

**COMMENTS AND RESPONSE TO THE U.S. DEPARTMENT OF JUSTICE'S
NOTICE OF PROPOSED RULEMAKING TO AMEND 28 CFR
PART 36: NONDISCRIMINATION ON THE BASIS OF DISABILITY
BY PUBLIC ACCOMMODATIONS AND IN COMMERCIAL
FACILITIES**

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Submitted by

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SUPPLEMENT MATERIAL for QUESTION 45

As attachment

Original Course Plans (PDF)

Modified Course Plans, included individual hole designs (PDF)

Quotes from Adventure Golf Services and Castle Golf (PDF, XLS, DOC)

ABSTRACT

The International Association of Amusement Parks and Attractions (IAAPA), the International Association for the Leisure Entertainment Industry (IALEI) and the Miniature Golf Association of the United States (MGAUS) appreciates the opportunity to provide public comment to the Notice for Proposed Rule Making (NPRM) on revisions to the Americans with Disabilities Act Title III, Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities. The following is a brief outline of our concerns about the NPRM. We will provide detailed discussion of items three, four and five in the body of this document.

1. Sixty (60) Day Public Comment Period. The NPRM's 60 day period for public comment is too short for our members to provide substantive comment to the issues raised and proposed. Mid-June through mid-August is probably the busiest 60 day period of the year for the miniature golf industry. The fact the most miniature golf courses derive approximately 80% of their entire annual revenue between Memorial and Labor Day makes this short 60 day period even more problematic.

2. (6) Month Period for Effective Date. The NPRM's proposed 6 month effective date of the rule is contrary to Options 1 and 3 proposed in the September 30, 2004 Advance Notice of Proposed Rulemaking (ANPRM). The three association's primary concern with this effective date is that it is too short for barrier removals on existing miniature golf courses. Additionally, as IAAPA requested in its comment to the ANPRM, these associations feel "first use" should be used as the trigger event for barrier removal obligations for miniature golf courses, and not "start of construction" as is proposed in this NPRM.

3. Question 45: "Exemption for existing miniature golf facilities that are of a limited total square footage, have a limited amount of available space within the course, or were designed with extreme elevation changes". The three associations fully endorse this "exemption" for existing miniature golf courses that fall within this description. The Department asked in **Question 45** for potential "parameters" that would define these facilities which are included in this response. The reader will note that a great deal of work has been presented for this area due to the potential impact it may have within the industry if such parameters are not adopted.

4. "Safe Harbor." This is a new concept that deserves and requires more discussion than this short NPRM period permits. We support the concept of a "safe harbor" for businesses who are trying in good faith to comply with the ADA. The 2004 ADAAG requires the removal of architectural barriers only when "readily achievable"; however the "readily achievable" standard under the 1991 regulations is too vague to offer protection. In some jurisdictions, "readily achievable" could be determined to mean up to bankruptcy for the business. Despite our interest in the concept of a safe harbor, we have several serious concerns with the safe harbor proposal as it is currently presented in the NPRM. These concerns are discussed in more detail within this report.

5. Alterations vs. “Normal Maintenance”. This is an extremely important issue to the industry. Each industry has “typical normal maintenance” tasks. These tasks are carried out on a regular schedule and do not change the “usability” of the maintained items. Painting or wallpapering interior walls are typical in most commercial buildings. Miniature Golf does not have interior walls or roofs to re-shingle but the beauty and safety of miniature golf courses are the elements that make the activity so popular. The re-carpeting of the golf holes, maintenance of the brick paving stones that serve as curbs or borders on the golf holes in essence are the course’s interior walls and roof. Maintenance of many of these items is a requirement of the facility’s liability insurance carriers. There are many more examples included in the body of this report.

6. Question 59: Allowing Multiple Breaks in the Sequence of Holes “The Department would like to hear from the public about the suggestion of allowing multiple breaks in the sequence of accessible holes, provided that the accessible holes are connected by an accessible route. Should the Department ask the Access Board to change the current requirement in the 2004 ADAAG?” The three associations fully support this recommendation for *newly constructed* miniature golf courses. This would appear to be a “win-win” proposition as it would permit the miniature golf guest with a disability to enjoy the “sites, sounds and ambiance” of the entire miniature golf course. This flexibility will also offer designers of miniature golf courses more flexibility and opportunities in their designs of courses.

7. Service and Comfort Animals. The three associations support the Department’s and NPRM’s proposal on new definition of “Service Animals”, and support the exclusion of “Comfort Animals”.

8. Segways® The three associations do not support the Department’s and NPRM’s proposal to include electronic personal assistive mobility devices (EPAMDs, i.e. Segway®.) as a conventional class of mobility device. These concerns are related to safety in intensive pedestrian environments such as tightly constructed miniature golf courses.

9. “Element by Element “Barrier Removals The NPRM’s “Element by Element” is a new standard of care for removal of architectural barriers, and clearly appears to exceed the current Title III ‘Readily achievable’ standard, which includes §36.304 (c) Priorities and §36.305 Alternates to Barrier Removal. Facilities which complied with the 1991 standard could be penalized under this standard and would in essence be forced to do barrier removal activities twice.

INTRODUCTION

The miniature golf industry is primarily composed of family-owned small businesses whose owners often have left other careers to offer their respective communities a place where all citizens may enjoy a safe, family-oriented opportunity to spend quality time with family and friends. Our industry has and will continue to work with the Access Board and the Department to develop solutions that address the needs of our guests with disabilities.

The three associations commend the Access Board and the DOJ in their very difficult task of balancing the needs of citizens with disabilities and the issues that small businesses such as miniature golf face in attempting to comply.

The new ADA Standards bring many concerns to the miniature golf industry, yet we understand the importance and fairness these measures bring to all members of our communities. Our primary concerns revolve around the impact these new standards will bring to the thousands of existing miniature golf courses currently in operation throughout the United States.

We are confident that creative owners and designers will be able to implement the new standards into newly constructed courses. Unfortunately, existing courses may face very difficult times based on the final resolution of these proposed new standards. Miniature golf has enjoyed a renaissance in popularity over the past 30 years. Most of this popularity can be traced to courses incorporating multiple levels, and undulating golf holes that have typically been designed on relatively small pieces of property. Many of the very elements that have rejuvenated miniature golf will now be impacted by these new standards. This is not to say the miniature golf industry does not agree with the need for these standards – quite the contrary, the concern lies in how these standards can be incorporated into existing facilities without causing financial ruin.

It is paramount as we approach the final details of this process, that we work together to craft standards that will fairly address the needs of our citizens with disabilities and also address the financial impact it will have on small, typically family-owned businesses.

The three associations (IAAPA, IALEI and MGAUS) that represent the vast majority of the miniature golf course owners and operators have collaborated on this lengthy response to the NPRM. All three of the associations involved in this response take the responsibility of compliance very seriously. The very short 60-day response period coinciding exactly with probably the busiest 60 days of the year for most miniature golf courses made this endeavor extremely difficult.

You will note that we have included very lengthy support data in response to question 45 in the NPRM (item three listed above) regarding the potential parameters for an exemption for some existing miniature golf courses based on specific criteria. Without attempting to over-dramatize the issue, the Department's final ruling on this subject may determine the future of our industry.

The industry is also very concerned with items four and five (definition of “alterations vs. normal maintenance” and the specific points involved in the proposed “Safe Harbor” provision).

We approached this project with an open mind as to the potential impact it could have. In fact, much of the length of this document is a result of supplying all of our due diligence in thoroughly researching this issue. We stand ready at anytime to meet with the Department to assist in resolving any issues that we can be of any assistance. Thank you for your time in reviewing this response.

RESPONSE TO QUESTION 45: *Potential Exemption for Miniature Golf Courses with Significant Elevation Changes within a “Tight Footprint of Property”*

HISTORY

Miniature Golf enjoyed a “renaissance” from the mid 1970s starting in warm weather climates in the western U.S. that eventually spread to the Midwestern and eastern U.S in the mid to late 1980s. Miniature Golf course designs changed from flat, generic courses to much more elaborate configurations.

Until this transformation, the “typical” miniature golf course was built on an existing, usually flat piece of ground. By design, the golf holes were level and the skill required was the ability to time your putt through a moving obstacle such as the infamous windmill that seems to be associated with miniature golf of yesteryear or to bank a shot off of built-in obstacles on the hole or the curb surrounding the golf hole.

As competition for the discretionary entertainment dollar grew stronger in the 1960s and 70s, the popularity of miniature golf began to wane. Some veterans of the industry understood the growing desire for upscale family entertainment and recognized the need for change. These forward-thinking entrepreneurs began building courses that incorporated new and exciting elements while maintaining the core aspects of miniature golf that made it so universally appealing to people of all ages.

One of the core new design elements included multi-level courses. In addition to creating a more challenging experience, this type of design also permitted the miniature golf course to become a billboard for passing motorists on the road. For tourist locations the height of the course became more and more important to draw guests into play.

An important part of the transformation of miniature golf was the incorporation of lush, beautiful landscaping. Where the climate permitted, tall palm trees were planted throughout the courses which added to the height and street appeal. Landscaping and sprinkling system budgets on these new courses usually surpassed the total cost of building the older, flat, generic courses of the past.

One of the primary objectives in the new design of these courses was to create the perception of a sense of privacy within each hole or within areas of the course. This was achieved through the topographical changes and the strategic placement of trees, shrubbery and other decorative landscaping, and in many cases, the construction of perfectly scaled scenes. This type of design reduced the likelihood of conversations among a group playing together to be heard across the course. Unlike other typical attractions at amusement parks, waterparks and even family entertainment centers (FECs), miniature golf was not designed to be a 2-5 minute “thrill” experience: its appeal was to create an opportunity for a group of friends, a family or a couple on a date to enjoy a relaxing 45 – 60 minute non-skill related fun activity.

Water became a very important aspect of these courses. Cascading waterfalls, ponds with impressive fountain displays became standard fare on newly built courses. Creating these realistic looking waterfalls and elements required skilled specialists who traveled around the country plying their craft. Due to supply and demand of these few very skilled craftsmen, combined with the specialized equipment required to create these elements, the water elements of a miniature golf course were, and still are, very expensive.

The golf holes themselves became works of art. Instead of the flat, generic holes that were encapsulated within 90 degree angles, free-form undulating golf holes similar to the greens of real golf courses were introduced. Again, local contractors seldom could be found who had the expertise required to form the concrete bases of these holes to attain all the necessary specifications required to have the holes play as designed. The concrete forming of miniature golf holes (when done properly) is an art form and requires an experienced miniature golf course builder to meet all the specifications required. The objective is to require the guest to “read” the undulating green and be rewarded if they do so. Often overlooked by the inexperienced contractor is allowing for ample but subtle slope (drainage) on the “green” portion of the hole so that water (rain) will not puddle or collect on the green. Conversely, there cannot be so much slope that all the golf balls end up coming to rest against the lowest point of the green against the curb.

Many courses utilize fantasy themes: jungles, pirates, and nautical, are just a few of the popular themes typically used. Perfectly -scaled scenes depicting these themes are typically incorporated into the design of miniature golf courses. These scenes are often built by Hollywood movie set designers, or comparably-skilled craftsmen who take great care in the minute details of these structures. Needless to say, they are not inexpensive.

In essence, the renaissance of miniature golf became a movement of creating many of the elements found on “real” golf courses. Miniature golf courses are not designed to be practice sites for improving one’s putting skills. The popularity of the attraction is actually its low skill level and social appeal to people of all ages. On a nice summer, spring or fall evening, with the beautiful landscaping, cascading waterfalls, and changing terrain, it becomes a “walk through the park with an objective.”

It is very important to understand how and why the sport of miniature golf has changed throughout the past 30 or so years. Not by accident, miniature golf has paralleled the birth of family entertainment centers which have become the home of most miniature golf courses built today. Today, free standing or “stand alone” miniature golf courses are usually only found at tourist locations.

LAND COST AND USE FOR MINIATURE GOLF COURSES

Tourist locations and Family Entertainment Centers share the same philosophy in regard to the allotment of land dedicated to miniature golf: be as efficient as possible. Most of these courses were built prior to the introduction of the 2004 ADAAG and/or standards, thus, in many cases, did not incorporate appropriate space to design and build golf holes and accessible paths that meet the criteria for guests with disabilities. The profitability of

these facilities is, in part, based on the efficient use of space. This controls the amount of land that is required and permits a more efficient use of staff. It is because of this design criteria that most miniature golf courses are “landlocked” and do not have available space to expand.

ISSUES THAT WOULD LIKELY PREVENT MANY CURRENT MINIATURE GOLF COURSES FROM EVER BECOMING ACCESSIBLE

Actual “slope” of miniature golf hole does not meet ADA specifications (1:12): It might appear to the person who has hired a contractor over the years to repair a portion of their driveway, that the simplest solution to this issue would be to cut-out the affected area and put in a piece of new concrete. If the hole is perfectly or nearly flat, this issue should not require anymore than a good local concrete finisher. By design, miniature golf holes often are designed to have “undulating” slopes similar to a real golf green. For a facility to remove a hump or other portion of a golf hole that did not meet the new standard it is easier and the end-result is better to jack hammer the entire hole and rebuild it. This is very specialized work and can seldom be properly completed by a contractor who is not experienced in this type of work. The type of course that would need an exemption is typically comprised of many golf holes with these characteristics.

The cost to recreate a golf hole is dramatically higher than when building an entirely new course. When constructing a new course, it is easy to move about. Concrete can be poured directly from the truck. If sequenced properly, there is little to work around. When working on an existing course, everything takes considerably longer. The existing hole must be demolished into workable sizes so that it can be put into a Bobcat and carefully taken off the course. If the golf hole was constructed with steel reinforcing bars, they must be cut with cutting torches, again so it can be broken up into small pieces. All remnants of the demolished hole must then be trucked off site in a dump truck or in a large construction dumpster. Care must be taken throughout this process not to do any damage to areas of the course that are not scheduled to be rebuilt. Everything below grade must be attempted to be saved, including electrical wires, irrigation, water supply lines, etc. This is usually much easier said than done!

When it is time to start the new golf hole, concrete must be poured from the truck into a buggy and slowly driven to the hole under repair. This is much more time-consuming than when working on a new course with nothing to work around and the concrete truck can be pulled adjacent to the hole.

Carpeting would need to be replaced over the entire hole in almost all cases. Attempting to match new carpeting with worn and/or used carpeting would fundamentally alter the playing surface. The carpeting of miniature golf holes is not nearly as easy as it may appear. The placement of connecting seams can be critical to how the hole plays and how the carpet wears over time. The grain of the carpet is often mislaid by inexperienced miniature golf carpet installers.

There are a number of experienced miniature golf carpet installers who travel the country installing carpet on courses. Most miniature golf construction companies have working relationships with one or more of these installers and use them to install carpet on their new courses. Many existing miniature golf course owners have learned the hard way that when it is time to re-carpet their course, saving a few dollars by using a local inexperienced installer will normally backfire.

If the modified area included the actual hole, a new hole would need to be drilled through the concrete. Based on the type of lighting and placement of fixtures, these electrical issues would also need to be addressed.

The potentially more perplexing problem with modifying one hole is the domino effect it may have on the surrounding terrain and/or adjacent golf holes and walkways. This situation exemplifies one of the major difficulties in attaining accessibility in many existing miniature golf environments. In many cases by correcting one accessibility issue, one or more others are created as a result.

Golf holes (fairways & tee areas) that are not a minimum of 36” wide: If it was decided that a hole that was less than 36” wide was to be modified in order to meet the required standards, the same steps described above would be involved – it would likely need to be completely replaced.

There is one other likely factor - the hole may be narrow (less than 36”) for a reason. Even prior to the 2004 ADAAG, it was typical to design golf holes at least 36” wide unless there was terrain or other structural issues that necessitated narrowing the fairway. Some, but not all of reasons may be:

- The fairway may also serve as a bridge over a pond or waterfall. Bridges are expensive and difficult to build. It was common prior to the 2004 ADAAG to sometimes make these bridges narrower than 36 inches, either to save money or due to site constraints.
- The hole may be positioned on a “plateau” between a steep embankment (usually retained by a wall) or waterfall on the “high” side and a retaining wall (steep drop-off) on the “lower” side.
- Another more perplexing problem belies a hole less than 36” wide that was built this way due to the lack of appropriate space. The hole, in many or most cases cannot be circumvented by the construction of an accessible path of travel for the same reasons the fairway was built less than 36” wide – there is not enough space. This particular scenario could impact access to the remaining golf holes. The course used as an example is very typical of the course design (see Hole Nine) prevalent prior to the publication of the 2004 ADAAG. These were courses basically built in “tiers” with retaining walls used to separate the different “levels”. Because of the amount of elevation change within such a tight “footprint” of land, typical sloping of the land would have required much more land for “ramping”.

- -There often are certain holes on these courses that do not offer the possibility of gaining accessibility without major construction. On the course used as the example, the existing fairway/bridge (Hole 9 – see blueprint of course) would need to be rebuilt or expanded in width (both very difficult and expensive). There is just enough extra land to achieve this although by doing so, it would require the golf hole being re-built right on the edge of a retaining wall, something designers normally try to avoid due to safety concerns. If this course did not have the appropriate extra space, and it was decided that the only way to gain accessibility was to widen this hole, one of two things would need to be done:
 1. Replace the lower retaining wall to gain needed space for extending the hole. This would be a very expensive and difficult task because it would also involve altering or replacing the “water weir” (waterfall that creates a clean, flat waterfall effect). This action would necessitate the removal of and replacement of footers, rebuilding of the retaining wall, landscaping and lighting (focused on waterfall). The “old saying”, “robbing from Peter to pay Paul” would be an appropriate comment on this or similar courses, the space gained above will cause similar problems on the lower level of the course. You would be just moving the space issue from one area of the course to another. The only other option would be,
 2. Go in the other direction and replace the entire waterfall, cut into the embankment to gain space for the wider hole. In addition to the very expensive task of removing and replacing the waterfall, it would require all new retaining walls to be built on that side of the golf hole. Landscaping and lighting fixtures and water supply lines would also be impacted by this choice.

“Architectural Barriers” that were designed into original design of golf holes on courses built prior to the 2004 ADAAG. Since most of these courses were built prior to standards being published, the placement of these obstacles often did not include a 36-inch wide accessible path through the hole. The limited space in which these courses were built seldom allow for an “accessible route” or path adjoining the hole that would permit a guest with a disability to have appropriate reach from outside the hole. Some of the typical “barriers” are:

- Large boulders planted on a golf hole with concrete poured and carpeting installed around it.
- Obstacles strategically placed on a golf course requiring the player to angle their putt off of this object in order to have their putt end close or in the hole. Similar to boulders, these obstacles are typically planted below the finish grade of the concrete with the concrete being poured and carpeting being installed around it.
- Humps exceeding four inches in height designed and built into the golf holes.

The removal of these types of architectural barriers would **not** be considered “readily achievable” due to the cost involved to remove them. Miniature golf holes are all designed to be uniquely challenging. Removing these obstacles, which would involve the same types of issues described in the examples given above, but also would typically require a whole new design that likely would include some topographical changes in the design. New challenges would need to be incorporated into the redesigned golf holes. In lieu of these types of obstacles, the holes would likely be redesigned to include some elevation changes (obviously meeting appropriate ADA specifications) to create interest and challenges. It is important to remember that most architectural barriers in most businesses are not integral components of a facility that would **fundamentally alter** the reason for being there. The types of barriers described above represent the core appeal and popularity of the activity.

Constructing “Start of Play Areas” on existing courses create additional issues due to limited space and existing elevation challenges. The flat surfaced start-of-play area is vitally important to a guest on a miniature golf course. Unfortunately most of the courses that were built prior to the 2004 ADAAG did not allow space for this element. The ideal configuration would be 60 inches across (width) of the tee area to accommodate both a left and right handed golfer with a disability. Few miniature golf holes ever exceed four feet in width due to efficient utilization of carpet which is manufactured in 12-foot widths (3 fairways, each four feet wide). Additionally, the typical miniature golf hole design has two main areas, the “fairway” and the “green” which opens up in space at the end of the golf hole. Until this new requirement, the consensus was fairways did not need to be in excess of four feet wide. Most existing miniature golf courses would opt for the four foot by five foot configuration.

The existing miniature golf course owner would have two basic options to choose in how to incorporate this area: One, if the hole was at least four feet wide at the tee area and the initial five feet of the fairway was flat (so that it conformed to the 2004 ADAAG), it becomes relatively easy.

Unfortunately, many of the miniature golf courses that seek exemption were designed with a rise or fall in slope within several feet of the tee. These slopes are often within the acceptable ADA Standards (less than one inch per foot) but do not meet the start-of-play criteria. Cutting out and removing the first five feet of the fairway would create a “bump” at the transition point of where the new flat area would converge with the existing fairway which at that point would there could be a five inch difference. Not only does this not meet the slope standards but it would necessitate the entire golf hole to be rebuilt. Building up the hole in this area to create a smooth transition at the five foot point on the fairway just creates a new elevation issue at the beginning of the tee area.

Option two would be to extend the tee area back onto the connecting walkway that runs between the preceding golf hole and the golf hole in question. This solution only works when this area is flat. If it was flat, a new pad approximately five feet by five feet would need to be poured since most existing sidewalks will not be this size at that point.

Additionally, at the beginning of each tee area, most courses will have a two-by-four inch length of wood running the width of the golf hole that is used to allow for a metal length of carpet strip to be installed to keep the edge of the carpet from becoming frayed or loose. This two-by-four inch length of wood would need to be removed so that the new concrete may be ‘butted’ up to the existing edge of the concrete golf hole. New side curbing or brick pavers would need to be installed (the reason for the extra foot of width for the pad is to allow for the installation of the pavers). New carpeting would need to be installed at least over the new area. If the existing carpet was over a year old, it is possible and likely probable the entire hole would need to be re-carpeted. As carpet wears, it gets matted down and the transition point of the old and new can alter the path of the putt, and could become a trip hazard.

Moving the “Start-of-Play” areas onto the connecting walkways will be difficult on many of the courses under review for exemption. These walkways are areas that often were designed to transition from one elevation to another within a very short distance. Many of these paths do not currently meet the 2004 ADAAG as they relate to acceptable sloping. Adding a flat 48–inch by 60-inch “Start of Play Area” at the beginning of a hole not only shortens the distance between holes but creates, in many cases, a very steep path from the end of the preceding hole to the new pad. Unfortunately, these courses were not designed and built with appropriate space to accommodate this additional “Start of Play Area” without creating significant new elevation issues.

Inability to construct an appropriate “accessible route” throughout the course that would meet the ADA standards. There are several different inherent issues on many existing courses that make reaching this standard almost or totally impossible.

Because many of these courses were designed and built to incorporate different levels of elevation (tiers) within tight footprints of property, there is usually only one or two areas on the course available to transition from the upper level to the lower level (or vice versa). Even where this transition area exists, the slope is typically too severe to meet ADA specifications. The limited space within the footprint of the course does not allow for appropriate sloping without completely remodeling that area of the course which would likely include the demolition of and rebuilding of multiple golf holes.

Even more common are certain areas of the course that basically become dead ends. This usually comes into play where one or several holes are built on the edge of a slope immediately adjacent to a retaining wall or water element such as a pond or waterfall. In these cases, the only possible solution would be to make these golf holes part of the 50 percent accessible holes so that they could become part of the accessible route. Unfortunately these holes sometimes are less than 36 inches wide and have built-in obstacles that were explained earlier. These straight narrow golf holes would become very boring without these obstacles and their elimination would fundamentally alter the experience of the miniature golfer.

The 32”–inch wide 1-inch “exit curb” when placed on the “green” portion of the golf hole fundamentally alters the miniature golf experience. The sport of miniature golf is

very much like billiards in that the ability to ricochet shots off the cushions (or curbs) is essential. Just as one would find it difficult and frustrating to have a section of a billiard table cushion dramatically lowered, the 1-inch exit curb creates the same dilemma on a miniature golf hole green. Additionally, it creates several issues, one of which is safety.

Since miniature golfers are not usually accomplished golfers, due to age, lack of experience, etc., their ability to control the speed of their putts varies considerably. It is much more common to see a miniature golfer strike the ball too hard vs. too soft, particularly with younger golfers. A 1-inch curb will seldom contain such a putt and consequently the golf ball will leave the putting surface. This situation creates a whole new set of issues for the golfer (including the disabled golfer), other golfers on the course, and the facility.

Injuries from being struck by an errant golf ball occasionally occur with standard two and a half-inch curbs. Adding one-inch curbs to the green will dramatically increase that number. Finding a lost ball will impact a great deal of people playing on the course during even a semi-busy period as the golfer (and their playing partners) will need to search for the lost ball among the elaborate landscape material that is an essential part of many courses. Unlike regular golf that is normally only played during daylight hours, one of the most popular times to play miniature golf is after dark.

This issue was brought to the attention of the Access Board when the ADA Miniature Golf Committee met in person with them in Washington D.C. in May of 2006. It was the committee's suggestion, that the "1-inch exit curb" be placed on the "fairway portion" of the golf hole with an accessible route then leading from that intersecting point to the next accessible tee area.

The Access Board confirmed to the committee in their written response, **"Our provision basically permits use of a one-inch curb where the accessible route intersects with the hole. The location of this intersection is not prescribed; therefore technically it could be on the fairway area. It is suggested that a sketch of how this may be designed be provided for review to ensure understanding"**. A review of the plans for the remodeled course in our report shows this design.

The Miniature Golf Industry recognizes the need for this lower one inch exit curb (curbs are typically about two and a half-inches high). When starting the design of a new miniature golf course, this can be adequately addressed. The strategy and challenge of each golf hole can be integrated into the design and placement of this exit curb. Designing these elements in concert can reduce or eliminate many of the concerns outlined above.

The implementation of the one-inch exit curb on many existing miniature golf courses becomes a very challenging issue. The placement of this curb is critical to not fundamentally alter the miniature golf experience. To be successful playing miniature golf, you must be creative in putting your ball around obstacles that are

between you and the hole. Similar to billiard cushions, the curbs encompassing the hole become key elements used to make a shot.

Adding such an opening after the golf hole and adjoining areas have been designed and built (existing courses) is not as simple as it may seem. Many holes (particularly holes that do not have space to provide an accessible route adjacent to the hole) do not have appropriate areas to provide such an opening on the green and physically lack the available space adjacent to the hole to add an accessible route next to the fairway.

Even when altering an area, there often are major physical limitations that would make this task extremely challenging if not impossible. When starting from scratch on a newly constructed course, we are comfortable good designers can achieve a workable solution through the strategic placement of the one inch curb on the fairway, the construction of an intersecting accessible path leading to the next tee area and the careful design around the exit curb to easily contain any errant golf balls.

The miniature golf industry is requesting an exemption for certain courses that due to site constraints, elevation changes and other issues would never realistically be able to achieve 50 percent of the golf holes being accessible. The fact that each miniature golf course is a unique design makes the development of workable, consistent, and fair parameters that would be required to meet the exemption standards extremely difficult.

We have approached this situation very carefully and thoroughly. **We have tried to develop parameters that fairly address the need to make miniature golf courses accessible and at the same time, address the issues of the course owner in regard to the total cost, downtime during construction, etc.** There are a number of factors that need to be considered and unfortunately, there is not a “one size fits all” solution. Our goal is to develop a criterion that is fair yet easy to understand.

SUGGESTED PARAMETERS TO DETERMINE IF AN EXISTING MINIATURE GOLF FACILITY WOULD BE GIVEN A BLANKET EXEMPTION FROM MEETING ADA STANDARDS

An existing 18-hole miniature golf course shall be forever exempt from meeting ADA Standards adopted (insert adoption date), for the following reasons:

1. It *exceeds five feet of elevation change* between the elevations of the lowest tee area on the course to the elevation on the highest tee area on the course, **AND**
2. It currently does not have, anywhere *within the course, nine (9) consecutive golf holes* (the definition of the golf hole includes the connecting walkway that leads to that hole), *with one potential break* within these consecutive holes, if the last hole in this sequence is the last hole on the course, that meet *ADA Standards for appropriate slope*

and/or maneuverability space prescribed by the Department of Justice on (insert effective date).

Rationale for this exemption: Most miniature golf courses were designed and built prior to the establishment of ADA standards. The typical courses designed and built since the 1970's renaissance of the sport (see section on history of miniature golf) included significant elevation changes within the course that normally occurred on the golf hole and/or on the connecting walkways leading to each golf hole. Attempting to integrate the new ADA Standards into these particular existing miniature golf courses is economically infeasible as well as almost physically impossible.

In our original suggestion to the Access Board regarding these types of courses, we initially felt that we could define the affected courses by devising an easy to read and understand chart. It was felt that we could show "X" amount of elevation change within "X" amount of square footage to identify the courses that would be too difficult and costly to remedy. It has always been our committee's desire to suggest parameters that would standup to the scrutiny of fairness. During our thorough design analysis, we discovered that using our original thesis would be an over simplification. Our original criteria would have included many courses that were actually attainable.

Explanation of our suggested parameters: The real issue remains significant elevation change within a limited area. By using the actual golf holes and the connecting walkways leading to them as the defining criteria, we can more fairly identify the courses that face, in most cases, insurmountable construction and financial issues. The proposed parameters also hold courses accountable that have the ability to meet the standards within reasonable means.

After much review and dialogue, we determined that a minimum of five feet of elevation change between the lowest and highest tee area of the course was the most equitable. You will note that we are specifying the tee areas as the measuring criteria. Many courses that have five feet of elevation change in the tee areas will actually have ground changes to 12 feet or more. The additional footage would be found at the top of putting surfaces that feed into a feature hole such as a castle, lighthouse, etc. Guests do not actually travel up to the top of these fairways/golf holes, they simply putt from the tee area and wait for their ball to traverse through underground pipes down to what are termed "drop holes". These holes/greens are typically located immediately adjacent to the tee area. The fairway is the high up-ramp that empties into the feature hole (i.e. castle). We did not feel it was fair or appropriate to use the top of the ramp/fairway or even more dramatic, the top of the feature hole as a measurement to establish these parameters since guests do not need to go beyond the tee area. More importantly, this five-foot dimension is a true minimum barometer of miniature golf courses that utilize significant elevation changes throughout the course as part of their design criteria.

We also felt it was important to include language that specifically addresses slope and maneuverability issues as they relate to the standards. Courses that have these specific issues are the ones that typically would have little chance of meeting the criteria without

significant construction modifications, and would in most situations; put that facility out of the miniature golf business.

Finally, we included the requirement to be able to identify nine consecutive holes with a maximum of one break (within the nine identified holes, assuming the last hole in this sequence includes the last hole on the course) as per the new standards. Using this criteria mandates that if a course has, somewhere within the course, nine accessible holes (using the new ADA Standards), with a maximum of one break, including appropriate space for an accessible route (using the golf hole if necessary), they do not qualify for an exemption.

There is not a “perfect” definition that encompasses all courses that should be exempted since every miniature golf course is unique in its design. As you will see in the accompanying documentation, we attempted to examine this as thoroughly and fairly as possible. We have supplied all of our data that led us to these suggested parameters and welcome any questions the Department may have. Additionally, we will be happy to work with the DOJ toward a fair and equitable solution to this complex issue.

METHOD USED TO DETERMINE THE SUGGESTED PARAMETERS

We took a very time-consuming and comprehensive path to complete appropriate and credible due diligence on this subject. We have supplied all of our work for review.

We decided that the best way to research this issue was to find the most “typical” miniature golf course we could that represented the type of course we feel cannot be reasonably modified to meet the new standards. Our approach was to see if we could achieve the criteria and to examine all the pertinent issues to compliancy. We have attempted to explain the entire process, but if the Department wishes more information, we will do our best to respond to the request.

The following pages include the rationale for the facility we chose, the work required to reach compliance, original and modified designs, quotes from miniature golf design and construction companies, estimates of lost revenue and support data for that area, and other critical components necessary to complete a fair analysis:

Facility: Swings-N-Things Family Fun Park

Location: Olmsted Township, Ohio (Western suburb of Cleveland, Ohio)

Date of Construction: 1987

Size: 140' X 115' = 16,100 Sq. Ft.

Designer/ Builder: Castle Golf, Mesa, Arizona

Cost to Construct: \$225,000 (in 1987)

Est. Cost to Reconstruct: \$375,000

One of two 18- hole the miniature golf courses at Swings-N-Things Family Fun Park was chosen for our study for several reasons: It is owned and operated by Tim Sorge, Chairman of the Family Entertainment Center Committee (FEC) of IAAPA and also is

the Chairman of the ADA Miniature Golf Committee. This committee represents the three associations (IAAPA, IALEI and MGAUS) in the U.S. that represent the majority of miniature golf owners. The fact that there was only a 60-day Comment Period during probably the 60 busiest days of most miniature golf course's year mandated a choice of a facility that was readily available for the committee to study.

Swings-N-Things is regarded as one of the "models" from which many miniature golf courses were built from the late 1980's through the 1990's. Swings-N-Things is regarded as the first Family Entertainment Center that was built in the Eastern half of the United States. The upscale multi-level miniature golf course(s) have anchored this facility since it's opening in 1987.

Tim Sorge and two partners (Dick Hall and Tom Smith) who owned the largest commercial pitching machine company (Automated Batting Cages) in the world founded Miniature Golf Construction Company and used Swings-N-Things as the model facility to prospective miniature golf and batting range owners. Tim Sorge served as President of Miniature Golf Construction Company. In 1989 they also purchased J&J Amusements, a manufacturing company that has since become one of the largest go-kart and bumper boat manufacturing companies in the world. For many years (in the heyday of FEC growth), Swings-N-Things was probably the site most toured by potential entrepreneurs examining the FEC Industry.

The committee felt there was not a more "typical" miniature golf course in the country to use as a "model" for this exercise. The characteristics of the course(s) typify many, if not most, miniature golf courses built across the country in non-tourist locations since the late 1980's. Additionally, the design of the miniature golf courses at Swings-N-Things are representative of courses built at Family Entertainment Centers throughout the U.S., which include most of the courses that have been built in non-tourist locations over the past 20 years.

One of the main characteristics of FECs is their utilization of land. FECs in essence are a "mall" of family-oriented attractions. Due to the cost of land, and a desire for efficiency of operations, these facilities are typically built with these attractions in close proximity to each other. The acreage required for of a typical indoor-outdoor FEC is usually between four and eight acres.

This tight configuration of attractions limits the possibility of expanding any of these attractions, including miniature golf. At Swings-N-Things for example, the miniature golf courses are bounded on the north by its 18,000 sq. ft operational building which includes a large game room, laser attraction, kids indoor play area, restaurant and offices. Additionally, behind the operational building (still to the north of the miniature golf courses) and bordering the second 18-hole course is the bumper boat pond. On the east side of the golf courses is a \$500,000 paintball facility (Paintball Village) and to the west and south is the facility's parking lot. The parking lot to the west is situated as close to the road that is permissible, and the parking lot to the south is situated between the golf courses and a \$750,000 go-kart facility.

There is no existing available land to “push” the parking lots back to gain additional space for “expansion” of the miniature golf courses. Expanding the miniature golf course in either direction into the parking lots would also cut-off access to the bulk of the park’s 300 spaces, with no other access available on their property. It should also be noted that Swings-N-Things owns 13 acres, much more than most FEC and still cannot accomplish “accessibility”. These issues are typical of most existing miniature golf courses or family entertainment centers.

METHODOLOGY USED

The first step was to determine how many and which golf holes met the new standards. To accomplish this Tim Sorge measured and shot elevation grades on every golf hole and walkway connecting them. Upon completion of this exercise, it was determined that only four of the 18 holes met the new standards. These holes were numbers: 1, 13, 15 and 16.

The next step was to hire an experienced, reputable designer to review the information and determine if and how this course could reach compliance, and if so, find the most cost-effective way. IAAPA hired Bill Beatty, President of Bill Beatty Recreational Design Company. Mr. Beatty has been in the miniature golf industry for over 35 years. He was involved in the design of several of the first facilities on the West Coast that we now refer to as Family Entertainment Centers. He has designed and built courses throughout the U.S. and abroad at both tourist and non-tourist locations. Most importantly, Mr. Beatty is known for his integrity and his ability to design facilities and miniature golf courses extremely efficiently and cost-effectively. We wanted to be sure that we chose a person that had these credentials.

We next sent Mr. Beatty the original plans to this course, including a topographical drawing. Included in this package were all the measurements completed by Mr. Sorge, approximately 100 pictures that included several pictures of each hole as well as various pictures of critical points within the course.

After review of this information, it was determined it was possible to modify the course but it would not be easy or inexpensive. One of the key issues, that many courses similar to Swings-N-Things would face, is that the only way to connect a minimum of nine holes and have an accessible route is to include two specific holes (Holes Nine and Eleven), neither of which met the standards for several different reasons. More importantly, the only way to accomplish this route was to have these golf holes also serve as the accessible route.

Hole Nine actually is a bridge and a golf hole (very common on these types of courses). The fairway, which is the only way across the bridge is only 32 inches wide (36-inch minimum required). The hole is bounded by a waterfall on one side and a two foot, ten-inch high retaining wall that separates the two levels of the golf course.

Hole eleven is the only logical route from the upper level of the course to the lower level. The golf hole cannot be avoided due to lack of space on either side. This golf hole would also need to be completely redesigned and re-built and, like Hole Nine, be used as part of the “accessible route”.

The new design would require that an accessible path be built starting on the upper level adjacent to Hole Three and hugging the retaining wall that separates the two levels and would run the length of the course to intersect with Hole Nine. Since the path would in essence be right on the edge of the wall, a new four-foot high wrought iron safety barrier would need to be added. Holes Nine through Eighteen (ten holes) would become the accessible holes. Only Holes Fifteen and Eighteen would not need to be rebuilt although the walkway between Holes Seventeen and Eighteen would need to be rebuilt to reduce the current steep upward incline.

This document includes the original and the modified plans necessary to become compliant.

After it was determined what would be necessary to accomplish compliance we asked two of the most respected and experienced miniature golf designer/builders to review and quote the work required. We chose Adventure Golf Services located in Traverse City, Michigan and Castle Golf who is headquartered in Mesa, Arizona. Both companies have more than years experience and are two of the most respected companies in our industry. Castle Park actually designed and built Swings-N-Things course.

The itemized quotes are supplied in this document for your perusal. The last but very important step to this exercise was determining how much revenue would be lost during the period the course(s) would be closed for remodeling. The following is the analysis of all of this information:

COST ANALYSIS TO MODIFY TYPICAL MINIATURE GOLF COURSE TO MEET NEW ADA STANDARDS

Est. Cost to modify “typical” 18-Hole Course: (Ave of quotes received from Adventure Golf Services and Castle Golf): **\$162,006**

Cost to modify both 18-Hole Courses at site using “sample” course: **\$324,012**

Estimated lost revenue during construction period assuming one 18-hole course is closed during construction: **\$86,500***

Estimated lost revenue to complete renovations to both 18-hole miniature golf courses: **\$173,000***

Total estimated cost of project, including lost revenue: **\$497,012**

Percentage of gross sales of this site: **31% (2007 Gross Sales of \$1.6 million)**

- **The loss of revenue was calculated using the following criteria:**
 - **Each course would be closed for 6 weeks (separately)**
 - **Work would be performed between June and August. See note on Castle Golf quote regarding typical time of year this type of project would fit their construction schedule.**
 - **Miniature Golf revenue comprises 30% of Swings-N-Things summer gross sales.**
 - **Six different 6-week revenue periods were averaged to determine “lost revenue” estimates.**

Net Profit of this particular facility is less than 5%. For all practical purposes, this project would put this facility out-of-business. We will be happy to supply 2007 year-end financial statements of this “typical” facility to the DOJ to confirm this statement if confidentiality can be guaranteed.

All calculations to this analysis are shown elsewhere in this document. We encourage and welcome having it reviewed and scrutinized by any qualified representatives of the department.

**SPECIFICATIONS for REMODELING
ONE 18-HOLE MINIATURE GOLF COURSE
at SWINGS-N-THINGS FAMILY FUN PARK
in OLMSTED TOWNSHIP (CLEVELAND), OHIO
to MEET PROPOSED ADA STANDARDS**

NOTE TO DOJ: These are specifications for work sent to both companies.

DESCRIPTION of WORK

To modify existing 18-hole miniature golf course built in 1987 to meet proposed ADA Standards (2008). The existing course is located in suburban Cleveland, Ohio. The course is situated on a plot of land 140' X 115' (16,100 sq. ft.). The course was built by Castle Golf. The course features low level colored lighting with no overhead lighting. Four “scenes” dot the course with the feature scene being a 16' castle placed on an 8' high concrete pad located on the SW corner of the course. Other “scenes” are the “scaled” Grist Mill with a functioning water wheel, a “Dock Lobster House” placed on the lower level adjacent to the pond, and the 18th Hole Mine Scene which is also used to collect golf balls at the end of each player’s round.

It is assumed that there will be many “challenges” to effectively accomplish this task. Some, but not all of these challenges are:

- Unlike construction of a new course, the contractor will need to perform work on an existing, functioning miniature golf course.
- Existing elements of the golf course must be worked around so as not to cause damage to these elements during construction. Some of these elements are:
 - Low-level colored lighting fixtures (approximately 4 fixtures per golf hole).
 - Underground sprinkling system.
 - Underground electrical wiring.
 - Landscape material, including but not limited to: mature trees, shrubbery, flowers, grass.
 - Concrete block “split-face” retaining walls.
 - Existing non-affected golf holes should be protected from damage resulting from driving construction equipment over them such as backhoes, bobcats, bulldozers, concrete buggies, wheelbarrows, and other construction equipment.
 - Due to the “tight” configuration of these courses, there is often not ample space to drive around the golf holes and thus the golf holes and walkways between them must be used as “construction paths”. To protect damage from this occurring throughout this process, ¾” plywood should be used during construction to cover all golf holes as well as landscaped areas adjacent to the holes. The common issues prevalent to miniature golf courses when construction is attempted within the confines of an existing course are: damage to miniature golf carpet, damage to brick pavers which are “glued” to concrete “pad”, formed concrete curbs, edges of concrete pad being “chipped” by heavy equipment, low level golf lights damaged due to close proximity to golf holes.
- Due to “typical” weather conditions in N.E. Ohio, it is assumed that construction cannot take place efficiently from Nov. 1st through April 1st.
- Access to the course will likely need to be gained from the western parking lot just west of hole #11. Tall shrubbery currently in place at this area will need to be removed during construction and replaced upon completion of the project. There is a concrete 8’-0” wide walkway adjacent to the Operational Building on the north side of the course that may be used to gain access to the course.

SPECIFICATIONS

(Same as existing course with exception of wrought iron fencing vs. current wood fencing. Location of fencing dictates a stronger structure for safety purposes)

CONCRETE WALKWAYS: To be 4” thick concrete w/fiber mesh, hand trowled. Minimum of 3 ½” aggregate sub-base. Width of walkways according to drawings. Linear footage of new walkways is included with the drawings.

CONCRETE GOLF HOLES: To be 4" thick concrete w/fiber mesh, machine trowled. Minimum of 3 ½" aggregate sub-base. Dimensions of each golf hole are supplied on the drawings to assist in estimating concrete, carpeting, etc.

RETAINING WALLS: Shall be "Split-Face" concrete block matching original block. Concrete footers shall be a minimum of 30" deep. All retaining walls shall have their "cores" filled with concrete. All walls shall have "caps" secured on top using matching color of original walls. Linear footage & height of retaining walls is included on drawings to assist estimating cost.

WROUGHT IRON FENCING: Shall be decorative high quality material. All fencing shall be placed on retaining walls that separate upper and lower level (adjacent to new "Accessible Route" sidewalk that begins next to hole #3 and runs to hole # 11) and should be 4'-0" high. Additional Wrought Iron Fencing shall be placed on the west boundary of the course running from the existing retaining wall to the NW corner and then run along the entire north boundary of the course adjacent to the building to replace original fencing that will need to be removed to permit access to north portion of course during construction. Linear footage of fencing required is included on drawings to assist in estimating cost.

CARPETING: Shall be high quality indoor/outdoor carpeting, glued to concrete base with high quality outdoor all-weather glue. All carpeting shall be installed by experienced professional miniature golf carpet installers. Dimensions of golf holes are included on drawings to assist in estimating cost.

CURBS: All miniature golf hole curbs shall match existing concrete brick "pavers." Pavers shall be secured to concrete base using high quality adhesive designed to adhere at temperatures to 20 degrees below zero.

LANDSCAPING: Entire lower level of course shall be re-sodded with high quality disease resistant sod. All material shall be installed by landscape professionals. Area on upper level between retaining wall north of castle waterfall (adjacent to holes 9 & 10) to north upper boundary of course shall also be re-sodded. All areas adjacent to new "Accessible Route" on upper level on south side of course shall be re-sodded where needed.

SOIL REMOVAL: Approximately 62.5 cubic yards of soil will need to be removed from upper level of course adjacent to holes 9 & 10 to lower topography of course to permit construction of accessible holes and routes. An additional 9 cubic yards of soil will need to be removed adjacent to hole #14 to permit construction of a new hole and accessible route. **TOTAL OF 71.5 CUBIC YARDS OF SOIL TO BE REMOVED AND TRUCKED OFF PREMISES MINUS SOIL USED WHERE POSSIBLE FOR NEW SOD.**

DEMOLITION AND REMOVAL OF 8 ORIGINAL GOLF HOLES (Holes: 9 – 14, & 16 – 17) AND CONNECTING WALKWAYS: This includes concrete golf holes and

connecting walkways, carpeting, sub-base material and any other material that are part of these areas. This material should be put into appropriate dumpsters and removed from Swings-N-Things property.

DEMOLITION AND REMOVAL OF RETAINING WALLS BEING REPLACED:

This includes excavation of concrete footers and approximately 35 linear feet of 3’-0” high (above grade) of Split-Faced Concrete block retaining walls that will require removal adjacent to hole #9. It should be noted that the “cores” of these blocks have been filled with concrete. This material should be put into appropriate dumpsters and removed from Swings-N-Things property.

DESIGN OF GOLF HOLES: Holes must meet ADA Specifications but should be designed and built to create interesting, challenging golf holes for all participants. Designs need not be shown. This is noted only for purposes of quoting holes of “interest” vs. flat “generic” golf holes.

CONSTRUCTION OF “BRIDGE” HOLE #9: Please note that hole #9 also serves as a bridge over a waterfall. Specifications for this hole should meet appropriate requirements.

RELOCATION OF ELECTRICAL JUNCTION BOXES LOCATED ON RETAINING WALL ADJACENT TO HOLE #13: These boxes (see picture) will need to be relocated so that “accessible route” walkway may be constructed adjacent to hole #13. The new location shall be approximately 30’ west of the current location on the retaining wall. All electrical work on these boxes shall be done by a licensed electrician. These boxes will likely need to be replaced with new boxes as a result of requirements to remove them.

INSTALLATION OF LOW LEVEL LIGHTING TO ILLUMINATE ALL NEW “ACCESSIBLE ROUTE” WALKWAYS: All walkways will require appropriate low level lighting. Fixtures should be extremely durable and of high quality. All materials and workmanship required to install them should meet appropriate local (typical) building codes.

LOW LEVEL COLORED LIGHTING OF GOLF HOLES: Shall be mounted on 30” high posts (approximately 4/hole). Lights & shades should match existing units (Deco Duro originally supplied by GNS). All electrical wiring shall be done by licensed electrician.

**QUOTE FOR MODIFICATIONS TO MEET
NEW PROPOSED ADA STANDARDS**

- Please supply individual quotes for all aspects of work (i.e. golf holes, concrete walkways, removal of items, landscaping, electrical, retaining walls, etc.).
- It is critical that we show “legitimate” quotes for this task. Our credibility in depicting this process accurately will give us the best opportunity to gain the

changes we desire. We are asking a lot, but you were both selected based on your experience and reputation in our industry. Please also be aware that this information will likely be distributed to the industry.

- Please estimate how long you would estimate this project to take. On that note, please give separate time estimates for the following construction periods:
 - April & May (Inconsistent weather, typically wet and cool through mid May)
 - June – August (Most desirable weather conditions for construction in NE Ohio)
 - September & October (2nd most desirable time weather-wise)
- Please note how your firm would prioritize a “remodeling” project such as this vs. a project that includes construction of a totally new golf course and other potential construction work related to a new facility. It is my opinion, that you would likely rate a project like this lower than a new facility and would probably plug a project like this into your schedule in the summer. I ask this because we must also estimate “lost revenue” as a result of this construction.
- Please attempt to show the costs involved in bringing in a crew to complete work, even it is just several holes. I ask this since part of our rationale is that professionals (like you) are required to complete projects such as this. The proposed new standards require spending an additional 20% of any project dedicated to “alterations” to a course to be spent making the course “accessible from the point of alteration. It is our opinion that the cost to make 50% of the golf holes accessible on an existing miniature golf course would be prohibitive and thus we hope to get an exemption. Until we examine your estimates, we are just speculating. Our committee has also been asked by the DOJ to make suggestions for parameters to give existing miniature golf course an exemption. Your estimates may assist us in this process.
- Please include any pertinent information that you feel is important for all parties to know.
- Bill Beatty of San Diego who I believe you both know or know of has been a tremendous help in this process. He has completed all of the design work that I have forwarded to you. Please feel free to contact Bill or me with any questions you may have. I can be reached at the following numbers:
 - Cell: (omitted)
 - Swings-N-Things: (440) 235-4420 X 108
 - I am in the eastern time zone (EDT)
- Bill can be reached at: (omitted)
 - Bill is in the western time zone (PDT)

SUMMARY

The “typical” course used in the supplied analysis would cost about \$162,000 to meet the proposed ADA Standards based on the average quote received by two of the most experienced and respected golf course design and construction companies in the miniature golf industry (see individual quotes listed elsewhere in this report). This quote is for just one of the two 18-hole courses at this “model” facility. The second course which was built one later than the course reviewed is almost identical and faces the very same issues.

The total required to meet the proposed standards for both courses would be \$324,000. Each course would need to be closed for 6 weeks during prime season to accomplish this task. The estimated lost revenue to the facility while this work is being completed is estimated to be about \$173,000. The total cost including construction and lost revenue would be about \$500,000. These two courses cost approximately \$225,000/each in the late 1980s. With total gross sales of \$1.6 million and the net profit being in the low single digits; it is obvious what these facilities face if mandated to meet these new standards.

It should be noted that the course used in study does not come close to the design and construction issues many tourist and other courses with much more “extreme” elevation changes.

We suggest developing an easy to understand “certification” form that each eligible miniature golf course facility would be required to complete and either send in to a governmental agency or just keep on file at the facility. It would have technical measurements for each of the 18 holes and their connecting walkways. It would need to identify the hole as “accessible” or not.

COST ANALYSIS TO MAKE TYPICAL MINIATURE GOLF COURSE TO MEET NEW ADA STANDARDS

Est. Cost to modify “typical” 18-Hole Course: (Ave of quotes received from Adventure Golf Services and Castle Golf): \$162,006

Cost to modify both 18-Hole Courses using “sample” site: \$324,012

Estimated lost revenue during construction period assuming one 18-hole course is closed during construction: \$86,500

Estimated lost revenue to complete renovations to both 18-hole miniature golf courses: \$173,000

Total estimated cost of project, including lost revenue: \$497,012

Percentage of gross sales of this site: 31% (2007 Gross Sales of \$1.6 million)

Net Profit of this particular facility is less than five percent. For all practical purposes, this project would put this facility out-of-business. We will be happy to supply 2007 year-end financial statements of this “typical” facility to the DOJ to confirm this statement if “confidentiality” can be guaranteed.

All calculations to this analysis are shown elsewhere in this document. We encourage and welcome having it reviewed and scrutinized by any qualified representatives of the department.

SAFE HARBOR

This is a new concept that deserves and requires more discussion than this short NPRM period permits.

We support the concept of a “safe harbor” for businesses who are trying in good faith to comply with the ADA. The 2004 ADAAG requires the removal of architectural barriers only when “readily achievable”; however the “readily achievable” standard under the 1991 regulations is too vague to offer protection. In some jurisdictions, “readily achievable” could be determined to mean up to bankruptcy for the business.

Despite our interest in the concept of a safe harbor, we have several serious concerns with the safe harbor proposal as it is currently presented in the NPRM.

The NPRM proposes a small business safe harbor which provides that a qualified small business, as defined by SBA size standards, will be deemed to have met its barrier removal requirements for a given year if it spends the equivalent of one percent of the preceding year’s gross revenue on barrier removal. In effect, this safe harbor creates an affirmative defense for any qualified small business to assert against a claim that it has not done all that is readily achievable to remove accessibility barriers in its facilities.

Safe Harbor for Facilities not covered under the 1991 Standard (Question 7)

The reason miniature golf courses and other recreation facilities are not covered under the proposed general safe harbor are because they were not included in the 1991 Standard. The supplemental rules were created to address, among other things, recreational facilities, including miniature golf courses. Although not required, many facilities did barrier removal activities before the 2004 ADAAG, as a good guest service measure. These modifications may not match the 2004 ADAAG exactly, but have been providing functional accessibility to guests for years. Those elements that are providing accessibility should be protected under a safe harbor. Future elements should be a part of the readily achievable barrier removal plan and evaluated on a case-by-case basis as feasible.

As we discuss in this public comment, there is limited opportunity to do barrier removal in many existing miniature golf courses due to their limited square footage and drastic elevation changes. We hope the Department will take special consideration of these unique recreation facilities.

Small Business Safe Harbor

We are concerned that the small business safe harbor language used in the NPRM proposes to make this requirement “endless”. The NPRM does not state that the obligation to spend one percent of gross “in the previous year” ends if the facility has been brought up to barrier removal, alteration or new construction standard. Without further guidance from the Department, this provision could unintentionally increase the burden on small businesses.

The concept does not take into account that a particular barrier removal may require more than one percent gross, and the business would have to “bank” money for two or three years to accumulate sufficient funds to conduct the alteration. A good example is the replacement of small to medium sized play structure and accessible impact attenuation surface, which will cost more than \$60,000 (one percent of gross revenue maximum of a \$6,000,000).

The value of this “Safe Harbor” can only be brought forth as a defense. The Department does not take into account that a business will be sued first, and then only be able to defend its actions in court (spending one percent maximum in the previous year as good faith effort). The cost of defense in litigation will likely far exceed the one percent of gross sales for many small businesses, particularly miniature golf facilities. This is not factored into this proposal.

The proposal does not take into account that the Department proposes a six month period for “effective date”. A business would need at least one fiscal year to analyze its conditions for barrier removal, plan for capital improvement, hire the appropriate architects or contractors, and the proceed with procurement or contract for construction. This process may take 2-3 years, before the proof of one percent expenditure during the “previous year” accomplished a readily achievable barrier removal. This is especially true in the miniature golf industry where most facilities have been designed and built by “specialists” who are not “local contractors” and thus must bring crews to the site. Most of these firms are in great demand and “customers” must secure a date months, if not sometimes a year, in advance.

Additionally the NPRM does not effectively tie this concept to title III §36.305 Alternatives to Barrier Removal, where a public accommodation can demonstrate that a barrier removal is not readily achievable, and the public accommodation makes its goods and services available through alternative methods. It would seem that it might be wiser to address the loose ends of “readily achievable” barriers rather than to introduce a new plan that has not been thoroughly reviewed.

Construction “hard” costs only represent a portion of the total cost for barrier removals. There are other costs to be considered, such as lost revenue during the construction period, which is not factored into this plan. The lost revenue to a “typical” miniature golf course that is used as an example in this report was about \$173,000 (11 percent of the facility’s gross sales). In the colder regions of the country, construction on outdoor facilities cannot be completed during winter months when the miniature golf course(s) are normally closed. The 1% of gross sales is an oversimplification that does not fairly address many small businesses. We can appreciate the Department’s desire to remove “creative accounting” procedures, but much more thought and dialogue must take place before a fair safe harbor rule can be finalized.

We would like the Department to consider making the small business safe harbor a small percentage of net revenue, as this is the money business owners have available to spend on improvements for their courses. Three to five percent of net revenue is a more reasonable approach.

We would also like to suggest that when a facility exceeds the percentage, that excess may be “banked” and applied to future years. This is a more realistic approach to many projects as the cost to complete many of them will far exceed the annual percentage (whatever it may ultimately be). This option will permit a facility to address the modifications in a manner that is most efficient from a size of project viewpoint as well as the short and long term ability to afford these changes. It is not fair to expect a business owner to complete a major renovation that might cost three percent of gross sales in year one and then be expected to continue to allot an additional minimum of one percent of their gross sales for the next two years.

We are concerned that the one percent figure (or any percentage) could become an annual minimum that facilities must spend. If a business spends money each year on barrier removal projects, there will likely come a time when all the projects are complete, potentially leaving a business open to liability. We encourage the DOJ to carefully “rethink” this potential measure. More time and thought is required to equitably address this very complex and potentially fatal issue for small businesses.

ALTERATIONS VS. “NORMAL MAINTENANCE”

This is an extremely important issue to the industry. Each industry has “typical normal maintenance” tasks. These tasks are carried out on a regular schedule and do not change the “usability” of the maintained items. **The ADA definition of an alteration is:** A change to a place of public accommodation or a commercial facility that affects or could affect the “*usability*” of the building or facility or any part thereof.

Just as painting or wallpapering interior walls are typical in the operation of most places of business, miniature golf courses do not have interior walls or roofs to re-shingle. These “normal maintenance tasks” are even more important to members of this industry. The perception of safety, and the beauty and charm of miniature golf courses are the key elements that, in fact, make the activity so popular.

Section 36.211 provides that a public accommodation shall maintain in operable working condition those features of facilities and equipment that are required to be “readily accessible” to and usable by persons with disabilities by the Act or this part. The Act requires that, to the “*maximum extent feasible*,” facilities must be accessible to, and usable by, individuals with disabilities. This section recognizes that it is not sufficient to provide features such as accessible routes, elevators, or ramps, if those features are not “**maintained**” in a manner that enables individuals with disabilities to use them.

Additionally, the miniature golf course’s insurance carriers require that the courses be maintained in a safe manner. It is critical to the safety of ALL participants that the golf holes, accessible routes, sidewalks and all areas of the course that patrons may visit or walk be free from trip hazards. This would seem to be especially prudent for guests with disabilities who must use a cane, crutches, walker or other “assistive” device.

The re-carpeting of the miniature golf holes is a major concern to owners of courses. It is our interpretation that it is currently classified as an “alteration”, even though there is a special provision made for the carpet used on the actual holes. **Worn carpeting is a safety issue to all guests. Worn carpet** also “*fundamentally alters*” the quality and experience to our guests. When golf holes are re-carpeted, it does not change the “usability” of the golf hole anymore than a “fresh coat of paint” does to a wall.

This definition, if not adapted for miniature golf courses, will put the owners in a “Catch 22” situation: 1) Do not re-carpet as often as is required and expose yourself to potential guest injuries, litigation and problems securing liability insurance, 2) Do not re-carpet as often as is appropriate and lose guest traffic because the “quality” of the experience (damaged putting surfaces) is damaged and the perception of the facility becomes one that is poorly maintained, or 3) Continue to re-carpet as needed to maintain a safe and attractive facility and be required to invest another 20 percent of the cost of the re-carpeting into “accessible routes.” Many tourist and high traffic facilities re-carpet their courses annually. The average facility probably re-carpets every three or four years.

Re-carpeting is not the only issue that would fall into this category regarding safety and the **“fundamental alteration”** of the activity. Many miniature golf courses are bordered with “brick pavers.” The “curbs” or pavers serve a specific purpose – to contain the golf ball on the hole. They are typically glued with a very strong adhesive, but still often break away from the concrete. When they break away, the guest putting is at a distinct disadvantage if their shot requires the use of that paver as a “bank”. The same issues discussed above pertaining to carpet are relevant here. Again, the re-gluing or replacement of a brick paver does not change the usability.

The replacement of dead or damaged landscape material is unclear. A visit to almost any miniature golf course will show the importance landscaping plays in the enjoyment, curb appeal and perception of the sport. The replacement of dead or damaged plant material on a one-to-one basis should be classified as “normal maintenance.” Most courses spend considerable time and money planting “annual” flowers on the course. Beautiful flowers and landscaping are part of how miniature golf is perceived. The re-sodding of grass areas is also an ongoing maintenance issue. All of these landscape issues described in this paragraph are on a regular maintenance schedule and should be classified as “normal maintenance.”

The general examples used in the current language for alterations are very appropriate for many “typical” businesses that operate within a “typical” place of business. Most recreational businesses operate in unique venues or surroundings. Just for clarification, we have listed some “typical” regular tasks that are performed at a miniature golf course as “normal maintenance:

- Repair of “chipped” concrete on golf holes or walkways. It is important to remember that many miniature golf courses were built on “fill” in order to create elevation changes. It is not uncommon for edges of concrete surfaces to sometimes break away if the “below grade” material was not properly compacted. Assuming the repair entails only the repair of this situation, it should be classified as “normal maintenance.”
- Repair of low level light fixtures that are popular on many courses. These fixtures are made of colored plastic shades that when broken create sharp edges that could easily cut a guest. Plastic “elbows” also extend out allowing for two shades to be placed on one post. Unfortunately, it is not uncommon for guests to “sit” on these fixtures causing them to snap. The end result is a hanging light fixture that no longer can illuminate the golf hole or walkway it was intended.
- Repair of sprinkling heads at ground level throughout the course. You must understand that miniature golf caters to kids and teens. Giving them metal rods (putters) to carry around for an hour creates all sorts of maintenance issues for the miniature golf proprietor.

Our list is certainly not complete. We have attempted to demonstrate that not all places of business operate in the same surroundings and these differences need to be fairly addressed to “even the playing field!”

It is not the intent of the industry to present this as a way to reduce the responsibilities associated with true "*alterations.*" These tasks are no different than many used as examples by the Access Board such as, re-roofing, painting, wallpapering, asbestos removal, and changes to the electrical and mechanical systems.

THANK YOU FOR GIVING US THE OPPORTUNITY TO RESPOND AND FOR YOUR EFFORTS ON THIS EXTREMELY COMPLEX ISSUE.

ADDITIONAL COMMENTS FROM THE INDUSTRY

To whom it may concern,

My name is Randy Fullmer. I am the managing partner of Boondocks Fun Center in Northglenn, Colorado and Draper, Utah. We have two 18-hole miniature golf courses at each facility. The courses incorporate multi-level terrain with obstacles placed within the golf holes. The new standards would alter the experience and compromise the financial success of our business.

I have taken some time to try and understand the proposed ADA accessible guidelines "standards" that are being considered for the miniature golf industry. I believe that the proposed standards would be "financially burdensome" to many operators in this industry! I strongly encourage the DOJ to: 1) Extend the comment period on the new rules by an additional 180 days . 2) Applying "reasonable" ADA accessible guidelines to miniature golf courses built after the standards are adopted into law. 3) Allow an exception to courses that were constructed prior to the 2004 ADAAG. 4) Eliminate the rule that would necessitate that compliance to the new standards are triggered by "Course Alterations". 5) Consider a reasonable time for courses constructed prior to 2004 to become compliant and limit the "financial burden" to a reasonable percentage of the courses annual receipts.

I would like to have the opportunity to aid in the design and creation of the accessible guidelines. Please consider my request.

Thank you,

Randy Fullmer
Select Management

I would like to add my thoughts to the proposed changes to the ADA regulations as they pertain to miniature golf courses. I operate a Fun Center in Murrieta, CA with two 18-hole courses. These two courses have been in use for over 10 years and are currently wheelchair accessible. It is my opinion that the timing and content of the regulations present a number of hardships, which I have outlined below:

1. Due to our proximity to the adjacent freeway, the geography required that measurable elevation changes be incorporated into the design. In addition, recent property development has boxed in our facility, restricting our ability to expand the courses enough to incorporate the ramping that would be required to comply with the proposed regulations.
2. We are still in the midst of our busy season which continues through Labor Day. With all personnel devoted to serving our guests and the courses in use 12 to 14 hours each day, reviewing the docket will be near impossible for some time. I would suggest that a 45 to 60 day extension be allotted to move us beyond our peak operating season.
3. The definition of alteration versus maintenance requires further clarification. Since most miniature golf courses are located outdoors, the courses are subject to the elements. This results in frequent repairs to the carpet, curbing material, lights,

and set pieces. To add a percentage cost for the creation of accessible routes on top of these normal expenses creates an undue financial burden. While not desirable, the net effect for many operators might be to defer routine maintenance, thus creating potentially hazardous conditions. To avoid this type of situation, “alterations” should be characterized as significant changes to the layout or design, so as not to be confused with repairs required to maintain the course’s original condition.

Obviously, it would be a benefit to all operators if existing courses were exempt from any changes to the ADA regulations. Historically, the ADA standards and their subsequent interpretation were sometimes vague and/or unclear. Many operators who, in good faith, tried to work within the ADA guidelines might find themselves in violation of the new regulations and be forced to shutter their courses if they lacked the finances to comply.

In the unfortunate event that existing courses were not exempted from the proposed modifications, I would like to see a window of at least one-year from the time that the law takes effect to bring the courses into compliance. This should allow ample time to redesign, permit, and renovate the courses. Conversely, it would be unrealistic to assume that existing courses could achieve compliance at the same time that the law is enacted.

Thank you,

Mike Manassee

Director of Training

Mulligan Family Fun Centers

Murrieta - Torrance - Palmdale

To: The Department of Justice

This letter is in regards to the proposed ADA regulations that will be affecting Miniature Golf Courses across the country. Being that the family entertainment industry is in the peak part of the year from Memorial Day to Labor Day, an extension for the comment period needs to be granted. The amount of time needed to review the entire docket line by line and develop an action plan to make our courses compliant simply isn’t available in the summer months due to business demands. An extension of 45-60 days on the comment period would allow proper time for all operators to respond in an effective manner.

The miniature golf courses that I am the general manager of in Los Angeles were constructed in 1993 and are wheelchair accessible. In my eleven years working for this establishment, I have never had an issue where a wheelchair was not able to access our courses. When our courses were designed and constructed, ADA laws were not clearly defined in regards to miniature golf courses. The standards were built with a very vague interpretation of the

law. Our courses were designed to be wheelchair accessible, but not to the level that the proposed regulations would require. Our courses have elevation changes that were designed to enhance the scenery and experience of playing miniature golf.

Clarification also needs to be made on the difference between maintenance versus alteration. Dictionary.com defines maintenance as "to keep in an appropriate condition, operation, or force; keep unimpaired" and alteration as "to make different in some particular, as size, style, course, or the like; modify." Replacing carpet, lighting, broken bricks, and landscaping are all maintenance items that are done routinely to allow for safe, clean and maintained facility for all our guests. To add 20% to the cost of maintenance to construct handicap accessible routes is going to be a financial burden on our business. If this was required, I know that several of these maintenance items would be deferred, thus causing our courses to become unsafe for all of our guests. Alterations should be classified as significant changes to the design or layout, not items that restore the course to its original condition.

Exempting existing courses from the regulations would be a benefit to all operators and customers of our business since the standards at the time of construction were very vague. Since our courses were designed to be wheelchair accessible, but not to the standards of the proposed law, we would be out of compliance once this law took effect. I also fear that many golf course operators would simply close their business, as it is such a financial burden.

Lastly, if these proposed regulations do become law, there needs to be time frame for existing courses to become compliant. Being that my courses are in the City of Los Angeles, it will take at least one year to redesign, permit and construct the courses to become compliant. Once law, operators need applicable time to become compliant. It is simply going to be near impossible to be compliant immediately upon the law being in effect. A one year window would allow these changes to be done in a safe and proper way.

Please feel free to contact me with any questions.

Sincerely,
Kevin Altobelli
General Manager

As an operator of an FEC I would like to comment on the proposed ADA regulations as it pertains to miniature golf courses. I currently have three 9 holes courses, of which one course is ADA accessible. Per the proposed changes, my courses would not be in compliance with the law. To make the courses compliant would be a difficult challenge as we are lacking in land and capital to add in the necessary changes.

I would like to request that "maintenance" be redefined in the law as it would be financially unfeasible to spend an additional 20% of my repairs in ADA additions every

time I have a routine repair. Replacing broken lights, changing golf carpet, or replacing damaged obstacles does not alter the play of the course or change the layout. If this were the case, I would be forced financially to hold off on repairs until our busiest season when funds would be available. This could cause unsafe conditions on our courses as well as an unkempt look which would drive away business leading to a negative outlook on my park from the community and eventually the closure of my park. Maintenance is not the same as alterations as it does not change the golfers experience, it simply restores the course to its original condition.

I would ask that courses like mine be exempt from this change as the law was unclear when my park was under construction. At the very least, I would ask for a 12 month compliance grace period after the law takes effect.

In addition, I would like to request that the comment period be extended for 2 more months. This will give a chance for my fellow operators to fully review the changes. This period is my most busiest time as I know it is for most of the industry. It is challenging for many of us to find the time to review this law in its entirety when our parks are full of guests and the operation calls for us.

Thank you for your time and consideration. Please feel free to contact me with any comments or questions.

Sally Edwards
General Manager
Mulligan Family Fun Center
525 West Avenue P-4
Palmdale, CA 93551

would like to comment on the proposed ADA regulations as it relates to miniature golf courses. My first request is an extension of the comment period. Most of the miniature golf courses across the country are in the midst of their busy season. The majority of the revenues generated by miniature golf courses come in the summer months. It is a challenge for operators to take the time needed to thoroughly review the docket when our courses are full of guests. A 45-60 day extension on the comment period would allow all operators to respond in a proper manner.

I operate three miniature golf courses in Southern California. My courses are wheel chair accessible, but the standards being proposed would make my courses non compliant. Elevation changes were a major design element on most of my courses. The courses simply would not have enough land to create the ramping required.

There also need to be a clarification of maintenance versus alterations. Carpet needs to be changed often as do bricks, landscaping and lights. These are maintenance items done by all courses on a routine basis. To add 20% of the cost to create an accessible route would be a financial burden that would become a challenge. I would fear that courses would defer maintenance issues causing unsafe conditions for all players. Alterations should be classified as

significant changes to the design or layout, not items that restore the course to its original condition.

If existing courses were to be exempt from the regulations it would benefit all operators. The standards were very unclear, and most courses were built with a vague interpretation of the rules. Most operators who did their best to comply now find themselves out of compliance though they have courses that are wheel chair accessible. I would fear that many courses would be financially unable to comply and simply close their doors.

My final comment is that there needs to be a time frame if existing courses are not exempt for compliance. For my courses, it will take at least one year to redesign, permit and renovate the course to become compliant. Once the law is in the books, please allow the operators the time they need to comply. It is unfeasible to expect all courses to be compliant when the law is enacted. A one year window should be created so the regulations can be properly interpreted and executed.

Please feel free to contact me with any questions or comments.

Robert Thomas

Vice President

Mulligan Family Fun Centers

714-484-6799 Ex. 28

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As small business owners, my family and I have owned and operated 3 miniature golf courses over the past 30 years. The first was built in 1978, the second in 1983, and the most recent in 1990. The first two courses were on flat and level ground and designed in the "Putt-Putt" style. While many people refer to Putt-Putt golf as a generic name for miniature golf, it is a branded and protected name, much like Kleenex. To my knowledge while Putt-Putt is still in existence and still franchising, they no longer build this style of miniature golf course due to its decreasing popularity.

The first two courses would have been easily adapted to ADA accessibility within their original footprints by changing heights of ball barriers and widening access or travel paths. Neither of these two courses is still in operation due to economic obsolescence. The third one built in 1990 is an adventure style course and is still in operation.

This course is part of a Family Entertainment Center serving a local clientele. The miniature golf occupies 16,400 SF (18.8%) of a 2 acre parcel. The course is bordered by another commercial parcel on the south, our main building on the west, parking and highway access on the north, and a state road on the east, with no excess land for expansion. The actual dimensions of the course are 80 feet X 205 feet. This course, despite its small footprint contains a pond, a cave, a waterfall, a flowing creek with two footbridges, and a gazebo at the entrance. While the highest elevation above the parking lot is 8 feet, the elevation change experienced by a player on this course is 28 feet as it winds up and down this elevation through 18 holes of play.

It would be a physical impossibility to make this course ADA accessible even at the 50% requirement. Only 4 of the existing holes are level, with no elevation change within the hole or from one hole to the next, and these are located at the farthest location from the starting point, with no access route that does not traverse elevation changes that would accommodate an 8.3% slope.

A few examples:

- Between Hole #2 and Hole #3 there is a 44" elevation change over a span of 112". To replace the existing steps with a ramp would be a 38% grade. There is not sufficient space to do a switch back type ramp necessary to meet the 8.3% grade required by ADA as the distance between the end of the hole and the tee area is less than 10 feet. Such a ramp would require 44 lineal feet. From the upper level of hole #3 to the lower level is 27.5" in an 84" span, a 33% slope.
- From the end of Hole #4 to the tee area of Hole #5 the gain is 33" over 96", a 34% slope. Such a scenario continues through the course until holes #12-15 at the east end of the course which are level with no elevation change, but no accessible route to or from this holes exists and could not feasibly be installed.
- Holes # 16, 17, and 18 meander down the south side, with 94" of elevation change between them. In the 2 areas where there is sufficient room to replace steps with ramps these ramps would be at a 12-13% grade, which would not meet ADA guidelines.

In my estimation it would take at least 60-70% more land area (~26,000-28,000 SF total space) to build a course with moderate elevation changes and meet the 50% accessibility guidelines. Financial considerations aside, it would not be possible in our existing space. It is not a matter of barrier removal, but the necessity of building an entirely new miniature golf course. Based on our elevation change this would require approximately 1000 square feet of land area per 1 foot of elevation change to accommodate a properly designed course. This would be a minimum for our style of course and it would not be considered to have extreme elevation changes but rather a rolling style.

The result if no exemption is made for such existing courses is that they will cease to exist, which defeats the intent of the ADA guidelines and standards. In designing this course prior to construction in 1990 we visited at least 20 miniature golf courses in the southeast to observe design and layout ideas which if still in existence would be in the same situation as our course. Well located courses which have managed to stay in existence probably do not have the luxury of excess land on which to expand. Many of these courses are in tourist or seasonal areas where the cost of land is prohibitive.

An exemption needs to be made for existing miniature golf courses that cannot meet the accessibility guidelines due to space constraints and it is important that they be able to maintain the safety of all patrons and the integrity of their courses without a concern that such activities would be considered an alteration that would trigger a complete renovation to come in to compliance. These common maintenance tasks includes brick and concrete repairs, recarpeting, plant removal and replacement, wood component replacement,

repairs due to ground settling, vegetative encroachment, irrigation and water feature renovation, etc. Carpet replacement is of particular concern as it is an ongoing necessity although the frequency varies with use, quality of carpet, and environmental stress.

The 2004 ADAAG is an achievable standard for newly designed and constructed courses but should allow for non-consecutive holes to meet the 50% requirement so that designers can optimize the terrain and space to create the unique environment that miniature golf can offer on an individual course basis, maximizing the experience for all players, handicapped or otherwise. To apply this standard to courses designed and built prior to the standards being adopted would put an undue burden on an industry that seeks to offer enjoyment to as many people as possible.

To whom it may concern,

I am writing in an effort to help the government better understand our business and the hardship that could be cause to our business with the new Standards that are being considered. We have been operating our miniature golf course in Wilsonville Oregon for just over 14 years. At the time that we built our two 18 hole course we tried to build the course to what was understood at that time relating to ADA. However, it now appears that our courses may not meet the new regulations that the government is trying to implement. Since you are just now getting around to finalizing/defining the actual Standards it seems extremely unfair to hold us to rules/regulations that were not as specific as they should/could of have been. We would ask that you please consider "exempting" existing golf course and that with the new rules/regulations coming out that all new courses be held to these new standards.

Also over the 14 years that we have been in business, we have only seen our sales go down a couple of times. One of the reasons for that is due to the fact that we work very hard (in spite of their age) to maintain our miniature golf course to a very high standard. For us the kind of repair and maintenance that we have to do so that our guests are comfortable returning to our golf courses, include new golf carpet, updating the overhead lighting, taking out old scrubs and adding new ones, annual plantings, repairing/replacing pumps that are used for our water features and repairing our ponds, painting and repairing of our various obstacles and repairing concrete/pavers that are wearing out due to the extreme weather. All of these items are not "alteration" to our courses, but rather they would be considered "repair and maintenance" items which needs to be done to not only keep our golf courses safe, but also attractive so that our guests want to return regularly. We would ask that you reexamine your thoughts on the definition of "alterations" as it relates to this sort of business.

I appreciate your consideration of these thoughts and would be happy to assist in any way I can if needs be.

Sincerely,

Court Huish

Managing Partner of Wilsonville Family Fun Center and Bullwinkle's

R. Court Huish
30172 Hillside Terrace
San Juan Capistrano, CA 92675

As a member of IALEI and the current owner of a 36 hole mini-golf course, I strongly urge the rules committee to take into consideration hardships the new rules would impose on existing operators.

My current course, Adventure Golf South in Dayton, OH, was built in 1992 before there were any regulations. There are stairs leading into the clubhouse, stairs leading out of the clubhouse, stairs leading onto the course, and stairs and walkways all over the course. There is a 30 foot elevation change between the low and high points. When the course was built, this was seen as a major attraction.

It would be extremely difficult to comply with the proposed regulations because of the current layout. If at all feasible, I estimate the cost to be somewhere on the order of \$250,000. Given that this is about my total annual revenue, it is obvious that I would close my business rather than take on an expense that would take 20 years to amortize.

Likewise, the committee also needs to understand the nature of maintenance on a course such as mine. I have a standing policy to replace the carpet on about 6 holes per year, which means the course is recarpeted every 6 years. Just due to normal wear and tear, this must be done.

Please take the facts under advisement as you reach your decision.

Feel free to contact me if you have any questions.

Thanks,

Jerry

Jerry Weber
Laser Web and Adventure Golf South
7285 Dixie Highway
Fairfield, OH 45014

"I own a 36 hole miniature golf course in Albuquerque, NM, constructed in 1994. It was built to ADA specs and is completely accessible to wheelchairs and other disabilities. Each hole has wheelchair accessibility for entering an playing and exiting, but as I understand the proposed new rules, I still do not comply. I do have pretty extreme elevation changes and no more land to use for renovation.

"I feel I am being extremely penalized for trying to do the right thing at the construction stage and now the rules are being changed after the game. I urge an exemption for courses such as mine.

"Also, the proposed alteration changes would cause extreme hardship as we recarpet frequently and treat it as routine (normal) maintenance to our business to keep it in good repair. The additional work and expenses required to do the additional 20% of cost "alterations" to "create an accessible path to travel" to and from the altered area. That really creates a big problem and hardship and I think will cause long term safety issues for our guests. It will fundamentally alter the quality and enjoyment experience.

"These issues must be addressed and the department needs to reclassify them. All repairs done on a regular basis are not alterations, but simply maintenance; simply replacing existing to new carpeting or other day to day painting and maintenance items that do not change play on the hole or alter it in any manner.

"I would appreciate a response to my concerns as I am an operator that tries to offer a good, safe product to the public and have been doing so for 15 years on a major basis in Albuquerque.

"If you need more information, my address and phone number follow.

Gene E. Hinkle, Owner

Hinkle Family Fun Center

PO Box 14934

Albuquerque, NM 87191