

Court won't hear McKownville water district case

By EDWARD CAREY

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GUILDERLAND — The state's highest court has declined to hear the case involving the town's appeal of a state Supreme Court decision which ruled unconstitutional a local referendum on the merger of the Westmere and McKownville water districts.

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 Jeff Stockholm, attorney for the three town residents who won the Supreme Court decision.

In most instances, appeals from state Supreme Court decisions are made to that court's Appellate Division. But both parties in this case agreed to go directly to the Court of Appeals to save time and expense, said John Tabner, Guilderland's attorney in the case.

Now that the Court of Appeals has refused to hear the case, it goes to the Appellate Division.

The case involves a referendum conducted last August in which a Westmere-McKownville water district merger was approved. In that election,

non-property owners were not allowed to cast ballots.

Three town residents, John Esler, Daniel Gaffney and Mary Smith, sued the town, charging the referendum was

unconstitutional because non-property owners were restricted from the vote.

The Supreme Court in December ruled the referendum unconstitutional, and the town appealed to the Court of Appeals.

Tabner said he hopes the case will be heard by the Appellate Division of the Supreme Court "before the summer recess."

But Stockholm said the case may not go on the court's calendar until September "because July and August are dead months."

Stockholm noted his clients are not disturbed by the Court of Appeals' decision not to hear the case, saying the only inconvenience to anyone is that of "a time delay."

"This had delayed the thing. And if we or the town loses, there may be further appeals to the Court of Appeals. If that is the case, there may be another delay of six months," Stockholm said.