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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
C.A. NO. 08-04641-B

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JOHNSON GOLF MANAGEMENT, INC.,

Plaintiff

vs

TOWN OF DUXBURY, and NORTH HILL ADVISORY
COMMITTEE, Consisting of MICHAEL DOOLIN,
CHAIRMAN, SCOTT WHITCOMB, ROBERT M. MUSTARD,
JR., MICHAEL MARLBOROUGH, ANTHONY FLOREANO,
MICHAEL T. RUFO, THOMAS K. GARRITY, RICHARD
MANNING, W. JAMES FORD, and GORDON CUSHING
(EX OFFICIO) and CALM GOLF, INC., and
CHARLES LANZETTA,

Defendants
-----X

DEPOSITION OF RICHARD R. MacDONALD, taken
on behalf of the Plaintiff, pursuant to the
applicable provisions of the Massachusetts Rules
of Civil Procedure, before James A. Lyons, CSR
No. 117993, a Registered Diplomat Reporter,
Certified Realtime Reporter and Notary Public in
and for the Commonwealth of Massachusetts, at
the offices of Follansbee & McLeod, LLP, 536
Granite Street, 3rd Floor, Braintree,
Massachusetts, on Tuesday, December 15, 2009,
commencing at 10:30 a.m.

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<p>1 <u>APPEARANCES:</u></p> <p>2</p> <p>3 Stephen R. Follansbee, Esq., Follansbee & McLeod, LLP 536 Granite Street, 3rd Floor 4 Braintree, Massachusetts 02184 Attorney for the Plaintiff</p> <p>5</p> <p>6 Robert S. Troy, Esq., Troy Wall Associates 7 90 Route 6A Sandwich, Massachusetts 02563-1866 8 Attorney for the Defendants, Town of Duxbury, Et Als.</p> <p>9</p> <p>10 <u>ALSO PRESENT:</u></p> <p>11 Douglas Johnson 12 Jason Laramie (For Johnson Golf Management, Inc.)</p> <p>13</p> <p>14</p>	<p>5</p> <p>1 <u>EXAMINATION BY MR. FOLLANSBEE:</u></p> <p>2 Q. Good morning, sir. Could you please state your 3 name and occupation?</p> <p>4 A. Richard MacDonald, M-a-c capital D-O-N-A-L-D, 5 town manager for the Town of Duxbury.</p> <p>6 Q. And how long have you been the town manager for 7 the Town of Duxbury, sir?</p> <p>8 A. June 2005.</p> <p>9 Q. And with regard to your educational training, 10 beginning with high school, could you take us 11 through your educational background?</p> <p>12 A. I have a high school education. I have a 13 bachelor of science degree in business 14 administration.</p> <p>15 Q. And where did you go to high school?</p> <p>16 A. Saugus High School.</p> <p>17 Q. And when did you graduate, sir?</p> <p>18 A. 1965.</p> <p>19 Q. And you obtained a bachelor's degree from what 20 institution?</p> <p>21 A. Emmanuel College.</p> <p>22 Q. When was that?</p> <p>23 A. Roughly '91.</p> <p>24 Q. And were you a full-time student at Emmanuel</p>
<p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>DEPOSITION OF RICHARD R. MacDonald</p>	<p>18</p> <p>19 Q. And you obtained a bachelor's degree from what 20 institution?</p> <p>21 A. Emmanuel College.</p> <p>22 Q. When was that?</p> <p>23 A. Roughly '91.</p> <p>24 Q. And were you a full-time student at Emmanuel</p> <p>DEPOSITION OF RICHARD R. MacDonald</p>
<p>1 <u>I N D E X</u></p> <p>2 <u>Deposition of:</u> <u>Page</u></p> <p>3 RICHARD R. MacDonald</p> <p>4 Examination by Mr. Follansbee 5</p> <p>5</p> <p>6</p> <p>7 <u>Exhibits</u> <u>Page</u></p> <p>8 No. 14 Packet of North Hill Country 18 Club Non-Price Evaluation Forms for October of 2008 RFP</p> <p>9</p> <p>10 No. 15 Criteria Evaluation Standards 39</p> <p>11 No. 16 Questions regarding Pre-Bid 42 Conference October 2, 2008 at 10:00 a.m.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>DEPOSITION OF RICHARD R. MacDonald</p>	<p>6</p> <p>1 College?</p> <p>2 A. Part-time.</p> <p>3 Q. And when did you attend Emmanuel College?</p> <p>4 A. Late '80s, into the '90s.</p> <p>5 Q. And what year did you receive your degree?</p> <p>6 A. I believe it was early '90s, '91, '92.</p> <p>7 Q. And it's a bachelor of science degree?</p> <p>8 A. Yes.</p> <p>9 Q. And the field again, was that business 10 administration?</p> <p>11 A. Business administration.</p> <p>12 Q. Prior to obtaining your position as town 13 manager in June of 2005, what did you do 14 immediately prior to that by way of vocation?</p> <p>15 A. Director of Inspectional Services for the Town 16 of Duxbury.</p> <p>17 Q. And what years were you Director of Inspectional 18 Services?</p> <p>19 A. 1996 to 2005.</p> <p>20 Q. And prior to 1996, what was your occupation?</p> <p>21 A. Well, I was the Director Of Inspectional 22 Services/assistant town manager for the Town of 23 Saugus.</p> <p>24 Q. And what year did you have the position of</p> <p>DEPOSITION OF RICHARD R. MacDonald</p>
<p>1 <u>P R O C E E D I N G S</u></p> <p>2</p> <p>3 MR. FOLLANSBEE: As far as stipulations.</p> <p>4 MR. TROY: I would just, you know, agree 5 to the rules.</p> <p>6 MR. FOLLANSBEE: So do you want him to 7 sign before a notary public?</p> <p>8 MR. TROY: Right. We'll just abide by 9 the rules of civil procedure --</p> <p>10 MR. FOLLANSBEE: Okay.</p> <p>11 MR. TROY: -- for everything.</p> <p>12 MR. FOLLANSBEE: As far as objections, 13 are you waiving any objections?</p> <p>14 MR. TROY: No.</p> <p>15 MR. FOLLANSBEE: Okay.</p> <p>16 Swear in the witness, please.</p> <p>17</p> <p>18 RICHARD R. MacDonald, a witness called on 19 behalf of the Plaintiff, first having been 20 satisfactorily identified by their Massachusetts 21 driver's license, then duly sworn, on oath 22 deposes and says as follows:</p> <p>23</p> <p>24</p> <p>DEPOSITION OF RICHARD R. MacDonald</p>	<p>7</p> <p>1 assistant town manager and Director of 2 Inspectional Services in Saugus? For what time 3 period?</p> <p>4 A. 1991 to 1996.</p> <p>5 Q. And prior to 1991, what was your occupation?</p> <p>6 A. President of R. R. MacDonald Mechanical 7 Contracting.</p> <p>8 Q. And was that a Massachusetts corporation?</p> <p>9 A. Yes, it was.</p> <p>10 Q. And how long did you have that occupation?</p> <p>11 A. 20 some odd years.</p> <p>12 Q. So from, roughly, 1971 to 1991?</p> <p>13 A. '70s, yeah, more like 1978.</p> <p>14 Q. '78 to '91?</p> <p>15 A. Right.</p> <p>16 Q. And 1965 to 1978, what did you do for an 17 occupation?</p> <p>18 A. I was in the United States Marine Corps and then 19 I was in Local 12.</p> <p>20 Q. And what is Local 12?</p> <p>21 A. It's a plumbers union.</p> <p>22 Q. So for a period of time, you worked as a union 23 plumber?</p> <p>24 A. Well, briefly. And then I went into the</p> <p>DEPOSITION OF RICHARD R. MacDonald</p>

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1 management field with a company called P. C.
 2 Huggins.
 3 Q. H-U-G-G-I-N-S?
 4 A. Correct.
 5 Q. And where was P. C. Huggins located?
 6 A. Saugus, Mass.
 7 Q. Now, directing your attention --
 8 Well, would that complete all of your
 9 various employment positions since graduation
 10 from high school?
 11 A. I beg your pardon?
 12 Q. Have we covered all of your various employment
 13 situations since you graduated from high
 14 school?
 15 A. Briefly, I was with the City of Beverly from '88
 16 to '91.
 17 Q. What did you do for Beverly?
 18 A. I was with the health department.
 19 Q. And what was your job assignment?
 20 A. Health agent.
 21 Q. Now, prior to 2005, when you obtained your
 22 position as the town manager, did you have any
 23 experience with public procurement procedures in
 24 Massachusetts?

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1 A. Prior to 2005?
 2 Q. Yes.
 3 A. Yes.
 4 Q. And what involvement did you have with public
 5 procurement prior to 2005?
 6 A. The Town of Saugus.
 7 Q. Did you have any role as either a chief
 8 procurement officer or in the office of
 9 procurement in the Town of Saugus?
 10 A. No.
 11 Q. Did you have any formal training in the public
 12 procurement field when you were working in
 13 Saugus?
 14 A. No.
 15 Q. Since you began working in the Town of Duxbury,
 16 have you had any training in the field of public
 17 procurement?
 18 A. No.
 19 Q. And am I correct that, as the town manager in
 20 Duxbury, you are also the chief procurement
 21 officer for the town?
 22 A. Yes.
 23 Q. Now, as the chief procurement officer for Town
 24 of Duxbury, did you have occasion to become

DEPOSITION OF RICHARD R. MacDONALD

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1 familiar with the Massachusetts Uniform
 2 Procurement Act, which is General Laws, Chapter
 3 30B?
 4 A. I've read it.
 5 Q. And other than having read it, have you had any
 6 training at all with regard to that?
 7 A. No.
 8 Q. And when did you read it?
 9 A. I don't recall.
 10 Q. With regard to the procurement process seeking
 11 an operator for the North Hill Country Club in
 12 calendar year 2008, did you have occasion to
 13 read Chapter 30B, at that time?
 14 A. No.
 15 Q. And did you ever designate anybody else in the
 16 Town of Duxbury to do the procurement
 17 documents for the Town of Duxbury relative to
 18 the North Hill Country Club in calendar year
 19 2008?
 20 A. I don't recall.
 21 Q. Are you familiar with --
 22 Well, you're familiar with the RFP that
 23 was issued by the Town of Duxbury?
 24 MR. TROY: Objection as to form. Why

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1 don't you show him the document.
 2 MR. FOLLANSBEE: I'll show him the
 3 document.
 4 Q. (BY MR. FOLLANSBEE) Sir, I'm going to show you
 5 what has been previously marked as a Request For
 6 Proposals for the North Hill Country Club by the
 7 Town of Duxbury. It was marked as Exhibit 3 in
 8 the deposition of Mr. Lanzetta. I'll let your
 9 counsel look at that first and then I'll ask you
 10 a few questions about it. If you would keep
 11 that in front of you, sir.
 12 Before I get to Exhibit No. 3, I should
 13 have asked you one more thing. After graduating
 14 from Emmanuel and receiving your bachelor of
 15 science degree, have you had any other formal
 16 educational training?
 17 A. I took some master's in public administration
 18 courses at Suffolk University.
 19 Q. And when did you take those?
 20 A. I would say, late '90s.
 21 Q. And with the exception of the courses that you
 22 took at Suffolk University, have you had any
 23 subsequent formal training?
 24 A. No.

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1 Q. Now, with regard to what's been marked as
 2 Exhibit 3 and placed before you, did you have a
 3 role in drafting that document?
 4 A. No.
 5 Q. Do you know who drafted the document?
 6 A. I don't recall.
 7 Q. Do you recall the issuance of the RFP in October
 8 of 2008?
 9 A. Repeat the question.
 10 Q. Do you recall the Town of Duxbury issuing that
 11 proposal or Request For Proposals in October of
 12 2008?
 13 MR. TROY: Are you asking, does he recall
 14 that document being issued? Is that what the
 15 question is?
 16 MR. FOLLANSBEE: Yes, whether the request
 17 for proposals was issued.
 18 A. Whether it was issued?
 19 Q. Yes.
 20 A. I assume it was.
 21 Q. Well, do you recall it being published and given
 22 out to prospective proposers?
 23 A. No.
 24 Q. Do you have any memory of the process in October

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1 of 2008?
 2 A. Very little, very little.
 3 Q. Did you, as the chief procurement officer,
 4 formulate a decision to use a Request For
 5 Proposals for the North Hill Country Club in
 6 2008 pursuant to Chapter 30B, Section 6?
 7 A. I'm sure there was a conversation, but I don't
 8 recall the conversation, nor with whom.
 9 Q. But as far as your decision as the chief
 10 procurement officer to employ comparative
 11 criteria to evaluate different proposers, did
 12 you come to that conclusion yourself?
 13 A. It was, I believe, part of the process.
 14 Q. And was that your decision to use a comparative
 15 analysis?
 16 A. It was probably the legal process.
 17 Q. Well, what do you mean by "the legal process"?
 18 A. Well, we followed the procedures under 30B.
 19 Q. And when you say "we followed the procedures,"
 20 who are you including in the "we"?
 21 A. The town.
 22 Q. And with regard to your role in issuing a
 23 Request For Proposals, which has been marked as
 24 Exhibit 3, do you recall reading that document

DEPOSITION OF RICHARD R. MacDONALD

<p>14</p> <p>1 before it was made available to prospective 2 corporations and individuals to bid on the golf 3 course?</p> <p>4 A. I don't recall.</p> <p>5 Q. Did you have any -- did you, personally -- have 6 any contact with any other governmental 7 entities, such as the Inspector General's 8 Office, before October of 2008 when Exhibit 3 9 was made available to prospective bidders?</p> <p>10 MR. TROY: Objection. I just want to 11 note, for the record, that consultations with 12 counsel are not discoverable.</p> <p>13 MR. FOLLANSBEE: I'm not asking for 14 consultations with counsel.</p> <p>15 MR. TROY: So I think the question is, 16 other than consultation with counsel.</p> <p>17 MR. FOLLANSBEE: Yes.</p>	<p>17</p> <p>1 was the point person on behalf of the Town of 2 Duxbury in interacting with the prospective 3 bidders?</p> <p>4 MR. TROY: Objection. 5 You can answer.</p> <p>6 A. I would say that's a fair statement.</p> <p>7 Q. And do you recall that there was a prebid 8 conference that took place for any potential 9 bidders to come and look at the property?</p> <p>10 A. I do not recall.</p> <p>11 Q. Did you discuss the RFP process in the fall of 12 '08 with Mr. Cushing?</p> <p>13 A. I don't recall.</p> <p>14 Q. I'm going to show you documents that have been 15 provided by the Town of Duxbury. And I'll ask 16 you a few questions and see if we can identify 17 these.</p>
<p>18 Q. (BY MR. FOLLANSBEE) Just for clarity, I'm not 19 asking you for any conversations that you had 20 with your own attorneys. I'm asking whether you 21 had any consultation with other governmental 22 entities, such as the Inspector General's 23 Office?</p> <p>24 A. Not that I recall.</p> <p>DEPOSITION OF RICHARD R. MacDONALD</p>	<p>18 MR. TROY: Well, I think if these are 19 related to the first --</p> <p>20 MR. FOLLANSBEE: These are the first 21 RFP.</p> <p>22 MR. TROY: -- which is not the subject 23 matter of this case, I'm going to object. I 24 don't think we're going to go through two</p> <p>DEPOSITION OF RICHARD R. MacDONALD</p>
<p>15</p> <p>1 Q. Did you appoint certain individuals to do the 2 evaluations of the proposals that were received 3 from various candidates pursuant to the issuance 4 of the RFP, which is Exhibit 3?</p> <p>5 A. I believe I did.</p> <p>6 Q. And do you know who the evaluators were?</p> <p>7 A. The first time around, I cannot recall who they 8 were.</p> <p>9 Q. Did you discuss the RFP process with the 10 evaluators?</p> <p>11 A. I don't recall.</p> <p>12 Q. Did you give any guidance to the evaluators on 13 how you wanted the evaluations done?</p> <p>14 A. I do not recall that.</p> <p>15 Q. Did you prepare any forms for the evaluators to 16 use in evaluating the proposals in October of 17 2008?</p> <p>18 A. Not that I remember.</p> <p>19 MR. TROY: And just for the record, too, 20 when you're saying "did you," you're asking 21 Mr. MacDonald whether he himself prepared forms? 22 Is that what the question is?</p> <p>23 MR. FOLLANSBEE: Yes.</p> <p>24 MR. TROY: Is that where the "you" is</p> <p>DEPOSITION OF RICHARD R. MacDONALD</p>	<p>18</p> <p>1 procurement processes, not in this case.</p> <p>2 Q. (BY MR. FOLLANSBEE) With regard to the 3 document in front of you, do you recognize 4 these as the nonprice evaluation forms that 5 were provided as part of the RFP process in 6 October of 2008?</p> <p>7 A. No.</p> <p>8 Q. Have you looked at the document?</p> <p>9 A. I just did.</p> <p>10 Q. And what do you believe these are?</p> <p>11 MR. TROY: Objection. He can't answer 12 that question.</p> <p>13 Q. You can't answer that question?</p> <p>14 MR. TROY: What does he believe those 15 are?</p> <p>16 MR. FOLLANSBEE: He says he can't 17 identify them.</p> <p>18 MR. TROY: He just said he can't identify 19 them, so he can't answer that question.</p> <p>20 MR. FOLLANSBEE: I'd ask that this be 21 marked as the next exhibit. 22 (Exhibit No. 14, For Identification, 23 marked.)</p> <p>24 Q. (BY MR. FOLLANSBEE) Sir, directing your</p> <p>DEPOSITION OF RICHARD R. MacDONALD</p>
<p>16</p> <p>1 directed, to him?</p> <p>2 MR. FOLLANSBEE: To him, personally.</p> <p>3 MR. TROY: To the town manager.</p> <p>4 MR. FOLLANSBEE: Right, to him 5 personally.</p> <p>6 MR. TROY: All right.</p> <p>7 Q. (BY MR. FOLLANSBEE) And you don't recall 8 that?</p> <p>9 A. I don't.</p> <p>10 Q. Are there any documents that would help you in 11 remembering who you appointed as the 12 evaluators?</p> <p>13 A. I assume there is a file, but I don't have it 14 with me.</p> <p>15 Q. And when was the last time that you looked at 16 that file?</p> <p>17 A. A long time ago. Specifically, I don't recall 18 when that was.</p> <p>19 Q. Just for the record, could you tell us who 20 Mr. Gordon Cushing is?</p> <p>21 A. He is the recreation director for the Town of 22 Duxbury.</p> <p>23 Q. And is it fair to say that, during the RFP 24 process in the autumn of 2008, Gordon Cushing</p> <p>DEPOSITION OF RICHARD R. MacDONALD</p>	<p>19</p> <p>1 attention to what's now been marked as Exhibit 2 No. 14, did you review the nonprice evaluations 3 of Mr. Cushing, Mr. Dixon and Mr. Floreano in 4 the fall of 2008?</p> <p>5 A. I do not recall.</p> <p>6 Q. Do you recall making a determination yourself 7 to reject all of the proposals that were 8 provided in response to the RFP in the December 9 time frame of 2008?</p> <p>10 A. I recall that the first round of bids was 11 rejected.</p> <p>12 Q. And it was your decision to reject those 13 proposals, correct?</p> <p>14 A. I don't recall, exactly. But I'm sure it 15 probably was upon a recommendation of the 16 committee.</p> <p>17 Q. And when you say "upon a recommendation of the 18 committee," could you tell me who the committee 19 is?</p> <p>20 A. I don't recall. I'm assuming that it was from 21 the committee. That's an assumption on my part 22 only.</p> <p>23 Q. When you use the word "committee," what are you 24 referring to?</p> <p>DEPOSITION OF RICHARD R. MacDONALD</p>

<p>1 A. The review committee. 2 Q. When you say "the review committee," are you 3 talking about the evaluators? 4 A. Correct. 5 Q. Just so I understand it, your decision to reject 6 the bids, you believe, was based upon the 7 committee's recommendation to you that they 8 should be rejected? 9 A. I don't recall the exact specifics. 10 Q. In the fall of 2008, did you have occasion to 11 review the RFP and the proposals that were 12 submitted by the five different companies 13 pursuant thereto? 14 A. I don't recall. 15 Q. You don't recall if you looked at the 16 proposals? 17 A. No. 18 Q. And you don't recall if you reviewed the 19 nonprice evaluation forms by the various 20 evaluators? 21 A. I do not. 22 Q. And as far as the company known as CALM Golf, 23 C-A-L-M, did you review any proposals submitted 24 by CALM Golf in 2008?</p> <p style="text-align: center;">DEPOSITION OF RICHARD R. MacDONALD</p>	<p style="text-align: center;">20</p> <p>1 has to be, other than consultation with counsel 2 for the question to be complete. You either 3 have to ask him whether he consulted with 4 counsel and put that on the record. But you 5 can't -- what you're essentially doing is, 6 you're asking a question which is inherently 7 unfair. 8 MR. FOLLANSBEE: I certainly don't mean 9 to be unfair. I don't want conversations with 10 counsel. 11 MR. TROY: I know. 12 But for some reason, whether it's 13 intentional or unintentional, you are not 14 putting on the record the fact of whether or not 15 he had conversations with counsel about the 16 legal judgment that was made in making a 17 determination to reject the bids. 18 And you're not entitled to what those 19 conversations are. But the record should 20 reflect whether or not he, in fact, had those 21 conversations. So you either have to amend your 22 question, or I have to make the objection on a 23 question-by-question basis. 24 MR. FOLLANSBEE: Well, I don't quite</p> <p style="text-align: center;">DEPOSITION OF RICHARD R. MacDONALD</p>
<p style="text-align: center;">21</p> <p>1 A. I do not recall. 2 Q. Other than the recommendation of the committee, 3 are you aware of any other reason why the bids 4 were rejected in October and December of 2008? 5 MR. TROY: Well, no. Once again, does 6 this exclude -- 7 I think the question has to be very 8 clear. I actually think that you have to have a 9 foundation. You have not put on the record 10 prior to asking these questions whether or not 11 he has had conversations with counsel relating 12 to the matter which are obviously exempt from 13 discovery. 14 But if you're not going to do that, then 15 I think you have to say that, other than 16 communications with counsel. 17 MR. FOLLANSBEE: I've prefaced all of my 18 questions that way. Bob, I understand that. 19 MR. TROY: But I don't think the record 20 is accurate when you make an oblique reference 21 earlier in the record, I think, when you're 22 asking a question. Otherwise, I'm going to 23 have to object to each question that you ask. 24 It's up to you. We can do it either way.</p> <p style="text-align: center;">DEPOSITION OF RICHARD R. MacDONALD</p>	<p style="text-align: center;">23</p> <p>1 know how to do that. I'm trying to establish 2 his basis, and if his basis was the advice of 3 counsel and it was intended to be communicated 4 to third parties, then the privilege wouldn't 5 apply. 6 But I don't want to get into any issue of 7 privilege, and I'm not asking him questions 8 about his consultation with counsel. Maybe I 9 can phrase it a different way. 10 MR. TROY: Thank you. 11 Q. (BY MR. FOLLANSBEE) Sir, you've identified as 12 your reason for rejecting the bids that you had 13 a recommendation from the committee, correct? 14 A. I believe, I said I assumed that. 15 Q. And other than the recommendation from the 16 committee, did you have any other information 17 from any source that caused you to make a 18 determination to reject all bids? 19 A. I do not recall. 20 MR. TROY: Other than conversations with 21 counsel. 22 MR. FOLLANSBEE: I'm not asking for 23 conversations with counsel. I've already said I 24 don't want any conversations with counsel.</p> <p style="text-align: center;">DEPOSITION OF RICHARD R. MacDONALD</p>
<p style="text-align: center;">22</p> <p>1 MR. FOLLANSBEE: I can preface every 2 question by saying, any time I ask you about 3 conversations with anybody, it excludes any 4 conversations with town counsel or private 5 counsel. 6 Q. (BY MR. FOLLANSBEE) Do you understand that? 7 A. Yes. 8 Q. So when I talk about recommendations from the 9 committee, I'm specifically excluding anything 10 that Attorney Troy or any other attorney told 11 you who was representing you. I'm strictly 12 speaking about what was communicated to you 13 from the committee members that you've 14 identified. 15 Do you understand that, sir? 16 A. Fine. 17 Q. Okay. 18 Now, your decision to reject all of the 19 proposals in December of 2008, was that 20 predicated on anything other than the 21 recommendation that you had received from the 22 committee? 23 A. I do not remember. 24 MR. TROY: And so then the rest of that</p> <p style="text-align: center;">DEPOSITION OF RICHARD R. MacDONALD</p>	<p style="text-align: center;">25</p> <p>1 MR. TROY: But the answer to the question 2 is inaccurate unless the witness references, one 3 way or the other, that he's excluding 4 conversations with counsel. 5 Q. (BY MR. FOLLANSBEE) Other than conversations 6 with counsel? 7 A. Not that I recall. 8 Q. Did you, personally, review any of the proposals 9 that had been provided to the Town of Duxbury in 10 the fall of 2008? 11 A. I don't recall. 12 Q. Once you made the determination that the RFP 13 process would be rebid in December of 2008, did 14 you participate in drafting a new RFP document 15 to be made available to all of the prospective 16 bidders? 17 A. Not that I recall. 18 Q. I'm going to show you what's been marked as 19 Exhibit No. 6. And this is the RFP. And just 20 for clarity, I'll get you the date on it. This 21 is the RFP that was due back to the town on 22 January 9th of 2009. 23 Have you had a chance to review Exhibit 24 No. 6, sir?</p> <p style="text-align: center;">DEPOSITION OF RICHARD R. MacDONALD</p>

<p style="text-align: center;">26</p> <p>1 A. Yes.</p> <p>2 Q. And do you recognize that as the RFP that was</p> <p>3 issued for the North Hill Country Club with bids</p> <p>4 due in January of 2009?</p> <p>5 A. That's what it states. Do I specifically recall</p> <p>6 that particular document? No.</p> <p>7 Q. And did you have any role in drafting that</p> <p>8 particular document?</p> <p>9 A. Not that I recall.</p> <p>10 Q. And do you recall, as the chief procurement</p> <p>11 officer, that you appointed three different</p> <p>12 evaluators to evaluate the proposals in 2009?</p> <p>13 A. I do remember that.</p> <p>14 Q. Do you know who they were?</p> <p>15 A. I believe it was Mr. Cushing, Mr. Madden and</p> <p>16 Mr. Britten, B-R-I-T-T-E-N, I believe.</p> <p>17 Q. Now, did you discuss with those three gentlemen</p> <p>18 the RFP process and how they were going to</p> <p>19 review the proposals from the various</p> <p>20 entities?</p> <p>21 A. I don't recall the conversation.</p> <p>22 Q. Did you participate in any instruction to those</p> <p>23 individuals on how they were going to go about</p> <p>24 the evaluation of the proposals?</p> <p style="text-align: center;">DEPOSITION OF RICHARD R. MacDONALD</p>	<p style="text-align: center;">29</p> <p>1 of CALM Golf?</p> <p>2 A. I don't recall.</p> <p>3 Q. Had you read the proposal of Johnson Golf</p> <p>4 Management?</p> <p>5 A. I do not recall.</p> <p>6 Q. Had you reviewed the evaluations that were</p> <p>7 prepared by Mr. Madden and Mr. Britten?</p> <p>8 A. I don't recall.</p> <p>9 Q. Having reviewed the exhibit, am I correct that</p> <p>10 the third evaluator was not Mr. Cushing but was</p> <p>11 Mr. Studley?</p> <p>12 A. Correct.</p> <p>13 Q. And could you tell us who Mr. Studley is?</p> <p>14 A. He is the assistant recreation director for the</p> <p>15 Town of Duxbury.</p> <p>16 Q. And who is Mr. Madden?</p> <p>17 A. He is the finance director for the Town of</p> <p>18 Duxbury.</p> <p>19 Q. And who is Mr. Britten?</p> <p>20 A. A citizen.</p> <p>21 Q. And prior to issuing your award letter, had you</p> <p>22 reviewed the evaluations of the three gentlemen,</p> <p>23 Mr. Madden, Mr. Britten and Mr. Studley?</p> <p>24 A. I don't recall.</p> <p style="text-align: center;">DEPOSITION OF RICHARD R. MacDONALD</p>
<p style="text-align: center;">27</p> <p>1 A. I don't recall.</p> <p>2 Q. Did you review their evaluations yourself?</p> <p>3 A. I don't recall.</p> <p>4 Q. Did you ultimately make a determination on</p> <p>5 awarding a contract for the North Hill Golf</p> <p>6 Course contract to an entity called CALM Golf?</p> <p>7 A. I do.</p> <p>8 Q. And I'm going to show you what's been marked as</p> <p>9 Exhibit 10.</p> <p>10 A. Okay.</p> <p>11 Q. And sir, do you recognize Exhibit 10 as your</p> <p>12 award letter dated January 15, 2009?</p> <p>13 A. Specifically, no.</p> <p>14 Q. You don't recognize that?</p> <p>15 A. No.</p> <p>16 Q. Do you have any memory that you issued an award</p> <p>17 letter in January of 2009 to CALM Golf?</p> <p>18 A. I am aware that I awarded to CALM Golf.</p> <p>19 Specifically, the process, I do not recall.</p> <p>20 Q. Do you recall why you chose CALM Golf out of the</p> <p>21 various proposals?</p> <p>22 MR. TROY: Objection.</p> <p>23 A. I do not.</p> <p>24 Q. I'd ask for you to take a look at Exhibit No.</p> <p style="text-align: center;">DEPOSITION OF RICHARD R. MacDONALD</p>	<p style="text-align: center;">30</p> <p>1 Q. In your letter, you purport to base your</p> <p>2 decision on the fact that those gentlemen made</p> <p>3 certain findings, is that correct?</p> <p>4 MR. TROY: Well, what is the letter?</p> <p>5 What do you mean by the letter?</p> <p>6 MR. FOLLANSBEE: Exhibit No. 10. I think</p> <p>7 it's called an award letter.</p> <p>8 MR. TROY: Exhibit 10, all right.</p> <p>9 Q. (BY MR. FOLLANSBEE) In Exhibit 10, you</p> <p>10 indicate that, with regard to Mr. Gunnerson --</p> <p>11 and this is on page 3 of Exhibit 10 -- that</p> <p>12 evaluator Madden found that -- sorry, evaluator</p> <p>13 Studley noted that Gunnerson was not currently</p> <p>14 managing a golf course.</p> <p>15 Did you rely on that information?</p> <p>16 MR. TROY: Objection.</p> <p>17 I think that the document speaks for</p> <p>18 itself. It's an award letter. And to</p> <p>19 characterize different portions of it and to</p> <p>20 question as to whether he relied on different</p> <p>21 portions, the document speaks for itself.</p> <p>22 That's the award letter. He's acknowledged</p> <p>23 that.</p> <p>24 MR. FOLLANSBEE: I understand that</p> <p style="text-align: center;">DEPOSITION OF RICHARD R. MacDONALD</p>
<p style="text-align: center;">28</p> <p>1 10. I have a few questions about that.</p> <p>2 MR. TROY: Well, he's going to have to</p> <p>3 read it.</p> <p>4 MR. FOLLANSBEE: He can read it.</p> <p>5 Do you want to take two minutes and take</p> <p>6 a break?</p> <p>7 MR. TROY: Sure.</p> <p>8 MR. FOLLANSBEE: We'll go off the</p> <p>9 record.</p> <p>10 MR. TROY: He's going to have to read</p> <p>11 it.</p> <p>12 MR. FOLLANSBEE: Why don't we go off the</p> <p>13 record so that the witness can read the</p> <p>14 exhibit.</p> <p>15 (Recess taken.)</p> <p>16 Q. (BY MR. FOLLANSBEE) You've had a chance to</p> <p>17 review the exhibit, sir?</p> <p>18 A. Yes.</p> <p>19 Q. Having reviewed that, does that refresh your</p> <p>20 memory as to your reasons why you awarded the</p> <p>21 contract to CALM Golf?</p> <p>22 A. I've read the statements in the letter.</p> <p>23 Q. And with regard to that, had you also, prior to</p> <p>24 issuing your decision, had you read the proposal</p> <p style="text-align: center;">DEPOSITION OF RICHARD R. MacDONALD</p>	<p style="text-align: center;">31</p> <p>1 that's the award letter. I'm asking for his</p> <p>2 state of mind, what he believed, what he didn't</p> <p>3 believe when he issued that.</p> <p>4 MR. TROY: Well, then the objection is,</p> <p>5 there is no foundation. Because you haven't</p> <p>6 established or put on the record that he has</p> <p>7 any current state of mind about what he was</p> <p>8 thinking about in 2009, in January of 2009.</p> <p>9 Q. (BY MR. FOLLANSBEE) With regard to CALM Golf,</p> <p>10 in January of 2009, did you believe that CALM</p> <p>11 Golf was managing the Rockland Golf Course?</p> <p>12 MR. TROY: Objection.</p> <p>13 Q. You can answer.</p> <p>14 MR. TROY: No, no. I object to the form</p> <p>15 of that question. Did he believe? I think that</p> <p>16 the form of that is flawed.</p> <p>17 I guess, you can ask whether or not he</p> <p>18 has any memory as to, you know, any of the facts</p> <p>19 that are in the document. And then after some</p> <p>20 type of foundation about that, go on, if he</p> <p>21 does. I don't know that he has any current</p> <p>22 memory. He barely recognized the document.</p> <p>23 MR. FOLLANSBEE: It's his document.</p> <p>24 MR. TROY: Right. And it's on the</p> <p style="text-align: center;">DEPOSITION OF RICHARD R. MacDONALD</p>

<p>32</p> <p>1 record. But he's also the town manager of the 2 municipality, and this document is dated a year 3 ago. 4 Q. (BY MR. FOLLANSBEE) Sir, at the time that you 5 wrote this letter on January 15, 2009, did you 6 believe that CALM Golf was currently managing 7 the Rockland Golf Course? 8 MR. TROY: Objection. 9 You can answer only if you have any 10 memory of what you remember about any of the 11 people who submitted proposals, at that time. 12 A. I do not recall. 13 Q. You don't remember anything about it? 14 A. About what? 15 Q. About whether or not you believed CALM Golf was 16 operating a golf course. 17 MR. TROY: Objection. 18 Once again, the question, there is no 19 foundation. He has to be asked whether or not 20 he has any memory as to the circumstances. 21 MR. FOLLANSBEE: Go ahead. 22 MR. TROY: Well, he's just not going to 23 speculate about memories that you want him to 24 have that he may not have. DEPOSITION OF RICHARD R. MacDONALD </p>	<p>35</p> <p>1 Is that what the question is? I'm confused 2 about the tense of these questions. 3 MR. FOLLANSBEE: Well, he wrote it on 4 January 15th of 2009. 5 MR. TROY: Correct. The document speaks 6 for itself. 7 MR. FOLLANSBEE: I understand that the 8 document speaks for itself. I want the witness 9 to tell me what his belief was. 10 MR. TROY: If he remembers a year 11 later. 12 Q. (BY MR. FOLLANSBEE) Sir, just so we're clear on 13 anything, I don't want you testifying if you 14 have no memory of anything. 15 A. And that's what I'm trying to tell you, which 16 I've repeated now, I believe, three times to 17 the same question you've asked in different 18 manners. I don't recall. 19 Q. And I'd like to find out what you do recall, 20 sir. That's all. 21 With regard to CALM Golf's proposal, is 22 it your testimony that you never read it? 23 A. I don't recall. 24 Q. Well, you made a determination that CALM Golf DEPOSITION OF RICHARD R. MacDONALD </p>
<p>33</p> <p>1 MR. FOLLANSBEE: I'm not asking him to 2 create a memory. I'm asking if he has one. 3 MR. TROY: Ask him if he has a memory, 4 that's different. You didn't ask him that. 5 Q. (BY MR. FOLLANSBEE) As you sit here today, do 6 you believe that CALM Golf was managing the 7 Rockland Golf Course? 8 MR. TROY: Objection. 9 Q. You can answer the question. 10 MR. TROY: If you remember. 11 A. I don't remember. 12 Q. I'm asking you right now, today, do you believe 13 that CALM Golf ever managed the Rockland Golf 14 Course? 15 MR. TROY: He's already answered. He 16 said he doesn't remember. 17 MR. FOLLANSBEE: I'm not asking if he 18 remembers. I'm just asking him, does he have a 19 memory. Right now, does he think they ever 20 managed it? He either thinks they did or he 21 thinks they didn't. 22 MR. TROY: Objection. 23 Q. (BY MR. FOLLANSBEE) Do you think they did? Do 24 you think CALM Golf managed the Rockland Golf DEPOSITION OF RICHARD R. MacDONALD </p>	<p>36</p> <p>1 had sufficient financial information -- this is 2 at the bottom of page 3 -- you state that, "CALM 3 Golf had sufficient financial information to be 4 considered the most advantageous proposer for 5 the town." 6 What financial information were you 7 considering when you made that statement? 8 A. I don't remember any specific financial 9 information. 10 Q. Well, if you look at the bottom of page 3, sir, 11 beginning with the word "examination." 12 A. Yes. 13 Q. If you could read that paragraph to yourself, 14 and then I'll ask you a few questions about 15 that. 16 A. Okay. 17 Q. Did you examine the proposal of CALM Golf 18 before you wrote the letter, which is Exhibit 19 No. 10? 20 A. I do not remember. 21 Q. Did you review any financial information of 22 CALM Golf before you wrote the letter, which is 23 Exhibit No. 10? 24 A. I do not remember. DEPOSITION OF RICHARD R. MacDONALD </p>
<p>34</p> <p>1 Course? 2 A. I don't recall. 3 Q. Well, when you say that, in your award, you say 4 that CALM Golf and Johnson Golf are the only 5 entities that are currently operating golf 6 courses. 7 MR. TROY: What page are you referring 8 to? 9 MR. FOLLANSBEE: This is the last page, 10 page 4. 11 MR. TROY: Do you want the witness to 12 look at the document? 13 MR. FOLLANSBEE: Yes, please. 14 MR. TROY: Is there a question? 15 MR. FOLLANSBEE: Yes. 16 Q. (BY MR. FOLLANSBEE) What golf course did you 17 think CALM Golf was operating? 18 MR. TROY: Objection. 19 Q. You can answer. 20 A. I don't recall. 21 Q. But you believed they were operating some golf 22 course? 23 MR. TROY: Objection. 24 Is the question, does he believe now? DEPOSITION OF RICHARD R. MacDONALD </p>	<p>37</p> <p>1 Q. Is there anything that you could review to 2 assist you in remembering whether or not you 3 examined that proposal? 4 A. Repeat that question, please. 5 Q. Are there any documents that you could review 6 that would assist you in remembering whether or 7 not you looked at the CALM Golf proposal? 8 A. I do not know. 9 Q. Having looked at this document, your recitation 10 that CALM Golf has sufficient financial 11 information, does that refresh your memory that 12 you looked at some financial information of CALM 13 Golf? 14 A. No. 15 Q. Did you maintain any other records concerning 16 the RFP process for the North Hill Country 17 Club? 18 A. Specifically, me? 19 Q. Yes. 20 A. I don't know. 21 Q. Do you maintain files on each one of your public 22 procurements? 23 A. I'm sure there are files in town hall. 24 Q. And are those maintained in your office? DEPOSITION OF RICHARD R. MacDONALD </p>

<p>38</p> <p>1 A. They would be maintained in the town manager's/ board of selectmen's office.</p> <p>2 Q. And as the chief procurement officer, it's your ultimate responsibility to maintain those files, 3 is that correct?</p> <p>4 A. Yes, yes.</p> <p>5 Q. In January of 2009, had you received information from any source that the principals of CALM Golf 6 were in bankruptcy?</p> <p>7 A. Not that I recall.</p> <p>8 Q. Before you issued your award letter, had you personally reviewed the RFP as to the criteria 9 for evaluating the various proposals?</p> <p>10 A. I read many RFPs. I don't recall any specifics to this one.</p> <p>11 Q. Sir, I'm going to show you the Criteria Evaluation Standards, and this is pages 6, 7 and 12 8.</p>	<p>41</p> <p>1 Q. (BY MR. FOLLANSBEE) Well, sir, I'm going to show you some questions regarding the prebid 2 conference of October 2nd of 2008.</p> <p>3 Could you just take a look at those, 4 please?</p> <p>5 MR. TROY: Objection as to relevance, 6 too. This has to do with the first bid, 7 correct?</p> <p>8 MR. FOLLANSBEE: Yes.</p> <p>9 MR. TROY: So this document here --</p> <p>10 MR. FOLLANSBEE: Just for clarity.</p> <p>11 MR. TROY: -- It's an unsigned document. 12 Can you identify it beyond that, or do you just 13 want him to look and see whether he has seen 14 that?</p> <p>15 Is that the question?</p> <p>16 MR. FOLLANSBEE: I'll formulate a 17 question for him.</p>
<p>18 MR. TROY: From what document?</p> <p>19 MR. FOLLANSBEE: For the RFP, which is -- 20 They are pages 6, 7 and 8 out of Exhibit 21 No. 6.</p> <p>22 MR. TROY: Well, we don't want to get 23 confused here. Which one?</p> <p>24 DEPOSITION OF RICHARD R. MacDONALD</p>	<p>18 MR. TROY: Okay.</p> <p>19 Q. (BY MR. FOLLANSBEE) Do you have any memory of 20 ever seeing those written questions?</p> <p>21 A. No.</p> <p>22 MR. FOLLANSBEE: I'd ask that that be 23 marked as the next exhibit.</p> <p>24 DEPOSITION OF RICHARD R. MacDONALD</p>
<p>39</p> <p>1 MR. FOLLANSBEE: Well, this is the second 2 RFP.</p> <p>3 MR. TROY: The second RFP?</p> <p>4 MR. FOLLANSBEE: Yes.</p> <p>5 MR. TROY: Okay.</p> <p>6 Q. (BY MR. FOLLANSBEE) Sir, directing your 7 attention to the three pages, had you reviewed 8 those prior to issuing your award letter, which 9 is Exhibit No. 10?</p> <p>10 A. Are you referring to attachment 3?</p> <p>11 Q. Yes.</p> <p>12 A. I don't recall.</p> <p>13 MR. FOLLANSBEE: I'd ask that that be 14 marked as the next exhibit. 15 (Exhibit No. 15, For Identification, 16 marked.)</p> <p>17 Q. (BY MR. FOLLANSBEE) Do you remember -- 18 Well, I suppose I ought to ask you, do 19 you remember after the prebid conference in 20 October of 2008 that the various bidders 21 submitted written questions to the town?</p> <p>22 A. No.</p> <p>23 Q. Were you the person -- assuming that said 24 questions were submitted -- are you the person</p> <p>DEPOSITION OF RICHARD R. MacDONALD</p>	<p>42</p> <p>1 (Exhibit No. 16, For Identification, 2 marked.)</p> <p>3 Q. (BY MR. FOLLANSBEE) And just for completeness, 4 not remembering whether there were any 5 questions, you don't remember answering any 6 questions, is that correct?</p> <p>7 A. Correct.</p> <p>8 Q. With regard to the RFP document itself, Exhibit 9 No. 6 -- and this is the RFP for January of 2009 10 for the North Hill Country Club -- do you know 11 who drafted this document?</p> <p>12 A. No, I do not.</p> <p>13 Q. Your memory is that you did not draft it, is 14 that correct?</p> <p>15 A. I don't recall drafting it.</p> <p>16 Q. With regard to the procedures in the Town of 17 Duxbury for an RFP such as the one that's been 18 marked as Exhibit No. 6, is there a policy of 19 checking the references that are provided by the 20 various vendors?</p> <p>21 MR. TROY: Objection.</p> <p>22 Q. You can answer that.</p> <p>23 MR. TROY: If you understand it.</p> <p>24 A. Repeat the question.</p> <p>DEPOSITION OF RICHARD R. MacDONALD</p>
<p>40</p> <p>1 that would answer those questions?</p> <p>2 MR. TROY: Well, he doesn't remember the 3 questions, so how would he remember?</p> <p>4 MR. FOLLANSBEE: I'm saying, if questions 5 were submitted, is he the person who would have 6 answered?</p> <p>7 MR. TROY: What does that mean, if 8 questions were submitted?</p> <p>9 MR. FOLLANSBEE: Well, written 10 questions, if they're submitted at a prebid 11 conference, somebody answered them on behalf of 12 the town. I'm just trying to find out who 13 answered them, if it was this gentleman or 14 somebody else.</p> <p>15 MR. TROY: Well, he doesn't remember. He 16 doesn't remember the questions. How would he 17 remember who answered them?</p> <p>18 MR. FOLLANSBEE: Well, he hasn't said 19 that yet.</p> <p>20 MR. TROY: He did. He just said that he 21 didn't remember the question, that questions 22 were submitted. If he doesn't remember if 23 questions were submitted, then he doesn't 24 remember what the questions were.</p> <p>DEPOSITION OF RICHARD R. MacDONALD</p>	<p>43</p> <p>1 Q. Yes.</p> <p>2 Does the Town of Duxbury have a policy to 3 check the references that are provided by 4 various proposers in their written 5 submissions?</p> <p>6 MR. TROY: Objection.</p> <p>7 Q. You can answer it.</p> <p>8 MR. TROY: Are you talking about in 9 general or about RFPs? Is that what the 10 question is?</p> <p>11 MR. FOLLANSBEE: Yes, in general, about 12 RFPs. He is the chief procurement officer. I 13 want to know, do they have a policy for checking 14 the references.</p> <p>15 A. My assumption is, yes.</p> <p>16 Q. (BY MR. FOLLANSBEE) Is that something that you 17 do, personally, or does somebody else do it?</p> <p>18 A. Typically, not me.</p> <p>19 Q. Typically, who would check the references?</p> <p>20 A. It depends on the RFP.</p> <p>21 Q. Well, with regard to the RFP for the golf 22 course, which is Exhibit No. 6, the RFP asked 23 for references -- 24 (Cell phone ringing.)</p> <p>DEPOSITION OF RICHARD R. MacDONALD</p>

MR. FOLLANSBEE: Do you need to get that?

MR. TROY: Excuse me, just for a second. (Discussion off the record.)

MR. TROY: I apologize.

MR. FOLLANSBEE: No problem.

What was the last question, please? (Question read.)

Q. (BY MR. FOLLANSBEE) And who would have been designated to check those references?

A. I don't recall.

Q. Directing your attention to your award which is Exhibit No. 10 -- and I may have asked you this before, but if I did, I apologize -- was there anything that you reviewed prior to issuing this letter that gave you information about the financial condition of CALM Golf?

A. I don't recall.

Q. After issuing your award on January 15, 2009, did you receive any additional information subsequent to that with regard to the financial condition of CALM Golf?

A. Not that I remember.

Q. In your decision, you indicate that, "The

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financial data from the proposer must give the town the confidence that the proposer could administer a significant business such as North Hill."

MR. TROY: What page is that on?

MR. FOLLANSBEE: Let me dig that out for you. It's on page 3. I've got a highlighted section of it that might make it easier for you.

Q. (BY MR. FOLLANSBEE) If you would look at page 3 of your award, the highlighted section.

A. Okay.

Q. In the highlighted section, you state, "I conclude that, while Gunnerson has past experience, his proposal lacks specificity to conclude that he is capable of running North Hill as soon as the award is made.

"Moreover, the financial data submitted by Gunnerson is limited to his personal returns and does not provide the information a business return would that is needed to give the town the confidence that he could administer a significant business such as North Hill."

Now, with regard to the financial

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information, what financial information were you looking for, at that time?

MR. TROY: Objection. What is the question? Does it relate to what you've just read?

MR. FOLLANSBEE: Yes, it does.

MR. TROY: So your question is about Gunnerson?

MR. FOLLANSBEE: No.

Q. (BY MR. FOLLANSBEE) My question is, the town needed certain financial information to give the town confidence that someone could administer a significant business such as North Hill.

What financial data were you looking for in that regard?

A. I don't recall.

Q. If a proposer had total assets of \$169 in their company, would that have given you the confidence that that proposer could administer a significant business such as North Hill?

MR. TROY: Objection.

You can answer, if you can.

A. That's a hypothetical question. I can't

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answer.

Q. Well, it's more than a hypothetical, because that's exactly what CALM Golf gave you.

So what I'm asking you, sir, is if you knew at the time that CALM Golf had total assets of \$169 and that was the total amount of financial information that you had for CALM Golf, would you have made the award to CALM Golf?

MR. TROY: Objection.

That assumes -- it's a hypothetical which the witness has correctly said -- and it assumes that some analysis that you've given is a fact, which of course is not supported.

Do you have a document that you want to show the witness?

MR. FOLLANSBEE: Sure.

Q. (BY MR. FOLLANSBEE) Do you have difficulty answering that question, sir?

A. I don't understand your question.

Q. Okay.

Let's assume that CALM Golf only had total assets of \$169 as of January 9, 2009.

A. I don't recall the assets of CALM Golf.

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Q. I understand that.

A. So you're asking me a hypothetical question.

Q. A hypothetical, assuming that they had \$169 in total assets, would you have awarded a contract to such a company to run North Hill for a five-year period?

MR. TROY: Objection.

A. I can't answer that.

Q. Why can't you answer that, sir?

A. Because you're asking me something not based on fact. I have no idea where you're going with that and what the question, specifically, is. I don't recall the assets of CALM Golf or any other one who applied for this position.

Q. Sir, I'll show you the nonprice proposal of CALM Golf, which Mr. Lanzetta identified at his deposition and has been marked as Exhibit No. 6.

MR. FOLLANSBEE: I'll show it to Attorney Troy. If you want to take a five minute break to take a look at that, I will be happy to afford you that time.

MR. TROY: Well, what do you want him to do, read it?

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MR. FOLLANSBEE: I don't want him to read the whole proposal. I'm going to highlight a specific portion of it.

MR. TROY: I think that you've already asked a question as to whether or not he reviewed these proposals.

MR. FOLLANSBEE: I did.

MR. TROY: And I think that the answer was that he did not.

MR. FOLLANSBEE: That's correct.

MR. TROY: So then what is the point of his reviewing them now if he didn't review them then?

MR. FOLLANSBEE: Well, so I can get an answer to the question.

MR. TROY: To the hypothetical.

MR. FOLLANSBEE: No. It's more than a hypothetical. An answer to the question based on what CALM Golf actually provided to the town.

MR. TROY: Well, I think if you are asking him to review that document, which I object to, but he's going to have to have time to review it. He's going to have to read it.

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<p style="text-align: right;">50</p> <p>1 You'll have to suspend the deposition, and then</p> <p>2 we'll have to see where it goes from there.</p> <p>3 MR. FOLLANSBEE: Well, before we suspend</p> <p>4 the deposition --</p> <p>5 MR. TROY: It's a 30 page document.</p> <p>6 MR. FOLLANSBEE: Before we suspend the</p> <p>7 deposition, I'll take a five minute break, and</p> <p>8 I'll give the witness pages 91 through 106 to</p> <p>9 take a look at.</p> <p>10 MR. TROY: But I'm going to object if</p> <p>11 you're giving him part of the document. He</p> <p>12 needs to review the whole proposal.</p> <p>13 MR. FOLLANSBEE: He can look at the</p> <p>14 whole proposal.</p> <p>15 Q. (BY MR. FOLLANSBEE) If you want to take the</p> <p>16 time to look at the whole proposal, I will</p> <p>17 suggest to you that the financial data from</p> <p>18 CALM Golf is found on pages 91 to 106. And I'd</p> <p>19 ask you to take a look at that portion of it,</p> <p>20 and then I have a couple of questions.</p> <p>21 MR. FOLLANSBEE: And we can take a five</p> <p>22 minute break while you do that, and I'll use the</p> <p>23 men's room.</p> <p>24 (Recess taken.)</p> <p style="text-align: center;">DEPOSITION OF RICHARD R. MacDONALD</p>	<p style="text-align: right;">53</p> <p>1 hypothetical.</p> <p>2 MR. FOLLANSBEE: I understand it's a</p> <p>3 hypothetical. I'm entitled to the answer.</p> <p>4 A. I can't answer that.</p> <p>5 Q. Why can't you answer it?</p> <p>6 A. Because it's a hypothetical question.</p> <p>7 Q. And why can't you answer a hypothetical</p> <p>8 question?</p> <p>9 A. Because I'm not aware of this situation. I</p> <p>10 can't recall that situation.</p> <p>11 Q. Well, I'm not asking you whether you can recall</p> <p>12 it.</p> <p>13 This is their bid. It's been identified</p> <p>14 by Mr. Lanzetta as being their bid. And these</p> <p>15 are the only financial documents that CALM Golf</p> <p>16 provided. Mr. Lanzetta has so testified and</p> <p>17 authenticated the document.</p> <p>18 Given that this is the only information</p> <p>19 provided to the Town of Duxbury, is it your</p> <p>20 testimony that, if you were aware of this when</p> <p>21 you made your award in January of 2009, you</p> <p>22 would not have awarded them a contract?</p> <p>23 MR. TROY: Okay, objection. And the</p> <p>24 objection is, the witness has said that he did</p> <p style="text-align: center;">DEPOSITION OF RICHARD R. MacDONALD</p>
<p style="text-align: right;">51</p> <p>1 Q. (BY MR. FOLLANSBEE) Mr. MacDonald, you now</p> <p>2 have in front of you a portion of Exhibit No. 7</p> <p>3 which is the financial data that was provided</p> <p>4 by CALM Golf in January of '09.</p> <p>5 Have you had a chance to look at that</p> <p>6 while we took a break?</p> <p>7 A. Yes.</p> <p>8 Q. And based upon the fact that the most recent</p> <p>9 financial statement of CALM Golf, which is in</p> <p>10 front of you, demonstrated that, at the end of</p> <p>11 2007, they had total assets of \$169, were you</p> <p>12 aware of that at the time that you made your</p> <p>13 award?</p> <p>14 A. I don't recall.</p> <p>15 Q. Now being aware of it, or given that the</p> <p>16 information they provided to the Town of</p> <p>17 Duxbury was that they had total assets of \$169,</p> <p>18 had you known that that was their financial</p> <p>19 condition, would you have awarded a contract to</p> <p>20 them?</p> <p>21 A. Had I known?</p> <p>22 Q. Yes.</p> <p>23 A. No, I don't recall seeing that document. That's</p> <p>24 a CPA --</p> <p style="text-align: center;">DEPOSITION OF RICHARD R. MacDONALD</p>	<p style="text-align: right;">54</p> <p>1 not see the document contemporaneous or prior to</p> <p>2 making the award.</p> <p>3 And so therefore, since the award is</p> <p>4 predicated on a document that he didn't see, my</p> <p>5 objection is that he cannot now, a year later,</p> <p>6 having briefly looked at a document in any way</p> <p>7 cure the fact that he has testified that he</p> <p>8 never saw the document.</p> <p>9 So it's beyond a hypothetical. It's a</p> <p>10 document that does not relate to any evidence</p> <p>11 that the witness has said that he examined, and</p> <p>12 therefore, he can't answer questions about a</p> <p>13 document that he didn't see.</p> <p>14 MR. FOLLANSBEE: Just for purposes of</p> <p>15 clarity, the document in question is the</p> <p>16 nonprice proposal submitted by CALM Golf, Inc.</p> <p>17 to the Town of Duxbury. It was obtained from</p> <p>18 the office of the town manager in the Town of</p> <p>19 Duxbury.</p> <p>20 It was provided pursuant to a FOIA</p> <p>21 request and/or a request for production of</p> <p>22 documents in this litigation. And it has been</p> <p>23 authenticated by Mr. Charles Lanzetta at his</p> <p>24 deposition on November 4th of 2009.</p> <p style="text-align: center;">DEPOSITION OF RICHARD R. MacDONALD</p>
<p style="text-align: right;">52</p> <p>1 Is that audited?</p> <p>2 Q. It's unaudited.</p> <p>3 A. I don't -- I never saw it, and I don't recall</p> <p>4 seeing it, and I don't recall discussing it.</p> <p>5 Q. And you never considered that as part of your</p> <p>6 award, correct?</p> <p>7 A. Not that I recall.</p> <p>8 Q. And if you did have this information, that if</p> <p>9 this information was available to you when you</p> <p>10 were making your decision to award a contract</p> <p>11 for the North Hill Country Club, had you known</p> <p>12 that CALM Golf's total assets were \$169, is it</p> <p>13 fair to say you would not have awarded them a</p> <p>14 contract?</p> <p>15 MR. TROY: Objection.</p> <p>16 A. I did not know the assets of CALM Golf.</p> <p>17 Q. I know that you didn't know it, and I understand</p> <p>18 that to be your testimony, sir.</p> <p>19 But what I'm asking you is, if you did</p> <p>20 know that, if you were aware that they only had</p> <p>21 \$169 in the bank and that was their total</p> <p>22 assets, would you have awarded a contract to</p> <p>23 them?</p> <p>24 MR. TROY: Objection. That's a</p> <p style="text-align: center;">DEPOSITION OF RICHARD R. MacDONALD</p>	<p style="text-align: right;">55</p> <p>1 Q. (BY MR. FOLLANSBEE) Is there any doubt in your</p> <p>2 mind, sir, that the document, Exhibit 7, is the</p> <p>3 nonprice proposal of CALM Golf that was</p> <p>4 submitted to the Town of Duxbury?</p> <p>5 A. I don't recall seeing the document.</p> <p>6 Q. Well, whether you saw it or not, do you have</p> <p>7 any reason to believe that this is anything</p> <p>8 other than the nonprice proposal submitted by</p> <p>9 CALM Golf?</p> <p>10 A. Whether I saw it or not, I don't recall seeing</p> <p>11 it. The question is whether I recall seeing it</p> <p>12 or not? Is that your question?</p> <p>13 Q. No.</p> <p>14 My question is, do you have any</p> <p>15 information that this is anything other than the</p> <p>16 nonprice proposal submitted by CALM Golf to the</p> <p>17 Town of Duxbury?</p> <p>18 A. My answer to that question is no.</p> <p>19 (Discussion off the record.)</p> <p>20 Q. (BY MR. FOLLANSBEE) Do you have Exhibit 10 in</p> <p>21 front of you?</p> <p>22 A. No.</p> <p>23 Q. You don't have Exhibit 10?</p> <p>24 A. No.</p> <p style="text-align: center;">DEPOSITION OF RICHARD R. MacDONALD</p>

<p style="text-align: right;">56</p> <p>1 Q. Sir, I'll give you Exhibit 10 again, and if you 2 would look at the bottom of page 3.</p> <p>3 A. Okay.</p> <p>4 Q. You state, at the last sentence on the page, 5 you state that, "CALM Golf has the experience, 6 the organizational capability, the maintenance 7 equipment and the staff and sufficient financial 8 information to be considered the most 9 advantageous proposal for the town."</p> <p>10 What financial information were you 11 relying upon in writing that paragraph?</p> <p>12 A. I don't recall.</p> <p>13 Q. Is there anything that could refresh your memory 14 on that?</p> <p>15 A. No, I don't believe I've seen any. I assume 16 that this was vetted out by the committee.</p> <p>17 Q. When you say it was "vetted out by the 18 committee," could you tell me what you mean by 19 "the committee"?</p> <p>20 A. I said I assumed it was vetted out by the 21 committee.</p> <p>22 Q. I understand that. And I want to know what you 23 mean by the word "committee."</p> <p>24 A. The review process.</p> <p style="text-align: center;">DEPOSITION OF RICHARD R. MacDONALD</p>	<p style="text-align: right;">59</p> <p>1 ultimately follows the statute to answer 2 questions that imply some omission, whereas the 3 statute is very clear that the evaluators have 4 specific responsibilities. It's all set forth 5 in the statute.</p> <p>6 This whole deposition is nothing other 7 than an inquiry that presupposes that the person 8 asking the questions doesn't understand anything 9 about the 30B process.</p> <p>10 MR. FOLLANSBEE: I would be happy to have 11 you instruct me on the 30B process any time, 12 Bob.</p> <p>13 MR. TROY: So I think that, you know, 14 with the respect that is owed to the town 15 manager of the Town of Duxbury, the questions 16 should be limited to his furtherance of the 17 statute's process obligations, which include 18 appointing evaluators and following the process 19 with respect to the nonprice and the price 20 process that's in the statute.</p> <p>21 That's all that your procurement officer 22 does. He doesn't read any of the financial 23 documents. He doesn't study financial 24 statements. That's all in the statute. And I</p> <p style="text-align: center;">DEPOSITION OF RICHARD R. MacDONALD</p>
<p style="text-align: right;">57</p> <p>1 Q. So the committee would be --</p> <p>2 A. The evaluators.</p> <p>3 Q. So the committee would be the three evaluators 4 that you appointed?</p> <p>5 A. Correct.</p> <p>6 Q. And you read their evaluations?</p> <p>7 A. I don't recall. I've said that before.</p> <p>8 Q. You don't know if you read their evaluations?</p> <p>9 A. I do not recall.</p> <p>10 Q. And you didn't read the proposal of CALM Golf?</p> <p>11 A. I don't recall reading their proposal.</p> <p>12 Q. And you didn't get any other financial 13 information about CALM Golf, other than what 14 somebody else told you, is that correct?</p> <p>15 A. I don't recall.</p> <p>16 Q. Why did you believe, in January of '09, that 17 CALM Golf had sufficient financial information?</p> <p>18 MR. TROY: Objection.</p> <p>19 A. Why did I believe?</p> <p>20 Q. Yes.</p> <p>21 A. Well, I don't recall. I assume that the 22 evaluators looked at this information.</p> <p>23 Q. And as far as CALM owning the maintenance 24 equipment, you didn't make any determination</p> <p style="text-align: center;">DEPOSITION OF RICHARD R. MacDONALD</p>	<p style="text-align: right;">60</p> <p>1 object to furthering that, because I frankly 2 think that the deposition is now bordering on 3 harassment.</p> <p>4 MR. JOHNSON: Yeah, by you. You're 5 unbelievable, man. This guy is something.</p> <p>6 MR. FOLLANSBEE: Just stop.</p> <p>7 There is no harassment going on 8 whatsoever. This is the gentleman who issued 9 the award of the contract described in Exhibit 10 No. 10. I'd say 90 percent of my questions have 11 had to do with Mr. MacDonald's decision to issue 12 that award and the basis that he put in his 13 award letter, which now he either doesn't recall 14 or can't explain or doesn't know where he got 15 the information from.</p> <p>16 And with regard to his role as the chief 17 procurement officer, it's his obligation both 18 statutorily and as the town administrator to 19 maintain the files.</p> <p>20 MR. TROY: But there is no question, the 21 files have been maintained. No one is saying 22 that the files have not been maintained.</p> <p>23 So you know, I'd request that you strike 24 that response because no one has suggested that</p> <p style="text-align: center;">DEPOSITION OF RICHARD R. MacDONALD</p>
<p style="text-align: right;">58</p> <p>1 that they owned any maintenance equipment other 2 than what evaluators may have told you, 3 correct?</p> <p>4 A. No, I did not.</p> <p>5 Q. Do you recall the evaluators having any 6 conversation with you about the CALM Golf 7 proposal?</p> <p>8 A. No.</p> <p>9 Q. Is it your belief that there just was no 10 conversation? You simply reviewed their 11 evaluations?</p> <p>12 A. I don't recall.</p> <p>13 Q. Now, with respect to the fact that much of the 14 testimony you've given today is that you don't 15 recall the information surrounding this bid 16 process, are there records available to you in 17 your office at town hall that would refresh your 18 memory on those topics?</p> <p>19 MR. TROY: Objection.</p> <p>20 You know, for the record, the entire 21 deposition has been taken in the vacuum of any 22 kind of knowledge of the statute. It's apparent 23 to me that there is no understanding of the 30B 24 process, and that you are asking the person who</p> <p style="text-align: center;">DEPOSITION OF RICHARD R. MacDONALD</p>	<p style="text-align: right;">61</p> <p>1 there is anything improper with respect to the 2 maintenance of files. You have all of the 3 information that the town has. It's an open 4 book. You have it right in front of you.</p> <p>5 MR. FOLLANSBEE: And I would simply 6 suggest that for the witness knowing of the 7 deposition, knowing that he was coming here 8 today, decides that he doesn't review anything 9 in anticipation of the testimony, it does waste 10 time, there is no question about it.</p> <p>11 And your suggestion that he review this 12 material and we suspend and reconvene at a date 13 when he is familiar with the documents, I'll be 14 happy to do that.</p> <p>15 MR. TROY: Well, the witness isn't 16 required, under the rules, to review any 17 documents.</p> <p>18 MR. FOLLANSBEE: Well, then perhaps what 19 we need to do is take a different deposition of 20 the keeper of the records of the town. But I 21 was taking the deposition of the individual who 22 made this decision and trying to find the basis 23 of his decision.</p> <p>24 The witness is refusing to answer</p> <p style="text-align: center;">DEPOSITION OF RICHARD R. MacDONALD</p>

<p style="text-align: center;">62</p> <p>1 questions about hypotheticals. I know of no 2 basis in order to instruct the witness not to 3 answer those questions, but that's your 4 prerogative. 5 What I'm going to do is suspend. I'll 6 re-notice and request documents with the 7 re-notice of the deposition so that the witness 8 is not at any disadvantage as far as his 9 recollection is concerned. 10 MR. TROY: Well, what documents don't you 11 have? 12 MR. FOLLANSBEE: Well, I thought that I 13 had all of the documents. But this man is 14 evidently not familiar with them. 15 MR. TROY: Well, there is no requirement 16 that the witness be familiar with documents 17 that he has no responsibility to review. 18 That's the problem. You're asking the wrong 19 witness. 20 MR. JOHNSON: He's not familiar with his 21 own letter. This is a joke. You ought to be 22 embarrassed. You call yourself a lawyer? Give 23 me a break. 24 MR. FOLLANSBEE: Just stop.</p> <p style="text-align: center;">DEPOSITION OF RICHARD R. MacDONALD</p>	<p style="text-align: center;">65</p> <p style="text-align: center;"><u>CERTIFICATE</u></p> <p>1 2 3 I, RICHARD R. MacDONALD, do hereby 4 certify that I have read the foregoing 5 transcript of my testimony, and further certify 6 that said transcript is a true and accurate 7 record of said testimony. 8 Dated at _____, 9 this _____ day of _____, 10 2009. 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p style="text-align: center;">RICHARD R. MacDONALD SIGNED UNDER THE PENALTIES OF PERJURY</p> <p style="text-align: center;">DEPOSITION OF RICHARD R. MacDONALD</p>
<p style="text-align: center;">63</p> <p>1 MR. JOHNSON: Give me a break. You guys 2 are something, I'll tell you. 3 MR. FOLLANSBEE: Let's just go off the 4 record. 5 (Discussion off the record.) 6 MR. TROY: Back on the record, and I'm 7 going to object to the deposition being 8 suspended, and we'll see from there. You've 9 asked the witness two hours of questions. He's 10 testified truthfully and under oath. 11 MR. FOLLANSBEE: Bob, that's preposterous 12 to say two hours. 13 MR. TROY: Well, an hour and a half of 14 questions. 15 MR. FOLLANSBEE: I mean, you were 45 16 minutes late getting here, so we didn't start on 17 time. And I can go back and look at the record 18 or not. 19 MR. TROY: Well, what time did the 20 deposition begin? 21 THE COURT REPORTER: 10:30. 22 MR. TROY: So it's 12:15. That's pretty 23 close to two hours. 24 MR. FOLLANSBEE: No, it isn't. Well, we</p> <p style="text-align: center;">DEPOSITION OF RICHARD R. MacDONALD</p>	<p style="text-align: center;">66</p> <p style="text-align: center;"><u>CERTIFICATE</u></p> <p>1 Commonwealth of Massachusetts 2 Middlesex, ss. 3 I, JAMES A. LYONS, Certified Shorthand 4 Reporter, Registered Diplomate Reporter, 5 Certified Realtime Reporter and Notary Public in 6 and for the Commonwealth of Massachusetts, do 7 hereby certify: that RICHARD R. MacDONALD, the 8 witness whose deposition is hereinbefore set 9 forth, was satisfactorily identified, then duly 10 sworn by me, and that such deposition is a true 11 record of the testimony given by the said 12 witness. 13 I further certify that I am not a 14 relative or employee or counsel or attorney for 15 any of the parties, or a relative or employee of 16 such counsel or attorney, nor am I financially 17 or otherwise interested in the outcome of the 18 action. 19 IN WITNESS WHEREOF, I have hereunto set 20 my hand and notarial seal this 30th day of 21 December, 2009. 22 23 24</p> <p style="text-align: center;">JAMES A. LYONS CSR No. 117993, RDR, CRR My commission expires on April 29, 2016</p> <p style="text-align: center;">DEPOSITION OF RICHARD R. MacDONALD</p>
<p style="text-align: center;">64</p> <p>1 had a lot of times where we didn't ask any 2 questions. 3 Let's just go back on the record, and 4 I'll state that I am going to suspend the 5 deposition. My brother wants to put something 6 on the record indicating that he's objecting to 7 the suspension of the deposition. 8 MR. TROY: And I'm going to object based 9 on the fact that the witness has answered each 10 and every question that was posed to him 11 truthfully and to the best of his knowledge and 12 that, apparently, there is some concern that the 13 witness has not reviewed documents, which he is 14 not required to review. 15 I respectfully suggest that the questions 16 are being asked to the wrong witness and that 17 the whole deposition belies an unfamiliarity 18 with the 30B process. And I'm going to object 19 to reconvening any deposition of this particular 20 witness. 21 MR. FOLLANSBEE: Thank you. 22 (Whereupon, the deposition was suspended 23 at 12:15 p.m.) 24</p> <p style="text-align: center;">DEPOSITION OF RICHARD R. MacDONALD</p>	

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