

"LEGISLATIVE" and "QUASI-JUDICIAL"

This information is provided by the Township Attorney off of Kelly and Lemmons, P.A.

This is a brief explanation of the phrases "Legislative" and "Quasi-Judicial". The difference is important because rules governing challenges to a Legislative decision are different from the rules governing challenges to a Quasi-Judicial decision.

When the Planning Commission and Town Board create a new ordinance or amend an existing ordinance, they are acting as legislators creating new law. The Court respects the right of the Town Board and the Planning Commission to determine what rules and regulations promote the public health, safety, morals or general welfare of the Town citizens. The Court therefore defers to the Town's decision and will only overturn an ordinance if it finds the Town Board acted unreasonably or irrationally.

Once the new ordinance or amendment is adopted the role of the Town Board and Planning Commission change. They now become fact finders. When an owner applies for a conditional use permit, interim use permit or variance the Town Board and Planning Commission will hold hearings to take testimony and determine if the facts support the request. Essentially they are acting as judges, which is why conditional use permit, interim use permit and variance hearings are considered to be Quasi-Judicial.

A court hearing to challenge the Town Board's decision regarding a conditional use permit, interim use permit or variance will review the findings of fact prepared by the Town Board as well as the evidence used to create the findings of fact. Based on that examination the Court will then determine whether the decision was unreasonable or irrational.

This is the key difference between Legislative decisions and Quasi-Judicial decisions. In the case of Legislative decisions, the Court will defer the decisions made by the Town Board and Planning Commission. In the case of Quasi-Judicial decisions, the Court will actually look at the findings of fact created to support the decision and the evidence behind those findings of fact. This is why the Town Board when it grants or denies a CUP, IUP or variance places in the record the reasons why they made their decisions.