

WEEK 27 - DAY 4



Article in ThisWeek, "[Ohio top court says no to vote on trash.](#)"

WEEK 27 - DAY 3



Article in *UA News*, "**Trash system opponents will end their fight.**"



And Mike's Letter to the Editor to wrap things up and thank everyone who supported the initiative. (Click on the image at left for a readable version.)

Plus, a couple of great letters in this week's *UA News*.
See "**Resident Responses.**"

Thank you to all ...

WEEK 27 - Day 1

Mike and I have had a bunch of phone calls and emails asking us what we're going to do next.

The answer is ... nothing.

It's over.

The Supreme Court ruled that the City Manager had the authority/power all along to do whatever she wanted, with or without even Council's approval.

The Supreme Court ruled that as long as money has been appropriated (which it was), and if an action/decision falls within the responsibility of the City Manager (which, per the Codified Ordinances is basically everything having to do with running the city), no approval -- from Council or from the residents -- is needed.

There are some bigger-picture implications for this.

We'll leave it to you to noodle on them.

Issue 52

Ohio top court says no to vote on trash

Wednesday, October 8, 2008 2:06 PM

By CHRIS BOURNEA

ThisWeek Staff Writer

Although Upper Arlington residents won't have the opportunity to vote on the city's trash collection system following last week's Ohio Supreme Court ruling, city manager Virginia Barney local officials still want to hear concerns about trash and stand ready to respond. The Ohio Supreme Court ruled Oct. 2 that the solid waste initiative petition, Issue 52, will not appear on the Nov. 4 ballot.

The initiative would have given Upper Arlington voters the option to overturn or uphold the city's decision last December to dismantle its solid waste division and contract with Texas-based Inland Service Corp. to collect trash and recycling. Inland took over solid waste collection in April.

City attorney Jeanine Amid Hummer filed a motion on Aug. 29 with the Franklin County Board of Elections protesting the initiative, which the board had certified to appear on the Nov. 4 ballot.

After hearing arguments from Dan McTigue, an outside counsel representing the city, and Jim Becker, an attorney and local resident representing petitioner Mike Schadek, the board voted on Sept. 12 to allow Issue 52 to remain on the ballot.

Hummer challenged the board's decision with the Supreme Court, which issued its decision on Oct. 2 after accepting briefs from both sides.

The city contested Issue 52 on three major points: the initiative did not propose a law and "would result only in a public preference poll of voters;" the initiative doesn't contain the required number of signatures of registered voters; and the decision to contract with Inland was administrative and not legislative in nature and therefore not subject to referendum.

"Our code, the law, allowed the city manager to into contract with certain types of services," Hummer said. "They're very specific and they're narrow."

The city manager, without seeking council approval, can contract for services for less than \$15,000, Hummer said, as well as services that are essential to the community.

"There's already a law that allows her to do it. Because this was a public issue, the city manager decided to bring the piece of legislation before council," Hummer said. "But taking it before council doesn't make it legislative and not administrative. All council said was, 'Go ahead and do it,' falling under that same law that already existed."

Barney said the city is receptive to any concerns residents may have about trash service.

"We always encourage residents to share their concerns and beliefs, and we hear from them regularly," Barney said. "This particular (issue) was not appropriate for the community."

Schadek said he's disappointed with the court's decision but does not plan to file a motion for the court to reconsider the case.

"We don't want to waste the resources," he said. "With a six to zero decision, we think it would be futile to ask for the motion to reconsider."

Despite the court's decision, Schadek said he appreciates the work of dozens of volunteers who collected signatures and helped get the word out about the petition.

Trash system opponents will end their fight

** Ohio Supreme Court judges agree with city leaders that Issue 52 should not be in front of voters.*

By DONAVON CAMPBELL

Published: Tuesday, October 7, 2008 2:06 PM EDT

The man behind the fight to stop Upper Arlington from privatizing its solid-waste collections said the fight is finished.

The Ohio Supreme Court announced Thursday, Oct. 2, that Issue 52 should not be on the Nov. 4 ballot for Upper Arlington residents.

The initiative sought to end the city's solid-waste contract with Inland Services Corp. Residents opposing City Council's December 2007 decision gathered signatures to place the question before voters.

Resident and Issue 52 petition organizer Mike Schadek reiterated that there would be no motion to reconsider filed by petition organizers.

"Well, obviously we're extremely disappointed in the Ohio Supreme Court ruling," said Schadek. "But we're also extremely proud of the community involvement.

"It was truly an incredible experience to be involved with so many people in Upper Arlington."

The court ruled on several of the city administration's challenges, according to a written release. Those include:

* Residents were attempting to reverse an administrative decision -- by City Manager Virginia Barney and backed by City Council. State law allows referendum questions relating to legislative decisions, not administrative;

* On a related note, passage of Issue 52 would have been administrative in nature as it tried to capture voters' opinions. According to the court's ruling, "Moreover, insofar as the proposed ordinance included precatory language without legal effect that appeared to express the public opinion of the city's electors -- that the city residents "do not desire" privatization of trash collection services, "want" to continue the pre-existing trash-collection method, and "don't want" the city to enter into a contract with Inland Service Corp. - its enactment also would not constitute a proper legislative action.

* The court did not address questions about the number of signatures on petitions, as that was made moot by the other decisions.

"From the beginning of this issue, the city has felt the initiative and its intent has been outside the purview of the initiative process," said Barney.

"The city is committed to conducting its business within the legal processes and parameters of the city's charter and state law. So when faced with an issue that pushes the city outside these boundaries, we take the necessary steps to protect the systems that are in place to allow for effective governance and exceptional service to our community."

One of the organizers, Vickie Kerman, said she thought residents put up a good fight, but this would be the end of the line.

"Thank you to all," she said in an e-mail. "Your support is what kept us going. We did the best we could!"

UA began utilizing the private trash collection service in April, with Barney signing a three-year contract with Inland.

The move was made to save residents' money, said City Council President Don Leach, while also maintaining a level of service and recycling that is expected in UA.

"Issue 52 could have set a bad precedent for how all cities across Ohio conduct their business," Barney added.

"This was why the Ohio Municipal League filed a brief in support of the city's position with the Ohio Supreme Court."

To see the complete opinion, visit the Web site, sconet.state.oh.us/rod/docs/pdf/0/2008/2008-Ohio-5093.pdf.

--with reports from Cliff Wiltshire

Letters

Letter: Trash fight is over, but residents will stay alert

Published: Tuesday, October 7, 2008 5:36 PM EDT

To the Editor:

Last week, the Ohio Supreme Court granted the city's "writ of prohibition," pulling Issue 52, the Solid Waste Initiative, from the November ballot.

I started the initiative effort back in January because I was appalled at the way our city government had passed both the wholesale change in service and the \$30 annual fee (in essence, a new tax) as emergencies, without giving us, the taxpayers and recipients of the service, the opportunity to vote on either one. Truly a 21st-Century version of taxation without representation.

Support for this effort grew as residents came to realize the extent to which our rights -- specifically, our right to vote -- had been violated by the persons whom we had elected to represent us. Nearly 60 circulators donated their time to secure thousands of residents' signatures. Other residents donated funds and their time to assist the campaign. Over 50 letters supporting the initiative were written by residents and printed in local papers. Countless hours were donated by professionals within the community to advise us, and we got hundreds of e-mails and telephone calls expressing disgust with the way our city leaders had handled the trash issue.

Although this ends the initiative, it's only the beginning of a new era here in UA in which we, as resident taxpayers, recognize the need to stay alert in identifying abuses of power by our elected leaders, and to hold them accountable. The rezoning of the two Tremont Road properties (which is on the Nov. 4 ballot as Issue 51), the 2002 rezoning of properties throughout the city from residential to planned mixed-use district without notification to the surrounding Brandon Road and Chester Road homeowners (you'd better check your property's current zoning classification!), the 2005 Sky Bank rezoning from residential to commercial, the relining of Redding Road (a costly mistake), and the attempted purchases of the Christian Apostolic Church and Kingsdale (both at well above market value) are all cases in which our city sacrificed our rights and ignored our voices to pursue its own agenda.

While we can't change our current trash delivery system, we have the ability to prevent abuses of power by city staff and council in the future. We will have the opportunity to effect change when we elect new council members in 2009.

Thanks again to all who helped with the trash initiative. I've met some amazing people, and this has reaffirmed my belief that because of its residents, Upper Arlington truly is a special place to call home.

Mike Schadek

