

BOARD OF REGENTS BRIEFING PAPER

1. AGENDA ITEM TITLE: Request to Proceed with Litigation Re: UNR Mackay Stadium
MEETING DATE: July 19, 2019

2. BACKGROUND & POLICY CONTEXT OF ISSUE:

University of Nevada, Reno (UNR) Mackay Stadium underwent renovations in 2015, and the architect of record, Worth Group Architects, P.C. (Worth Group), breached its contract with UNR by, among other things, drafting and providing designs that failed to comply with accessibility standards required by the Americans with Disabilities Act (ADA).

After construction was complete, UNR discovered the design deficiencies and brought them to Worth Group's attention. As a remedy, Worth Group prepared new designs and represented that the new designs complied with the ADA. Worth Group's redesign led to a second round of renovations, which were completed in 2017.

In an initiative unrelated to the Mackay Stadium renovation projects, and as part of its continual effort to ensure accessibility to its programs and services, UNR hired Environmental Management Group, Inc. (EMG) to update the UNR's ADA Transition Plan. In part, the purpose of the ADA Transition Plan is to identify ADA barriers at various facilities both on and off-campus, and Mackay Stadium was one of the facilities included in this study. At completion of its work in June 2018, EMG opined that accessible seating installed at Mackay Stadium pursuant to Worth Group's designs did not meet ADA standards.

As a result, UNR obtained the services of and a report by Ed Roether, who is an industry recognized architect with national experience in the area of ADA design of sports facilities. Mr. Roether has reviewed the design services rendered by Worth Group in 2015 and 2017 and confirmed that those services failed to comply with applicable ADA standards, necessitating additional renovations (attached as Exhibit 1). Mr. Roether has further concluded that a reasonable basis exists for filing action against Worth Group.

UNR's contract with Worth Group provides that Worth Group is financially responsible for additional construction costs that result from negligent errors and/or omissions in its design documents. Efforts to amicably resolve this matter with the Worth Group have been unsuccessful, and UNR will have sustained approximately \$3.9 million in total damages to correct Worth Group's errors and bring those areas of Mackay Stadium into ADA compliance (attached as Exhibit 2).

3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

NSHE Chief General Counsel Joe Reynolds and UNR General Counsel Mary Dugan request approval to file and litigate in state or federal court any complaints, appeals, and writ petitions against Worth Group and any currently known or unknown persons or entities necessary to advance and protect the legal interests of the Board, NSHE, and UNR regarding design deficiencies and/or recent upgrades to Mackay Stadium.

4. IMPETUS (WHY NOW?):

- Worth Group was the architect of record for renovations to Mackay Stadium in 2015 and 2017.

- UNR obtained the services of and a report by Ed Roether, an industry recognized architect with national experience in the area of ADA design of sports facilities. Mr. Roether has reviewed the design services performed by Worth Group and concluded that those services failed to comply with applicable ADA standards and that additional renovations are needed.
- Worth Group is contractually responsible for additional construction costs that result from negligent errors and/or omissions in its design services.
- UNR has demanded Worth Group to pay the costs of the needed renovations, but Worth Group has refused.
- The additional renovations needed to bring Mackay Stadium into compliance are significant. Construction is planned to commence following completion of the 2019-2020 football home season.

5. CHECK THE NSHE STRATEGIC PLAN GOAL THAT IS SUPPORTED BY THIS REQUEST:

Access (Increase participation in post-secondary education)

- Success (Increase student success)**
- Close the Achievement Gap (Close the achievement gap among underserved student populations)**
- Workforce (Collaboratively address the challenges of the workforce and industry education needs of Nevada)**
- Research (Co-develop solutions to the critical issues facing 21st century Nevada and raise the overall research profile)**
- Not Applicable to NSHE Strategic Plan Goals**

INDICATE HOW THE PROPOSAL SUPPORTS THE SPECIFIC STRATEGIC PLAN GOAL

Compliance with ADA at all UNR facilities increases student access to higher education.

6. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- Worth Group was contractually obligated to perform its design services in compliance with, among other things, the ADA standards.
- Ed Roether, an industry recognized architect with national experience in the area of ADA design of sports facilities, has reviewed the design services performed by Worth Group and concluded that those services failed to comply with applicable ADA standards and that additional renovations are needed.
- The additional renovations needed to bring Mackay Stadium into compliance are significant.
- Worth Group is contractually liable for additional construction costs that result from negligent errors and/or omissions in its design services.
- UNR has demanded Worth Group to pay the costs of the needed renovations, but Worth Group has rejected that demand.
- Attempts to informally resolve this matter with the Worth Group have been unsuccessful.

7. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

Litigation carries risks, including the risk of an adverse attorney fee or costs award.

8. ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:

Accept design work that is not in compliance with the contract, industry standards, or federal law, and require UNR to pay for correction of the resulting issues without contribution from the party whose breach of contract caused those additional costs.

9. RECOMMENDATION FROM THE CHANCELLOR'S OFFICE:

Approve request for authority to commence litigation.

10. COMPLIANCE WITH BOARD POLICY:

XX Consistent With Current Board Policy: Title 1, Section 3
Article 11, Section 4 of the Nevada State Constitution
Chapter 396 of the Nevada Revised Statutes

Amends Current Board Policy: Title # _____ Chapter # _____ Section # _____

Amends Current Procedures & Guidelines Manual: Chapter # _____ Section # _____

Other: _____

XX Fiscal Impact: Yes XX No _____

Explain: Costs Associated with Litigation

EXHIBIT 1

ED ROETHER CONSULTING, LLC

Report

Issued April 15, 2019

regarding the

University of Nevada, Reno Mackay Stadium

Recent Seating Upgrades Compliance

with the

Applicable Accessibility Standards

for the

Board of Regents of the Nevada

System of Higher Education

on behalf of the

University of Nevada, Reno

I was engaged by the Board of Regents of the Nevada System of Higher Education on behalf of the University of Nevada, Reno to assess whether the seating design described in the Worth Group's design documents complied with the applicable accessibility standards. My qualifications are in my resume' which is at the end of this report. I have over 40 years' experience as an architect, over 25 years focusing on compliance with accessibility standards for accessible design and about 30 years of experience with the design of sports facilities similar to Mackay Stadium, including five that were reviewed by the U.S. Department of Justice during previous employment. I have provided accessibility consulting services for over 8 years.

I developed my opinion using the following:

1. My 40 years' experience as an architect
2. My 25 plus years' experience in accessible design
3. My just shy of 30 years' experience in the design of Arenas, Stadiums and Ballparks
4. My experience as a member of the U.S. Department of Justice's Accessibility Regulatory Impact Analysis Panel during their adoption of the 2010 ADA Standards
5. My experience as the chair of the 2003 ICC/ANSI A117.1 Assembly Task Group, which included a representative of the U.S. Architectural & Transportation Barriers Compliance (Access) Board (ATBCB) as they were developing their 2004 ADA/ABA Accessibility Guidelines which was then adopted by U.S. Department of Justice's for their 2010 ADA Standards
6. My experience as the chair of the 2017 ICC/ANSI A117.1 – 2010 ADA Standards Harmonization Task Group, which again included a representative of the U.S. Architectural & Transportation Barriers Compliance (Access) Board (ATBCB)
7. My experience as a member of the International Code Council's Code Technology Committee's ADA/IBC Coordination Committee
8. The 2010 ADA Standards for Accessible Design (2010 ADA Standards)
9. The 2012 International Building Code
10. The American National Standard (ANSI) 2009 ICC/A117.1 as referenced by the 2012 International Building Code Section 1101.2
11. My first-hand experience with Department of Justice Interpretations on five similar sports facilities under the 1991 ADA Standards
12. The U.S. Department of Justice's opinion described in their "Guidance on the 2010 ADA Standards for Accessible Design", dated September 15, 2010
13. The U.S. Department of Justice's specific opinion expressed in their guidance that the 2010 ADA Standards "are expected to have minimal impact since they are consistent with the Department's longstanding interpretation of the 1991 Standards and technical assistance".
14. The following Worth Group design documents:
 - a. Mackay Stadium Seating Upgrades & Stadium Club Record Drawings, UNR Project No. 1304-P083, dated 16 December 2015 (many sheets dated 28 August 2015)
 - b. Mackay Stadium East Side Suite #4 Demo and New ADA Restroom, UNR Project No. 1304-P083, dated April 17, 2017 (architectural sheets dated 19 June 2017)
 - c. Mackay Stadium Accessible Seating Remodel, UNR Project No. 1304-P083, dated April 17, 2017 (sheets dated 19 June 2017)
 - d. Mackay Stadium – Accessible Seating, dated September 9, 2017, As-Built
 - e. Mackay Stadium – Accessible Seating Presentations, dated 12/2/2016, 1/4/2017, 01/14/2017, 2/3/2017 & 2/26/2017
 - f. Mackay Stadium Seating Upgrades & Stadium Club Bid Documents, UNR Project No. 1304-P083, dated 28 August 2015

15. The Nevada Revised Statutes §11.258
16. The Nevada Revised Statutes §338.180
17. The Professional Services Agreement between the Board of Regents of the Nevada System of Higher Education, acting on behalf of the University of Nevada, Reno and Worth Group Architects, dated May 8, 2013
18. The University of Nevada, Reno Campus Design & Construction Standards Section 2 Architectural Design Guidelines as revised in 2013, July 2015 and July 2017

Experience with U.S. Department of Justice's Interpretations:

While I was employed by a firm specializing in the design of arenas, stadiums and ballparks the design of five facilities was reviewed by the U.S. Department of Justice. As I understand it, after several court cases over the design of arenas, stadiums and ballparks the U.S. Department of Justice started selectively reviewing arenas, stadiums and ballparks in a more proactive effort rather than waiting for a complaint to arise. Four facilities; Wells Fargo Arena in Des Moines, Iowa, Trustmark Park in Pearl Mississippi, Citi Field in Queens, New York, and then Yankee Stadium in Bronx, New York was reviewed as the design was finishing, but construction had already commenced for each facility. Unlike the other three, the U.S. Department of Justice's review of Yankee Stadium was in response to a settlement agreement over the previous Yankee Stadium.

There was another facility, the Nationals Park in Washington D.C. where the U.S. Department of Justice initiated the review process early in the design process and provided input on their interpretations of the ADA Standards for Accessible Design well before construction commenced. The reviewer for all five facilities was on staff at the U.S. Department of Justice in Washington, D.C. I communicated with each reviewer along with having a dialogue where greater clarity was needed, but there were more detailed discussions over the standards with the U.S. Department of Justice on the Nationals Park. Their interpretations were consistent between the five facilities that I was involved with and my opinion is based upon my understanding of their interpretations.

2015 Design Observations:

Most of the Mackay Stadium seating existed prior to the adoption of the ADA, therefore existing construction per both the 1991 ADA Standards and the 2010 ADA Standards. In 2015, the Worth Group's design as described in the Mackay Stadium Seating Upgrades & Stadium Club Record Drawings, UNR Project No. 1304-P083, dated 16 December 2015, required the demolition and reconstruction of the center 2 sections of seats on the east side and the center 5 sections of seats on the west side of the lower seating bowl. It also included the demolition of the first two rows of seats in the existing sections on the west side and the construction of new wheelchair platforms on both the east and west side. Further, spaces on the west concourse were demolished for the construction of a stadium club with loge seats behind the altered seating. Finally, the 2015 design included the demolition of several rows of seats in front of the suites in the existing sections on the east side and the reconstruction of suite seating and a cross-aisle behind the seating in front of the suites. It also included selective demolition within the suites for an upgrade in finishes.

The seating modifications described above occurred after March 15, 2012, so the applicable accessibility standards for the Americans with Disabilities Act was the 2010 ADA Standards. The 2012 International Building Code is listed as the enforced building code. Both the 2010 ADA Standards and the 2012 International Building Code consider the seating modifications described above as alterations to existing construction. There were other alterations within the scope of the 2015 design by the Worth Group, but

this report only addresses the seating's compliance. The extent of altered construction is required to comply with the requirements for new construction except where it is technically infeasible.

The 2010 ADA Standards and the 2012 International Building Code defines "alteration" and "technically infeasible" as follows:

2010 ADA Standards:

Alteration. A change to a *building or facility* that affects or could affect the usability of the *building or facility* or portion thereof. *Alterations* include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, resurfacing of *circulation paths* or *vehicular ways*, changes or rearrangement of the structural parts or *elements*, and changes or rearrangement in the configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not *alterations* unless they affect the usability of the *building or facility*.

Technically Infeasible. With respect to an *alteration* of a *building or a facility*, something that has little likelihood of being accomplished because existing structural conditions would require removing or *altering* a load-bearing member that is an essential part of the *structural frame*; or because other existing physical or *site* constraints prohibit modification or *addition* of *elements, spaces, or features* that are in full and strict compliance with the minimum requirements.

2012 International Building Code:

[A] ALTERATION. Any construction or renovation to an *existing structure* other than *repair or addition*.

TECHNICALLY INFEASIBLE. An *alteration* of a *facility* that has little likelihood of being accomplished because the existing structural conditions require the removal or *alteration* of a load-bearing member that is an essential part of the structural frame, or because other existing physical or site constraints prohibit modification or addition of elements, spaces or features which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility.

Specific Observations of the 2015 Design:

East Side:

The wheelchair seating areas are best described on the seating plan 2/AS101 with the approximate seat totals under the Stadium Seating Notes on sheet AS101. This sheet shows 26 wheelchair spaces and 26 companion chairs at the field wall in front of the center two altered sections of seats. (*The approximate seat totals lists 28 companion seats 20" wide with the altered sections also having 20" wide seats.*) The 28 existing wheelchair spaces at the concourse remain with the existing seating outside the altered area of seating. The height of the wheelchair platform at the field wall is about 4 feet above the field perimeter with the first row of fixed seats about 2 feet higher. The height of the wheelchair platform is best described on detail 3/A601 and the height of the first row of fixed seats behind was estimated from this detail. As shown on sheet AS101, the wheelchair seating at the field wall is out in front and separate from the other seating and the wheelchair spaces are not integral with the altered sections of seats as required (Section 221.2.2 in the 2010 ADA Standards and Section 802.6 in the 2009 ICC/ANSI A117.1).

As shown on sheet AS101, section 2/A503 and then sheet A101, the wheelchair seating at the field wall is also not provided with substantially equivalent to, or better, viewing angles available to other

spectators in either the altered sections of seats or the existing sections of seats as required (Section 221.2.3 in the 2010 ADA Standards and Section 802.9.1 in the 2009 ICC/ANSI A117.1). Although players and coaches standing along the sideline blocks the view for many rows of seats the most obstructed views are those closer to the field and the spectators in wheelchairs have the greatest obstruction during a football game since they are 4 feet above the field of play and the first row of fixed seating is approximately 2 feet higher. But, these wheelchair spaces would have better views during soccer matches or track events.

As best shown on sheet A202, none of the east boxes are provided with a wheelchair space in its seating and at least one wheelchair space is required for each east box (Section 221.2.1.2 in the 2010 ADA Standards and Section 1108.2.2.2 in the 2012 IBC). Sheet A202 calls these spaces “East Boxes”, but designers of sports facilities currently commonly call these types of spaces “suites”. Historically, they have been called “luxury boxes, club boxes, sky boxes, suites along with other terms”. Both the 2010 ADA Standards and the 2012 IBC by the sections referenced above call these types of spaces “luxury boxes, club boxes and suites”. These types of spaces are primarily a lounge separated by full height walls having associated seating. This is distinctively different from “other boxes” which is primarily seating separated by low partitions or railing. Both “luxury boxes, club boxes and suites” as well as “other boxes” are sold on a box-by-box basis, general seating is sold on a seat-by-seat basis.

West Side:

Seating plan 1/AS101 shows 22 wheelchair spaces and 22 companion chairs at the field wall in front of the end sections of the center five altered sections of seats. 25 wheelchair spaces and 25 companion chairs are shown at the field wall in front of the existing end sections of seats. Seating plan 1/AS101, along with A101 and A191 of the record drawings, dated 16 December, 2015, also show 7 wheelchair spaces and 7 companion chairs at the cross-aisle in one of the center five altered sections of seats even though an accessible route to this location is not indicated. These wheelchair spaces and companion chairs at the cross-aisle were never built and apparently a graphical error, even though consistently shown on multiple sheets. *(In support of this only being a graphical error plans A101 and A191 of the bid documents, dated 28 August, 2015, do not show the wheelchair spaces and companion chairs at the cross-aisle.)* Seating plan 1/AS101 also shows 5 wheelchair spaces and 5 companion chairs at the level of loge seating. In summary, the drawings show a total of 59 new wheelchair spaces and 59 new companion chairs even though some are located with the existing seating. *(The approximate seat totals under the Stadium Seating Notes on sheet AS101 lists 65 companion seats 20” wide with the altered sections also having 20” wide seats.)* Seating plan 1/AS101 also shows the 10 existing wheelchair spaces at the concourse to remain with the existing seating outside the altered area of seating.

As shown on sheet AS101 and section 1/A502 and similar to the east side, the wheelchair seating at the field wall is not integral with either the altered or the existing sections of seats to remain as required (Section 221.2.2 in the 2010 ADA Standards and Section 802.6 in the 2009 ICC/ANSI A117.1). The center three sections at the field wall are shown similar to the outer two, but without either wheelchair seating or stadium seating. As shown on sheet AS101, section 1/A502 and then sheet A101, again the wheelchair seating at the field wall is not provided with substantially equivalent to, or better, viewing angles available to other spectators in either the altered sections of seats or the existing sections of seats as required (Section 221.2.3 in the 2010 ADA Standards and Section 802.9.1 in the 2009 ICC/ANSI A117.1). Although players and coaches standing along the sideline blocks the view for many rows of seats the most obstructed views are those closer to the field and the spectators in wheelchairs have the greatest obstruction during a football game since they are about 4 feet above the field of play and the first row of fixed seating is approximately 16 inches higher. Spectators in these wheelchair spaces would obstruct the views of other spectators more than those on the east side.

With regards to the 7 new wheelchair spaces and 7 new companion chairs shown in the record drawings at the cross-aisle that were not built, not only is an accessible route to this location not indicated, but the depth of the cross-aisle is insufficient for wheelchair spaces. Further, club seats shown in this row behind the wheelchair spaces conflict with the space for the wheelchair seating and these wheelchair spaces would not have lines of sight over standing spectators. The wheelchair spaces shown in this location are unrealistic and do not contribute to the number of wheelchair spaces provided by the design without significant modifications. Again, plans A101 and A191 of the bid documents, dated 28 August, 2015, do not show the wheelchair spaces and companion chairs at the cross-aisle so this is likely only a graphical error in the record drawings.

With respect to the loge seating behind the club seats, even though 5 wheelchair spaces and 5 companion chairs are shown in 3 separate spaces on sheets AS101, A201 and A222, the loge seating is considered "other boxes" per the 2010 ADA Standards and the 2012 IBC. As previously mentioned "other boxes" is primarily seating separated by low partitions or railing as shown in sheet A222. Wheelchair spaces are required in at least 20% of the boxes (Section 221.2.1.3 in the 2010 ADA Standards and Section 1108.2.2.3 in the 2012 IBC). There is some discrepancy between drawings on the number and locations of television cameras, but assuming there are 22 loge boxes regardless of whether the 3 boxes shown with wheelchair spaces are the same as the other loge boxes or not at least 5 loge boxes are required to have a wheelchair space since at least 20% results in a minimum of 5 boxes either way.

Finally, as shown in sheet AS101 and sections 2/A501 and 2/A601 the lines of sight provided spectators in the loge seating have some obstruction from the spectators seated in the club seats and club spectators are expected to stand. Wheelchair spaces are required to have lines of sight over spectators standing in front where spectators are expected to stand, which are not provided (Section 802.2.2 in the 2010 ADA Standards and Section 802.9 in the 2009 ICC/ANSI A117.1). Lines of sight over standing spectators are required for both wheelchair spaces associated with the seating in front as well as wheelchair spaces within a loge box.

Combined 2015 Seating Analysis:

The approximate seat totals on sheet AS101 lists a total of 4,109 stadium seats 20" wide, 358 club seats 22" wide and 93 companion seats 20" wide for the altered seating. The drawing on the west side shows 2,860 general seats and 2,885 are listed; the drawing matches the 238 seats listed for the west club. The 7 companion chairs do not appear to be included with the approximate seat totals. It is unclear what is considered the 93 companion chairs, excluding the existing wheelchair spaces and the 7 wheelchair spaces shown on the cross-aisle the drawings show a total of 53 wheelchair and 53 companion seats with the altered seating on the east side and west side combined. *(An additional new 25 wheelchair and 25 companion seats are shown with the existing seating on the west side.)*

The 120 listed for the east club/box are for the suites on the east side and calculated independently from the general seating. DOJ's opinion on how to calculate the required number of wheelchair spaces for a stadium is best explained in their Guidance on their Standards dated September 15, 2010. Following is an excerpt from that guideline:

"The 2010 Standards require each luxury box, club box, and suite in an arena, stadium or grandstand to be accessible and to contain wheelchair spaces and companion seats as required by sections 221.2.1.1, 221.2.1.2 and 221.3. In addition, the remaining seating areas not located in boxes must also contain the number of wheelchair and companion seating locations specified in the 2010 Standards based on the total number of seats in the entire facility excluding luxury boxes, club boxes and suites."

Following represents the total number of seats shown with the altered seating to determine the number of wheelchair spaces required for the altered seating if the entire stadium seating is not provided with a sufficient number of compliant wheelchair spaces:

1,224	East Side Seats
26	East Side Wheelchair Spaces
26	East Side Companion Seats
2,860	West Side Seats
27	West Side Wheelchair Spaces
27	West Side Companion Seats
<u>238</u>	<u>West Side Club Seats</u>
4,428	Total Seats

At least 33 wheelchair spaces and 33 companion chairs integral with altered seating is required for a total seat count between 4,401 and 4,550 seats (Section 221.2.1.1 in the 2010 ADA Standards and Section 1108.2.2.1 in the 2012 IBC). The number of wheelchair spaces provided with the altered seating is sufficient for the number of seats altered. However, except for the 5 wheelchair spaces and companion seats with the loge seating none are integrated with the altered seating as required and none of the wheelchair spaces and companion seats are provided with substantially equivalent to, or better, viewing angles available other spectators in the altered seating as required.

2015 Design Summary:

The following summarizes the Worth Group's 2015 design's compliance with the 2010 ADA Standards and the 2012 IBC, including the 2009 ICC/ANSI A117.1 as described in the Mackay Stadium Seating Upgrades & Stadium Club Record Drawings, UNR Project No. 1304-P083, dated 16 December 2015:

1. 33 WCs with 33 Comps required with the alteration, 53 WCs with 53 Comps provided
2. All wheelchair seating is required to be integral with the altered seating, only the 5 with the loge seating are integral
3. Wheelchair seating is required to have substantially equivalent viewing angles as other spectators, none of the 53 WCs with 53 Comps have substantially equivalent viewing angles as other spectators
4. Wheelchair seating is required to have lines of sight over standing spectators where spectators are expected to stand and the club spectators are expected to stand, the wheelchair seating by the loge seating is not provided with lines of sight over standing spectators
5. Each east box is required to have a wheelchair space in the box seating, none of the east boxes are provided with a wheelchair space
6. At least 20% of the west side loge boxes are required to be on an accessible route and have a wheelchair space in the box seating, there appears to be an accessible route to each loge box but none are provided with lines of sight over standing spectators for spectators in wheelchairs

2017 Design Observations:

In 2017, the Worth Group's design as described in Mackay Stadium East Side Suite #4 Demo and New ADA Restroom along with Mackay Stadium Accessible Seating Remodel, both with UNR Project No. 1304-P083 and dated April 17, 2017, approached the accessible seating holistically for the total stadium rather than limiting it to the extent of altered seating. Providing a sufficient number of wheelchair spaces that comply with the applicable requirements would comply with both the 2010 ADA Standards and the 2012 International Building Code. However, the stadium accessible seating calculations on sheet AS-101 of the Mackay Stadium Accessible Seating Remodel do not include the wheelchair spaces

with the seating capacity as required by the Department of Justice. Wheelchair spaces contribute to the total number of seats in the entire facility. Again, DOJ’s opinion on how to calculate the required number of wheelchair spaces for a stadium is best explained in their Guidance on their Standards dated September 15, 2010, see excerpt below:

“The 2010 Standards require each luxury box, club box, and suite in an arena, stadium or grandstand to be accessible and to contain wheelchair spaces and companion seats as required by sections 221.2.1.1, 221.2.1.2 and 221.3. In addition, the remaining seating areas not located in boxes must also contain the number of wheelchair and companion seating locations specified in the 2010 Standards based on the total number of seats in the entire facility excluding luxury boxes, club boxes and suites.”

Following represents the total number of seats shown in the stadium to determine the number of wheelchair spaces and companion seats required:

2,231	North Grandstand
9	North Grandstand Wheelchair Spaces
11,325	East Side Seats
84	East Side Wheelchair Spaces
6,588	South Grandstand
20	South Grandstand Wheelchair Spaces
5,514	West Grandstand
<u>28</u>	<u>West Grandstand Wheelchair Spaces</u>
25,799	Total Seats

Both the 2010 ADA Standards and the 2012 IBC require a wheelchair space for a fraction established when dividing by 200 (Table 221.2.1.1 in the 2010 ADA Standards and Table 1108.2.2.1 in the 2012 IBC). Therefore, the number of wheelchair spaces required for a total seat count between 25,601 and 25,800 seats is 140, not 139 as indicated. The number of wheelchair spaces indicated with the accessible seating remodel is sufficient for the number of seats in the stadium. However, the number of wheelchair spaces provided that complies with the applicable requirements needs further consideration to determine the number of compliant wheelchair spaces provided. The following provides specific observations of the remodel impact on each area of the stadium.

Specific Observations of the 2017 Accessible Seating Remodel:

East Side:

The wheelchair spaces at the concourse level on the east side existed prior to the alteration and based upon the information provided in the 2015 design they appeared to have lines of sight over standing spectators, based upon some assumptions. *(A section through the existing seating is not included in either the 2015 or the 2017 drawings. It is assumed that the extent of the aisles shown in plan is accurate and that the slope of the seating is similar to the altered seating.)* However, after the 2017 remodel the spectators in those existing wheelchair spaces would see less of the field than other spectators seated or standing. In other words, the wheelchair seating added in the 2017 remodel as shown in the enlarged plans 4 & 5/AS-201 obstruct the views of spectators in the wheelchair spaces that existed prior to the remodel. The lines of sight are obstructed primarily by the railings associated with the ramp accessing the new wheelchair seating area but also to lesser extent spectators in the new wheelchair spaces. The new wheelchair spaces have lines of sight over standing spectators, but due to the obstructed views for the existing wheelchair spaces the remodel essentially reduced the number of compliant wheelchair spaces rather than increasing them. Also, the ramps to the new wheelchair

platforms do not have landings with at least 60 inch clear length at the platform as required (Section 405.7.3 in both the 2010 ADA Standards and the 2009 ICC/ANSI A117.1).

The wheelchair spaces added in front of the suites appear to have lines of sight over standing spectators based upon sections 1 & 2/AS-203. However, spectators in the suites behind the wheelchair seating have some degree of sightline obstruction from the wheelchair seating. None of the suites are provided with a wheelchair space as part of the accessible seating remodel as shown on sheet AS-101 and enlarged plan 2/AS-201 and at least one wheelchair space is required in each suite's seating (Section 221.2.1.2 in the 2010 ADA Standards and Section 1108.2.2.2 in the 2012 IBC). A spectator in a suite's wheelchair space is required to have lines of sight over spectators standing in front of the suite, but only required to have lines of sight over other suite spectators seated (Section 802.2.1 and 802.2.2 in the 2010 ADA Standards and 802.9 in the 2009 ICC/ANSI A117.1).

The wheelchair seating at the field wall was not modified as part of the accessible seating remodel, again spectators in this wheelchair seating are not provided with substantially equivalent, or better, viewing angles as other spectators during football games as required (Section 221.2.3 in the 2010 ADA Standards and Section 802.9.1 in the 2009 ICC/ANSI A117.1). Also, this wheelchair seating is not integral with any seating as required (Section 221.2.2 in the 2010 ADA Standards and Section 802.6 in the 2009 ICC/ANSI A117.1).

In summary, the number of wheelchair spaces in compliance with the accessibility standards on the east side would be the 17 in front of the suites (excluding 1 impacting the ramp landing) and the 7 added in front of the existing wheelchair spaces on each end for a total of 31 wheelchair spaces, in lieu of the 84 claimed.

West Side:

It appears that the wheelchair spaces added in front of the club seats have lines of sight over standing spectators based upon the information provided in plan detail 3/AS-201 and section 4/AS-203. However, spectators in the club seats and loge seats have fairly significant obstruction to their lines of sight due to the spectators in those wheelchair spaces. The club seats and loge seats had some degree of sightline obstruction prior to adding the wheelchair spaces and adding these wheelchair spaces only exacerbated their less than desirable lines of sight.

With regards to the club seating, a proportional amount of wheelchair spaces integral with the club seats are required and the inclined platform lifts added with this accessible seating remodel appears to have eliminated one of the wheelchair seating areas by the loge seating per 3/AS-201. Further, this accessible seating remodel appears to also have eliminated one wheelchair space in each pair of wheelchair spaces previously shown on each end of the loge seating. Again, since spectators would be expected to stand, wheelchair spaces for the club seating would require lines of sight over standing spectators.

With respect to the loge seating behind the club seats, again this seating is considered "other boxes" per the 2010 ADA Standards and the 2012 IBC; as such wheelchair spaces are required in at least 20% of the boxes. As shown in 3/AS-201 and 9/AS-802 the loge seating does not appear to have changed with this accessible seating remodel other than the impact of providing the inclined platform lift and minor relocation of the center tables. Again, assuming there are 22 loge boxes regardless of whether the boxes shown with wheelchair spaces are the same as the other loge boxes or not at least 5 loge boxes are required to have a wheelchair space since at least 20% results in a minimum of 5 boxes. Since spectators would be expected to stand in front of the loge boxes, wheelchair spaces for the loge boxes would need to have lines of sight over spectators standing in front of the boxes, which are not provided.

With respect to the wheelchair spaces with the existing seating sections, the 10 wheelchair spaces shown on AS-101 that existed prior to 2015 do not appear to have lines of sight over standing spectators. However, the 10 wheelchair spaces shown in 1/AS-201 that were added with the accessible seating remodel appear to have lines of sight over standing spectators.

In summary, the number of wheelchair spaces in compliance with the accessibility standards on the west side would be the 6 in front of the club seats and the 10 added behind the existing seating on the south end for a total of 16 wheelchair spaces, in lieu of the 28 claimed.

South Side:

The stadium seating on the south side is considered existing construction since it existed prior to the adoption of the ADA Standards, including the 20 wheelchair spaces that exist with this south seating as shown on AS-101. This was not modified as part of the 2017 accessible seating remodel, but whether it complies with the standards needs consideration since it is included with the overall number of wheelchair spaces provided. The first row of the southern grandstand appears to serve as a cross-aisle due to the height of the guard along the front and the stairs on each end. However, a vomitory serves each center aisle and stairs connect each end aisle to grade behind the wheelchair seating, so it appears that egress is provided without using the space in front of the wheelchair spaces as a cross-aisle. Currently, the guard has some impact to the lines of sight for the spectators in wheelchairs. Since the guard existed prior to 2015, there should be some consideration for modifying the guard to improve lines of sight to the extent technically feasible. Modifying the guard is anticipated to be relatively minor but would require approval of local code enforcement, so the 20 wheelchair spaces and 20 companion seats currently provided would be compliant on the assumption that the guard will be modified to the extent allowed by code enforcement.

North Side:

The stadium seating on the north side is also considered existing construction since it existed prior to the adoption of the ADA Standards and 9 wheelchair spaces exist with this north seating. *(There is some discrepancy between documents since the Mackay Stadium Accessible Seating Remodel documents, dated April 17, 2017 indicate 9 wheelchair spaces and the Mackay Stadium – Accessible Seating documents, dated September 9, 2017, indicate 14 wheelchair spaces.)* The north side differs from the south since the first row of the grandstand serves as a cross-aisle since the aisles from above use it to connect to the center vomitories and end stairs. Currently, the guard impacts the lines of sight for the spectators in wheelchairs which would need some modification to the extent technically feasible. Again, modifying the guard is anticipated to be relatively minor but would require approval of local code enforcement, so the 9 wheelchair spaces and 9 companion seats currently provided would be compliant on the assumption that the guard will be modified to the extent allowed by code enforcement.

Combined 2017 Seating Analysis:

There is discrepancy between the seat counts on sheet AS-100 the stadium egress plan and sheet AS-101 the accessible seating plan. The accessible seating plan (AS-101) shows 197 more fixed seats than the stadium egress plan (AS-100). More seats are shown in each grandstand, so the following is based upon AS-101, with one exception, since it has the largest number of seats. The number of seats in the east grandstand listed on AS-101 is considerably more than the other grandstands from AS-100, so it appears to include the 120 occupants in the east boxes. Reducing the number of seats in the east grandstand by 120 would result in similar discrepancy as the other grandstands. Therefore, the number of seats listed in the east grandstands will be reduced by 120 based upon that assumption.

As described above as well as for each side the resultant seat count would be as follows:

2,231	North Grandstand
9	North Grandstand Wheelchair Spaces
11,105	East Side Seats
31	East Side Wheelchair Spaces
6,588	South Grandstand
20	South Grandstand Wheelchair Spaces
5,514	West Grandstand
<u>16</u>	<u>West Grandstand Wheelchair Spaces</u>
25,614	Total Seats

The number of wheelchair spaces required for a total seat count between 25,601 and 25,800 seats is 140. The number of compliant wheelchair spaces provided after the accessible seating remodel is 76 (81 if there are 14 wheelchair spaces with the north grandstand), not 141 as indicated. The number of compliant wheelchair spaces provided is insufficient for the number of seats in the stadium. Essentially, almost half of the wheelchair spaces provided with the accessible seating remodel in 2017 are not in compliance with either the 2010 ADA Standards or the 2012 IBC/2009 ANSI A117.1 for one reason or another.

2017 Design Summary:

The following summarizes the Worth Group's 2017 design's compliance with the 2010 ADA Standards and the 2012 IBC, including the 2009 ICC/ANSI A117.1 as described in the Mackay Stadium Accessible Seating Remodel, UNR Project No. 1304-P083 and dated April 17, 2017:

1. 140 WCs with 140 Comps required for the total stadium, 76 WCs with 76 Comps comply with the standards, i.e. integral with the seating, have substantially equivalent viewing angles as other spectators and have lines of sight over standing spectators
2. Each east box is required to have a wheelchair space in the box seating, none of the east boxes are provided with a wheelchair space
3. At least 20% of the west side loge boxes are required to be on an accessible route and have a wheelchair space in the box seating, there appears to be an accessible route to each loge box but none are provided with lines of sight over standing spectators for spectators in wheelchairs

Overall Opinions of the 2015 and 2017 Designs:

Based upon the Worth Group's 2015 design and their 2017 design as described in their documents referenced above as well as the 5 presentation drawings showing design options for bringing the seating into compliance between 12/2/2016 & 2/26/2017 it is apparent that the Worth Group lacked sufficient knowledge of stadium seating design to adequately address the accessibility requirements. One example, in addition to those previously described is on page 7 of the 12/2/2016 seating options presentation which confuses the ANSI A117.1 requirement for the dispersion of wheelchair seating with the quantity of wheelchair spaces required. Another example, as previously mentioned, is that the club seats and loge seats have compromised sightlines for the general spectators and the sightlines for the spectators in wheelchairs in that area are even further compromised. It has been my experience that sports facility designers would not have made some of the basic errors observed in the documents. The Worth Group should have hired a stadium designer to assist with their design. It is common for sports facility designers to work under the architect of record to provide their special expertise.

Conclusions:

Based upon my observations of the 2015 design documents, it is my professional opinion that the Worth Group lacked a basic understanding of the accessibility requirements for incorporating wheelchair seating in assembly areas with fixed seating. Although a sufficient number of wheelchair spaces and companion seats were provided with the seating alterations, they were not provided with substantially equivalent, or better, viewing angles as other spectators during football games and few of them were integral with other seating. This opinion was reinforced with the 2017 accessible seating remodel. While greater integration was provided with the 2017 design, essentially a little over half of the wheelchair spaces provided fully comply with the standards. It has been my experience that architects familiar with the accessibility requirements for wheelchair seating in assembly areas with fixed seating would not make the basic mistakes observed in the Worth Group's design documents.

It is also my professional opinion that it was technically feasible for the design to incorporate wheelchair seating in compliance with the standards. Therefore, as much as I don't want to say this about another architect, I have concluded that there is a reasonable basis for filing action against the Worth Group.

Edward M. Roether, R.A.
President, Ed Roether Consulting LLC

Ed Roether served as a project architect for several architectural firms in the Kansas City metropolitan area from 1977 to 1990. He started working for Populous (formerly known as HOK Sport, Venue, Event) as a project architect in 1989, and then from 1990 to 2010, he was responsible for the Populous Quality Assurance program, including code and ADA compliance. He directed this program, facilitating office wide quality improvements including meeting the needs of the public relative to accessibility and life safety.

From his experience as a practicing architect since 1977 and his involvement with code development, Ed has developed an intimate understanding of the requirements for accessibility and life safety, along with construction standards. Ed's impact on design standards and codes has been recognized industry-wide. Following are just some of the projects that he has worked on:

Arena

- Bridgestone Arena, Nashville, Tennessee
- Xcel Energy Center, St. Paul, Minnesota
- Jobing.com Arena, Glendale, Arizona
- Sprint Center, Kansas City, Missouri
- Consol Energy Center, Pittsburgh, Pennsylvania
- KFC Yum! Center, Louisville, Kentucky

Major League Baseball Park

- Coors Field, Denver, Colorado
- AT & T Park, San Francisco, California
- Petco Park, San Diego, California
- Nationals Park, Washington, D.C.
- Yankee Stadium, New York City, New York
- Target Field, Minneapolis, Minnesota

Hotels

- Hotel AC Westport, Kansas City, Missouri
- Aqua Waikiki Wave, Honolulu, Hawaii
- Sheraton Crown Center, Kansas City, Missouri
- Westin Crown Center, Kansas City, Missouri

Education

Kansas State University
Bachelor of Science Degree in Architecture

Committees/ Task Groups

U.S. D.O.'s. Accessibility Regulatory Impact Analysis Panel
ICC/ANSI A117 Accessible and Usable Buildings and Facilities
Chaired the 2003 ICC/ANSI A117.1 Assembly Task Group
Current Chair: ADA/A117 - Harmonization Task Group
NFPA 101 Assembly Occupancies and Membrane Structures
Current Chair: Assembly Life Safety Task Group
Current Chair: Assembly Aisle Transition Task Group
NFPA 101/5000-72 Joint Task Group on Occupant Notification
ICC/CTC ADA/IBC Coordination Committee
ICC/CTC Open Stairway Study Group
ICC/CTC ICC 300 Coordination with IBC Group
ICC/CTC Guard Study Group

NFL Stadium

- Bank of America Stadium, Charlotte, North Carolina
- Reliant Stadium, Houston, Texas
- Gillette Stadium, Foxboro, Massachusetts
- M & T Bank Stadium, Baltimore, Maryland
- Raymond James Stadium, Tampa, Florida
- University of Phoenix Stadium, Glendale, Arizona

Minor League Baseball Park

- Canal Park, Akron, Ohio
- Harbor Park, Norfolk, Virginia
- Isotope Park, Albuquerque, New Mexico
- Richmond County Bank Ballpark, Staten Island, New York
- First American Bank Ballpark, Midland, Texas
- Alliance Bank Stadium, Syracuse, New York

Miscellaneous

- Tnemec Technology Center, Kansas City, Missouri
- Cargill Office Center, Wayzata, Minnesota
- VA San Jose Outpatient Clinic, San Jose, California
- VA Mental Health Building, Kansas City, Missouri

Registrations

Missouri

Publications

Co-author: Section 20, Chapter 20-9 Assembly Occupancies
NFPA Fire Protection Handbook Twentieth Edition
Co-author: Managing Emergencies
NFPA Journal July/August 2011

“EXHIBIT B” - Schedule of Hourly Rates for ADA Consulting Services
Ed Roether Consulting, LLC
Effective 6-7-2017

Accessibility Services

Ed Roether - (Design Consulting Time)	\$250.00
(Legal Assessment and Testimony Time)	\$350.00



University of Nevada, Reno

EXHIBIT 2

Bryan L. Wright
Assistant General Counsel

June 3, 2019

Via Email Only

Christine Drage, Esq.
Weil & Drage
2500 Anthem Village Drive
Henderson, NV 89052
cdrage@weildrage.com

Re: *Mackay Stadium Project*
Worth Group Architects
Your File No. 2022.141

Dear Ms. Drage,

Please allow this letter to serve as notice that the University intends to seek authorization from the Board of Regents of the Nevada System of Higher Education at its September 2019 Quarterly Meeting to initiate legal action against Worth Group Architects, P.C. A courtesy copy of the draft complaint is attached.

As you will see in the draft complaint, the University engaged Ed Roether Consulting, LLC to review Worth Group's design on the Mackay Stadium project. Mr. Roether is an industry recognized architect with national experience in the area of accessible design of sports facilities. Mr. Roether has concluded, in compliance with NRS 11.258, that a reasonable basis exists for filing action against Worth Group.

As detailed more fully in his report (which is also attached), Mr. Roether bases that conclusion on Worth Group's repeated failures, both in the 2015 original design and the 2017 redesign, to comply with applicable accessibility standards. Indeed, Mr. Roether observed that "Worth Group lacked a basic understanding of the accessibility requirements for incorporating wheelchair seating in assembly areas with fixed seating" and that "architects familiar with the accessibility requirements for wheelchair seating in assembly areas with fixed seating would not make the basic mistakes observed in the Worth Group's design documents." The University believes these observations and conclusions to be accurate, and is confident it will be able to prove these deficiencies in court.

The Agreement to Provide Professional Services between Worth Group and the University provides that Worth is financially responsible for additional construction costs that result from negligent errors and/or omissions in its design documents. In addition to the costs already identified in Sean McGoldrick's December 5, 2016 correspondence to Doug Worth, totaling \$88,349, the University expended \$706,695 in 2017 in implementing Worth Group's redesign:

University of Nevada, Reno
Office of the General Counsel
1664 N. Virginia Street/MS 0550
Reno, Nevada 89557-0550
(775) 784-1015
(775) 327-2202 fax
bryanwright@unr.edu

Exhibit	Scope	Firm	Contract Amount	PO Number	Paid to Date	Expected Total	Additional Expected Payments
	Additional Design Services Fee	HOK	\$12,000	01-00005577	\$12,000	\$12,000	\$-
11	Plan Check/ Inspection Fees	SPWD	\$27,026	N/A	\$12,027	\$12,026	\$-
12	Pre-construction Services	Gilbane	\$23,620	01-00005444	\$7,086	\$23,620	\$16,534
13	Special Inspections	CME	\$4,115	01-00008184	\$-	\$4,115	\$4,115
14	Construction	Gilbane		TBD	\$-	\$2,680,172	\$2,680,172

TOTALS**\$311,666****\$216,955****\$3,090,474****\$2,873,520**

As you can see, the total amount the University will incur in addressing and correcting Worth Group's deficient design work totals \$3,797,169. If this matter proceeds to trial, the University is confident it will be able to prove and recover the entirety of this amount. Nonetheless, the University is cognizant of the fact this amount exceeds the limits of Worth Group's professional liability policy applicable to this project. Accordingly, and in an effort to avoid protracted litigation, the University hereby demands payment in the amount of the available policy limits of \$2,000,000. If payment or a firm commitment to tender payment is not made by June 18, 2019, in conformance with Nevada's Open Meeting Law the University will have no choice but to publicly seek authority from the Board of Regents to initiate litigation.

Your attention and prompt response to this matter is required.

Best Regards,

/s/ Bryan Wright

Bryan L. Wright, Esq.

University of Nevada, Reno
Office of the General Counsel
1664 N. Virginia Street/MS 0550
Reno, Nevada 89557-0550
(775) 784-1015
(775) 327-2202 fax
bryanwright@unr.edu