

# Same's challenge tossed; SF hall vote will proceed

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SENECA FALLS — Let the referendum be scheduled.

Former Supervisor Peter Same's legal challenge to petitions seeking a referendum on the town taking money from its capital reserve fund to renovate and reuse its town hall was dismissed Tuesday.

Acting State Supreme Court Justice Patrick Falvey of Yates County dismissed the challenge in a bench ruling after hearing arguments at the Yates County Courthouse in Penn Yan.

Falvey's ruling dismissed the challenge on two legal technicalities, without getting into the merits of whether the petitions had a sufficient number of valid signatures.

Specifically, Falvey agreed with attorney Steven Getman of Ovid, who represented petition signers, gatherers and witnesses Gerald Graziano, Chad Sanderson, Stanley Praszkwicz, Antonio Constantino, Ailene Phillips, William and Robert Wayne, Domenick Paradise, David Carfora and Katherine Robson.

"Ms. Robson and Mr. Carfora were not legally served with the petitioner's objections as parties, as required," Falvey said.

Falvey agreed that Same filed his objections with the town clerk Feb. 1, within the required five-day period after the petitions were filed with the town Jan. 27.

But he agreed with Getman's claim that Same did not file his legal complaint with the court until Feb. 3, outside the five-day requirement.

For those two reasons, he dismissed the complaint without getting into the gist of Same's arguments.

Same's lawyer, David Ettman of Fayette, argued that even with Carfora and Robson not properly served — he noted Robson was out of state — the other defendants were more involved with the petitions and the case should proceed against them.

He told Falvey that the petitions were filed around 4:30 p.m. on a Friday, a half-hour before town offices closed. He said Same didn't find out about the filing until the following Monday, contributing to the time delay in getting the objections before the court.

But Falvey said the law is clear.

"It says five days, not five business days," he said.

Ettman said it is unclear whether the five-day rule applies to filing with the court.

"I don't see where it says he has five days to do both," Ettman argued.

Getman disagreed, pointing to court cases in his written papers that back up his motion to dismiss the objections.

He said Robson was not just a notary public for some of the petitions, but someone who witnessed four pages containing 31 signatures.

Getman also argued that the five-day deadline for filing both with the town clerk and the court was clear in law.

He argued there was no fraud or bad faith by those circulating the petitions, claimed Same was responsible for some confusion “that he now seeks to exploit” and said upholding his challenge would deny people their right to vote.

“It’s a great day for Seneca Falls,” Graziano said afterwards. “This gives the voters a chance to have a voice with their vote. That’s a good thing.”

Same said he did the best he could and was confident if he could overcome the technical issues of timeliness, his objections had a good chance of being sustained and the petitions rejected.

He said he would not appeal the ruling.

“Hopefully, voters will approve the town’s plan to use money saved and put into this fund just for this purpose,” Same said. “Hopefully, they will see the benefits of doing this.”

In 2011, the prior Town Board that Same headed decided to renovate the former Town Hall at 10 Fall St.

Board members said there was \$2.4 million in the reserve fund to pay for the project without raising taxes, a plan that was preferable to continuing to lease space at \$90,000 a year from St. Patrick’s Parish.

They came up with a Greek Revival design that drew some criticism as being unnecessary. The project was put to bid last fall. Bids were awarded in early December and the motion to take money from the reserve fund was adopted Dec. 29.

Taking money from that fund was subject to a permissive referendum. If petitions with at least 144 valid signatures were submitted on time, the taking of money from that fund could be put to a binding referendum.

Graziano and others submitted petitions with 176 signatures. Same said many of them signed before the Dec. 29 vote and thus should be invalidated, leaving an insufficient number of signatures.

It will now be up to Town Attorney Patrick Morrell to outline the legal steps necessary for the referendum. The cost of the vote will be borne by the town. The date has not been determined but should be in late March or early April.