elections, and more importantly, the fate of Upper Arlington as a whole.

Please feel free to contact me if you wish discuss any of this further.

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