

February 3, 2021 TXGCPD Webinar Series.

*****DISCLAIMER!!!*****

THE FOLLOWING IS AN UNEDITED ROUGH DRAFT
TRANSLATION FROM THE CART PROVIDER'S OUTPUT
FILE. THIS TRANSCRIPT IS NOT VERBATIM AND HAS NOT
BEEN PROOFREAD. THIS IS NOT A LEGAL DOCUMENT.
THIS FILE MAY CONTAIN ERRORS.

THIS TRANSCRIPT MAY NOT BE COPIED OR
DISSEMINATED TO ANYONE UNLESS PERMISSION IS
OBTAINED FROM THE HIRING PARTY.

SOME INFORMATION CONTAINED HEREIN MAY BE
WORK PRODUCT OF THE SPEAKERS AND/OR PRIVATE
CONVERSATIONS AMONG PARTICIPANTS. HIRING
PARTY ASSUMES ALL RESPONSIBILITY FOR SECURING
PERMISSION FOR DISSEMINATION OF THIS TRANSCRIPT
AND HOLDS HARMLESS TEXAS CLOSED CAPTIONING
FOR ANY ERRORS IN THE TRANSCRIPT AND ANY
RELEASE OF INFORMATION CONTAINED HEREIN.

*****DISCLAIMER!!!*****

>> Turner: Good morning, everyone, welcome to the Accessibility and Disability Webinar Series. My name is Randi Turner, the disability coordinator for the Governor's Committee for People with Disabilities. Today's webinar is **How does the ADA apply to landmarks and other historical buildings.**

A couple of housekeeping instructions before we begin, microphones will be off during the session. Please note the webinar tool bar Q&A box, that's where you will place questions. Try not to use the chat feature for that. It could be overlooked.

So the Q&A icon is on your tool bar.

If there is information that we want to share in the audience we will share in the chatbox so do keep an eye on that. The webinar will be recorded and posted to our YouTube channel. Training materials and the realtime captioning transcript will be made available to participants as well. It will be posted at our website and so a link in the follow-up email will guide you to that location. Typically it's within 24 to 48 hours that we have all that information available.

The Governor's Committee for People with Disabilities is composed of 12 members, at least seven of those must be persons with disabilities. We have officials from the Texas Department of Family and Protective Services, Texas Health and Human Services Commission, the Texas Education Agency, the Workforce Commission, the Department of Licensing and Regulation, and the Texas State Independent Living Council. We have individuals from those

entities that serve as non-voting ex-officio members.

The committee staff is five central resource people that we are here in the Austin area to cover the state so there's just a handful of us. We try to connect people to the right resources to be able to get the services that they need and we also take disability issues and concerns and try to resolve those issues from this office. The committee works also with the legislative committees and with state agencies on the development of laws and policies that affect Texans with disabilities. Our biennial report has been posted and given to the Texas Legislature and the Governor. So if you're interested in that go to our website at gov.texas.gov/disabilities.

All right. I'm going to press the record button here in a moment and when I do I'm going to repeat the title and a bit of the introduction but none of the housekeeping.

>> Turner: Good morning and welcome everyone to the disability and policy webinar series. My name is Randi Turner, I'm the accessibility and disability rights coordinator for the Governor's Committee for People with Disabilities. Today we have with us John Torkelson and Mark Mazz and they will talk to us about how the ADA applies to historical landmarks and other buildings. So I'm going to turn it over to you, John, first, correct?

>> Torkelson: Thank you, Randi. I wanted to let you know that Mark Mazz is going to be doing the heavy lifting on this and I want to thank him for participating and agreeing to assist and to append my name to the presentation.

I will be dealing specifically with the requirements in the State of Texas and I'll also be acting as a moderator. As you post questions we will look at those questions and as appropriate we will be asking them throughout the session. So we will not be holding questions to the end here, but in interest of time and making sure that we stay on track, I will be moderating and editing those.

And with that I'm going to turn it over to Mark so that he can inform us.

>> Mazz: Thank you, John. Next slide.

Just to let you know, the presentation is copyrighted. Feel free to use it as you need to in your office. Don't go out and try to make money off of giving the same presentation to other people.

Next.

The slides in the program complement the verbal part of the presentation, they don't stand alone. So you might feigned things in the photographs that don't comply with or don't even -- aren't even in the spirit of the ADA. Just to warn you that the slide is there for me to talk about what I wanted to speak about in this slide. There may be other amazing things that happen visually that keep your interest, but bear in mind there may be things in slides that do not comply that I haven't tried to go through the slides to make sure everything does.

Next slide.

So talking about historic preservation and old buildings, it's impossible to do that without doing a review of the requirements that architects don't have to

deal with as often as building owners and governments do. And these are to retroactive clauses in the ADA.

If you own a place of public accommodation you will have to remove the barriers that are readily achievable to remove even if you're not doing any alterations at the time. And we'll go over that.

Title II, which is state and local governments, you have to provide program access to your programs, not necessarily fixing everything in your buildings, to the existing buildings, but fixing enough to make sure that you have program access.

You will learn what the exceptions are for qualified historic buildings. There's not many of them. It won't take long to get through it.

That's where I hope John will filter in a lot of questions and we can answer your concerns on that.

And come up with some creative ways to ensure the compliance to ensure that the compliance with the ADA and Texas accessibility standards.

Next slide.

So program access, it's for public entities, meaning state and local governments, plus also any of the departments, agencies or other instrumentalities of the ADA -- of the local government. Other instrumentalities are things like you can contract out services like if you have a zoo and it's contracted out to a private group to run the zoo for you that's an instrumentality and they have to comply with Title II of the ADA making sure that the programs

are accessible.

As a private entity, then it's also a place of public accommodation and you have to remove the barriers. So that's when you operate the programs so that they are viewed in its entirety, they are readily accessible and usable by people with disabilities. That includes public right-of-ways. That would include sidewalks, the curb ramp as shown in the picture, but the public rights of way stops at the property line pretty much, so that will be probably an issue in historical locations and parts like that I will talk about a little bit later.

So when you view programs in their entirety, the two best examples I can think of would be like a public school system.

If you have a building that's two stories tall and doesn't have an elevator, if you have all the common use spaces on that first floor and a sufficient number of classrooms on the first floor, then the second floor can remain inaccessible.

That's assuming that the gym, cafeteria, anyplace that outside programs like with if the Boy Scouts use it or the Girl Scouts or the PTA use it, that they're on the accessible floor as well. Then you don't have to put an elevator in for program access.

However, if you can't move certain classrooms down there or if the gym is on the top floor, the elevator would be necessary.

Again, this is for buildings that aren't being altered because alterations have to comply. This is existing non-altered spaces.

Another example is if you have three swimming pools in a municipality

and you can put all the programs into one building. Scroll back. I wasn't finished on that slide.

So the three swimming pools, if you can put all the programs and amenities in one of the buildings and if it's on -- has the same access to public transportation as the other two swimming pools then do, then you can modify that one swimming pool with access.

So with program access you do not have to do something that would fundamentally alter the nature, service of the program or activity.

I'm not sure how well it shows in this paragraph, but this is Acadia park in Maine. You can see a ribbon of colors which are the people's coats walking up this path to get to the top of the mountain. You don't see me in the picture, one because I took it and two, I couldn't get that far up by myself. Getting too old for that type of thing. But you can see the ribbon going through. There's no way to make an accessible route up this mountaintop.

However, you're not off the hook and say that you don't have to do anything here. If there is a set of restrooms at the top, the restrooms would have to be accessible.

This park does have areas that are more gently sloping and you can get to the beach with an accessible route, but you can't get to the top of the mountain. That would be considered an undue -- doing so would be fundamentally alter or give you an undue burden to try to make it all work.

Next slide.

Okay. So the other thing about program access is if your program is in an accessible building you can always -- in an inaccessible building you can always move the program. This can complicate things for people who own the property and the program is run by the state or the city and uses your building for that purpose. This is an example of a state running a jazz festival once a year, and they liked using the historic hotels in this city. This hotel barely makes a profit so very few accessibility modifications could be done as being classified as readily achievable.

So the city had the owner -- the owner needed assistance to get the place modified to make it accessible. The state decided they couldn't take on that burden and they moved the program out of the hotel. So that's the option you have with program access unless the access is the reason for the program. But the Title III part where you only have to do the readily achievable can get in the way sometimes.

You need to remove all the physical barriers in the existing buildings to the programs. Again you can move the program. But the -- if the building itself is the program and you can't gain access to all the spaces, then you come up with some alternative method that may work and that's sometimes difficult to do. Next slide.

>> Torkelson: Mark, there was a question that came up on your previous slide in terms of if you have restrooms at the top and at the bottom of the mountain, or the restrooms that are not provided as a part of the accessible

route, that are not on an accessible route, are those still subject to compliance?

>> Mazz: The restrooms at the top if they were altered or put in after the effective date of the ADA, which is January 26th, 1992, John? I always miss up the year, '92 or '93.

>> Torkelson: I can't remember, I'm sorry.

>> Mazz: If it hasn't been altered since then, then the answer is no. If you've altered it, you fix the alterations. If it's new you have to make it compliant.

So you need to integrate your programs as much as possible.

The -- showing a slide here, the top slide shows a beach with the ramp going down to the beach. High tide would come up to the bottom of that ramp. Low tide is about 200 yards out. It's a very gentle beach. So you would fundamentally alter the use of the beach by putting a concrete pad down to the end of the beach to the water. That doesn't work out, causes erosion and things.

So this beach they have access to a big wheel wheelchair that can go down the beach with a little help and you can get to the water so that's how they're dealing with the program.

But it's best not to separate the program, separate the accessibility programs from the rest of it because you have to do everything in an integrated setting.

And that also helps you to make sure it's equally effective for people with

disabilities.

Next slide.

So even if you do have to give the separate place to make the program accessible, you still can't stop people with disabilities from using the areas that are inaccessible.

So the photograph I have here is the person in a wheelchair I think rappeling down the side of the mountain. I don't believe he's climbing.

I list three suggested places to look for help if you need to write a transition plan for yourself-evaluation and transition plan for your local government. The first one being the action guide for state and local governments, which was put out by the -- I believe the disability rights section dodge funded it. It's pretty good book in giving you sample forms to use.

There's one that's more online. The self-evaluation guide for public, elementary and secondary schools, that works fairly well. The third one is one -- I put it in here just to try to get this thing completed. They're building a program to make it a little easier to deal with coming up with the self-evaluation for the ADA. It's not up and running with, but it would be nice for him to get on to try to put out for the public to use.

>> Torkelson: Mark, there's been another question regarding polling places. There's a location where they're using -- the county is using old churches and schools which are not ADA compliant and the election workers at many of these locations are not taking the ballots or voting machines to the car.

And they have made complaints to the Secretary of State, but then it was forwarded on to the county and they were not acted upon.

I think the question here is that the polling location -- I'm assuming that those need to have a level of accessibility even if they're in older buildings. And we'll talk a little bit about what actions are available and in terms of complaining, if you feel that they're not compliant, we'll doll that in a little bit. But in terms of the older schools using as a polling place, do they have an obligation there?

>> Mazz: The polling places, there is a major polling place -- I don't know if it went to litigation or at least it's a case that DOJ is looking at in the State of Texas. I don't know if y'all are aware of that. Probably.

But program access being the polling places, you're obligated to put them in accessible locations. I know that you -- if the government doesn't own the locations, they may try and assist -- give assistance to places like churches that do not have to comply with the ADA to help them put the accessibility in place.

With polling places can you do temporary parking, accessible parking near the door that you use to get into the polling place.

The interesting thing about restrooms is for some reason disability rights section does not include will bathrooms, restrooms going into the polling area, which I find curious when you have to wait several hours in some locations.

Did I address the question, John?

>> Torkelson: I think so. The answer is yes, there are certain elements within the polling places that are required to be compliant, and being in an old school would not be a situation where you would have exemption from the requirements for the requirements in those conditions or churches.

>> Mazz: The benefit of using your own buildings is the schools have to be accessible anyway so they have their own program access issues. Hopefully they can get combined to make everything work out for both parties. That also goes along with emergency shelters have to be accessible.

So when you're going yourself-evaluation plan or determining whether there's sufficient program access, you should consult the disability community and that involves state and local disability officials, individuals and organizations representing. And the best thing about doing this is that when they participate in your decision-making process or program access, it's -- the best way for people with disabilities to understand the ramifications or the difficulties in making things work -- and getting their buy-in helps you immensely in the future on things.

You don't want to have an adversarial relationship. You want to make it cooperative. You find out things sometimes as simple as the thresholds to be a very simple issue and sometimes you'll find out that particularly with historic buildings you can get a buy-in on doing something -- some alternative format for getting something, making something accessible enough for that situation.

So it's always good to get them involved.

I guess this shows I'm from Maryland because the two groups I show here, of course the disability rights of Maryland, but independence now is also in the suburbs of Maryland.

The transition plans, self-evaluations and transition plans, start balancing out as to how much money you can spend on making it all be accomplished.

The whole idea of the self-evaluation and making things programmatically accessible is that it cuts down the costs that you have to spend on your existing facilities. Bear in mind over time trying to fix things administratively it comes down to how often must you retrain staff, particularly in high turnover areas, to make sure that the person with the disability is not discriminated against versus doing it in concrete, making it fully accessible so that you don't have to worry too much about moving programs around and getting information from people who need accommodations two weeks ahead of time, maybe moving the venue, courtrooms or plays and things.

As an example of what a transition room can look like I'm giving you one that's on the web. It's also one that I did. Unfortunately the self-evaluation piece didn't work out with the city very well. They didn't fill out the form seriously and understand this so it came down to much more money.

I know these slides are not readable at this point. The point is just to show you that one exists and if you need detail you can look at the website.

What we did was we surveyed all the barriers in the buildings and the sampling of the site work.

A little background, this is different in a lot of places. The city of Hyattsville has its own police department, but it does not have its own educational department. So we didn't have to do anything to schools. We have some recreational areas, but most of the recreations is handled at the county level as well.

Most of the roads are locally run but a significant portion of the roadways are either run by the state or the county. So putting all that together what we did was we surveyed the buildings in some of the property, some at the public rights of way, came up with what it would cost to remove those barriers and allocated who we thought should be paying for them. I don't believe we ran this one out over time.

Next slide.

And the chart on the left, I know you can't read it, but the line number so you can reference it when you're talking to people in the future, always provide the citation to the standards that you're quoting otherwise you tend to get things that people think ought to be there, but aren't necessarily required. So you always do the citation to the standards. Then you describe what the issue should be what the non-compliant feature of that issue is, you photograph everything, photo document it. You propose a solution only to the extent that you can give a ballpark estimate on what it would cost, then you set the priorities for when it should be handled.

Things being safety issues as soon as possible, things being further down

the line that aren't necessarily as important to get done.

So the diagram at the top shows a Google image of the pathways around the site itself, how to get in. This happens to be the municipal center, getting from the accessible parking to the entrance to the police station to the public right-of-way and of course the sallyport coming in the back.

Next slide.

So Title III is places of public accommodation, which are private entities. And that you either own, operate or lease. Commercial facilities is not for readily achievable, but it's for new construction and alterations. So seeing this picture here if you have a curb ramp that's in the access aisle of a parking space that doesn't comply. And if you are part of a franchise or have the funds to suggest that it is readily achievable, you would have to remove that curb ramp, put it in a place that's better.

And one of the things I like about this slide and John, correct me if you disagree, is that quite often people think that the best place to put the parking is the closest space to the entrance because you're required to do -- putting parking on the shortest accessible route from the parking to the entrance. But here if you put the curb ramp in the sidewalk in front of the door you cause other problems.

If it's too close to the door you don't have the maneuvering space. You don't have the level land for the maneuvering space. And sometimes it's best to move over a space or two, put in a parallel curb ramp for the accessible

spaces and making the route 10 or 15 feet to make it all work.

>> Torkelson: Absolutely, Mark. I agree with you there, but what you don't want to do is put it all the way at the far end because then it would not be on the shortest accessible route. You basically would take the distance from the end of the curb ramp and use the [indiscernible] of the curb ramp as well as calculating part of that shortest accessible route.

>> Mazz: Next slide.

So who's not covered by either Title II or Title III of the ADA? Entities controlled by religious organizations, that is used for their private purposes. If they have running a day care that is open to non-members of the church, that is actually covered under the ADA.

>> Torkelson: Or used as a polling location.

>> Mazz: Or used as a polling location. That portion is covered by the ADA.

Same thing with private clubs except to the extent that the private facilities of the club are made available to others. So if there's a golf course and a private club it wouldn't be covered except they hold events in the clubhouse, they may be open to the public. If you have weddings for non-members or rent it out for other purposes or have a free golf day for the community that extends it past private into the public accommodations realm.

So a quick overview of what you have to do with places of public accommodation.

You have to remove the barriers in existing facilities where it's readily achievable. And that's a vague term. You have to provide alternative methods where you can't remove barriers. And you have to maintain the accessible features. So when you put the platform lift in to get to the second level in your dining area, it's not a place where you hide your slop bucket and it's not a place you hide behind tables. It needs to be on an accessible route and auxiliary aids are available to provide effective communication.

Next slide.

So readily achievable, it means -- you can easily figure it out. It's easily accomplishable and able to be carried out without much difficulty and expense. And they give you examples, but beware the examples make it sound really simple and easy.

Quite often when DOJ comes through, there will be much more extensive than these simple few things. So it may involve more than putting in a curb ramp, rearranging tables, widens doors, installing grabs bars and putting in signs.

Next slide.

So when you're doing the retroactive things for readily achievable, you only have to into compliance with the ADA's provisions for alterations. What's that? That means that you're allowed to use a three-quarter high inch threshold instead of a half inch. It means the ramp could be slightly steeper in short situations and you don't have to do it if it causes safety issues.

So the order that DOJ wants it done is you get to the front door, get to the goods and services, the toilet facilities and then everything else. So a basically you think of it, you have to get the people through your front door first and then you have to sell them the goods you have in the store, then you allow them to use the bathroom.

That's the level of priority for DOJ. And then things like drinking fountains, telephones and stuff like that go into the fourth category, visual alarms.

Since you're doing the things that are readily achievable they may not fall in that order. If you can't do anything else, putting in grab bars at the toilet is still readily achievable even if you can't get in the front door or if the counters are too high wherever you're selling your products. Or if you can't get into the restaurant piece.

So when you do a self-evaluation in Title II, they would combine these four things with the severity of how bad the barrier is.

Next slide.

So readily achievable. Easily accomplishable and able to be carried out without much difficulty or expense.

What DOJ considers is the cost of the action needed, the overall financial services, resources of the company and its parent companies. So if there's a chain of stores and they're all separate limited liability corporations or separate corporations but all owned by the same person, you take all that, the parent

company's financial resources into consideration. And you also can consider legitimate safety concerns.

This becomes a very difficult thing to try and prove or substantiate to an advocate or DOJ that you don't have this financial resources. Most companies don't want DOJ to see that so -- that hasn't come up in any case that I've worked on.

And I don't believe architects have the -- have the background enough to know what is readily achievable. They can recommend what they think might be easy to do, but the owner has to make the decision on whether it's readily achievable.

Do you agree, John?

>> Torkelson: I agree.

>> Mazz: Go back a slide. I want to talk about the picture.

So here, this store was up a couple of steps so out in the public right-of-way they managed to put up a gently sloping ramp up to a landing that got you into the front door, a gently sloping ramp back down the other way.

The sidewalk without the ramp is still fairly wide for pedestrians to go on by.

The -- how easy is it for private businesses to modify the sidewalks outside their stores in the public rights of way in Texas?

>> Torkelson: It depends on the municipality. I have seen it happen, but most of my clients have said that it's difficult and I'm thinking that they're

saying that it's difficult because they don't want to deal with it.

>> Mazz: Okay. What I recommend to companies particularly when it's part of a settlement agreement, is depending on how it works in that municipality, you either send a letter to the responsible party for the municipality requesting to allow you to modify the sidewalks in front of your store to make it accessible. If they say go ahead then you do it. If they don't respond or say no, then it's out of your hands. Or you request that the city takes care of those things, you request that the city modify it to make it accessible.

So that's the best you can do if you're the private entity. The sidewalks themselves are considered part of a program that the municipality gives you, gives its citizens.

So curb ramps and sidewalks, advocates have sued on and won in many jurisdictions. I think it's like up to three billion dollars in the city of Los Angeles over the next 20 years to modify sidewalks and curb ramps. I know there's litigation going on in New York City. I know in Philadelphia there was litigation and there may be more litigation coming on curb ramps and sidewalks.

John, can you add a few to that? Do you know others?

>> Torkelson: I'm sorry, I was reading a question, so I do not. Sorry.

>> Mazz: I don't know of one in Texas at this point. But sooner or later it can come.

>> Torkelson: I think -- Corpus Christi had project civic access or --

>> When the Department of Justice comes in with projects they address the sidewalks and programs. Next slide.

So readily achievable, if you have an area, two different areas in a restaurant that are in different levels you need to provide an accessible route to the second area.

So in this photograph in the foreground you're either sitting at tall tables or you have to go up two steps to the window where you can sit and overlook the river. They do have an accessible route if you go back to the right side of the slide going back to where the restrooms are there's a ramp that comes up, but they don't tell you that and they don't give you a direction or sign to show you where that path is.

Next slide.

So here's a case of what is readily achievable or not. This bar is -- the owner told me that this bar is the longest -- this is the most -- oldest continuous running bar in the city of New York, including maintaining operations through the prohibition period.

They were -- an advocate came by and sued them or threatened to sue them for compliance with accessibility. As you can see on the corner of this building, there's a step up, there's a column that holds up. I believe it's a five-story building. And then the doors, which are probably a little less than three feet from the column, a pair of doors that open up may provide you a four and a half to five foot opening. So a single door will not give you a 32-inch

clear opening.

If you look at the plan on the left side it shows that that would get you to the bar and three tables. And then you could get to bathrooms that are -- I wonder how they managed to squeeze them into that tiny little space. But then there's an opening through a bearing wall of the five-story building that's less than 32 inches wide to a room that has another six tables.

There's another pair of doors in that back room that lead out to I believe it's two risers, one of the doors itself and one at the face of the wall down to the street where you may look to try and put a ramp in, but if you tried to run a ramp in the area that is highlighted there, what you're really doing is winding up on top of the fence and lighting that get down into the basement and into the platform elevator that depose down and brings the storage from the street level down to the basement.

There's virtually no place to put a ramp here.

So it's not readily achievable to make an accessible ramp in here, probably the only thing that's rehabilitative is the grab bars in the toilet -- that's readily achievable is the grab bars in the toilet room. So that client got that for the cost of two beers. Next slide.

John, you're on.

>> Torkelson: I'm sorry, I'm going to put this in the wrong place, Mark, so I am not on except that I will say when you're typing questions in, please do it in the Q&A and not in the chat. So Paul, you will need to repost, please.

I'm going to talk about this when we're a little bit further in the presentation.

So next slide.

>> Mazz: Okay. Historic preservation. So I'm on slide 25 and it took me this long to get to historic preservation. I apologize for just using international pictures but I don't have many clients who have much historic preservation work where it would be public enough for me to put the slides up. It would be generic enough that you wouldn't recognize where they are, so that's why the international pictures.

In order to be considered historic, qualified as an historic building, it has to be listed on or eligible for listing in the national historic register for historic places or designated as historic under the appropriate state or local law.

And that law comes down to section 106 in the National Historic Preservation Act. And the -- I don't know the exact process, but going through that the state office makes the -- advises and makes the determinations on this. Next slide.

And with the facilities not subject to section 106 of the national historic preservation, then whatever the state historic preservation office makes a determination as historic at that point.

Next slide.

It has to be certified and basically it all has to be in writing. And what it comes down to is if there's smog historic about the building it needs to be

specifically listed as historic. So if you have a building that the acoustical treatment in the theater is something that was first used in this building in the late 1920s and that was historic, it needs to be mentioned in the historic preservation review documents as being historically significant.

If it's not, many maybe you will still be required to blast a hole through that door if need be to make it accessible.

If you make a ticket booth outside the entrance and replace the doors with new doors that match the historic doors, both of those things are new elements, they're not historic themselves and both of them would have to comply with the standards.

Let's flip back to the first picture with the lift and the stairs.

Go back two or three slides.

That one.

Here, depending on what gets labeled as historic, whether it be the cobble stones or the inside of this -- of the Castle that was built I believe in the 1200s, the interesting thing the first time I went to Lithuania I was taken to an historic theater and they asked me whether that building would be considered historic or not. They asked me what to do to make the building accessible. And I looked around and I asked is this an historic building. And they looked at me, shrugged their shoulders and said it's not inside the old city, this is still historic. That only meant that the building was built after 1250 AD. It was still built before the first English came to the United States, to America.

But going back to this Castle, they deemed that it was okay to put a lift to get you up to the wall that goes around and you can view into the Castle. The cobble stones themselves they didn't address. They probably should have, but going further, once you get inside there's no way to get to the upper floors because there's no place to put an elevator in to get to those areas without hurting parts of the historic nature of the building.

Let's go to the next slide that I was going to. Yes, this one.

>> Torkelson: Mark, before we go further I have a question. Regarding the sidewalks in the public right-of-way, the person asking the question says that the -- there are large trees in the public right-of-way and that question is can you forego reconstructing the sidewalks if the work would damage those trees in the right-of-way? Would that be something that would be considered as a part of being able to be done?

>> I'm curious. The answer to that one is that's a great question to ask if you're in a situation where you might have to kill a tree to comply with the ADA standards. And my answer would be you take it into consideration and if it's a case where you're negotiating, you try and convince them that you can't do that.

I've seen any negotiations where that's -- I haven't seen any negotiations where that's come up and DOJ has forced somebody to do that or advocates have forced somebody to do something that would hurt the tree, but I also haven't seen the other [indiscernible] that's been brought up.

>> Torkelson: I'm going to interject here, the they you're talking about are a couple of different groups. The first one is before do you construction, you would want to talk to advocacy groups and folks like that to get their input. Once you're talking to DOJ for the most part that's a bad thing because that's typically means that you're in a the complaint process or a part of a lawsuit.

So you would want to get with the advocates and stakeholders and have these discussions with them. And before you get to the Department of Justice.

>> Mazz: Yes. So relating it back to involve the community of persons with disabilities being the officials that represent that for the jurisdiction, the individuals affected by it and any advocacy groups in the area.

So you get their buy-in at that point that you're protecting the tree and this is the best you can do by protecting the tree, then you've got your back covered to make sure that nothing goes wrong.

So the slide on the left is from your state house and it shows that the -- you're not threatening or destroying the character of the building or historic nature of the building by putting in accessible drinking fountains. And here they put them in and they can make them all work that way.

To the right is a monument. And when I looked on Google earth to try and date when the elevator shaft was built outside and it was after 1992. So I believe it was put in for accessibility purposes to get to the observation tower that was probably accessed from stairs inside the building. They put an elevator outside of it to get to that level so you could see, which I think is fairly

extensive thing but the local jurisdictions decided that would not destroy the historic significance of the facility.

Next slide.

This is a courthouse in Baltimore city built 1890 I think, maybe 1885 where we had to provide an accessible route to get into the building itself. The front door has the -- the main entrance has a granite stairway going up. The side door here is same level as a major corridor from this door to the lobby to the elevators and everything else.

And they can put security at this door as well. We took elements from the other parts of the building, copied them and put a wall essentially cutting the sidewalk in half. The sidewalk continues down the street on the curbside. On the other side of the wall we put in a path that's less than five percent to get in the door and you can get in that way. We also built it in such a way that none of it is physically attached to the existing building. We have expansion joint filler and stuff holding them apart, but if you took away the wall, took away the ramp, took away the landing, you would have the original building with no holes in it from tying it together, the structure.

The helpful guidance that I put in there as a web page that national parks services put together in helping with historic sites so what do you do when you can't make it accessible? And this is a good example of this. This is I believe a replica of the Arc. This is a replica of the Arc. They provided a ramp coming up to the edge of the ship, but you couldn't get in because it's just too

small to make it all work. The ramp itself is on hinges because it goes up and down with the tide.

The ships were rather small and -- and what they did because they decided it would destroy the historic significance of the facility ships and they could couldn't go down into the hold below to see what was going on.

Next slide.

So this actually applies to the last one, but applies better to this one. What do you do if you find out that it's the -- the -- it's a replica and not the original historic thing: This is a replication of the ship constellation in Baltimore. They used to brag that it was the oldest ship in the Navy, but it was found out that it was actually a replica of the oldest ship and it was built in the 1850s.

So this is an historic replica of the historic ship and they can no longer claim the oldest ship and that went to the Constitution in Boston, which is the oldest ship.

Here what they did was they built an interpretive center next to the ship with an elevator to get you up to the landing. And this is one of these slides where not everything is compliant, but it shows the points. The ramp comes up to the gang way getting to the ship -- sorry, backwards. The gang way comes in from the building to a landing and down a ramp on to the ship deck itself.

They have an inshrine lift going into the hold going over a set of stairs going into the hold of the ship. And they have another platform lift further into

the ship which takes you down to another level.

You essentially can get in a wheelchair, you can get everywhere except for the couple parts of the deck itself and down into the bottom of the ship where they don't even have a floor that's wide enough for a wheelchair.

So other things that can be done, the Smithsonian being purists that they are put a ramp into their Castle. They wanted to make sure that people knew it wasn't part of the original design, but they put in a ramp that looks temporary, but it's permanent, going from the plaza, the main doors are left open during all hours of operation and then to the glass doors that open automatically when you get close to visit whatever is going on inside.

When you put a ramp in and you can't get the slopes to work, you're allowed to put it in at a slope of one to six and not do the run more than two feet long. So it doesn't get you much, but it allows you to put in a steeper ramp to get into the building.

The photo down below has a ramp that I don't even know if this Buddhist Temple is considered historic or whether they tried for that. You enter on the left and then there's a ramp -- you can barely see it and the reason I show the photo is that they blended it in pretty well that you don't notice it unless you're looking for it from the pavilion on the left to get to the main pavilion in the center.

It is actually there next to the person in the White shirt. And then you cut across the main part of the Temple and then go down the other side of

another route and so you can make them work and hide them in there.

Next slide.

This is how you did it at the state house. You have a path, maybe the same material and the main walkway coming up to the front, which slopes -- I'm assuming five percent or less up to and it goes into the portico area.

>> Torkelson: In our state we call it the capitol. You've been calling it the state house. It's the capitol.

>> Mazz: Sorry about that.

>> Torkelson: Just being a proud Texan.

>> Mazz: Next slide.

So Mount Vernon on the left, they use the temporary ramp sloped one to six to get in. They're pure rifts at Mount Vernon. They do not like to touch anything that's not -- that gives any inkling that it wasn't perfect the way George Washington when he lived there the way it was.

Again your capitol, getting up to the podium area. You have a temporary ramp that I assume you roll out to get into place. It would be nice if you had handrails but it works for this situation. I think a pretty nice solution.

Next slide.

This is a building where the -- it's historic, I'm pretty sure. You have this beautiful iron staircase leading up to the main entrance on the second floor. That's not the accessible entrance. And putting something on the front would

threaten or destroy the historic nature of it. So they came up with an entrance around the side and down with an incline lift to get down to that level.

When the building is open, the doors open and the lift is working. I believe we were there before the building opened. So the lift wasn't working at that time.

When you do this you want to make sure that the non-public entrance is unlocked during business hours. You have directional signage on how to get to it and you provide a notification system where security is a problem.

I advise not to offer to assist a person with a wheelchair down the steps if you're one of the employees of the building because it affects the dignity issue and it's also not a safe thing to do.

I wanted to stay back on that one.

In another city that was a client of mine they also granite steps getting to the front door and you had a side door that was to be the accessible entrance and they insisted that yes, it all works, you get to that door, you push a button and they come down immediately and bring you in. So they had a social event that evening and they were warned that a person in a wheelchair was coming. And when the person showed up, the time it took from getting to the door, pushing the button and getting to the event on the second floor of that museum took them 40 minutes.

Instead of going through security and up to the second floor that would take five. He was quite upset. Didn't file a complaint, but that's not prompt or

quick enough.

So it's important to make sure that you give the person access as quickly and conveniently as possible to mirror the convenience of someone coming in through the steps.

The lifts, you have to get to every level where it's practical. Here I think it's a interpret think nice solution on the left. You hide the platform lift, you leave enough of a landing for the door at the top for all that to work and maneuvering space to get on the lift. Is that an automatic opener on the lift door?

>> Yes.

>> Mazz: So you don't have to worry that it's a service mounted lift, so the threshold mount that slopes down will be steeper than one to 12 because then it's not part of the landing or considered a threshold. It can just be a short little ramp sloping at one to six to get you where you're going. And when you can you put them in a corridor that's not used for any other purpose, which is great. Either way these are practical solutions to getting to the other levels.

>> Torkelson: Mark, I want to give you a 30-minute -- just to let you know where we are.

>> Mazz: Wow, going slow.

>> You see the ramp that you have to see so you can get to the second level up the three risers.

They said there's no way to get a lift or an elevator in because it's right

underneath the alter in the church.

Next slide.

This is another accessible of the bottom level to the top level. Any ideas? I couldn't figure it out. It wasn't a project.

Hard as it may be sometimes. Next slide.

>> It's important that the main entry is not the accessible entry, it's important to put good signage in place so that people can you and I like the signage around your capitol where it says the decision points you know where you need to go instead of coming up to the front door and finding out you're at the wrong location. The ADA says directional signage at the accessible entrance to the accessible entrance, but here you preempt that by giving them the directions at the right place and giving them reminders. It's a good way to do the signage.

Next slide.

Here you have a sloping floor to get to a certain point. Everything in this building is unique and fanciful and no place to hide an elevator without destroying the effect of the building. If you got to the roof where all the smoke -- the chimneys are, you still have steps everywhere, slopes everywhere. You can't make it work. One thing that -- another thing that you lose is the museum on the floor immediately below the roof. You don't get to experience that either but you can't get to these areas.

Next slide.

You can make things work with -- here you have an historic train ride up to the top of a mountain. Here when a person needs it they wheel the lift out, crank the person down, crank the person up. It came out smooth as me getting off the train seeing this on another door getting set up, making it work.

So where it's practical you make it work. Where you can't make it work you do something alternative.

Any more questions on that, John?

>> Torkelson: No. Sorry, I'm answering a question.

>> Mazz: The next slide -- yeah, delete that slide and do to the next one.

The -- so the minimum requirements you have to make at least one set of toilet rooms accessible and here again in your capitol you put an accessible restroom in the building because it doesn't mess with the historicalness.

Something that I found quite interesting is you have wood wainscoting in a bathroom and I wonder how that deals with safety or health standards. And it's quite a unique grab bar to get around the wainscoting being dropped into place, being hung from above.

Not passing judgment on it, but that was an interesting --

>> Torkelson: Getting off track, Mark.

>> Mazz: Okay. Providing written -- displays and written information documents, et cetera, should be put in a place where you can see it if you're seated, which is about 44 inches high. When you deal with -- when you try and

provide signage for the blind or a map of the area for the blind, try and use the language that works for a finger instead of trying to be too literal to what you see. For example, here you have topographic lines through the ground level of this building, they would be interpreted as steps by your finger going across it.

Next slide.

>> Turner: Mark, real quick, our director was asking a question and it relates to museums and historical places that might have areas where people can touch exhibits or -- I'm sorry, are forbidden from touching exhibits.

And so there may be a rope that separates people to keep them a certain distance from the artifacts. But for people that have low vision or blind, it also prevents them from being able to see the same exhibits. What are the program accommodations that you're aware of the customer -- for customers or patrons who are blind or have low vision.

>> Mazz: I'm going to give you the excuse first. I'm an architect. So I rarely come across things like exhibitory where you have the blind issue come up. But what I've seen done is for low vision if you can't get too close, many museums have the guided tours and they'll have one that one of the channels can be set aside for somebody who is visually impaired or blind on how to get around the room.

So numbering the exhibits in a logical sequence is important in that sense as opposed to numbering them arbitrarily. Sometimes they're numbered arbitrarily and the guided tour thing works -- solves that problem for people who

don't have visual impairments, but it doesn't work for people with a visual impairment.

The touching exhibits would be set aside -- I don't know exactly how you work them in, but there's there are things to consider. One thing that shows up in magazines now is how to address special needs population like children with autism in a museum so that they can getting learning experiences out of that. I think the Smithsonian has done quite a bit of making these things work and having other projects out there.

Do you?

>> Torkelson: Sorry, I'm moderating questions, so I don't know.

>> Mazz: That's the best I can answer that.

When you install things at exhibits that are child height usually you can make them work for a person in a wheelchair as well. So the average height of a person in a wheelchair is 47 and a half inches so put it in somewhere between 43 and 47 inches. Again, with the blind don't try and be too literal on the model because your fingers are going to interpret things a certain way and a person who is visually looking at it is going to look more for the exact proportions of what they're looking at outside.

So sometimes the model that you use to allow -- that you can touch and understand space better may not be the same proportions as the model that you want to put there for somebody who is visually looking at it to make it all work. It's just two different audiences, two different ways to work. And you

need somebody blind to tell you about this or interpret how it works.

On so alterations. To what extent do you have to do alterations? This is a small restaurant where -- very small space to make everything work. You have the cross slopes that are somewhere around seven or eight percent outside the door, but it continues all the way down to the curb -- the vehicular lane.

Going off to the right -- off to the left you have more options to get into the building, but when you look inside you've got a step which is part of the structure for the -- supporting the floor above the basement below.

In the foreground not in the picture you have the pickup counter for takeout orders where you see the step going up the step, you have some tables there and far in the significant back you see a bit of a sign and stairs showing you the center photo that the bathrooms are downstairs.

So in order to make this work when they renovated it to put the restaurant in they did put a bathroom, a restroom on the same level, but they didn't want it to become the restroom that everybody thought was the only restroom. They wanted people who could walk downstairs to walk downstairs and use that one, but if you couldn't they had this restroom up here.

Not everything was done absolutely correctly, but they did identify it as an accessible restroom with the accessibility symbol above it, but they didn't call it a restroom.

So a compromise in between.

If you're renovating a courtroom, courthouse, which these two slides

come from, if you're knocking it out or widening doors or putting new doorways in, those things obviously are going to have to comply.

If you're restoring the grandeur of an existing space and you're not building new in there, you do what you can to make it accessible without destroying the significance of the space.

Next.

So alterations to a primary function. Primary function -- I'm dealing with -- is the purpose that you go to a building. And that would be the lobby of a bank. It actually would be the employee area of a bank too. Classrooms, offices, whatever you're going to that building for.

So it wouldn't be the restroom unless it was at a truck stop, a stop along the highway or a building that is just set aside for restrooms.

The path of travel is the accessible route to the primary function plus all the appendages along the way. So if you're altering a primary function, say the dining area of a building, the parking, the accessible route through the door, the toilet rooms that you would use for that primary function are all the parts of the path of travel. Next slide.

>> Torkelson: So this is my portion of the program.

In Texas we have the same obligations that we do under the Federal requirements. And that is when we have alterations to existing facilities and we have new construction, we have an obligation to comply. In the State of Texas whereas under the ADA you are required to do the research and to put together

your information. In the State of Texas there's some additional obligations and that is when you are doing an alteration to an area or to an historic building or facility, there's an additional step that you would need to do where you would have to do the variance process for the State of Texas, and we'll talk about that a little bit later.

And in Title II entities and state leases, this slide is talking about the fact that even though you have an historic building in the State of Texas, you are still required to comply with the requirements of 202.5, which is historic -- you're doing an alteration to an historic facility.

Mark, just as a quick aside, when we have a situation where there is a facility that is being used as a restaurant, for example, and the patio area is being used and being [indiscernible] an accessible portion and there is no accessibility into the restaurant at all, what force of action is available to the citizens who see a situation where there is no accessibility. And I think what I want sort of steer towards is looking at has there been an alteration or is this just an existing facility that may be under readily achievable barrier removal.

>> Mazz: Good points. If they haven't altered anything inside -- I take that back. They have to -- the restrooms would be used by patron whose can get to the restrooms in the outdoor seating area.

So they would be part of the path of travel to the outdoor seating.

The outdoor seating would not be replacing the obligation to a remove readily achievable barriers to get to the seating inside the restaurant.

Talking about readily achievable rather than a building where you haven't had alterations since 1992, that's a long time ago and you would be hard pressed if you hadn't done something. So every time something got altered that 20% of primary function keeps showing up. So I would say to the individual who still can't use the bathroom that they still should push gently, push hard to get more accessibility into the restaurant. To do what they need to do.

>> Next slide.

>> Mazz: In alterations you don't have to do it if it's not technically feasible. In other presentations I title terms like technically and feasible as these words are not your friends.

It's a pretty high standard.

The existing conditions would require removing or altering an essential part of the structural frame. So column under a five story bearing wall building, yes, that's pretty much impossible to do. And -- or existing physical or site constraints prohibit full compliance.

So physical or site constraints, if you can't make the modifications outside your restaurant and the public right-of-way in order to get in the right door you do the best you can.

Sometimes you have to put the ramp inside, but if it knocks out so much of your retail space that the store is no longer viable then that also makes it technically infeasible.

So disproportionately. What you spend on your alteration is a primary function, have you to spend an additional 20% getting along the path of travel to get to that primary function.

So if you make your seating outside the restaurant accessible, but nothing inside, you still have to make the path from wherever you enter the facility to the restrooms to your outdoor seating. Up to 20% of the cost of creating that outdoor seating. Make sense?

>> Torkelson: So in the State of Texas, we do not have the ongoing obligation of readily achievable barrier removal such as the ADA does.

Texas law, the Texas Architectural Barriers Act is triggered by construction, either new construction or alterations to facilities.

And we also have an additional step which when we do an alteration to an area containing a primary function, we have an obligation to be compliant and then if it is technically infeasible, where we cannot provide compliance or if it would be a disproportionate cost as Mark has talked about, then in the State of Texas we have to go through the textual barriers program through the variance procedure. Next slide.

And if we are also trying to get relief for full compliance because an element is part of a historic landmark, then it's also through the variance procedures. One of the things that's important is that in the State of Texas it needs to be registered and reported on the National Register of Historic Places or is reported Texas historic landmark. We can't apply the provisions for

historic places strictly because it's old. It is -- it must be designated as a -- on the National Register of Historic Places or a state place.

Next slide.

The events -- I've given you the variance procedures. Essentially there's an application that you would fill out. You would need to state your case. You're able to -- I would recommend that if you are contemplating the variance process either contact the Registered Accessibility Specialist, the RAS, that you are using, or get with the state tech info at the state architectural barriers program and you can discuss the conditions that you're looking at. Prior to the application. And here's a copy of the variance application. The variance application will gather a bunch of data that we're looking for. And that TDLR is to consider. And when you go through the variance process you need to ensure that you need as much information as you can, be as clear as succinct as you can. They cannot make any assumptions. So the variance application and the process is, you know, somewhat technical in terms of you need to provide as much information as you can.

For example, if you were looking to do a variance for historic facility, you need to make sure that you include the documentation indicating that it's historic facilities on the National Register or what have you.

If you are applying for a variance in terms of disproportionate cost you need to document the cost of the alteration, not only the alteration that you are contemplating, but also any other alterations that occurred in that facility so

that you can document that it would exceed the 20% of the construction costs of the facility that has happened there.

>> Turner: John, just real quick. Your voice is fading out a little.

>> And I will lean forward a tad and thank you for letting me know.

Next slide.

Under the Texas Accessibility Standards, again, there is no obligation in the State of Texas, that's a federal requirement for readily achievable barrier removal and we use construction in the State of Texas under the Architectural Barriers Act for triggering what activity we need. If there was no construction, we cannot go through the complaint form. So TDLR does have a complaint form and I'll show you that in a moment. If it is not triggered by construction, they will look and see if there was a construction project that occurred and that is the enforcement mechanism that TDLR has to go after facilities that are not compliant. So if there has not been any construction, they will not pursue the complaint.

But there are still possibilities of doing a federal complaint, but it would not be through the TDLR, and here is a copy of the complaint form from TDLR.

All right, I think we've answered the questions, the ones that are for everybody. And I think that concludes it. Mark, do you have any closing or parting comments?

>> No, I don't.

>> Any last additional questions? Please post them in the Q&A box.

>> I see some specific questions that, you know, are something that I think would need to get to TDLR and to the tech info. I'll suggest that to the ones that I didn't answer specifically. They are more --

>> Can't hear you, John.

>> Oh, there are some specific questions in there that would be good to go to tech info and thank you, Randi, for posting the web address there. I see -
- hold on.

What is an example of a nonconstruction complaint? Well, again, that would be an existing facility that has not been altered and was constructed prior to the effective date of the ADA. And so let's say we have an old building that they haven't done any modifications to, there is no construction activity that would trigger a complaint or would trigger compliance with the Texas Architectural Barriers Act. But there may be an obligation under the ADA to comply with readily achievable barrier removal as Mark talked about. And so that would be a nonconstruction complaint. If you feel that they have not met the obligation of readily achievable barrier removal, the complaint process would not be with the State of Texas. That would be a federal requirement and you would need to probably seek some legal counsel on that.

And again, on these complaints, my recommendation is always to first approach the business owner or the folks that you're dealing with there and express your concerns and the issues that you see because you're more likely to

get a satisfactory resolution than if they have pushback or if you're not getting satisfied, then the complaint process is there if you want to pursue it further.

Anything else?

>> I don't think there is --

>> Wait, sorry. Wait a minute. I got to scroll a little bit here.

>> What if the construction of a historic building was solely focused on the HVAC system, could that still be considered construction under the Texas Accessibility Standards?

>> It would actually depend on the scope of the renovation. If it is a mechanical system, the mechanical systems are exempt except to the extent that those elements are made available and/or subject to compliance.

For example, if you're just redoing the HVAC, which is the heating, ventilation, air conditioning system, but you're modifying things such as having thermostats that are available for the resident -- or for the occupants of the space or if you have to put in chases or other ventilation that may then alter the character or the usability of the space, I'm thinking of putting an air duct next to a doorway, then it may trigger compliance requirements, but if you're just replacing the air conditioning system and nothing that affects the usability of the space, then I would say, no, that that would not be considered.

>> And you have another one, significant historic hardware in a public facility that is a state antiquities landmark, would this qualify as a variance?

>> So what you're saying is that there is hardware within the facility that

is noncompliant, but it has been designated as a state antiquities landmark, I think it needs to be specific to the National Register of Historic Places or recorded Texas Historic Landmark. So I'm assuming it would fall under one of those. At that point then, the first course of action is to talk with the historic preservation or the council on historic preservation or the preservation officer to determine the nature of the -- the historic nature of that element and if there are any modifications that could be made to provide an accessible condition such as the addition of a lever that goes over the hardware as opposed to removal and replacement of the hardware.

>> Okay. All right, we still have like four minutes. So if I don't see any new questions that are generic -- or that are for everyone, so I just want to thank you, John and Mark, for joining us today. I appreciate the information. I learned a lot because I don't know this area of accessibility. So I'm glad I got to run the webinar.

I want to thank our sign language interpreters from Communication By Hand, and our captioning transcriber from Texas Closed Captioning. We will post the materials to our website at tx.gov/disabilities. Just click on the training area and then you can find the links to our webinar sessions and the training materials at the same location.

You will get a follow-up E-mail with an evaluation of the session and with the link to the training materials. So I thank you again for joining us today,

and I thank you presenters and everyone else. Y'all have a great afternoon.

>> Thank you.

>> Thank you.