

# Accommodating People with Disabilities

Staying out of court and making money in the process.

BY MARTIN S. EBEL



Bob Wilson (right) and Marty Ebel get ready to tee it up at Bethpage Black (New York) in 2006.

Everyone knows that the number of rounds of golf per year is stagnant, or even falling. There is a big push from industry groups to grow the game. The industry is interested in building the number of rounds at almost every facility. Each year, more and more new courses are coming on-line, and almost everyone is getting a smaller slice of the pie.

So why is it that with these declining numbers, the industry is not making concerted efforts to reach the 54 million people in this country with disabilities? Why isn't the industry aggressively seeking ways to keep baby boomers (now that they are entering their retirement years) in the game longer? I suspect the answer has lots of facets, but part of it must be that the industry doesn't realize how much revenue it's turning its back on.

According to one research group, the biggest reason why people leave the game is that it's too hard to get around — that there's too much walking. These are most likely people who have some sort of mobility impairment — people with disabilities. Often, these are core golfers — golfers with both the free time and the money to play the game regularly. Once they reach the point where it is too hard, they quit playing. If golf courses can keep even one core golfer in the game for an additional year, they can generate tremendous amounts of additional revenue. So let's look at a great way to keep these people in the game longer — the single-rider golf car.

There are at least three reasons to reach out to people with disabilities and offer them accommodations like a single-rider golf car: (1) It's the right thing to do, (2) it will make you money,

and (3) it's required by law (and fighting it will cost you money). The biggest debate seems to turn on whether courses must provide single-rider cars. It seems clear from a legal perspective that courses *must* supply single-rider golf cars to comply with the law.

You know accommodation is the right thing to do, and you don't need anyone to tell you this. Just as it was the right thing to do to open courses and clubs to people of color and to women, it is right (and fair and just) to offer accommodations and welcome people with disabilities.

It is also not that daunting. And all the rhetoric about people with disabilities is wrong. For

example, there are a number of incorrect positions about single-rider golf cars in the industry:

- (1) The law doesn't require them.
  - (2) They damage turf.
  - (3) It's too costly to provide them.
  - (4) There is no demand.
- All are dead wrong. Let's take a look.

Federal law requires accommodation of people with disabilities. The Americans with Disabilities Act explicitly applies to golf courses. Accordingly, the ADA requires golf courses to provide access to their facilities (clubhouse, pro shop, course, and practice facilities) and their programs (playing golf, renting a golf car). There are only a few things that will relieve the requirement — if there is an undue burden (meaning hugely expensive), if the accommodation fundamentally changes the program, or if the accommodation poses a danger. If an accommodation does not

pose an undue burden, alter the fundamental nature of the facility, or pose a safety hazard, *the golf course is required to supply the accommodation!*

This means that the first rumor is dispelled — golf facilities are required to provide accommodations by the plain language of the ADA. Furthermore, the U.S. Supreme Court in *Casey Martin v. PGA Tour, Inc.*, explicitly said that riding in a golf car does not change the nature of golf and was a reasonable accommodation. Furthermore, the U.S. Access Board, the group charged with regulating the design of facilities to ensure access for people with disabilities, makes clear that using a golf car is reasonable.

The Access Board Guidelines for Recreational Facilities *requires* new course construction to include one or more tee boxes that a golf car can enter on each hole. It *requires* a "path of travel" from tee to green that a golf car can negotiate. It *requires* that every green have a point of entry and exit for a golf car. The Access Board's requirement of construction, allowing a golf car to drive on the tees and greens, demonstrates that it's reasonable to drive golf cars over them. Couple this with the Department of Justice's requirement that rental car companies *must* supply adapted automobiles to people with disabilities, and it becomes clear that providing a single-rider car *is* required. Anecdotally, no golf course has successfully defended against a lawsuit seeking a single-rider golf car as an accommodation.

Second, single-rider golf cars don't damage turf, at least if they are operated responsibly. Like any other vehicle, reckless operation can cause damage. But the standard under the ADA is no fundamental alteration (i.e., permanent damage) to a facility. And there is no permanent turf damage associated with single-rider golf cars. They exert less pressure per square inch than an adult male at heel-strike. And really, do you suppose that Pebble Beach, Hazeltine National, Bethpage Black, and every single TPC (just to name 28 courses) would have single-rider cars in their fleets if they caused damage to *their* hallowed grounds?

Turning to cost, it's a myth that single-rider golf cars' expense is a defense against purchasing them. First, to obviate the need for an accommodation, the cost must be extreme in comparison to the total assets of the facility, taking into account its parents, subsidiaries, and other related financial sources. Second, single-rider golf cars, just as standard cars, can be in the





regular rotation and generate revenue for the course. You don't need to restrict their use to people with disabilities.

Additionally, a significant tax credit awaits businesses purchasing adaptive equipment. A business with either fewer than 30 full-time employees or under \$1 million in annual revenue is entitled to a 50% credit on the first \$10,000 it spends each year on adaptations. For most, this credit brings the cost of a single-rider car in line with a standard car. Those not eligible for the tax credit almost certainly fail the financial means test and can afford the car(s).

The last refrain heard from those opposing single-rider cars is that there is no demand for them. This is simply not recognized by the law as a reason for non-compliance. The reason that Congress enacted the ADA was that it found there was systemic, long-term exclusion of people with disabilities from all sorts of activities in this country. The reason there is no demand is because until very recently, most people with disabilities were unwelcome at golf courses.

The golf course industry should take a page from the snow ski industry's playbook. About 20 years ago (pre-ADA!), they decided to embrace people with disabilities. These facilities spent some money on equipment, training, and marketing. And they found that every person with a disability who came brought at least one, and sometimes many more, able-bodied people with them. They made money from these people and more money from their friends. In the lean years, this population helped some of the ski

operators survive. Today, adaptive programs are one of the features that ski resorts compete with each other on. It is a money-making proposition. There is money — perhaps lots of money — to be made catering to this segment.

In February at the Golf Industry Show, I spoke on this topic. The next day, the NGCOA published in the show's daily paper the following "clarification": "A GIS session yesterday has sparked questions concerning the legalities

surrounding single-rider golf cart[s]. Although the U.S. Department of Justice is currently reviewing the matter, there is no requirement that courses provide the cars."

Yes, the DOJ is looking at the issue of single-rider golf cars, but their issue is not whether to require single-rider cars — instead it is how many single-rider cars will be required at every course (one or two)! More importantly, these regulations will merely codify the existing law — law that *currently* requires reasonable accommodations, including single-rider cars, for people with disabilities.

You know it's the right thing to do. You can make money doing it. It'll cost you money if you don't. Add single-rider cars to your fleet now. If you do so and are ever sued for failing to accommodate someone, the fact that you put a car in your fleet will be presumptive evidence that you don't discriminate! Look for a car that has passed the same safety tests as the rest of your fleet. It's the right thing to do.

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