

## **Frequently Asked Questions about Quasi-Judicial Proceedings**

Certain decisions of the Town Council (the "Council") and the Planning Commission (the "PC") are characterized as quasi-judicial ("QJ") based on specific legal requirements. If a Council or PC action is QJ, certain procedures are required by law. This FAQ provides a brief explanation of QJ procedures.

### **Q: What does QJ mean?**

**A:** An action is deemed to be QJ if the following characteristics are present:

- A state or local law requires that the Town give adequate notice to the community before acting;
- A state or local law requires that the Council/PC conduct a public hearing at which time concerned citizens must be given an opportunity to be heard;
- The application involves specific individuals, interests or situations and is not effective Town-wide; and
- A state or local law requires that the Council/PC make a determination by applying the facts of a specific case to specific criteria.

### **Q: What does "legislative" mean, as opposed to QJ?**

**A:** The Council acts legislatively when it acts upon a general rule or policy which is applicable to an open class of individuals, interests or situations. In that capacity, the Council gathers information and then implements a policy, based on the information it has gathered, by enacting a resolution or ordinance. Legislation creates Town-wide policy that operates prospectively from the effective date of the legislation. For example, when the Council enacts an ordinance setting leash law requirements for dogs, it is acting in its legislative capacity. The important distinction between legislative action and QJ action is that courts apply a more lenient or "hands off" approach in their review of legislative decisions. A court's hands off approach to review legislative actions comes from the concern for a separation of powers between the different branches of government. This concern for separation of powers has become a traditional rule in the American court system.

### **Q: What types of applications are QJ?**

**A:** Land use (zoning) applications that involve specific properties are QJ. In other municipalities, liquor license applications also fall into the QJ category, but in Erie, the Town's Municipal Judge handles these, so they fall outside the scope of this FAQ.

### **Q: What does it mean to operate in a QJ manner?**

**A:** In making QJ decisions, due process (a constitutionally guaranteed right) generally requires that the decision-maker (here, the Council or PC) only consider evidence and testimony that it receives at the public hearing on the matter. In a QJ proceeding, the Council or PC operates like a court, and may not pre-judge the application before it. Much

like a court would at a trial, the Council or PC must apply the law to the facts gathered at the public hearing to arrive at its decision. The testimony and evidence presented at the public hearing make up the record of the proceeding. If there is an appeal of the Council or PC's decision, the reviewing court will look to see if evidence in the record supports the decision.

**Q: Can I speak to my elected officials about a QJ proceeding?**

**A:** Not outside of the public hearing. While Council and PC members are free to discuss legislative matters with citizens at any time, Council and PC members may not discuss QJ applications outside of the public hearing. It is unlawful for a Council or PC member to discuss or consider correspondence concerning the QJ matter outside of the public hearing. Information received outside of the public hearing is called an improper *ex parte* communication.

**Q: What is *ex parte* communication?**

**A:** *Ex parte* communication is any oral, written, electronic or graphic communication with a Council or PC member about a QJ matter, outside of the public hearing, that may directly or indirectly relate to the matter and that could influence the disposition of the matter. Avoiding *ex parte* communications ensures due process, because the applicant is able to hear and respond to all communications about its application. *Ex parte* communications provide legal grounds for a reviewing court to overturn a decision.

**Q: How can I participate in the QJ process?**

**A:** If you wish to express your opinion or communicate information on a QJ application, you may appear at the public hearing and speak at the appropriate time. You may also submit your thoughts or concerns in written form to Town staff for inclusion in the public record. Town staff will then include your comments in the record for the public hearing, to be shared with the Council or PC in their agenda packets or at the public hearing.

If you have any questions, contact:

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