

Town water district appeal challenged

By EDWARD CAREY
Knickerbocker News Reporter

6/4/81
GUILDERLAND — The attorney for the Guilderland residents who won a state Supreme Court decision which ruled unconstitutional a local referendum on the merger of the Westmere and McKownville water districts has asked the state Supreme Court's Appellate Division to dismiss the town's appeal of that decision.

Jeffrey Stockholm, attorney for three Guilderland residents who sued — and beat — the town, charged last August's referendum on the merger was unconstitutional because non-property owners were excluded from voting.

He said Wednesday he has asked the Appellate Division to dismiss the town's appeal because its attorney has not filed the necessary documents within the time allowed by the court.

Three town residents, John Esler, Daniel Gaffney and Mary Smith, sued the town in state Supreme Court and won. The town then appealed to the Court of Appeals, the state's highest court.

In April, the Court of Appeals said it would not hear the case because it "didn't present solely a question of the constitutionality of a statute," according to Stockholm.

The case was sent to a lower court, the Appellate Division of the Supreme Court, where it is awaiting further action.

The town had 60 days from the date the Court of Appeals transferred the case to the Appellate Division to file a brief and record with the court. Since it has not done so within the time allowed, the appeal should be dismissed, Stockholm contends.

He noted the town may receive permission from the court to file the necessary papers now, even though its time limit has expired, if it can show "there was justification for the delay."

John Tabner, Guilderland's attorney in the case, was not available for comment Wednesday.