Elected Official Immunity in Making Local Zoning Decisions

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For years, elected members of municipal boards or councils charged with making local land use and zoning decisions enjoyed full personal immunity. When disgruntled landowners or developers aggrieved by an adverse zoning decision sought damages from the individual members of the board, council or commission making the decision, courts routinely rejected such efforts. Courts found that local zoning decision makers are protected by either legislative or quasi-judicial immunity. These doctrines of immunity reflect the courts’ recognition that whether acting in a legislative capacity, or in an adjudicative capacity similar to that of a judge, the decision maker should not be burdened with the fear of a lawsuit when officially exercising his or her zoning authority.

The district court for the Northern District of Illinois recently broke from this precedent in a decision with potential far reaching negative consequences for elected officials. In Chicago Joe’s Tea Room LLC v. Village of Broadview, the court refused to grant quasi-judicial immunity to the trustees of the defendant municipality—despite classifying the zoning denial as a quasi-judicial action. The seemingly incongruous decision threatens the very immunity on which local officials often rely when reviewing zoning issues, and opens the door for litigation-prone zoning applicants to scare local officials into granting zoning relief, whether or not that relief is merited.

I. The Doctrine of Quasi-Judicial Immunity

The doctrine of quasi-judicial immunity is rooted in the Supreme Court’s 1978 opinion in Butz v. Economou. In Butz, a commodities merchant

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2. Id. at 3.
alleged that the Department of Agriculture infringed the plaintiffs’ constitutional rights by revoking their commodities merchant registration. The lawsuit sought damages from the Secretary of Agriculture, the hearing examiner and prosecuting attorney involved in the revocation proceedings, as well as a host of other department officers, all of whom were named as individual defendants. The government argued that its officers enjoyed absolute immunity from liability for damages for their role in the revocation proceedings, even if those proceedings infringed the plaintiff’s constitutional rights and the infringement was deliberate.

Although the Supreme Court disagreed with the government’s broad assertion of absolute immunity for its officials in all circumstances, it recognized that “there are some officials whose special functions require a full exemption from liability,” such as judicial officials and others engaging in judicial functions (such as federal prosecutors). Going further, the Court declared that “adjudication within a federal administrative agency shares enough of the characteristics of the judicial process that those who participate in such adjudication should also be immune from suits for damages.”

Specifically, the Court identified six features of the judicial process that, if present in an administrative proceeding, would favor a finding that quasi-judicial immunity is available to those participating in the adjudication. Those features are: (1) an adversarial proceeding; (2) a decision maker insulated from political influence; (3) an opportunity to present evidence; (4) the use of precedent to resolve the controversy; (5) the ability to appeal the outcome of the proceeding; and (6) a record containing the decision and findings. The court remanded so that the district court could reanalyze the officials’ claim of immunity.

II. Quasi-Judicial Immunity and Special Use Permits

Prior to the recent Chicago Joe’s decision, at least three federal courts applied quasi-judicial immunity to a special use permit determination by local zoning officials. Most recently, in Dotzel v. Ashbridge, the Third Circuit relied upon Butz when it granted elected individual su-

4. Id. at 481.
5. Id. at 485.
6. Id. at 508 (citing Bradley v. Fisher 20 L. Ed. 646 (1872); Imbler v. Pachtman, 424 U.S. 409 (1976)).
7. Id. at 512-13.
9. Id. at 517.
10. 438 F.3d 320 (3d Cir. 2006).
Supervisors of a township board immunity from a section 1983 lawsuit involving the denial of a conditional use permit for a mining operation.  

First, the court noted the need for “insulation from political influence,” yet it granted the elected supervisors quasi-judicial immunity. The court explained that this Butz factor did not depend simply on whether the official was elected or appointed, but rather on whether the official “can be removed from office based on the substance of [his] official work.”  

Because the supervisors could not be removed without due process, the court concluded that they were sufficiently insulated from political influence.

The Dotzel court also held that the use of precedent to decide a case, also cited in Butz, turned on the extent to which the decision is “constrained by outside law.” The court reasoned that a decision is more judicial in nature if supported by precedent and external standards. The supervisors’ obligation to rely upon specified land use standards and to set forth its reasoning in writing indicated that they were acting in a quasi-judicial capacity.

Finally, the court asserted the public interest in providing quasi-judicial immunity to those making zoning decisions, so decision makers could act “without fear” of litigation and improper influence by developers. The court acknowledged that quasi-judicial immunity does not necessarily apply to every zoning body, but the privilege extended to the supervisors.

Two federal district courts have explored whether local zoning officials enjoy quasi-judicial immunity when denying a special use permit for a religious institution. In Hale O Kaula Church v. Maui Planning Commission, the federal district court in Hawaii granted immunity to members of a county planning commission after they rejected a permit for a church in an agricultural area. In contrast, the federal district court for the Eastern District of California ruled in Guru Nanak Sikh Society of Yuba City v. County of Sutter that county supervisors were not immune from liability for their decision. The Guru Nanak court noted that the supervisors’ “primary role” as “elected legislators,” indicated that they were not insulated from political influence. The court also held

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11. Id. at 325-26.
12. Id.
13. Id. at 326-27.
14. Id. at 325-26 (quoting Bass v. Attardi, 868 F.2d 45, 50 (3d Cir. 1989)).
17. Id. at 1135.
that quasi-judicial immunity was not available to officials who serve both as “lawmaker and monitor of compliance” with those laws.\footnote{18}

III. Quasi-Judicial Immunity in Other Contexts

Perhaps not surprisingly, quasi-judicial immunity has also been extended to local zoning officials conducting appellate style review of decisions by subordinate officials.\footnote{19} In rendering those decisions, courts shed further light on why quasi-judicial immunity is often granted to officials involved in zoning decisions. The district court for the Western District of North Carolina held that members of a town council were immune from liability for affirming the denial of a zoning variation, finding that “the touchstone” of judicial immunity is the “performance of the function of resolving disputes between parties, or of authoritatively adjudicating private rights.”\footnote{20} The Ninth Circuit noted public policy concerns, stating that “[l]and use decisions are often contentious and involve conflicting interests and policies. Permitting suits against the quasi-judicial decision makers would discourage knowledgeable individuals from serving as Board members and thwart the orderly process of judicial review.”\footnote{21}

Courts have also granted quasi-judicial immunity to local officials who review licenses. The First Circuit held that members of the Massachusetts Board of Registration in Medicine enjoyed immunity when revoking medical licenses.\footnote{22} The Seventh Circuit has twice upheld quasi-judicial immunity for Illinois mayors acting in their statutory capacity as the Local Liquor Control Commissioner.\footnote{23} In each of these cases, the Seventh Circuit observed that the commissioner could not take action against a liquor licensee except after a quasi-judicial proceeding.

IV. Chicago Joe’s and its Consequences

In \textit{Chicago Joe’s}, the district court for the Northern District of Illinois reviewed whether the trustees of a municipality were immune from

\footnote{18. \textit{Id.} at 1136.}


\footnote{21. \textit{Buckles}, 191 F.3d at 1136.}


\footnote{23. Killinger v. Johnson, 389 F.3d 765, 770–71 (7th Cir. 2004); Reed v. Vill. of Shorewood, 704 F.2d 943, 952 (7th Cir. 1983).}
liability for the denial of a special use permit to operate an adult facility. 24 In accordance with the Village’s zoning ordinance, the planning and zoning commission held a public hearing on the application and recommended that the permit be denied. The trustees agreed and rejected the application. Plaintiffs sued the Village and every member of its board of trustees, contending that the denial of the special use permit violated their First and Fourteenth Amendment rights. The trustees moved for judgment on the pleadings, arguing that they enjoyed “absolute immunity from personal liability.” 25

The trustees, looking to an Illinois statute that mandated judicial review of special use permit decisions under a deferential standard applicable to legislative acts, 26 argued that their decision was legislative in nature, and that they therefore enjoyed legislative immunity for their denial of the permit. The court noted the statutory standard of review, but nonetheless declined to classify the permit denial as a legislative decision. Instead, the court relied upon the statute’s legislative history, which provided that despite the required form of judicial review, special use permit decisions were of a “quasi-judicial character.” The court noted that the trustees were required to decide special use permit applications by “apply[ing] pre-existing land use standards and policies,” which is a “quasi-judicial, not classically legislative [act],” 27 and accordingly concluded that “[d]espite their formal status as legislators . . . the [t]rustees do not act in their legislative capacity when granting or denying a special use permit.” 28 On this basis, the court denied legislative immunity to the trustees, but then considered whether quasi-judicial immunity might apply. Although it did not cite Butz, the court specifically noted that the availability of quasi-judicial immunity depended in part upon the presence of procedural protections, such as a notice and hearing, and the availability of appellate review of the local official’s decision. Applying these factors, the court held that the special use proceedings were quasi-judicial. Importantly, the Village’s planning and zoning commission had conducted a public hearing, reviewed relevant facts, issued a set of factual findings, and submitted a report of its findings and a formal recommendation to the trustees. The trustees were obligated to base their decision on predetermined standards of review, and the ultimate decision was subject to judicial review.

25. Id. at *1.
26. Id. at *2 (citing 65 Ill. Comp. Stat. Ann. 5/11-13-25 (West 2009)).
27. Id.
28. Id.
After concluding that the Village’s special use process and the trustees’ decisions were quasi-judicial, the district court determined that quasi-judicial immunity was not available to the trustees. Because the trustees were not obligated to state reasons for the denial, their decision could not be reviewed in the same manner as that of a typical judge or even of an Illinois liquor commissioner, both of whom “must provide some reason for any adverse decision.” The court further explained that the deferential standard of judicial review of special use permit decisions was “too insubstantial a procedural safeguard” to extend quasi-judicial immunity to the trustees.

Notably, the district court did not cite Butz or any of its progeny in support of its conclusions, nor did it analyze all six of the Butz factors (it noted only two of the standards, as mentioned above). Instead, the court relied on two circuit court decisions involving legislative immunity and its own analysis.

The Chicago Joe’s decision, when compared with other cases involving quasi-judicial immunity, is clearly at odds with the doctrine. Had the court reviewed the claim of immunity in the context of the six Butz factors, the case may well have been decided differently. The special use permit decision in Chicago Joe’s involved an adjudication of private rights—which has been recognized as the “touchstone” of judicial immunity. Though the trustees were elected, Dotzel demonstrates that even elected officials may be entitled to quasi-judicial immunity. Also, Illinois special use decisions involve both the presentation of evidence on the Court record, and the use of established standards to guide the ultimate decision. Under Chicago Joe’s, local elected officials in Illinois will potentially be subject to lawsuits seeking monetary damages, without the protection of quasi-judicial immunity. An uptick in such cases would surely lead directly to that which the Third and Ninth Circuits cautioned against: the improper influence of the outcome of zoning processes, based solely on fears of litigation.

29. Chicago Joe’s, 2009 WL 3824723, at *3.
30. Id.
31. The trustees filed a motion for reconsideration of the court’s denial of the motion for judgment on the pleadings, which the court denied. The parties focused on recent Illinois case law regarding the standard of review of special use permit decisions; neither party discussed the quasi-judicial immunity issue. As of September 1, 2010, the litigation remains pending. See Chicago Joe’s Tea Room, LLC v. Vill. of Broadview, 2009 U.S. Dist. LEXIS 89174 (N.D. Ill. Sept. 25, 2009) (granting Chicago Joe’s motion for reconsideration but, again, denying summary judgment).