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ACCESS BAGGAGE

With the Americans with Disabilities Act Accessibility Guidelines still at the center of litigation, sports facility architects brace themselves for the first revisions.

By Andrew Cohen

One can't really be too critical of the Americans with Disabilities Act (ADA)— that would be like using an expletive to describe Mother Teresa. However, the ADA Accessibility Guidelines (ADAAG), published by the Architectural and Transportation Barriers Compliance Board (also known as the Access Board), are another matter altogether.

ADAAG has long been a sore subject among architects and facility operators, who charge that the guidelines are extremely short on specifics, leaving their sports facilities open to challenges by the U.S. Department of Justice (DOJ) and litigation by disability groups. Actually, the DOJ is held in even lower regard —the department's ADA Title III Technical Assistance Manual's assertion that "facilities must be built in strict compliance" with ADAAG typically elicits snorts of derision. How can anyone be in "strict compliance" with something so vague?

And now, those guidelines are undergoing their first revision. The Access Board is drafting the language for proposed rules for four areas of recreation —sports facilities, boating and fishing, golf and "places of amusement" (amusement parks). The text and preamble will have to clear the Office of Management and Budget and then be published in the Federal Register. A period of public comment will follow, during which time at least one public hearing will be held.

And the changes? It's a little early in the process to say (the board hopes to issue proposed rules by next fall), although the ADAAG Review Federal Advisory Committee's 432-page "Final Report: Recommendations for a New ADAAC" has been circulating since the spring.

"In some cases we may propose to relax some of the requirements, in some cases we may propose to ratchet them up a bit," says Capozzi. "I can't say whether we're going to accept all their recommendations, but we're treating them all very seriously."

What stings architects and facility owners is the way ADAAC works. The guidelines are simply advisory until they're adopted by the departments of justice or transportation, at which point they become enforceable standards. While Ellerbe Becket Architects' MCI Center experienced the highest-profile scrape with DOJ (see "Sitting Targets," Sept., p. 20), every sports facility architect has known the cold glare of Justice.

"We have had some problems," says Erik Kocher of Hastings & Chivetta Architects in St. Louis. "For example, the guidelines imply that as long as disabled patrons are offered alternative facilities, you don't need to make every space in a facility accessible. But we've been ruled against in a couple of cases where DOJ basically said, 'Every inch of the facility has to be accessible.' "

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- Erik Kocher, Hastings & Chivetta Architects

Kocher recalls a community center that included an ice rink, where for space reasons the toilet and shower facilities in two team locker rooms were not made accessible. Since the floor was designed to include a number of adjacent locker rooms with accessible toilets and showers, and as Kocher puts it, "99.999 percent of the users of ice hockey rinks are able-bodied," the client instructed them to let it go at that. After a code review, however, they were told to alter the locker rooms—during construction.

"So we now have an office policy where every inch of every facility must be accessible," says Kocher. "We resist owners who suggest otherwise, and it doesn't take too many horror stories to convince them."

"What people don't understand," says one architect, "is that it does cost a lot of money to accomplish these goals. Everyone would be enthralled to provide accessibility to a reasonable level of demand, but to fully serve 1 percent of the population, you are forced to provide less to the other 99 percent."

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Ground zero in the ADAAG controversy is in larger venues such as arenas and stadiums, and specifically, the requirement that all spectator facilities provide wheelchair seating to the tune of 1 percent of the building's seating capacity. Turner Madden, an attorney who represents the International Association of Assembly Managers (IAAM), calls the 1 percent figure a "blue sky number" - "they pulled it out of the air," he explains - although it corresponds roughly to the number of that population is in nursing homes, and a significant number will never go to events, whether they have the desire to or not," he says. "They don't, they won't, they can't."

Madden adds that a survey he's currently conducting is showing that about a third of wheelchair seats are used on a regular basis. "We're four years into the law and the seats ," he says. " 'If you come'? Well, there are wheelchair users in the general population. Not relevant, says an unnamed architect. "About 75 percent of them aren't being used," he says. " 'If you build it, they will come? Well they're not coming."

"In some cases we propose to relax requirements, in some cases we may propose to ratchet them up a bit"

- David Capozzi, Director of Technical Assistance, Architectural and Transportation Barriers Compliance Board

But Kevin McGuire, an accessibility consultant who is also a wheelchair user, reminds architects that they must plan for future use. "Right now, I would say 1 percent is not reasonable," McGuire says. "It could be in 20, 25 years with the graying of America. The older the country gets, the more people you'll find who will develop a mobility impairment, whether due to a stroke, respiratory illness or arthritis. Right now, with the arenas and stadiums I'm working with, they're selling about 20 percent of the 1 percent, but it depends on the venue and the event."

It has been widely assumed in the industry that the 1 percent figure will be relaxed (the review committee's proposal cuts the number to one-half of 1 percent for venues over 500 seats), but Ellerbe Becket's Tom Beckenbaugh isn't so sure that will happen.

"If you think about a 60,000-seat football stadium, where you must have 600 wheelchair locations, maybe 1 percent doesn't make a lot of sense," Beckenbaugh says. "But I know DOJ has taken the position that none of us really know yet what the demand is for wheelchair seating in assembly space, because for so long the public was conditioned that there were only a few places, so many people who had a disability wouldn't attend an event. We've seen over time that when we design one of these new facilities, actual wheelchair-using spectator attendance rises significantly, because the facilities are accessible. If you design it accessible, they will come."

Problems with the 1 percent figure go beyond design. One percent may sound like a perfectly reasonable figure, but here 1 percent is really 2 percent, or higher, given the requirement that wheelchair seating be accompanied by companion seats. Facility operators are obligated to "protect the integrity of those seats and ensure that people with disabilities and their companions, get a chance to access them," as McGuire says. Wheelchair spaces are designed so they can be fitted with temporary seats if they go unused by people with disabilities, but the difficulties in ticketing and planning for sold-out events— and the possible revenue loss when wheelchair seats and their companion seats go empty—is hard to deny.

Another controversial issue, the concept at the center of the MCI Center litigation, is so-called "enhanced sightlines." Yet, interestingly, the review committee's recommendations offer no change to that portion of the text. "It's no clearer, and still subject to interpretation," laments Beckenbaugh. "Informally, though, the DOJ has made its interpretation clear, so that's what we're designing to."

Sightlines have proven thorny to designers in the age of ADA because of continued disagreement over the meaning of "comparable," and because the DOJ's interpretation of ADAAG has evolved over time. Ellerbe Becket used a sort of scalloped effect in its seating bowl design of the Florida Panthers' new hockey arena so disabled spectators could see over standing spectators without being segregated significantly from the rest of the crowd. The DOJ is now touting this design as a model of accessibility and vertical integration—a welcome shift in the disabled public's opinion of the firm after the MCI Center case.

Says Beckenbaugh, "What caused the litigation is that the DOJ wasn't as clear as they could have been. Architects are all interested in designing appropriate environments, but we're also interested in understanding what the rules are. When ADAAC first came out, we viewed the notion of integration and comparable lines of sight as meaning the dispersion of wheelchair seats throughout the bowl. Now that the industry in general understands the new interpretation, we're able to design to that standard."

McGuire supports this view.

"It's been a big learning curve for people," he says. "It's unfortunate that with the MCI Center and others, it wasn't articulated right from the start what 'comparable lines of sight' meant. The bottom line is that if the Access Board and DOJ

had specified 'over standing spectators,' that's what architects would have designed, that's what owners would have bought and that's what would have been constructed."

Moakley, though, isn't sure that the original guidelines are as hazy as some architects claim. "Early on, the DOJ came out with a technical assistance manual that specifically used the term 'line of sight over standing spectators,' so l think it was made fairly clear from the beginning of implementation that that's what it meant," Moakley says. "I very often hear architects and attorneys, neither of which I am, make the general statement that the regulations are vague and ambiguous, and that some of the design specifications are too rigid, but I don't see it that way at all. As a matter of fact, I think there's a lot of flexibility in both the design specifications and in the way the law is implemented."

Marsha Mazz, the Access Board's technical assistance coordinator who served for two years on the ADAAC review committee, sees the fight over sightlines as emblematic of a larger problem—lack of understanding between architects and people with disabilities.

" 'Line of sight' over standing spectators is not a term we used in the ADAAC or in the committee report, but in our notice of proposed rule-making in 1990 we did ask some questions about sightlines, so it's not a new concept," Mazz says. "I really believe that historically there has been a disconnect between people with disabilities and architects in terms of the language they speak. But I also believe that that's not the case so much anymore. I think they're coming a lot closer."

Mazz believes architects' familiarity with working with building codes doesn't prepare them for a document like the ADA guidelines. ("ADAAC should never be looked at naked," she says. "You need to look at them through a civil rights filter.")

Adds Beckenbaugh, "Building codes are interpreted by local jurisdictions, and if you have a question about a provision of the code you can go down to city hall and they have the authority to render an interpretation that's binding in that situation. That's not the case with ADAAC. You can get all the opinions you want from the local building department, from the mayor, from the governor, and it doesn't matter. It gets tested in court."

And so, the difficulties continue. Some states interpret the guidelines more strictly than others, case law is too recent to have settled on any one interpretation and architects do as much as they can do—and maybe even more than they have to do—to ensure accessibility. Brailsford & Dunlavey's Noyes points out that this makes ADA a success, from the disabled public's viewpoint, if only because it's spurred designers to act decisively.

Noyes sees the costs of ADA compliance not so much in terms of financial costs —"On the large jobs we do, it's not so much extra cost as you just design it a different way than you would have," he says—but in the sudden obsolescence of certain "classic" types of architecture. "You see it in the design of rec centers built in the late 1960s and 1970s, when they were mostly health and physical education buildings," Noyes says. "They had things like a lot of elevation changes within buildings that are really not possible anymore. Going further back, the old field houses of the 1920s and 1930s, those with the Parthenon-style steps, are no longer valid, either. ADA has definitely had an impact on design."

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- Kevin G. McGuire, Chairman & CEO of McGuire Associates, Inc., an ADA consulting firm

Renovation of these structures is becoming more difficult, too, since the DOJ's interpretations in this area appear to he shifting. "They'd always said that an existing structure had a 'readily achievable' obligation to comply with ADAAC, with readily achievable defined as 'cheap and easy,' " says McGuire. "But nowadays what DOJ is saying is that you have to he able to bring your building up to new construction standards, and if you can't do that, you've got to argue that it's going to be an undue burden. That's tough."

Beckenbaugh sees a silver lining and a dark cloud.

"ADA's been in effect for about five years, and we're just starting to see buildings come on line that comply with the spirit of the law," he says. "I think we'll see the environment shift over the next decade, where designing to accommodate the disabled will become much more routine. We're just now getting to the point where we can make our designs compliant without actually getting the book out and checking everything. You have to work with ADAAC for awhile to get comfortable with some of its nuances."

He pauses. "It's a little unsettling to think that 'OK, now they're coming out with a new rule book.' "