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EXHIBITS: 17

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 JOHN M. MADDEN, JR., 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 12:17 p.m.

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<p style="text-align: center;">8</p> <p>1 MR. FOLLANSBEE: I put it on the record, 2 I think, at the beginning of Mr. MacDonald's. 3 If I didn't do it here, I'll repeat it here. 4 MR. TROY: But when they attach, when 5 the exhibits are listed, I assume that, for 6 instance, Exhibit 4, there is no Exhibit. 7 They'll just write that there is no Exhibit 4. 8 Is there going to be some notation so 9 that it's clear that the exhibits reflect 10 numbers? 11 MR. FOLLANSBEE: When I identified the 12 exhibits, I identified them as being introduced 13 at the deposition of Mr. Lanzetta. I'll provide 14 you a complete list as well. 15 MR. TROY: Very well. 16 Q. (BY MR. FOLLANSBEE) Sir, directing your 17 attention to what's now been marked as Exhibit 18 17, these are the five nonprice evaluation forms 19 that you filled out for the various proposals, 20 correct? 21 A. Yeah. 22 Q. And in addition to the nonprice proposals that 23 each of the individuals gave you, you were also 24 provided with a copy of the Request For DEPOSITION OF JOHN M. MADDEN, JR.</p>	<p style="text-align: center;">11</p> <p>1 So how would he be able to answer 2 questions about a document that he hasn't seen 3 for a year? 4 MR. FOLLANSBEE: Well, he can look at the 5 document now. 6 MR. TROY: Well, I think that's 7 burdensome, too. I mean, it's one thing to 8 look at a page. But to ask him to look at a 30 9 page document to answer questions that you 10 have, I don't think that's contemplated by the 11 rules. 12 MR. FOLLANSBEE: You don't think it's 13 contemplated by the rules? 14 MR. TROY: No. 15 Q. (BY MR. FOLLANSBEE) At the time that you 16 prepared Exhibit 17, did you have any other 17 information about CALM Golf other than what was 18 in their written proposal? 19 A. I don't believe I did. 20 Q. At page 11 of the CALM proposal, it indicates 21 the previous contracts that they had, correct? 22 A. That's what it says here. 23 Q. And for the previous contracts, the only 24 contract that they claimed to have had DEPOSITION OF JOHN M. MADDEN, JR.</p>
<p style="text-align: center;">9</p> <p>1 Proposals that had been issued by the Town of 2 Duxbury which was marked as Exhibit 6 at 3 Mr. Lanzetta's deposition, correct? 4 A. I wasn't at his deposition. 5 Q. No. I understand you weren't there. 6 But as to the document, you were given 7 a copy of this document, is that correct, sir? 8 A. That's correct, yes. 9 Q. And in it, the document instructed you as to 10 what criteria that you would use in order to 11 evaluate the various proposals, correct, sir? 12 A. Yes, I believe so. 13 Q. And what has been marked at Mr. MacDonald's 14 deposition as Exhibit No. 15, these are the 15 Criteria Evaluation Standards that you were 16 guided by, correct? 17 MR. TROY: If you remember. 18 A. To the best of my recollection. Specifically, I 19 can't say, but they look familiar. 20 Q. And for purposes of comparison, what has been 21 marked as Exhibit 16 is a photocopy of what the 22 criteria evaluation standards were in the RFP 23 issued by the Town of Duxbury, correct? 24 A. Okay, they're similar. DEPOSITION OF JOHN M. MADDEN, JR.</p>	<p style="text-align: center;">12</p> <p>1 operating a golf course was the Strawberry 2 Valley Golf Course in Abington, is that 3 correct? 4 MR. TROY: Are you asking him to look at 5 the document? 6 MR. FOLLANSBEE: Yes. 7 MR. TROY: So you're asking him to read 8 the document. Because he has no independent 9 recall. 10 MR. FOLLANSBEE: Well, I'm asking him to 11 direct his attention to page 11 of the 12 document. 13 A. Okay. I also see Rockland Golf Course. 14 Q. (BY MR. FOLLANSBEE) And it doesn't say that 15 CALM Golf operated Rockland Golf Course, does 16 it? 17 A. It lists it on there. 18 Q. For Rockland Golf Course, it doesn't say that 19 CALM Golf was operating that, does it? 20 A. It listed it. 21 Q. And was it your understanding that CALM Golf 22 operated the Rockland Golf Course? 23 A. I can't say what it was that I used to determine 24 back in January, no. DEPOSITION OF JOHN M. MADDEN, JR.</p>
<p style="text-align: center;">10</p> <p>1 Q. Now, if you would take a look at the evaluation 2 standards, were you utilizing these standards 3 that are described in Exhibit 15 when you 4 prepared your evaluation, which is Exhibit 17? 5 A. At the time, to the best of my ability, I used 6 these criteria. 7 Q. And on the first page of Exhibit No. 17, under 8 the category of Relevant Experience, you 9 designated that CALM Golf should receive a score 10 of highly advantageous, correct? 11 A. Yes. 12 Q. And the proposal of CALM Golf -- which was 13 Exhibit No. 7 at Mr. Lanzetta's deposition -- 14 the proposal of CALM Golf demonstrates that, at 15 the time of submitting their proposal, they 16 were not currently operating a golf course, 17 correct? 18 MR. TROY: Objection. He may not have -- 19 There is no foundation for that question. 20 He may not have any memory of the proposal. 21 You've just given him a 30 page document that 22 he, presumably, unless you can ask him and 23 confirm it otherwise, he hasn't seen that 24 document for over a year or for almost a year. DEPOSITION OF JOHN M. MADDEN, JR.</p>	<p style="text-align: center;">13</p> <p>1 Q. There is a contact person for the Strawberry 2 Valley Golf Course, a fellow by the name of 3 Joseph Cavanaugh. 4 Did you contact anybody to find out 5 whether CALM Golf was running that course? 6 A. No, I did not. 7 Q. Was it your belief, in January of 2009, that 8 CALM Golf was operating the Rockland Golf 9 Course? 10 MR. TROY: Objection. 11 There is no foundation whether he has any 12 memory of what he thought in January. 13 MR. FOLLANSBEE: I'm just asking him what 14 his belief was. 15 MR. TROY: Well, if he has one, if he has 16 a memory. 17 A. We're talking about nearly a year ago. 18 Specifically, what I've seen at the time, I 19 couldn't tell you. 20 Q. So you can't tell us why you gave CALM Golf a 21 highly advantageous rating? 22 A. To be honest with you, at this point in time, 23 we'd have to start this process from scratch. 24 Remember, my expertise is in financials. I was DEPOSITION OF JOHN M. MADDEN, JR.</p>

<p style="text-align: center;">14</p> <p>1 asked to review these. I did it to the best of 2 my ability, and I'm comfortable with that. 3 Q. Well, with regard to the criteria standards that 4 were provided to you -- 5 And those are shown in Exhibit 15? 6 A. Yes. 7 Q. -- it indicates in the Relevant Experience 8 section, which is Section 1, under the category 9 of not advantageous, it indicates that the 10 firm's personnel may have had experience with 11 the business of golf or comparable business 12 enterprise, but the firm has less than three 13 years experience. 14 Did you read that, at the time? 15 A. I believe that I probably reviewed the entire 16 document. 17 Q. And with regard to the document issued by the 18 Town of Duxbury for their Criteria Evaluation 19 Standards, did you understand that, if the firm 20 had less than three years experience, they would 21 be considered not advantageous? 22 A. I can't really say, specifically. At the time, 23 I felt that I understood the information that 24 was put in front of me. DEPOSITION OF JOHN M. MADDEN, JR.</p>	<p style="text-align: center;">17</p> <p>1 ability. 2 Are you asking me to review it eleven 3 months later again? 4 Q. No. 5 I'm going to show you the document at 6 page 49 and ask you, on page 49 of CALM's 7 nonprice proposal, do they identify who their 8 golf course superintendent was going to be? 9 A. I do not see that on page 49. 10 Q. You do see that on page 49? 11 A. You have Ryan Anderson, CGSAA. 12 Q. Now, did you know what the designation "CGSAA" 13 meant? 14 A. I don't know whether, at the time, that I did or 15 not. 16 Q. Do you have any knowledge now what it means? 17 A. It might be a guess. I'm not certain. 18 MR. TROY: Don't answer if it's a guess. 19 Q. Several pages later, on page 51, there is a 20 resume provided by CALM Golf for Mr. Ryan 21 Anderson, correct? 22 A. Yes. 23 Q. And did you review that resume when you were 24 evaluating the proposal? DEPOSITION OF JOHN M. MADDEN, JR.</p>
<p style="text-align: center;">15</p> <p>1 Q. Well, when you look at it in black and white on 2 Exhibit 15, it's very direct that, if the firm 3 has less than three years experience, they would 4 be rated not advantageous, correct? 5 MR. TROY: Are you asking him to read it 6 now? Is that what you want? 7 MR. FOLLANSBEE: Yes. 8 MR. TROY: Can you read it now, and see 9 if you understand it. 10 A. Yes, I see what it says. 11 Q. (BY MR. FOLLANSBEE) And what it says is, if 12 the firm has less than three years experience, 13 they would be rated not advantageous, correct? 14 A. That's what it says, right. 15 Q. So if CALM Golf had less than three years 16 experience managing a golf course, the rating 17 they would have deserved would have been not 18 advantageous, correct? 19 A. That would be correct. 20 Q. And with regard to Organizational Capability, 21 can you look at the section for Organizational 22 Capability in Exhibit 15? 23 A. Okay. 24 Q. And the Organizational Capability indicates DEPOSITION OF JOHN M. MADDEN, JR.</p>	<p style="text-align: center;">18</p> <p>1 MR. TROY: If you remember. 2 A. If it was part of the document, then I may 3 have. 4 Q. And from his resume, Mr. Ryan Anderson has less 5 than three years as a superintendent, correct? 6 MR. TROY: Objection. He doesn't know 7 how many years he's got. 8 Are you asking him to read information 9 that's in there? What is the point, if the 10 information is in the document, what is the 11 point of him reading for you something that you 12 can read with your own eyes? 13 MR. FOLLANSBEE: I want to find out 14 whether or not his belief was that this fellow 15 had the experience or didn't have the 16 experience. 17 MR. TROY: But once again, you haven't 18 asked him about his memory of what he remembers 19 about this process that took place almost a year 20 ago. You're asking him today to look at 21 something, and I don't know that he has any 22 memory of it. 23 MR. FOLLANSBEE: Well, I don't know that 24 he does either. But if he doesn't have a DEPOSITION OF JOHN M. MADDEN, JR.</p>
<p style="text-align: center;">16</p> <p>1 that the superintendent must have at least 2 three years experience in the turf industry, 3 correct? 4 A. Where are you citing that, please? 5 Q. Under advantageous. 6 A. Could you repeat what you just said? 7 Q. Yes. Under advantageous -- 8 A. Correct. 9 Q. -- for Organizational Capability, the 10 requirement would be for the superintendent, if 11 he had less than three years experience, he 12 would be advantageous, correct? 13 A. That's correct. 14 Q. And with regard to the proposal submitted by 15 CALM Golf, did you review it to find out who 16 their golf course superintendent was going to 17 be? 18 MR. TROY: Is this the time frame, did 19 you review it in January of 2009? Is that the 20 question? 21 MR. FOLLANSBEE: That's right. 22 MR. TROY: All right, if you remember. 23 A. Again, specifically, I read the document, and I 24 applied the criteria, to the best of my DEPOSITION OF JOHN M. MADDEN, JR.</p>	<p style="text-align: center;">19</p> <p>1 memory, I'd expect that he'll give the same 2 answers that the previous witness did. This 3 happened so long ago that it's almost hard to 4 remember. 5 A. That is correct. I don't know if that was a 6 shot just now, whether I have a memory or not, 7 okay. 8 You know, were documents put in front of 9 me? Yes, they were. Did I review them, to the 10 best of my ability? Yes, I did. Did I record 11 these based on my ability to interpret the 12 documents in front of me? Yes, I did. 13 Now, if you ask me to recite line for 14 line what are in these documents, I can't do 15 that. 16 Q. I'm not asking you to recite anything line for 17 line, sir. I'm asking you how you came about 18 your conclusion that CALM Golf in the category 19 of Organizational Capability was highly 20 advantageous. 21 What did you rely on to make that 22 determination? 23 A. As I recall, I went through these documents. 24 Q. And when you say "these documents," you mean DEPOSITION OF JOHN M. MADDEN, JR.</p>

<p style="text-align: center;">20</p> <p>1 the nonprice proposal of CALM Golf which is</p> <p>2 Exhibit No. 7 to the Lanzetta deposition,</p> <p>3 correct?</p> <p>4 A. The documents that were provided to me.</p> <p>5 Q. And this was all that was provided to you for</p> <p>6 CALM Golf, is that correct, sir?</p> <p>7 A. I believe so.</p> <p>8 Q. And with the exception of the resume for</p> <p>9 Mr. Ryan Anderson, which is found on page 51 of</p> <p>10 the exhibit, you don't have any other</p> <p>11 information about Mr. Anderson independent of</p> <p>12 that, do you?</p> <p>13 A. I don't recall. I can't be certain of that.</p> <p>14 Q. Now, with regard to the category of Maintenance</p> <p>15 Equipment and Staff, could you turn to the next</p> <p>16 page of the exhibit and look at Maintenance</p> <p>17 Equipment and Staff?</p> <p>18 A. All right.</p> <p>19 Q. Now, your rating for CALM Golf was highly</p> <p>20 advantageous in the area of Maintenance</p> <p>21 Equipment and Staff, correct?</p> <p>22 A. Uh-huh.</p> <p>23 Q. Is that a yes, sir?</p> <p>24 A. Yes, it is.</p> <p style="text-align: center;">DEPOSITION OF JOHN M. MADDEN, JR.</p>	<p style="text-align: center;">23</p> <p>1 you're showing him today, he remembered a year</p> <p>2 ago anything else, then you have to ask him</p> <p>3 that question and see whether he has any</p> <p>4 memory.</p> <p>5 Q. (BY MR. FOLLANSBEE) Was it your belief in</p> <p>6 January of 2009 that CALM Golf operated any</p> <p>7 other golf course in its history, other than</p> <p>8 Strawberry Valley?</p> <p>9 A. Without reviewing it page for page, I can't</p> <p>10 really say.</p> <p>11 Q. But you will agree with me that, in order to</p> <p>12 achieve a rating of highly advantageous,</p> <p>13 according to the RFP, CALM Golf would be</p> <p>14 required to demonstrate that they had more than</p> <p>15 one golf course, correct?</p> <p>16 A. For maintenance?</p> <p>17 Q. Yes.</p> <p>18 A. More than one for three years, correct, that's</p> <p>19 what the criteria is.</p> <p>20 Q. And they would also have to demonstrate that</p> <p>21 they had an on-site superintendent with five</p> <p>22 years experience, correct?</p> <p>23 A. If that's what the criteria says.</p> <p>24 Q. And the proposal submitted by CALM Golf</p> <p style="text-align: center;">DEPOSITION OF JOHN M. MADDEN, JR.</p>
<p style="text-align: center;">21</p> <p>1 Q. And in order to achieve that rating, the</p> <p>2 guidelines given you by the Town of Duxbury</p> <p>3 said that, "The proposer must demonstrate for</p> <p>4 three years or more a proven ability to</p> <p>5 maintain more than one golf course or</p> <p>6 comparable business enterprise in top</p> <p>7 condition," correct?</p> <p>8 A. If that's what the document says.</p> <p>9 Q. Well, I'm showing it to you.</p> <p>10 A. Do you want me to read the document?</p> <p>11 Q. I'm showing it to you. I'm asking you if I read</p> <p>12 it correctly.</p> <p>13 A. Which category are you addressing?</p> <p>14 Q. Maintenance Equipment and Staff.</p> <p>15 In order to achieve highly advantageous,</p> <p>16 the Town of Duxbury said that, "The proposer</p> <p>17 must demonstrate for three years or more a</p> <p>18 proven ability to maintain more than one golf</p> <p>19 course or comparable business enterprise in top</p> <p>20 condition," correct?</p> <p>21 A. That's what it says, correct.</p> <p>22 Q. And it also indicates that the golf course</p> <p>23 superintendent on-site must have five years</p> <p>24 experience, correct?</p> <p style="text-align: center;">DEPOSITION OF JOHN M. MADDEN, JR.</p>	<p style="text-align: center;">24</p> <p>1 indicated that the on-site individual who was</p> <p>2 going to be the superintendent was Mr. Ryan</p> <p>3 Anderson.</p> <p>4 And that's found at page 49, correct?</p> <p>5 MR. TROY: Well, I object to that</p> <p>6 question. I think you have to -- he hasn't</p> <p>7 looked at that document, so you're just</p> <p>8 selecting one of the pages.</p> <p>9 MR. FOLLANSBEE: All right. We can take</p> <p>10 a five minute break, and he can feel free to</p> <p>11 look at it.</p> <p>12 MR. TROY: Well, I don't think you can</p> <p>13 look at a 30 page document. How many pages is</p> <p>14 that document? 30 or 40 pages?</p> <p>15 MR. FOLLANSBEE: More.</p> <p>16 THE WITNESS: It goes up to 60, I</p> <p>17 think -- oh, it's over 100.</p> <p>18 MR. TROY: He can't look at a 100 page</p> <p>19 document now. He can only testify as to what he</p> <p>20 remembers. You're asking him to remember things</p> <p>21 he doesn't remember.</p> <p>22 MR. FOLLANSBEE: Well, I don't know</p> <p>23 whether he remembers them or not.</p> <p>24 MR. TROY: Well, you have to ask him</p> <p style="text-align: center;">DEPOSITION OF JOHN M. MADDEN, JR.</p>
<p style="text-align: center;">22</p> <p>1 A. If that's what it says.</p> <p>2 Q. Now, with respect to the proposal submitted by</p> <p>3 CALM Golf, CALM Golf didn't maintain more than</p> <p>4 one golf course, did they?</p> <p>5 MR. TROY: Objection.</p> <p>6 A. I don't recall whether they did or not.</p> <p>7 Q. You don't know whether they did or not?</p> <p>8 A. I don't recall whether they did or not.</p> <p>9 Q. On page 11 of its proposal, CALM Golf -- and</p> <p>10 this was marked Exhibit 7 to Mr. Lanzetta's</p> <p>11 deposition -- CALM Golf indicates that there</p> <p>12 was a previous contract awarded to CALM Golf</p> <p>13 from May of 2003 to August of 2003, is that</p> <p>14 correct?</p> <p>15 A. That's what page 11 says.</p> <p>16 Q. And other than that, did you believe that CALM</p> <p>17 Golf had operated any other golf course?</p> <p>18 MR. TROY: Objection.</p> <p>19 You have not asked him whether he has</p> <p>20 any memory of anything that he read or learned</p> <p>21 about at the time of the award. You're showing</p> <p>22 him something a year later. You're showing him</p> <p>23 a piece of paper.</p> <p>24 So if the question is, other than what</p> <p style="text-align: center;">DEPOSITION OF JOHN M. MADDEN, JR.</p>	<p style="text-align: center;">25</p> <p>1 that.</p> <p>2 MR. FOLLANSBEE: I assume if he's</p> <p>3 answering questions, then he remembers. If he</p> <p>4 doesn't remember, I think that should be his</p> <p>5 answer. But I'm not going to predicate all of</p> <p>6 my questions --</p> <p>7 MR. TROY: If you don't remember, then</p> <p>8 you say that you don't remember.</p> <p>9 A. I'm answering so far the questions that you've</p> <p>10 asked, Is this what this says and Is this what</p> <p>11 this says.</p> <p>12 Q. The answer to that is yes, right?</p> <p>13 A. Correct.</p> <p>14 Q. And with regard to the RFP and the response to</p> <p>15 the RFP, the RFP asked them to name the</p> <p>16 superintendent.</p> <p>17 And CALM Golf named as its superintendent</p> <p>18 Mr. Ryan Anderson, correct?</p> <p>19 A. That's what page 49 says.</p> <p>20 Q. And page 51 says that Mr. Ryan Anderson had the</p> <p>21 experiences that are listed in his resume on</p> <p>22 page 51, correct?</p> <p>23 A. Without reviewing the document again, I can't</p> <p>24 really recall. I see a resume there.</p> <p style="text-align: center;">DEPOSITION OF JOHN M. MADDEN, JR.</p>

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1 Q. Well, in looking at the resume, it's a one-page
2 resume, correct?
3 MR. TROY: The question is, is it a
4 one-page resume?
5 THE WITNESS: Yes.
6 MR. TROY: It's a question of whether or
7 not the letter is a resume or part of the
8 recommendation.
9 Can you answer that?
10 Your question is whether or not --
11 Q. (BY MR. FOLLANSBEE) Is page 51 of the CALM
12 Golf proposal a one-page resume of Mr. Ryan
13 Anderson?
14 A. **Good point. Do the letters of recommendation**
15 **count?**
16 Q. I'll talk about the letters of recommendation
17 separate.
18 A. **It appears to be one page.**
19 Q. And in reviewing the one-page resume, it
20 indicates that, up until May of 2005,
21 Mr. Anderson was going to college, correct?
22 A. **Correct.**
23 Q. And the requirement from the Town of Duxbury
24 was that the on-site superintendent have five
DEPOSITION OF JOHN M. MADDEN, JR.

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1 years experience as a superintendent, correct?
2 This is under category 3 for a rating of highly
3 advantageous.
4 A. **Correct.**
5 Q. So Mr. Ryan Anderson couldn't have achieved that
6 rating, could he?
7 MR. TROY: Objection.
8 Q. You can answer it.
9 MR. TROY: If he knows the answer.
10 A. **I can't say that. I can't say that. I can't**
11 **say that with certainty.**
12 Q. Well, what other information would you need in
13 order to say that with certainty?
14 A. **I'd have to hear it from him.**
15 Q. Pardon me?
16 A. **I'd have to hear it from him.**
17 Q. And did you speak to him?
18 A. **No.**
19 Q. Do you know how you made a determination that
20 Mr. Ryan Anderson had five years experience as a
21 superintendent?
22 A. **I don't recall, at the time, no.**
23 Q. Now, your area of expertise is more in the
24 financial end of things, is that correct?
DEPOSITION OF JOHN M. MADDEN, JR.

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1 A. **That's correct.**
2 Q. In looking at the financial material submitted
3 by CALM Golf, I'd direct your attention to page
4 91 of the CALM Golf proposal, Exhibit No. 7 to
5 the Lanzetta deposition.
6 What was provided by CALM Golf were
7 unaudited financial statements, correct?
8 A. **I don't recall.**
9 Q. Well, if you look at the document --
10 MR. TROY: Well, if you want him to look
11 at that page, once again, you've given the
12 witness a 100 page document that he hasn't seen
13 in a year, and you're asking him questions about
14 a document that you apparently know more about
15 than he does.
16 A. **What is it that you want to know?**
17 Q. Are you looking at page 91?
18 A. **Yes.**
19 Q. And these are financial records presented by
20 CALM Golf in their proposal, correct?
21 A. **This is a letter from their CPA.**
22 Q. And it says, "Enclosed are unaudited financial
23 statements," correct?
24 A. **It's indicating that there are omissions. I'm**
DEPOSITION OF JOHN M. MADDEN, JR.

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1 **not seeing where you saw in this last paragraph**
2 **about "unaudited financial statements."**
3 Q. It specifically states that they did not perform
4 an audit, is that correct?
5 A. **Okay. That was the second paragraph. You said**
6 **that it was at the close, okay. "I have not**
7 **audited or reviewed the accompanying financial**
8 **statements."**
9 Q. And is your degree in finance?
10 A. **It's in American studies.**
11 Q. Subsequently, as a finance director, are you
12 familiar with the distinctions between audited
13 financial statements --
14 A. **Yes, I am.**
15 Q. -- and statements that are reviewed and
16 statements that are compilations?
17 A. **Uh-huh.**
18 Q. You have to say yes or no, for the record.
19 A. **Yes.**
20 Q. With regard to the material in front of you that
21 was provided by CALM Golf to the Town of
22 Duxbury, these are clearly not audited financial
23 statements, am I correct?
24 A. **That's correct.**
DEPOSITION OF JOHN M. MADDEN, JR.

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1 Q. And they're not even reviewed, is that correct?
2 A. **This William Camarano reviewed them to the point**
3 **where he can make this qualified statement.**
4 Q. Maybe I wasn't clear on my question.
5 There are three different types of
6 financial statements, am I correct?
7 A. **What are the three?**
8 Q. Well, would you agree with me that there are
9 audited financial statements, financial
10 statements that are reviewed and financial
11 statements that are compilations?
12 A. **Basically, what I'm looking for in my line of**
13 **work would be a qualified or an audited**
14 **statement or an unaudited or unqualified**
15 **statement.**
16 Q. And in your line of work then, the statements
17 that were provided by CALM Golf and their
18 accountant would fall into the unaudited
19 category, correct?
20 A. **That's correct.**
21 Q. And you reviewed all of these at the time that
22 you made your analysis of their bid, is that
23 correct?
24 A. **I believe I did.**
DEPOSITION OF JOHN M. MADDEN, JR.

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1 Q. And the financial section for the CALM Golf bid
2 runs from page 91 to page 103, is that
3 correct?
4 MR. TROY: You have the document in front
5 of you, he doesn't.
6 Q. Take a look at it. 91 to 103, I believe, are
7 the financial sections.
8 A. **The financial documents, yeah.**
9 Q. And with regard to the financial documents,
10 CALM Golf provided two years worth of unaudited
11 financial statements and then an excerpt of a
12 tax return, is that correct?
13 A. **I'd have to go through it again.**
14 Q. I'll show you the last two pages.
15 Am I correct that that purports to be a
16 portion of their 2007 tax return?
17 A. **Yes.**
18 Q. And the pages before that would be unaudited
19 financials for the years 2006 and 2005,
20 correct?
21 A. **Yes.**
22 Q. And in reviewing those, based upon the fact
23 that you knew those were not audited financial
24 statements and that they didn't comply with the
DEPOSITION OF JOHN M. MADDEN, JR.

<p>32</p> <p>1 criteria that designated for highly 2 advantageous, you ranked them not advantageous, 3 correct? 4 MR. TROY: Objection. 5 You can answer, if you know the answer. 6 A. I ranked them as not advantageous, that's 7 correct. 8 Q. And in your review, one of the things that you 9 were provided with was their 2007, which was the 10 most recent financial data, and it showed on the 11 second page of their tax return that their total 12 assets were \$169, correct? 13 MR. TROY: Objection. 14 Q. Is that what it shows? 15 MR. TROY: I don't know whether he's 16 qualified to answer that question. 17 MR. FOLLANSBEE: I'm just asking if 18 that's what the material shows. 19 MR. TROY: The documents speak for 20 themselves, whatever they are. These documents 21 were provided to you by the town, and so they 22 are what the town received. And obviously, the 23 documents speak for themselves. You don't need 24 him to tell you what is in the documents. DEPOSITION OF JOHN M. MADDEN, JR.</p>	<p>35</p> <p>1 question about that, correct? 2 A. There is some writing on that form. 3 Q. And the reason for that writing is that there 4 was no indication in CALM Golf's proposal that 5 they had the pesticide insurance, was there? 6 MR. TROY: Objection. That's not a 7 question. That's a sentence. 8 MR. FOLLANSBEE: I thought it was a 9 question. 10 MR. TROY: It was a statement. 11 MR. FOLLANSBEE: I thought it was a 12 question. 13 MR. TROY: Well, you didn't ask him. 14 You told the witness what you think. You're 15 holding a document which he doesn't have in his 16 hands. 17 Q. (BY MR. FOLLANSBEE) In Lanzetta's proposal or 18 the proposal of CALM Golf, which was Exhibit 7 19 at the Lanzetta deposition, on the last page, 20 having to do with insurance, it indicates that 21 an insurance agent is attempting to get the 22 insurance, correct? 23 MR. TROY: The witness hasn't looked at 24 it. You've looked at it. DEPOSITION OF JOHN M. MADDEN, JR.</p>
<p>33</p> <p>1 MR. FOLLANSBEE: I'm asking what he 2 reviewed and what he relied on in coming to his 3 conclusion. 4 MR. TROY: That's a different question, 5 and you have to ask whether he has any memory as 6 to that. 7 You're asking him a year later to testify 8 as to what factors he considered in making a 9 decision. If he doesn't remember that, you 10 can't get around that lack of memory by showing 11 him the document today and asking him to somehow 12 interpolate what he thought a year ago. That's 13 the problem with the entire inquiry. 14 MR. FOLLANSBEE: Well, I don't consider 15 it quite the problem that you do, but that's 16 okay. 17 (Discussion off the record.) 18 Q. (BY MR. FOLLANSBEE) Now, with regard to your 19 evaluation, do you recall looking at those 20 financial statements from CALM Golf when you did 21 your evaluation back in January of '09? 22 A. If it was part of the process, yes, but 23 specifically, I don't recall. 24 Q. Did you have any specific concerns about the DEPOSITION OF JOHN M. MADDEN, JR.</p>	<p>36</p> <p>1 MR. FOLLANSBEE: He's got it in front of 2 him. 3 MR. TROY: Well, you just handed it to 4 him. 5 MR. FOLLANSBEE: I'm asking him. 6 MR. TROY: The page speaks for itself. 7 You don't need the witness to read it. 8 A. Okay. 9 Q. (BY MR. FOLLANSBEE) And sir, is that why you 10 had a question about the pesticide insurance on 11 Exhibit 17? 12 A. I don't recall, specifically. 13 Q. Are there any documents that you could review 14 that would help your recollection in this 15 matter? 16 A. I'm not sure. 17 Q. As you testify today, is it your belief that the 18 only document --- 19 MR. FOLLANSBEE: Well, strike that. 20 Q. Do you believe that you reviewed documents 21 other than the nonprice proposals from each one 22 of the bidders on the North Hill Country Club? 23 A. Could you repeat that? 24 Q. Yes. DEPOSITION OF JOHN M. MADDEN, JR.</p>
<p>34</p> <p>1 lack of financial assets shown by CALM Golf when 2 you were doing your evaluations? 3 A. I don't recall. 4 Q. At the bottom of your evaluation of CALM Golf on 5 Exhibit No. 17, you have some handwritten 6 notations. 7 And there is a question mark and then it 8 says "'07 financials," is that correct? 9 A. That's what it says. 10 Q. And to the right of that, it says question mark 11 and then something else. Can you tell me what 12 that says? 13 A. Let's see, first one is "pest insurance." 14 Q. And was that a question that you had about CALM 15 Golf? 16 A. I don't recall, specifically, but if it was on 17 this form. You know, again, I can't read my own 18 writing on the second one. 19 Q. In the Maintenance Equipment and Staff, which is 20 category 3 on Exhibit 15, in order to obtain 21 highly advantageous, it says the firm carries 22 pesticide insurance, correct? 23 A. Firm carries pesticide insurance. 24 Q. And you, on your evaluation form, you had a DEPOSITION OF JOHN M. MADDEN, JR.</p>	<p>37</p> <p>1 Other than the nonprice proposals that 2 each of the bidders gave and Exhibit 7 from the 3 Lanzetta deposition as the CALM Golf proposal, 4 other than the proposals from each one of the 5 entities, did you review any other documents 6 from any of the entities in order to evaluate 7 their proposals? 8 A. I don't recall any. 9 Q. If you could turn on your evaluation form, which 10 is Exhibit 17, if you could turn to the third 11 page. 12 And this is the evaluation that you did 13 for Johnson Golf Management, correct? 14 A. Yes. 15 Q. As far as your handwritten notation, under the 16 word "'97," can you read what that says? 17 A. It says "'97 Gordon letter." 18 Q. And do you know what that makes reference to? 19 A. No. 20 Q. To the right of that, can you read the next, 21 the first line -- 22 Actually, read the whole thing, if you 23 can. 24 A. It says, Superintendent -- I'm not exactly DEPOSITION OF JOHN M. MADDEN, JR.</p>

1 sure -- does not something class A. These are
2 just crib notes.

3 Q. And do you have any memory of what those
4 handwritten notations mean?

5 A. No.

6 MR. TROY: Can we go off the record for a
7 minute.

8 MR. FOLLANSBEE: Sure.

9 (Discussion off the record.)

10 MR. FOLLANSBEE: We'll just suspend this
11 deposition, at this time.

12 (Whereupon, the deposition was suspended
13 at 1:06 p.m.)
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DEPOSITION OF JOHN M. MADDEN, JR.

39

1 CERTIFICATE

2
3 I, JOHN M. MADDEN, JR., do hereby certify
4 that I have read the foregoing transcript of my
5 testimony, and further certify that said
6 transcript is a true and accurate record of said
7 testimony.

8 Dated at _____,
9 this _____ day of _____,
10 2009.
11
12
13
14

15 JOHN M. MADDEN, JR.
16 SIGNED UNDER THE PENALTIES
17 OF PERJURY
18
19
20
21
22
23
24

DEPOSITION OF JOHN M. MADDEN, JR.

40

1 CERTIFICATE

2 Commonwealth of Massachusetts
3 Middlesex, ss.

4 I, JAMES A. LYONS, Certified Shorthand
5 Reporter, Registered Diplomate Reporter,
6 Certified Realtime Reporter and Notary Public in
7 and for the Commonwealth of Massachusetts, do
8 hereby certify: that JOHN M. MADDEN, JR., the
9 witness whose deposition is hereinbefore set
10 forth, was satisfactorily identified, then duly
11 sworn by me, and that such deposition is a true
12 record of the testimony given by the said
13 witness.

14 I further certify that I am not a
15 relative or employee or counsel or attorney for
16 any of the parties, or a relative or employee of
17 such counsel or attorney, nor am I financially
18 or otherwise interested in the outcome of the
19 action.

20 IN WITNESS WHEREOF, I have hereunto set
21 my hand and notarial seal this 30th day of
22 December, 2009.

23 JAMES A. LYONS
24 CSR No. 117993, RDR, CRR

My commission expires
on April 29, 2016
DEPOSITION OF JOHN M. MADDEN, JR.

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