

SAN FRANCISCO

Daily Journal

44 Montgomery Street, Suite 250, San Francisco, CA 94104 ♦ 415/296-2400

Monday, October 3, 2005

DID PROPERTY RIGHTS LAWYER ARGUE 'OTHER SIDE' IN PIER DISPUTE? Lawyer Makes Interesting Switch in Tahoe Pier Controversy

By Dennis Pfaff
Daily Journal Staff Writer

Ronald Zumbrun, the guru of private property rights in California, has spent much of his career fighting for landowners to build pretty much whatever they want. But for years, he has also deployed the tactics of environmental advocacy lawyers to try to block the construction of a big private boat pier on Lake Tahoe.

It turns out that Zumbrun, who loves to complain that environmental regulators meddle too much, is also critic of regulators who don't do enough.

The pier fight pits a group of residents of the upscale Glenbrook area on the Nevada side of the lake against their perhaps even wealthier neighbors. Call it the battle of the haves against the have-mores.

Last month, the 9th U.S. Circuit Court of Appeals sided with the bigger guys, clearing the way for the pier's construction. The 300-foot-long structure will serve homes owned by some of Nevada's most influential citizens.

It's a controversy that has gotten plenty of media attention.

The cast of characters includes Larry Ruvo, a liquor wholesaler who pops up on the society pages hobnobbing with casino magnate Steve Wynn.

According to Texans for Public Justice, a political watchdog group, Ruvo was among a group of about 200 donors who

contributed \$200,000 or more apiece to President Bush's re-election campaign, and he has hosted fund-raisers for Bush and Vice President Cheney.



Zumbrun

Harvey Whittemore, a man the Reno Gazette-Journal once dubbed one of the state's most powerful lobbyists and a big Democratic fund-raiser, is a partner in the project

Ruvo, the Sacramento Bee reported, this summer sponsored a \$25,000-percouple fund-raiser for Gov. Schwarzenegger, who appoints two members to the board of the powerful Tahoe Regional Planning Agency, which governs development at the lake. Co-hosting the event were former junk bond king and ex-convict Michael Milken and his wife, Lori.

According to The Associated Press, Whittemore in 1999 slipped a provision into a legislative bill that would have helped the pier project Nevada lawmakers, however, stripped the provision after "Piergate" erupted as a public controversy in the press.

Plans call for a Zumbrun pier only 10 feet wide but almost as long as a football

field. It would be built with lifts, so that boats can be hoisted up to make room for more boats at water level.

"It's a sizable pier," said Joanne Marchetta, the Tahoe planning agency's general counsel.

The pier backers' legal team packs equal heft. Lawyers pushing for the facility include E. Leif Reid of Las Vegas' Lionel, Sawyer & Collins. Reid's father is U.S. Senate Democratic Leader Harry Reid.

Zumbrun represented clients who hail from a development so exclusive that he once couldn't get in through its front gates. He said even dropping his client's name to a security guard didn't work to gain him entrance to the Glenbrook enclave.

"If they don't have your name there, lots of luck," Zumbrun said.

But next to Ruvo and Whittemore, Zumbrun said, "we feel a little like the have-nots, now."

Because Ruvo and Whittemore already have access to a Glenbrook communal dock, their neighbors don't think there's any need for a new pier that will draw large crowds to their secluded corner of the lake.

But an attorney working for the pier project said Ruvo and Whittemore don't want their boating access to be at the mercy of the neighbors.

In fighting the pier, Zumbrun argued on behalf of the Glenbrook Preservation Association that the Tahoe planning agency, a joint effort by California and Nevada, fell short on its environmental protection responsibilities when it approved the project in 2001. A separate organization of homeowners later joined the opposition.

Among their contentions: TRPA should have taken a look at the project's cumulative effects and required an environmental impact statement.

Zumbrun said the pier is just one piece of a "major entertainment center" that already

includes a bar, dance venue and a new three-story structure suitable for housing.

He described the facility as an illegal "commercial" development intended to entertain Ruvo and Whittemore's business and political clients and guests.

Already, Zumbrun said, hundreds of cars have been counted attending posh events at Ruvo's estate.

"To anybody looking at what's going on, [the pier] is very integral, and it's a key aspect" of the whole project, Zumbrun said.

Zumbrun claimed that TRPA officials gave preferential treatment to the pier's proponents. He questioned how officials managed to hold a hearing on the project a mere 12 days after backers submitted a modified permit application, a remarkably fast turnaround.

"It usually takes years," Zumbrun said.

Zumbrun's litigation approach echoed themes more likely to be argued by the Sierra Club than Pacific Legal Foundation. As a co-founder of the Sacramento-based foundation, Zumbrun over the years has pioneered legal strategies to curtail government restrictions on the use of private property.

More recently, Zumbrun has waged a high profile court fight against the California Coastal Commission, widely reviled by Pacific shoreline property owners. Although the California Supreme Court this year rejected his challenge to the commission's structure, he recently announced he will go to the U.S. Supreme Court

Marchetta, the TRPA lawyer, couldn't resist commenting on the irony.

"[Zumbrun] was putting to use the skills that he learned in law school of being able to argue both sides," she said. "I'm sure he had to swallow hard."

Zumbrun said he himself had found it "interesting to be in this situation." But he rejected the notion of any inconsistency in

his positions.

"We don't believe in no government," he said. "We believe in limited government"

The only way regulation works, Zumbrun said, is to apply clear standards and treat people equally and fairly.

"You can't just let your favorite people do it and not let anybody else, or vice versa," he said.

An attorney who assisted the Tahoe planning agency on the case said Zumbrun actually hewed pretty close to his core philosophy.

Zumbrun argued that the pier's approval interfered with the Glenbrook homeowners' property rights, according to William J. White, an attorney for San Francisco's Shute, Mihaly & Weinberger.

"That's classic Ron Zumbrun," White said.

Attorneys for both the planning agency and the pier's backers denied there is any double standard in the planning process.

At the same time, Marchetta acknowledged that Ruvo's political connections and wealth probably didn't hurt his cause.

"I'm not sure that that's a function of special treatment as much as it is a function of just the way the world works," she said. "People with resources have the tendency to be able to fight a longer battle."

Another TRPA lawyer, Jordan Kahn, said the agency worked with Ruvo's group just as it would with any other. He said TRPA also consulted with Zumbrun's clients.

"You can characterize it however you want, but the reality is they wanted a pier, and they worked with us and with our rules to arrive at a project proposal that we could approve," Kahn said.

Likewise, attorney Reid dismissed Zumbrun's claims as "hollow rhetoric." He pointed out that both the federal trial court and the 9th Circuit rejected Zumbrun's allegation that Ruvo's project is designed for a commercial purpose.

Ruvo and Whittemore simply "don't want their access to Lake Tahoe dictated by a homeowners' association that has historically been very hostile to them," Reid said.

He said Glenbrook residents have in the past refused access to their dock to Ruvo and Whittemore, a charge Zumbrun denied.

Access turned out to be a key legal issue in the dispute.

The planning body's rules barred the new pier from being built if its owners could use the existing Glenbrook dock

Ruvo and Whittemore solved that problem by bringing in a new partner and proposing to build the pier on his land, which arguably did not have access to the existing dock.

That application was quickly approved by TRPA, but the agency punted on the access question, saying it would have to go to court.

Last year, while the case litigation was pending, Ruvo went ahead and bought his new partner's property, where the pier is to be built

Ultimately, the 9th Circuit sided with the pier proponents, removing the last legal obstacle to construction.

Zumbrun has vowed not to give up. He said he'll probably petition the court for an en banc rehearing.

"We have some avenues," he said.