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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT
DEPARTMENT
NO. 08-04641-B

----- X
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 GORDON H. CUSHING, a
witness called on behalf of the Defendants,
taken pursuant to notice before Robert M.
Bramanti, Certified Shorthand Reporter,
Registered Merit Reporter and Notary Public in
and for the Commonwealth of Massachusetts, at
the offices of Follansbee & McLeod, LLP, 536
Granite Street, Braintree, Massachusetts, on
Monday, May 11, 2011, commencing at 10:08 a.m.

BRAMANTI & LYONS COURT REPORTING, INC.
REGISTERED PROFESSIONAL REPORTERS
92 STATE ST., 8TH FLOOR, BOSTON, MA. 02109
TEL: 617.723.7321 / FAX: 617.723.7322
www.bramanti-lyons.com

APPEARANCES:

Stephen R. Follansbee, Esq.
Follansbee & McLeod, LLP
536 Granite Street, 3rd Floor
Braintree, Massachusetts 02184
Attorney for the Plaintiff

Leonard H. Kesten, Esq.
Brody Hardoon Perkins & Kesten, LLP
One Exeter Plaza
Boston, Massachusetts 02116
Attorney for the Defendants,
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)

Craig J. Jordan, Esq.
Troy Wall Associates
90 Route 6A
Sandwich, Massachusetts 02563
Attorney for the Defendants,
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)

Also Present: Douglas Johnson and Jason Laramée

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STIPULATIONS

It is hereby stipulated and agreed
by and between counsel for the respective
parties that the witness will read and sign the
deposition transcript under the penalties of
perjury within 35 days of receipt.

It is further stipulated and agreed
that all objections, except objections as to
the form of the question, and any motions to
strike will be reserved to the time of trial.

GORDON H. CUSHING, a witness called for
examination by counsel for the Plaintiff, having
been first satisfactorily identified by his
Massachusetts driver's license, was duly sworn,
and testified as follows:

Examination by Mr. Follansbee:

- Q. Good morning, Mr. Cushing. Could you please
state your name, residential address, and
occupation.
- A. **Gordon H. Cushing, 318 Old Tremont Street,
Duxbury, Massachusetts. My primary occupation
is recreation director for the town of Duxbury.**

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MR. FOLLANSBEE: Off the record.
(Discussion off the record.)

- Q. (By Mr. Follansbee) Mr. Cushing, could you give
us your educational background starting with
high school.
- A. **Yeah, Duxbury High School 1980. And University
of Massachusetts 1985. I don't know -- I went
to Niagara University for one year, transferred
to UMass. Niagara was '80 to '81.**
- Q. You received your degree from UMass?
- A. **Yes.**
- Q. What degree did you receive?
- A. **Education.**
- Q. Beginning with 1985, could you give us your work
history.
- A. **Yeah, I worked for the town of Duxbury as a high
school history teacher from 1985 to 1989. Then
I started coaching at the high school,
basketball and baseball. And then I left that
employment at the end of 1989 school year and
was hired as the recreational director for the
town of Duxbury, which I began employment in
November of 1989.**
- Q. From 1989 up until the present, you've

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1 maintained your position as the director of
2 recreation?

3 A. Yes.

4 Q. In Duxbury?

5 A. Right.

6 Q. Could you briefly describe for me what your
7 responsibilities are in that regard.

8 A. Sure. I guess major areas would be, one, I
9 manage the municipal swimming pool known as the
10 Percy Walker Pool.

11 I provide year-round recreation programs
12 to all the residents and nonresidents that take
13 advantage of them, supervising six full-time
14 employees and up to 100 part-time employees.

15 I act as the -- oversee the contract at
16 the North Hill Country Club and advise the board
17 of selectmen and town manager on issues relating
18 to that property.

19 And we also schedule and permit all of
20 the use of the town and school-owned playing
21 fields, courts, playgrounds.

22 Q. I should have asked this before, the property on
23 Old Tremont Street, do you own that or is that a
24 rental?

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1 Q. Now, when you first took over your
2 responsibilities as the recreation director, did
3 you do any analysis yourself of the operation at
4 North Hill?

5 A. No. Not when we first took over, no.

6 Q. Was it being managed by an outside management
7 firm at that time?

8 A. Yes.

9 Q. Do you know the name of the firm?

10 A. I believe at that time it was called Gunnarson
11 Brothers Golf. I'm not 100 percent on that, but
12 I believe that's what it was called.

13 Q. That's G-u-n-n-e-r-s-o-n?

14 A. Yes, yeah, it's a-r-s-o-n, yes.

15 Q. Were you provided with a copy of the contract
16 between the town of Duxbury and Gunnarson
17 Brothers?

18 A. At some point, yes.

19 Q. You indicated a few minutes ago that one of your
20 jobs was to oversee the contractual obligations;
21 is that correct?

22 A. Yes.

23 Q. Were you doing that from 1989 forward?

24 A. No.

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1 A. I do.

2 Q. You own that?

3 A. I do.

4 Q. How long have you owned that property?

5 A. Eight years, I think.

6 Q. Do you live there alone or with others?

7 A. I live there with my ex-wife and two children.

8 MR. FOLLANSBEE: Can we go off the record
9 for a second.

10 (Discussion off the record.)

11 Q. (By Mr. Follansbee) Now, with regard to your
12 role as recreation director, in 1990, when you
13 took over, were you already familiar with the
14 various properties such as the Percy Walker Pool
15 and the North Hill Country Club?

16 A. Well, I started in 1989, first of all, not 1990.
17 But I guess, what do you mean by "familiar"?

18 Q. Well, had you played golf at North Hill?

19 A. Yes.

20 Q. You knew the property fairly well?

21 A. Yes.

22 Q. Correct me if I'm wrong, but it had a rather
23 rundown clubhouse at the time?

24 A. Yes.

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1 Q. When did you begin doing that?

2 A. Probably around 1992-ish, maybe '91, but not
3 right away.

4 Q. Okay. Beginning in 1992-ish, what did you do to
5 take over the responsibilities of overseeing the
6 contract at North Hill?

7 A. The town manager then, Tom Grew, felt that there
8 was a need for a professional staff person to be
9 involved in overseeing the contract. So he
10 asked me to get involved.

11 Q. Were there any particular problems that made him
12 come to that conclusion, to your knowledge?

13 A. The town was not, in his opinion, receiving the
14 monetary benefits that he thought in the
15 marketplace they could get.

16 Q. At that point, do you know how much the town was
17 receiving?

18 A. I think it was \$20,000 and some capital
19 improvements.

20 Q. Was that a yearly basis?

21 A. It was.

22 Q. From 1992 forward, did you participate in making
23 any changes in how things were going to be done
24 at North Hill?

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- 1 A. **Yes.**
- 2 Q. What was the first involvement that you had with
- 3 that process?
- 4 A. **When we first bid it out, I was involved with**
- 5 **Mr. Grew in development of the RFP.**
- 6 Q. Was that in the range of 1993?
- 7 A. **I don't remember.**
- 8 Q. When you say it was bid out, it was an RFP
- 9 process?
- 10 A. **It was.**
- 11 Q. You helped to create the RFP?
- 12 A. **With Mr. Grew, yes.**
- 13 Q. As a result of that, was a contract awarded to a
- 14 different organization to run it or did
- 15 Gunnarson still run it?
- 16 A. **My memory is he won, the Gunnarson Brothers won**
- 17 **the bid process the first time I was involved**
- 18 **with it, yes.**
- 19 Q. Do you recall whether there were any protests
- 20 about that process?
- 21 A. **My memory is there were no protests about that**
- 22 **particular bid, no.**
- 23 Q. Do you recall another RFP process during the
- 24 1990s that there was a protest?

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1 MR. KESTEN: At the golf course?

2 MR. FOLLANSBEE: At the golf course, yes.

- 3 A. **I don't remember.**
- 4 Q. Do you remember how long a contract the
- 5 Gunnarson Brothers were provided with?
- 6 A. **I'm fairly certain it was three years.**
- 7 Q. After the Gunnarson Brothers had run it for
- 8 three years under your supervision, was it
- 9 rebid? Was it put out to bid again?
- 10 A. **Yes. I'm sure that it was, yeah.**
- 11 Q. Did you participate in that RFP process?
- 12 A. **Yes.**
- 13 Q. Who was the town manager at that time?
- 14 A. **I don't remember.**
- 15 Q. Who was the town manager after Mr. Grew?
- 16 A. **Rocco Longo.**
- 17 Q. How do you spell his name?
- 18 A. **L-o-n-g-o.**
- 19 Q. When Mr. Longo was the town manager, did you
- 20 participate in an RFP process with him regarding
- 21 the golf course?
- 22 A. **Yes.**
- 23 Q. Who drafted the documents that time?
- 24 A. **I can't answer the question for a specific**

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- 1 **person because it's lots of different people.**
- 2 Q. Well, why don't we start with anybody you can
- 3 remember that had input at that time.
- 4 A. **People that are involved in drafting of the RFP**
- 5 **would be the town manager, the recreation**
- 6 **director, the board of selectmen, the town**
- 7 **accountant or finance director, the town's**
- 8 **insurance agent, the North Hill Advisory**
- 9 **Committee, fire chief. Lots of people get**
- 10 **involved, water department, superintendent. I**
- 11 **might be leaving some people out.**
- 12 Q. So was that consistent in the '90s that there
- 13 would be input from all those people if there
- 14 was an RFP at the golf course?
- 15 A. **Up until now, yes.**
- 16 Q. As far as the actual document called the RFP, do
- 17 you know who physically put that document
- 18 together in the '90s?
- 19 A. **I don't remember.**
- 20 Q. Do you remember if you ever did that?
- 21 A. **I do not -- in the '90s, I do not believe so.**
- 22 Q. As a result of the RFP process and let's say in
- 23 the mid-'90s, was there an occasion where
- 24 Johnson Golf Management and Mr. Doug Johnson

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1 submitted a proposal to the town?

- 2 A. **Yes.**
- 3 Q. Was that proposal accepted by the town?
- 4 A. **My memory is the first time they bid, the**
- 5 **proposal was rejected. I don't know the year.**
- 6 Q. Do you know why it was rejected?
- 7 A. **My memory is that they didn't meet some of the**
- 8 **requirements, but I don't remember which ones.**
- 9 Q. Would that have been the occasion where the
- 10 Gunnarson Brothers received another contract?
- 11 A. **I think so. But I couldn't be certain.**
- 12 Q. Do you know of any management company between
- 13 the time you took the job in '89 and 2008, any
- 14 company other than Gunnarson Brothers or --
- 15 A. **No.**
- 16 Q. -- Johnson Golf Management?
- 17 A. **No.**
- 18 Q. They were the only two companies that succeeded
- 19 in bids?
- 20 A. **Seemed to make sense, yes.**
- 21 Q. That's your memory, as well?
- 22 A. **Yeah. Because it's the only two people.**
- 23 Q. Now, do you recall that the first time that
- 24 Johnson bid, that they contacted the inspector

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1 general's office? Do you have any memory of
2 that?

3 **A. I don't.**

4 **Q.** Now, with regard to the second time that Johnson
5 Golf Management bid at North Hill, am I correct
6 that they were the successful bidder and were
7 awarded a contract?

8 **A. I'm not trying to be evasive but -- back then**
9 **I'm not sure it was called Johnson Golf**
10 **Management. I don't know if that matters or**
11 **not, but it used to be called Johnson Turf and**
12 **Golf Management or something like that.**

13 **Q.** When I refer to Johnson Golf Management, that's
14 the corporation and the corporation changed
15 their name, you are correct. So they used to be
16 known as Johnson Turf and Golf Management. It's
17 the same company. It was simply a name change.

18 For clarity, anytime I refer to Johnson
19 Golf, it's either Johnson Turf or Johnson Golf.
20 It's all one company.

21 **A. Yes.**

22 **Q.** Your memory it was Johnson Turf and Golf
23 Management that got the contract in the
24 mid-'90s?

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1 **A. I believe that's right.**

2 **Q.** At that time what was the condition of the
3 clubhouse, let's say?

4 **A. Terrible.**

5 **Q.** Had the town of Duxbury done anything by way of
6 capital improvements at the clubhouse?

7 **A. Not during my tenure until then, no. Not during**
8 **my tenure.**

9 **Q.** Do you remember the layout of the old clubhouse?

10 **A. I do.**

11 **Q.** Could you describe briefly what it was like.

12 **A. Two floors, porch on the second floor. Only one**
13 **exterior exit. One interior way of getting to**
14 **the second floor. Men's and ladies rooms on the**
15 **first floor. Pro shop and kitchen on the first**
16 **floor.**

17 Upstairs was a wide open space that was
18 used, utilized as a bar with tables and chairs.

19 **Q.** Did it --

20 **A. No basement.**

21 **Q.** No basement?

22 **A. No.**

23 **Q.** It was on a slab?

24 **A. Slab.**

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1 **Q.** Were there any amenities, other than a pro shop
2 and a bar?

3 **A. I mean, a kitchen with a counter service. I**
4 **guess that's it.**

5 **Q.** Was there a poolroom?

6 **A. There was a pool table on the second floor from**
7 **time to time, yes.**

8 **Q.** That was in the bar area?

9 **A. Yeah, upstairs.**

10 **Q.** Now, when you say the property was in deplorable
11 condition, was it a wood-framed building?

12 **A. Wood frame, former cow barn. Not handicap**
13 **accessible. The ADA had come into fruition by**
14 **that time. Septic system in disrepair.**

15 **Q.** When you say ADA, you are referring to the
16 Americans with Disabilities Act?

17 **A. I am.**

18 **Q.** What, if anything, did the town of Duxbury
19 decide that they were going to do with the
20 property?

21 **A. That there was a need for a new clubhouse**
22 **eventually.**

23 **Q.** Do you recall how that discussion ensued and who
24 participated in the decision to build a new

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1 clubhouse?

2 **A. I don't remember who was involved, but I do**
3 **remember the tenor of the conversations.**

4 **Q.** Can you just briefly tell us what the tenor of
5 the conversations was.

6 **A. Yes. The town felt there was a need for a new**
7 **clubhouse. There was a new management**
8 **contract/RFP coming up, I want to say 1998,**
9 **maybe. So the town drafted an RFP that included**
10 **language to have whoever won was awarded the bid**
11 **to build the town a new clubhouse and a Title V**
12 **septic system to the town's specification.**

13 **Q.** You participated in that RFP process?

14 **A. Yes.**

15 **Q.** As far as the creation of the document, were the
16 same people involved in creating that RFP as you
17 described earlier?

18 **A. Yeah, a whole litany.**

19 **Q.** That would include the town manager, yourself,
20 the selectmen, the town accountant, finance,
21 insurance, all of those people?

22 **A. Again, as I stated, it could be a lot more. I**
23 **could be leaving people out, but yes, all those**
24 **people were included.**

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- 1 Q. You indicated the North Hill Advisory Committee
2 participated in the creation of the document, as
3 well, right?
- 4 A. **They would provide input and suggestions into
5 what they would like to see in the contract, in
6 the management agreement. That's -- all those
7 entities would.**
- 8 Q. By 1998, you had had a three-year experience in
9 working with the folks at Johnson Golf, correct?
- 10 A. **Yes.**
- 11 Q. Did you ever have any problems with their
12 performance at the North Hill Country Club?
- 13 A. **Not relating to the course, absolutely not.**
- 14 Q. Did you have any problems, anything other than
15 relating to the course?
- 16 A. **There were concerns about customer service
17 issues from time to time expressed.**
- 18 Q. This was in the range of 1996 to 1999?
- 19 A. **I believe so, yes.**
- 20 Q. What were the customer service issues that you
21 recall?
- 22 A. **Just a couple of them would be confrontations
23 between customers and some employees on policies
24 and playing, things of that nature.**

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- 1 Q. Do you remember any of the specifics about what
2 the --
- 3 A. **People calling --**
- 4 Q. -- disagreements were?
- 5 MR. KESTEN: Wait until the question is
6 finished.
- 7 A. **I'm sorry. Sure.**
- 8 Say it again, I guess.
- 9 Q. Sure.
- 10 Do you have any specific memory as to
11 what the disagreements were?
- 12 A. **I guess just one comes to mind, a confrontation
13 between an employee and a player saying they
14 were yelled at, screamed at.**
- 15 Q. Do you know who the player was?
- 16 A. **Yes, his name was Mr. Ash. I don't recall his
17 first name.**
- 18 Q. Do you know who the employee was?
- 19 A. **At that time I believe it was Doug's father,
20 Warren Johnson.**
- 21 Q. So did you know Warren?
- 22 A. **I had met him, sure.**
- 23 Q. Did you have any trouble dealing with Warren
24 yourself?

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- 1 A. **No.**
- 2 Q. If I described in those days Warren would have
3 been a gentleman in his 70s, is that about
4 right?
- 5 A. **That would seem right to me.**
- 6 Q. When this issue of customer service came up, are
7 you the person who resolved it?
- 8 A. **Usually, yes.**
- 9 Q. Were you satisfied with the resolution of this
10 particular issue with Mr. Ash?
- 11 A. **Yes.**
- 12 Q. Other than that, you don't have any specific
13 memory of any customer service issues?
- 14 A. **Not specific, no.**
- 15 Q. Now, in the RFP process in 1998 that resulted in
16 the next contract, that turned out to be a
17 ten-year contract; is that correct?
- 18 A. **Yes.**
- 19 Q. What was the reason that it became a ten-year
20 contract rather than a shorter term contract?
- 21 A. **Because of the requirements that the town was
22 asking of a management entity, building a
23 clubhouse and a septic system, which would
24 require a fair amount of capital output, the**

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- 1 **town felt that in order to keep their hopeful
2 rental payment about the same as what they had
3 been receiving, they would extend the years of
4 the contract so a company could have a
5 reasonable time to get a return on their
6 investment.**
- 7 Q. Included in that RFP was the demolition of the
8 old building, construction of the new clubhouse,
9 and construction of the septic system; is that
10 correct?
- 11 A. **No.**
- 12 Q. What part of that is incorrect?
- 13 A. **The demolition of the clubhouse.**
- 14 Q. Who did that demolition?
- 15 A. **The town of Duxbury.**
- 16 Q. Did the town remove the slab also?
- 17 A. **The town did.**
- 18 Q. At that point there was nothing there and from
19 that point forward, the new operator, well,
20 actually the same operator, Johnson Golf
21 Management, built the clubhouse; is that
22 correct?
- 23 A. **No.**
- 24 Q. Who built the clubhouse?

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1 **A. Johnson. I don't want to be evasive. When you**
 2 **say there was nothing there, the town provided**
 3 **the operator with a portable building to operate**
 4 **the clubhouse functions out of.**

5 **Q.** There was no permanent structure there?

6 **A. No.**

7 **Q.** Okay. So there was a temporary structure there
 8 so that they could operate and have like a
 9 semi -- almost a little pro shop kind of
 10 arrangement?

11 **A. Very small.**

12 **Q.** Describe it. Was it as big as this room?

13 **A. Yeah, but thinner.**

14 **Q.** How long did Johnson Golf operate with that
 15 structure as being the only thing that they had
 16 there?

17 **A. I don't recall. Maybe a year. But I'm not**
 18 **certain.**

19 **Q.** During this period of time, is it fair to say
 20 that you were, as the town's representative, you
 21 were pleased with the performance of Johnson
 22 Golf Management running the golf course?

23 **A. Yes.**

24 **Q.** I'm going to show you a letter dated December 9,
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1 1997, and ask you to just review that.

2 **A. Okay.**

3 **MR. FOLLANSBEE:** I'd ask this be marked.
 4 (Exhibit No. 1 ID marked.)

5 **Q.** Mr. Cushing, showing you what's now been marked
 6 as Exhibit No. 1 for our deposition, is this
 7 information accurate that you provided back in
 8 1997?

9 **A. Yeah.**

10 **Q.** Essentially, it describes that since '95,
 11 Johnson Golf has been there, correct?

12 **A. That's what it says, yes.**

13 **Q.** Does that refresh your memory as to when Johnson
 14 Golf took over for the first time?

15 **A. Yeah, if it says it.**

16 **Q.** From the '95 season forward, Johnson was
 17 operating the golf course, right?

18 **A. That would sound right to me.**

19 **Q.** When you describe drastic improvements and you
 20 say that they've always met your expectations
 and exceeded the specifications, correct?

21 **A. Yes.**

22 **Q.** That remained true right up until the time you
 23 sent that letter, correct?
 24

1 **A. Yes.**

2 **Q.** Now, other than the issue by Mr. Ash and Warren,
 3 Doug's father, no other issues that you can
 4 remember that were problematic?

5 **A. Up until that time, no.**

6 **Q.** After the 1999 bid, Johnson was awarded a
 7 ten-year contract and they undertook to
 8 construct the clubhouse; is that correct?

9 **A. I'm not sure of the years. I'm just not sure of**
 10 **the years. I don't want to say yes if the years**
 11 **are going to become an issue. I'm not sure.**

12 **MR. KESTEN:** I don't think there is going
 13 to be an issue. The documents --

14 **MR. FOLLANSBEE:** Yeah.

15 **MR. KESTEN:** Just so it's clear, we know
 16 the dates, I assume.

17 **MR. FOLLANSBEE:** I'd ask that this be
 18 marked as the next exhibit.

19 (Exhibit No. 2 ID marked.)

20 **Q.** I'm going to show you Exhibit 2, Mr. Cushing.
 21 This is what purports to be the management
 22 agreement between Johnson Turf and Golf
 23 Management and the town of Duxbury. The date on
 24 the front page is December 21, 1998. Does that

1 refresh your memory as to when the long-term
 2 ten-year contract began?

3 **A. Yes.**

4 **Q.** You had a copy of this contract yourself,
 5 correct?

6 **A. I did.**

7 **Q.** As far as maintaining the relationship between
 8 the town of Duxbury and the vendor, Johnson
 9 Golf, this was the contract that you were both
 10 operating under, correct?

11 **A. Yes.**

12 **Q.** Pursuant to Exhibit No. 2, Johnson Golf, shortly
 13 after signing the contract, began construction
 14 of the new clubhouse, correct?

15 **A. Yes.**

16 **Q.** Once the clubhouse was completed, it was in
 17 essentially the state that it's in today,
 18 correct?

19 **A. Essentially, yes.**

20 **Q.** During the ensuing years, let's take the years
 21 1999 to 2004, did you continue to act as the
 22 representative of the town of Duxbury as far as
 23 the contract with North Hill Golf Course?

24 **A. Yes.**

- 1 Q. Did you interact on a daily basis with the
2 personnel from Johnson Golf Management?
3 A. **Maybe not daily.**
4 Q. Would weekly seem more accurate?
5 A. **Yeah, yes.**
6 Q. In addition to your responsibilities of dealing
7 with Johnson Golf at North Hill, did you also
8 deal with the North Hill Advisory Committee?
9 A. **Yes.**
10 Q. Did you attend their meetings?
11 A. **I did.**
12 Q. With regard to the time period of 1999 to 2004,
13 did you have any additional issues of a negative
14 nature with Johnson Golf Management?
15 A. **I don't recall.**
16 Q. Do you recall any disagreements between the
17 North Hill Advisory Committee and Johnson Golf
18 Management during the period 1999 to 2004?
19 A. **I don't remember.**
20 Q. Do you remember who the individuals were on the
21 North Hill Advisory Committee during that period
22 of time?
23 A. **No.**
24 Q. Well, you don't remember any disagreements

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- 1 between '99 and 2004, correct?
2 A. **I don't remember.**
3 Q. If we went from 2005 through 2008, are you aware
4 of any disagreements between the town of Duxbury
5 and Johnson Golf Management as far as the
6 operation of the golf course?
7 A. **No.**
8 Q. No problems?
9 A. **No disagreements that I can remember.**
10 Q. During the ten-year contract from '99 to 2008,
11 do you remember an issue coming up with regard
12 to members at the golf course being unhappy
13 about not being able to get 18-hole tee times?
14 A. **I do.**
15 Q. Would you describe that as a disagreement? How
16 would you characterize that, the 18-hole tee
17 time issue?
18 A. **Disagreement between members of the club and the**
19 **management company.**
20 Q. As far as that issue, did the North Hill
21 Advisory Committee disagree with the 18-hole tee
22 time policy?
23 A. **Some members of the committee, yes.**
24 Q. Did you take a position on that?

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- 1 A. **No.**
2 Q. What, if anything, do you remember about the
3 issue?
4 A. **Historically, people had been able to book**
5 **18-hole tee times as members. The management**
6 **company wanted to change that policy. People**
7 **were unhappy with the change, some people. Some**
8 **members were unhappy with the change. It was**
9 **implemented. That's all I remember.**
10 Q. Did you attend any meetings between the
11 representatives of Johnson Golf and the board of
12 selectmen regarding this issue?
13 A. **I believe so.**
14 Q. Was a decision made by the board of selectmen as
15 to whether or not this policy was okay?
16 A. **I don't personally remember that. Perhaps. But**
17 **I don't recall.**
18 Q. In any event, the policy went into effect; is
19 that correct?
20 A. **Yes.**
21 Q. Did the disagreement end at that point or did it
22 continue?
23 A. **I don't remember. I think it was over. I don't**
24 **remember.**

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- 1 Q. Did you discuss this issue with any of the
2 people on the North Hill Advisory Committee?
3 A. **Yes.**
4 Q. Who were the members at that time?
5 A. **I don't remember.**
6 Q. Do you remember a gentleman by the name of
7 Mr. Doolin?
8 A. **I do.**
9 Q. Was he one of the people that you discussed it
10 with?
11 A. **I don't remember.**
12 Q. Do you remember a Michael Marlborough?
13 A. **I do.**
14 Q. Did you discuss it with him?
15 A. **I don't remember.**
16 Q. Well, you remember discussing it with somebody?
17 A. **Yes, members of the committee in public**
18 **meetings. So whoever would have attended that.**
19 Q. What do you remember from that discussion?
20 A. **We discussed the policy that was going to be**
21 **implemented and we discussed the past history**
22 **how it was run, implemented, the past policy.**
23 **That was it.**
24 Q. Is it fair to say that at least some members of

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1 the North Hill Advisory Committee were
2 disappointed with the decision of the town that
3 changed the 18-hole tee time policy?

A. No.

Q. You don't remember them being disappointed?

6 A. **The town didn't make the policy. So they
7 weren't disappointed in the town, no.**

8 Q. But my question was, maybe I wasn't clear, were
9 they disappointed that the town didn't take
10 their side in the controversy?

11 A. No.

12 Q. You don't recall that?

13 A. No.

14 Q. As far as the controversy regarding the tee time
15 policy, did that controversy come to an end?

16 A. Sure, yes.

17 Q. Once the town said Johnson is okay, they are
18 abiding by their contract, that was the end of
19 the controversy?

20 A. **That's my memory.**

21 Q. You don't recall it coming up again with the
22 North Hill Advisory Committee?

23 A. **I don't understand that question. Can you say
24 that again.**

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1 Q. Well, from roughly 2004 through the end of 2008,
2 wasn't it a constant issue with the North Hill
3 Advisory Committee that they wanted some relief
4 on that 18-hole tee time policy?

5 MR. KESTEN: What do you mean, did they
6 ask if they could do it at meetings?

7 MR. FOLLANSBEE: Yes, at meetings.

8 MR. KESTEN: Constant issue at their
9 meetings?

10 MR. FOLLANSBEE: Yes.

11 A. **Is it a constant --**

12 MR. KESTEN: Was it a constant issue at
13 the meetings of North Hill Advisory Committee?

14 A. No.

15 Q. Do you recall it coming up --

16 A. **From time to time.**

17 Q. Each year it would be on the mind of the North
18 Hill Advisory Committee to change this policy,
19 correct?

20 A. No.

MR. KESTEN: He can't -- how could he --

22 MR. FOLLANSBEE: He is the member of the
23 committee.

24 MR. KESTEN: You said on the minds of the

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1 committee.

2 MR. FOLLANSBEE: Okay. Fair enough.

3 MR. KESTEN: Came up for discussion,
4 sure.

5 MR. FOLLANSBEE: I got it.

6 Q. (By Mr. Follansbee) As far as the meetings of
7 the North Hill Advisory Committee, and I'm
8 referencing the meetings from 2004 to 2008, you
9 attended all those meetings, didn't you?

10 A. **I don't remember.**

11 Q. Did you regularly attend meetings?

12 A. Yes.

13 Q. Minutes were kept of the meetings?

14 A. Yes.

15 Q. Who kept the minutes?

16 A. **Whoever the clerk was.**

17 Q. Do you know who the clerk is now?

18 A. **I do not.**

19 Q. When was the last time you attended a North Hill
20 Advisory Committee committee meeting?

21 A. **I don't remember.**

22 Q. Did you attend any meetings this year?

23 A. No.

24 Q. Did you attend any meetings in 2010?

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1 A. **I don't remember.**

2 Q. Did you attend any meetings in 2009?

3 A. **I don't remember.**

4 Q. Do you remember attending meetings in 2008?

5 A. **I don't remember the specific years. No.**

6 Q. Did you attend meetings in preparing the RFP
7 that went out to bid in 2008?

8 A. **Meetings of what?**

9 Q. North Hill Advisory Committee?

10 A. **Can you say it one more time?**

11 Q. In the year 2008, a new RFP was issued in
12 October of 2008, correct?

13 A. Yes.

14 Q. So you remember that?

15 A. **I do.**

16 Q. Prior to that, did the subject of the RFP come
17 up at the meetings of the North Hill Advisory
18 Committee in calendar year 2008?

19 A. **I believe so, yes.**

20 Q. You attended those meetings and participated in
21 those discussions, correct?

22 A. **I did.**

23 Q. Is it fair to say that a decision was made by
24 the town of Duxbury that would change the policy

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1 on the 18-hole tee time?

2 **A. I'm sorry. Can you ask that one more time?**

3 **Q. Sure.**

4 During the lead-up to the RFP in October
5 of 2008, is it fair to say that a decision was
6 made by the town of Duxbury to change the policy
7 at North Hill Country Club regarding 18-hole tee
8 times?

9 **A. Yes.**

10 **Q. Did you participate in that decision?**

11 **A. Yes.**

12 **Q. How was that decision arrived at?**

13 **A. The draft of an RFP would be circulated to all**
14 **those parties I mentioned previously. And those**
15 **parties would comment on items in the RFP. Then**
16 **the RFP would be put together and that's it.**

17 **Q. That's exactly what happened, correct?**

18 **A. Yes.**

19 **Q. What happened to these drafts of the RFP that**
20 **were circulated?**

21 **A. I don't understand. What do you mean?**

22 **Q. Well, someone created a draft of an RFP. It**
23 **gets circulated to the North Hill Advisory**
24 **Committee?**

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1 **A. Yes.**

2 **Q. Where is that draft?**

3 **A. I don't know.**

4 **Q. Who made the initial draft to circulate it to**
5 **everybody else?**

6 **A. My office would put the draft together.**

7 **Q. Now, who in your office specifically? Who does**
8 **the typing in your office or in 2008 who did it?**

9 **A. Myself and the recreation secretary.**

10 **Q. Who was that in 2008?**

11 **A. Her name is Loretta Kocon, K-o-c-o-n.**

12 **Q. Does Loretta still work for you?**

13 **A. She does.**

14 **Q. Just so I understand the methodology, you**
15 **created a draft of the RFP with Loréttta's help**
16 **and that was printed and circulated to members**
17 **of the North Hill Advisory Committee; is that**
18 **correct?**

19 **A. No. That's not. No.**

20 **Q. Okay. Tell me what did happen.**

21 **A. When the draft is put together by my office,**
22 **it's circulated to all of the people that I**
23 **mentioned on the list previously within the town**
24 **departments.**

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1 **Q. One of those groups that you mentioned, one of**
2 **the entities that you mentioned were the fellows**
3 **or woman on North Hill Advisory Committee,**
4 **correct?**

5 **A. I believe it would be to the chair.**

6 **Q. The chair?**

7 **A. Yes.**

8 **Q. Do you know who the chair was in 2008?**

9 **A. I don't remember.**

10 **Q. If I suggested to you it was Mr. Doolin, does**
11 **that refresh your memory at all?**

12 **A. I don't remember. It's not unreasonable, but I**
13 **just don't remember who it was.**

14 **Q. Do you know who the chair is today?**

15 **A. Doolin, Mr. Doolin.**

16 **Q. Mr. Doolin?**

17 **A. Yes.**

18 **Q. Who are the other members of the North Hill**
19 **Advisory Committee today?**

20 **A. I believe -- this may not be accurate -- Michael**
21 **Doolin, Michael Marlborough, Robert Mustard,**
22 **Thomas Garrity, James Ford. I can't remember**
23 **past that.**

24 **Q. That's not bad. That's pretty good.**

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1 With regard to the draft of the RFP that
2 was circulated in 2008, did you get feedback
3 from different -- I will go individually. Did
4 you get feedback from members of the North Hill
5 Advisory Committee on changes that they would
6 like to have made to the draft?

7 **A. Yes.**

8 **Q. Do you know who provided you with those changes?**

9 **A. My memory is Mr. Doolin.**

10 **Q. Did he give you that in writing?**

11 **A. I don't remember that.**

12 **Q. Did anybody else, let's take the next group of**
13 **people, did anyone else from town hall provide**
14 **you input?**

15 **A. Yes.**

16 **Q. Who else provided input?**

17 **A. Members of the board of selectmen, the town**
18 **manager, the finance director, the water**
19 **superintendent, and I don't remember who else.**
20 **But there may have been others.**

21 **Q. Do you remember specifically who on the board of**
22 **selectmen gave you feedback?**

23 **A. Mrs. Sullivan.**

24 **Q. Anyone else?**

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1 A. I don't remember.
 2 Q. Who were the other members of the board of
 3 selectmen in 2008?
 4 A. I believe Andre Martecchini was one. I don't
 recall the third. I'm not trying to be evasive.
 6 I just don't remember. It's three years ago.
 7 MR. KESTEN: They know.
 8 MR. DOUGLAS JOHNSON: We do know.
 9 MR. KESTEN: It's like a quiz.
 10 MR. DOUGLAS JOHNSON: It's funny how
 11 people don't remember certain things.
 12 Mr. MacDonald had the same problem.
 13 MR. FOLLANSBEE: Leave that alone.
 14 MR. DOUGLAS JOHNSON: Must be something
 15 in the water down there.
 16 Q. (By Mr. Follansbee) Now, when the contract
 17 that's in front of you, which is Exhibit No. 2,
 18 when that was signed and for the duration of
 19 that contract, in addition to the clubhouse, was
 20 there another structure on the property?
 21 A. Yes.
 22 Q. A residential structure?
 23 A. Yes.
 24 Q. Could you describe what that was?
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1 A. I believe a 1920s farmhouse with possibly eight,
 2 ten rooms. Basement. Two floors.
 3 Q. Three or four bedrooms?
 4 A. Yeah, yes.
 5 Q. What was that structure used for?
 6 A. When?
 7 Q. From 1999, when the contract was signed, that
 8 would be Exhibit No. 2, I think that was signed
 9 in late '98 for the '99 season, for the '99
 10 season forward, let's say for the first three
 11 years, '99, 2000 and, 2001, what was the
 12 structure used for?
 13 A. The management company housed their
 14 superintendent and later on one of the managers.
 15 Q. One of the on-site managers of the golf course?
 16 A. Yes.
 17 Q. That, as I understand it, that building is no
 18 longer there; is that correct?
 19 A. It's no longer there.
 20 Q. The building was torn down by the town of
 Duxbury?
 22 A. It was.
 23 Q. Do you know when that happened?
 24 A. I don't remember that.

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1 Q. Who made the determination to knock the building
 2 down?
 3 A. The town manager.
 4 Q. Was that due to the fact that it needed repairs?
 5 A. Yes.
 6 Q. As the contact person responsible for overseeing
 7 the contract on behalf of the town, are you
 8 familiar with the capital expenditures that are
 9 made by the town on an annual basis at the golf
 10 course?
 11 A. Yes.
 12 Q. Is there a quote, "capital budget" for the golf
 13 course each year?
 14 A. No.
 15 Q. Describe, if you will, how the capital projects
 16 at the golf course that the town wants to do are
 17 funded by the town?
 18 A. I would submit a capital budget request to the
 19 finance committee and fiscal advisory committee.
 20 Those would be reviewed by those committees and
 21 voted on.
 22 They would then be forwarded to the board
 23 of selectmen who would vote on them, whether to
 24 approve or deny. And then they would go to the
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1 town meeting to be voted upon.
 2 Q. Are you familiar, during your tenure, during
 3 this ten-year project that's shown on Exhibit
 4 No. 2, what the average capital budget was each
 5 year for the golf course?
 6 A. Average, I don't remember.
 7 Q. Do you remember what the high was?
 8 A. Somewhere south of \$400,000.
 9 Q. What was that? What was obtained with the
 10 capital budget of \$400,000?
 11 A. A couple of things, but the chief one would have
 12 been the installation of an automatic irrigation
 13 system.
 14 Q. Who put that in?
 15 A. Well, the town of Duxbury paid for it.
 16 Q. Do you know what vendor put it in?
 17 A. Yes. Lawhorn Irrigation was the contractor that
 18 installed the irrigation portion.
 19 Q. Do you know what year that was done?
 20 A. 1995, I believe. I believe.
 21 Q. I misdirected you. I meant to ask you about the
 22 capital budget having to do with this contract
 23 which began in 1999.
 24 A. Okay.

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1 Q. Aside from the irrigation system that was put in
2 in the mid-'90s, I'm talking about this
3 contract, Exhibit No. 2, and the capital budget
4 during that period of time, during the 1999 time
5 frame up until 2008.

6 Do you know what the highest capital
7 budget was?

8 A. **I don't remember.**

9 Q. But nothing of the magnitude that you just
10 described, is that correct?

11 A. **No, that's correct.**

12 Q. Without nailing down a specific number, would I
13 be correct in assuming it's less than \$10,000 a
14 year?

15 A. **No.**

16 Q. Is there any year you remember the capital
17 budget being higher than \$10,000?

18 A. **Yes.**

19 Q. Do you remember what project was funded with
20 that?

21 A. **The repair of cart paths and the repair of
22 bunkers and the installation of tee boxes.**

23 Q. Who performed that kind of work?

24 A. **Various contractors. Johnson Golf Management**

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1 **themselves; David Drake. I don't know if it's a**
2 **corporation or just a person. Jim Gallant, and**
3 **there is another asphalt company. The name**
4 **escapes me.**

5 Q. As far as the cart path repairs, that was done
6 by outside vendors, asphalt companies?

7 A. **Yes.**

8 Q. The restoration of bunkers, installation of tee
9 boxes, that would have been done by the
10 management company, Johnson Golf?

11 A. **And others.**

12 Q. And others?

13 A. **Yes.**

14 Q. Do you know who else might have done that work?

15 A. **Just say the question again so I can be sure I'm**
16 **answering the right one.**

17 Q. The work doing bunkers and tee boxes.

18 A. **Johnson Golf Management or David Drake**
19 **Corporation or Company or whatever his title**
20 **was.**

21 Q. When was the last time that you recall any of
22 these capital improvement projects with them?

23 A. **I don't remember.**

24 Q. Was it done within the last four years?

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1 A. **No, I don't think so.**

2 Q. Now, with regard to the feedback that you got
3 when you sent out the draft RFP in 2008, you
4 indicated that you got feedback from the
5 chairman of the committee, who we think is
6 Michael Doolin. Do you know what he wanted in
7 the contract?

8 A. **Can you just say the year again.**

9 Q. Yeah, the 2008 RFP.

10 A. **Yes.**

11 Q. You indicated that your secretary and yourself
12 had prepared a draft?

13 A. **Yes.**

14 Q. Circulated it to various people and you got some
15 feedback from the committee, and being the chair
16 of the committee, Michael Doolin, is who we
17 think you got it from.

18 A. **Uh-huh.**

19 Q. What feedback did they give you of items they
20 wanted in the RFP?

21 A. **I don't remember specifics.**

22 Q. Do you remember an option that was discussed of
23 having the town run the course themselves?

24 A. **Yes.**

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1 Q. That was discussed with the members of the North
2 Hill Advisory Committee, correct?

3 A. **And others, yes.**

4 Q. A decision was made that that wouldn't be in the
5 best interests of the town; is that correct?

6 A. **No.**

7 Q. Why didn't the town elect to run it themselves,
8 then?

9 A. **The board of selectmen at that stage didn't want**
10 **the town to have to go, because of the budget,**
11 **to go to town meeting and request a large amount**
12 **of money. They didn't feel that that would pass**
13 **town meeting.**

14 Q. The board of selectmen, the option of running it
15 with town employees was not going to be a viable
16 option, correct?

17 A. **I can't answer that.**

18 MR. KESTEN: What do you mean how could
19 they have decided? Whether he heard them say
20 it?

21 MR. FOLLANSBEE: I will rephrase the
22 question.

23 Q. A decision was made to use an RFP process and
24 seek an outside vendor?

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1 A. It was.
 2 Q. So I assume, and maybe incorrectly, that the
 3 other option of running it themselves was
 4 something that was rejected at the selectman
 level?
 6 A. I don't know that. You'd have to ask them. I
 7 don't know that.
 8 Q. Did you have a preference as to how the new
 9 contract should be done?
 10 A. No.
 11 Q. So it didn't matter to you whether it was
 12 outside vendors or town?
 13 A. No.
 14 Q. You were indifferent to it?
 15 A. Yes.
 16 Q. You indicated you got feedback from
 17 Mrs. Sullivan on the board of selectmen. Do you
 18 remember what feedback you got from her?
 19 A. No, I don't.
 20 Q. Did she give you anything in writing?
 21 A. I don't remember that either.
 22 Q. The other individuals in town that you
 23 circulated your draft RFP to, did you get
 24 feedback from anybody other than Doolin and
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1 Sullivan?
 2 A. I specifically remember the water
 3 superintendent.
 4 Q. Anyone else?
 5 A. The insurance agent for the town; Mr. Troy, the
 6 town counsel; finance -- I don't know if he was
 7 finance then. Town accountant's office.
 8 Q. Do you know who that individual was?
 9 A. I believe it was John Madden, I believe.
 10 Q. I don't know whether you said this earlier, what
 11 about the town manager, did he give you any
 12 feedback?
 13 A. Yes, he did.
 14 Q. Do you recall if any of these individuals gave
 15 you their feedback in writing?
 16 A. I don't recall. They may have. I don't recall.
 17 Q. If they did, would you have kept a copy of those
 18 documents?
 19 A. I don't think I would have. I don't remember.
 20 Q. Now, any changes and suggestions that you got
 21 from all these people, did you incorporate it
 22 into a new draft of the RFP?
 23 A. My memory is some possibly, not all.
 24 Q. How did you decide which ones you were going to
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1 include and which ones you weren't going to
 2 include?
 3 A. Discussions with legal counsel, town manager,
 4 you know, the people with expertise in that area
 5 that would have a better understanding than I
 6 would.
 7 Q. Now, with regard to the contract itself, did you
 8 have any role in drafting that document?
 9 A. The contract?
 10 MR. KESTEN: Which contract?
 11 MR. FOLLANSBEE: The contract, Exhibit
 12 No. 2.
 13 MR. KESTEN: The '98 contract?
 14 MR. FOLLANSBEE: Yes.
 15 A. I need more direction than that. What's the
 16 contract?
 17 Q. What you have in front of you, the town has
 18 identified that entire document as the contract.
 19 A. Say the question again.
 20 Q. With regard to Exhibit No. 2, had you had a role
 21 in drafting that document?
 22 A. Yes.
 23 Q. That incorporated the RFP that you had put out
 24 in '98; is that correct?
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1 A. Yes.
 2 Q. Was your role in drafting that document similar
 3 to your role in the 2008 process where it got
 4 circulated to all the folks and they gave you
 5 their feedback and that became a final product?
 6 A. Yes.
 7 Q. Now, in the RFP, this is a copy of the RFP that
 8 was issued in October of 2008. I'm sorry. It
 9 must have been issued before that. It had a bid
 10 date of October 24th, 2008, and this was marked
 11 as Exhibit No. 3 at the Lanzetta deposition.
 12 I'm going to show you that.
 13 MR. FOLLANSBEE: Do you need a copy of
 14 that, Lenny?
 15 MR. KESTEN: No.
 16 Q. Take a look at that, if you could, Mr. Cushing.
 17 And my question is: Do you recognize this as
 18 the final version of the RFP that you and your
 19 secretary had originally drafted and then got
 20 revised after input from a lot of town folk?
 21 A. I mean, there is a lot to look at that to make
 22 sure of.
 23 Q. Why don't we take a break and you can look at
 24 it.
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1 MR. KESTEN: If you represent it is, why
2 don't we just work that way. He would have to
3 go to his compare. Realistically we would have
4 to find the original. If you are saying this is
5 the final one --
6 MR. FOLLANSBEE: This was the one given
7 to us in the request for production.
8 MR. KESTEN: Okay. Let's work with it.
9 **A. Sure, then I recognize it.**
10 MR. KESTEN: No, no.
11 THE WITNESS: Don't say that?
12 MR. KESTEN: We -- you haven't compared
13 it. They are representing it is. We all think
14 it is. Let's work with it. Later on if
15 somebody notices something different in the
16 original, we can submit it in. You can't
17 possibly recognize it.
18 THE WITNESS: There's too many pages.
19 Okay.
20 **Q.** (By Mr. Follansbee) Now, in this RFP, which was
21 Exhibit -- what was it, Exhibit No. 3 --
22 MR. KESTEN: No. 3 in Lanzetta's
23 deposition.
24 **Q.** No. 3 at Lanzetta's deposition, it describes the
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1 criteria on how the bids are going to be
2 evaluated, am I correct in that?
3 I could probably direct you to a specific
4 page.
5 **A. That would be helpful.**
6 **Q.** Beginning on page 6, they are numbered in the
7 bottom middle.
8 **A. Okay.**
9 **Q.** Having been through this process a few times,
10 you are familiar with the expressions "highly
11 advantageous," "advantageous," and "not
12 advantageous"?
13 **A. Yes.**
14 **Q.** And the document that you and your secretary
15 originally created and then evolved into this
16 final product, includes, and I'm reading from
17 the area of Relevant Experience, it says, "To
18 get highly advantageous, the proposer and his
19 firm has managed more than one income-generating
20 municipal golf course operation or comparable
21 business enterprise for a period of at least
22 three years."
23 MR. KESTEN: Is there a question?
24 **Q.** My question is --
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1 MR. KESTEN: Did you read it correctly?
2 **A. I'm sorry.**
3 **Q.** Two things, did I read it correctly and is that
4 what you wrote?
5 MR. KESTEN: Is that what your wrote?
6 MR. FOLLANSBEE: Well, this is the draft
7 that he created. I want to know where that came
8 from.
9 MR. KESTEN: Oh, whether he wrote that
10 himself or somebody else?
11 MR. FOLLANSBEE: Exactly.
12 THE WITNESS: Is that the question?
13 MR. FOLLANSBEE: Why don't I strike that
14 question and ask you a better question.
15 **Q.** (By Mr. Follansbee) Read to yourself what it
16 says in order to obtain highly advantageous.
17 **A. Uh-huh.**
18 **Q.** And my question is, did you write that
19 paragraph?
20 **A. I believe so, yes.**
21 **Q.** Now, what did you mean by "comparable business
22 enterprise"?
23 **A. The term "comparable business enterprise" came**
24 **from town counsel, Robert Troy.**
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1 **Q.** Are you 100 percent sure of that?
2 **A. 100 percent sure of that.**
3 MR. KESTEN: Which one?
4 **A. "Comparable business enterprise."**
5 **Q.** Did you have any discussion with anybody about
6 what that term meant?
7 **A. No.**
8 **Q.** So did Attorney Troy give you something in
9 writing and say include the word "comparable
10 business enterprise"?
11 **A. I don't remember that.**
12 **Q.** Did you ever ask anyone, whether it be Attorney
13 Troy or anybody else in town government, what
14 the expression "comparable business enterprise"
15 meant?
16 **A. No.**
17 **Q.** Did you understand it yourself?
18 **A. I think so.**
19 **Q.** What was your understanding of what a
20 "comparable business enterprise" would be?
21 **A. Something that would be similar to someone v**
22 **was running a golf course or recreational**
23 **facility.**
24 **Q.** Off the top of your head, can you think of
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- 1 anything that's similar to running a golf
2 course?
- 3 **A. Not off the top of my head, no.**
- 4 **Q.** How about what other recreational facilities do
5 you think would be comparable to running a golf
6 course?
- 7 **A. I don't know right now.**
- 8 **Q.** Did you know then and you've forgotten?
- 9 **A. No.**
- 10 **Q.** Right now you can't think of a comparable
11 recreational facility?
- 12 **A. No.**
- 13 **Q.** In your earlier RFPs, you did not include the
14 word "comparable business enterprise," am I
15 correct?
- 16 **A. That's correct.**
- 17 **Q.** So in the RFP that was put out there in order to
18 create Exhibit No. 2, the measuring stick was
19 has the management company operated a golf
20 course; is that correct?
- 21 **A. I believe so.**
- 22 **Q.** Your memory was that this was a departure and a
23 change from the way you had done it in the past,
24 correct?

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- 1 **A. Yes.**
- 2 **Q.** Was there any consultant utilized by the town to
3 draft the RFP?
- 4 **A. No.**
- 5 **Q.** The only input you got from anybody were from
6 the folks that you've previously mentioned,
7 correct?
- 8 **A. Yes, and I said I might have left someone out on
9 that list, but yes, that's all.**
- 10 **Q.** But they were all affiliated with the town of
11 Duxbury or on the North Hill Advisory Committee?
- 12 **A. Uh-huh.**
- 13 **Q.** You have to say yes or no.
- 14 **A. Yes. Sorry.**
- 15 **Q.** Did you attend the prebid conference for all the
16 bidders in the fall of 2008?
- 17 **A. I believe so, yes.**
- 18 **Q.** Do you recall questions coming up about what was
19 meant by "comparable business enterprise"?
- 20 **A. I don't.**
- 21 **Q.** At the end of the prebid conference, different
22 potential vendors submitted questions in
23 writing; is that correct? Is that right?
- 24 **A. I believe that's right, yes.**

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- 1 **Q.** Did you answer those questions or did somebody
2 else in town answer them?
- 3 **A. That's a good question. I believe my office in
4 writing responded to the questions.**
- 5 **Q.** When you say your office, does that mean you
6 delegated it to somebody or did you answer them
7 and someone else typed them up?
- 8 **A. No -- yes, someone else could type them up. I
9 would provide the answer, but perhaps after
10 consulting someone else.**
- 11 **Q.** Who else would you have consulted?
- 12 **A. I don't remember.**
- 13 **Q.** Do you remember -- I may have already asked you
14 this -- do you remember a question about what
15 the words "comparable business enterprise"
16 meant?
- 17 **A. I don't.**
- 18 **Q.** If I asked you that question today, can you give
19 me an example of a comparable business
20 enterprise?
- 21 **A. Not off the top of my head, really, no.**
- 22 **Q.** Now, do you remember being assigned a task as
23 one of the evaluators for the RFP process in
24 October of '08?

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- 1 **A. Assigned a -- can you clarify what "assigned a
2 task" means.**
- 3 **Q.** Yes.
- 4 Did somebody give you the job of
5 reviewing the proposals and writing out an
6 evaluation of them?
- 7 **A. Can you just say that one more time, Steve.**
- 8 **Q.** Yes.
- 9 Did somebody give you the responsibility
10 to evaluate the various proposals in October of
11 '08?
- 12 **A. Yes.**
- 13 **Q.** Was that the town manager that asked you to do
14 that?
- 15 **A. Yes.**
- 16 **Q.** You had two colleagues that worked with you on
17 that doing the evaluations? Do you remember who
18 the evaluators were other than yourself?
- 19 **A. Anthony Floreano and Bill Dixon, I think.**
- 20 **Q.** Now, Mr. Floreano and Mr. Dixon and you were
21 given copies of everybody's proposal, correct?
- 22 **A. We were.**
- 23 **Q.** Did you meet together to do this or did you do
24 it independently?

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1 A. **Independently.**
 2 Q. Did you have any discussion with them at all
 3 about how to do this or when to do it?
 4 A. **None.**
 5 Q. When you did your evaluations, where did you
 6 perform the task?
 7 A. **In my office.**
 8 Q. Did you have any assistance or was it all done
 9 by yourself?
 10 A. **Just me.**
 11 Q. You didn't have the price proposals; is that
 12 correct?
 13 A. **That is correct.**
 14 Q. So all you had were the non-price proposals from
 15 the different competing companies that wanted
 16 the job, correct?
 17 A. **Correct.**
 18 MR. FOLLANSBEE: We may have marked these
 19 at somebody else's deposition, but I'm going to
 20 be on the safe side and mark them again here.
 21 (Exhibit No. 3 ID marked.)
 22 Q. I'd ask you to take a moment to take a look at
 23 what's now been marked as Exhibit No. 3. And I
 24 ask if you recognize that document?

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1 A. **I recognize them.**
 2 Q. Am I correct that the documents you have in
 3 front of you are your evaluation sheets to each
 4 of the competing proposals that came in in
 5 October of '08?
 6 A. **Yes.**
 7 Q. This form was provided to you by someone in
 8 town, correct?
 9 A. **Yes.**
 10 Q. Do you know who gave you that form?
 11 A. **The town manager.**
 12 Q. Did you get any instruction from anybody on how
 13 to evaluate these proposals?
 14 A. **No.**
 15 Q. So other than being given the proposals and
 16 Exhibit No. 3, you had no guidance from anybody
 17 on how to go about this?
 18 A. **No.**
 19 Q. Had you ever done this before?
 20 A. **Yes.**
 21 Q. When had you most recently done it?
 22 A. **The last contract.**
 23 Q. So it would have been ten years earlier?
 24 A. **Yes.**

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1 Q. Having seen Exhibit No. 3, when you received
 2 that in 2008, was that the same type of format
 3 that you had utilized back when you reviewed the
 4 proposals in 1998?
 5 A. **I don't remember.**
 6 Q. As you understand it, your duty was to go
 7 through the RFP and then check each person, each
 8 entity's proposal, to see what they deserved for
 9 a rating based on what was in the RFP, correct?
 10 A. **Yes.**
 11 Q. Now, what's the top one there?
 12 A. **Daley & Stiles.**
 13 Q. You determined that Daley & Stiles were not
 14 advantageous, correct?
 15 A. **Correct.**
 16 Q. Do you recall why you made that determination?
 17 A. **No.**
 18 Q. Do you know what experience Daley & Stiles had?
 19 A. **I don't remember.**
 20 Q. Did you know either Stephen Daley or Mark
 21 Stiles?
 22 A. **I know who Stephen Daley is.**
 23 Q. How do you know Stephen Daley?
 24 A. **He lives in Duxbury. He used to work for**

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1 **Gunnarson Brothers.**
 2 Q. Other than the fact that you knew him through
 3 Gunnarson Brothers, did you know him socially?
 4 A. **Sure.**
 5 MR. FOLLANSBEE: I'm sure we marked
 6 these, but I'm going to mark this one as the
 7 next exhibit, please.
 8 (Exhibit No. 4 ID marked.)
 9 Q. I'm now showing you what's been marked as
 10 Exhibit No. 4. This was given to us from the
 11 town and it's the non-price proposal from Daley
 12 & Stiles.
 13 If you look at Exhibit No. 4, do you
 14 recognize that as something that you reviewed?
 15 A. **No.**
 16 Q. If you look at Exhibit No. 3 from the deposition
 17 of Mr. Lanzetta, and I'm directing your specific
 18 attention to page 6, that describes the criteria
 19 that you'd need to get certain ratings, correct?
 20 A. **Yes.**
 21 Q. For Daley & Stiles, you determined that under
 22 Relevant Experience, they were not advantageous,
 23 correct?
 24 A. **Yes.**

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1 Q. One of the reasons for that is they weren't
2 managing two golf courses at the time, were
3 they?

4 MR. KESTEN: You mean according to --

5 MR. FOLLANSBEE: According to their
6 proposal.

7 A. **I would have to go back and read it again. I**
8 **don't remember talking to them. I'm sure I read**
9 **it.**

10 Q. Take a look at the document, then, if you don't
11 remember it.

12 MR. KESTEN: Do you want him to
13 reevaluate them?

14 MR. FOLLANSBEE: Well, I want to know why
15 he gave the rating of not advantageous.

16 MR. KESTEN: He said he doesn't remember
17 it.

18 MR. FOLLANSBEE: I'm asking if by looking
19 at this does that refresh your memory as to why
20 he said they were not advantageous.

21 A. **No, it was three years ago.**

22 Q. That's why I'm giving you an opportunity to look
23 at it now.

24 MR. KESTEN: I know. You are basically
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1 asking him to reevaluate him. He can do it, if
2 that's what you want.

3 MR. FOLLANSBEE: I would like to know how
4 he reached the conclusion that you reached.

5 MR. KESTEN: He told you he doesn't
6 remember.

7 MR. FOLLANSBEE: I understand that. Now
8 I'm saying take a look at this and see if that
9 refreshes your memory.

10 MR. KESTEN: You can read that relevant
11 experience thing.

12 MR. DOUGLAS JOHNSON: That's correct.
13 That's what he can do.

14 MR. KESTEN: Read that and then see if
15 that refreshes your memory as to how you reached
16 that conclusion. Does it help you remember what
17 happened back then?

18 A. **What's the question again?**

19 MR. KESTEN: Does this refresh your
20 recollection as to how you came to the opinion
21 on this that they were not advantageous? Is
22 that something that you remember?

23 THE WITNESS: No, this doesn't help me to
24 remember, no.

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1 Q. (By Mr. Follansbee) Let's take a look at Exhibit
2 No. 3 from the Lanzetta deposition. If you look
3 at what you would need to get highly
4 advantageous in the area of Relevant Experience,
5 the only way you could get highly advantageous
6 is if you were managing a municipal golf course
7 operation or a comparable business enterprise
8 for a period of at least three years, correct?

9 A. **Yes.**

10 Q. In addition to that, the proposer had to be
11 managing at least two municipal golf course
12 operations or comparable business enterprises,
13 correct?

14 A. **Which one are we looking at?**

15 Q. This is in the second sentence of highly
16 advantageous under Relevant Experience?

17 MR. KESTEN: That's what it says.

18 Q. That's what it says?

19 A. **Yes.**

20 Q. The only way any vendor could achieve that
21 rating is to satisfy those conditions, correct?

22 MR. KESTEN: That's what it says.

23 A. **I guess so, yes.**

24 Q. You had that in front of you when you were

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1 making your analysis, correct?

2 A. **Uh-huh.**

3 Q. That's a yes?

4 A. **Yes.**

5 Q. Looking at what Stiles and Daley gave you, they
6 did not at the time purport to be managing two
7 golf courses, did they?

8 A. **No.**

9 Q. In the area of Financial Information, if you go
10 to the next page of Exhibit 3 from Lanzetta's
11 deposition.

12 MR. KESTEN: I'll help you.

13 MR. FOLLANSBEE: Thank you.

14 MR. KESTEN: Do you want him to go to
15 that section on their proposal?

16 MR. FOLLANSBEE: Well, yes.

17 Q. (By Mr. Follansbee) If you look at the financial
18 section of the Stiles proposal.

19 MR. KESTEN: That's a different issue.
20 We are conducting a trial.

21 Okay.

22 Q. You found that they were not advantageous,
23 correct?

24 A. **Not advantageous, correct.**

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1 Q. The reason for that is?

2 MR. KESTEN: Well, ask him if he
3 remembers.

4 Q. Do you remember why they were not advantageous?

5 A. No.

6 Q. If you take a look at their proposal, did they
7 provide you with audited financial statements
8 that were audited by a CPA for the past three
9 years?

10 A. No. I'm going to say no.

11 Q. Did they provide all the financial documents
12 that were required?

13 A. I don't remember.

14 Q. Well, what did they provide you with according
15 to the document in front of you?

16 A. Three profit and loss statements.

17 Q. You determined that as a result of what they
18 gave you, you determined they were not
19 advantageous in the area of financial
20 information, correct?

21 A. Yes.

22 Q. Are you comfortable with the fact that you got
23 that right?

24 MR. KESTEN: What do you mean? What does
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1 that mean? Does he still think so?

2 MR. FOLLANSBEE: Yes.

3 A. I mean, I would need time to take the whole
4 package back and look at it again. I don't
5 know. I don't really understand that question,
6 I guess.

7 Q. Well, when you did the evaluation, you had the
8 RFP in front of you with the criteria that you'd
9 need to achieve each of these ratings, correct?

10 A. Uh-huh.

11 Q. That's a yes?

12 A. Yes. Sorry.

13 Q. You took that information from the RFP and
14 compared it to what was in the proposal,
15 correct?

16 A. Yes.

17 Q. Then you made a determination whether they
18 satisfied one of the areas to earn the rating,
19 correct?

20 A. Yes.

21 Q. So you went through this whole process?

22 A. Yes.

23 Q. Clearly Stiles & Daley didn't give you audited
24 financial statements, correct?

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1 A. Correct.

2 Q. They didn't give the name of their
3 superintendent in there, did they?

4 A. I don't know.

5 MR. KESTEN: Can I ask you why you are
6 doing it this way?

7 MR. FOLLANSBEE: Why don't we go off the
8 record.

9 (Discussion off the record.)

10 Q. (By Mr. Follansbee) On page 6 of the Stiles &
11 Daley proposal, under the category of
12 Superintendent, if you could review that, read
13 it to yourself. They did not provide you with
14 the name of a superintendent, did they?

15 A. Not according to this, no.

16 Q. It was a requirement in order to get highly
17 advantageous that the firm have a class A golf
18 course superintendent; is that correct?

19 A. Yes.

20 Q. He had to have a pesticide license and all that,
21 correct?

22 A. Yes.

23 Q. Another requirement in category 3 of the
24 maintenance, equipment, and staff, and I'm

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1 reading from the second-to-last line, it was a
2 requirement that the firm carry pesticide
3 insurance, correct?

4 A. In highly advantageous, yes.

5 Q. Without pesticide insurance, no company could
6 get highly advantageous in that category,
7 correct?

8 A. Yes.

9 MR. FOLLANSBEE: Off the record.
10 (Discussion off the record.)

11 Q. (By Mr. Follansbee) With regard to the RFP
12 process, do you recall that a decision was made
13 by the town manager to reject all the bids in
14 December of '08?

15 A. Yes.

16 Q. Did you participate in any discussions with him
17 about that decision?

18 A. No.

19 Q. When you were informed of that decision, were
20 you asked to prepare a new RFP for January?

21 A. I was.

22 Q. Did anybody give you any input in the new RFP?

23 A. Same process, yes. Same.

24 Q. So you --

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1 A. Yes.
 2 Q. All right. So you circulated a proposed RFP, a
 3 draft RFP to a bunch of different people?
 4 A. Yes.
 5 Q. The proposal that you circulated, was it the
 6 same one that you had in October?
 7 A. Proposal?
 8 Q. In other words, the RFP that you gave for
 9 January, was it the same form as Exhibit No. 3
 10 from the Lanzetta deposition?
 11 MR. KESTEN: Do you mean was it
 12 identical?
 13 MR. FOLLANSBEE: Yes.
 14 A. I don't remember if it was identical.
 15 Q. So you circulated this document to a bunch of
 16 different people. Did anybody ask you to make a
 17 change in it?
 18 A. I don't remember.
 19 Q. We'll get back to that then.
 20 Let's go back to your evaluation. If you
 21 could go through -- I'm sorry. I forgot what
 22 exhibit number are we on there, the evaluation?
 23 MR. KESTEN: Daley & Stiles is Exhibit 3.
 24 Q. There are multiple copies --
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1 A. Yes.
 2 Q. -- of different evaluations included there?
 3 A. Yes.
 4 Q. Could you go to the one for Eagles Nest Tree and
 5 Landscape. Now you have on this one, you've got
 6 something crossed out?
 7 A. Yes.
 8 Q. So the cross out is in the area of maintenance,
 9 equipment, and staff?
 10 A. Correct.
 11 Q. You originally said advantageous and then you
 12 changed it to highly advantageous?
 13 A. That's what I recall, yes.
 14 Q. Overall, you gave Eagles Nest Tree and Landscape
 15 a highly advantageous, correct?
 16 A. I did.
 17 MR. FOLLANSBEE: Mark that as the next
 18 exhibit.
 19 (Exhibit No. 5 ID marked.)
 20 Q. Mr. Cushing, I'm showing you what's now been
 21 marked as Exhibit No. 5. This is the non-price
 22 proposal of Eagles Nest Tree and Landscape, LLC.
 23 I will advise you that this document was given
 24 to us by the town of Duxbury and purports to be
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1 the proposal that was submitted by Eagles Nest
 2 on October 23rd, '08. This was one of the non-
 3 price proposals that you reviewed at that time,
 4 correct?
 5 A. Yes.
 6 Q. What you have in front of you in Exhibit 3 is
 7 your evaluation of this non-price proposal,
 8 correct?
 9 A. Yes.
 10 Q. Now, were you familiar with the principle of
 11 Eagles Nest Tree and Landscape, Mr. Shane?
 12 A. I know who he is, yes.
 13 Q. When you say you know who he is, he is a Duxbury
 14 resident, correct?
 15 A. Yes.
 16 Q. Do you have any social relationship with him?
 17 A. No. No.
 18 Q. Were you familiar with his business back in '08?
 19 A. Yes.
 20 Q. You knew that he was a landscaper?
 21 A. Oh, yeah. Yeah. Yes.
 22 Q. Did you have an understanding that he was in the
 23 golf business?
 24 A. No.
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1 Q. Had he been a member of the North Hill Advisory
 2 Committee in the past?
 3 A. Yes.
 4 Q. You had interaction with him in that committee?
 5 A. Yes.
 6 Q. Had he ever indicated to you that he wanted to
 7 get into golf course management?
 8 A. No.
 9 Q. Are you familiar with him being on any other
 10 boards or committees in the town of Duxbury?
 11 A. I believe he is now a cemetery trustee besides
 12 that. I don't know of any others.
 13 Q. Thankfully we are not going into what a cemetery
 14 trustee is. We will stick with the golf
 15 courses.
 16 Directing your attention to the Eagles
 17 Nest proposal, at the end of it, beginning on
 18 page 8, from page 8 to page 19, there are some
 19 balance sheets.
 20 A. Uh-huh.
 21 Q. You reviewed these at the time, correct?
 22 A. I don't remember doing that, but yeah. Yes.
 23 I'm sure I did.
 24 Q. You created the evaluation that's in front of
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1 you as part of Exhibit No. 3, correct?

2 **A. Yes.**

3 **Q.** That's based on your review of the Eagles Nest

4 proposal, correct?

5 **A. Yes.**

6 **Q.** From page 8 to page 19, that's all the financial

7 information that Eagles Nest provided, correct?

8 **A. Again, I'm not trying to be evasive, but if it's**

9 **all there, yes. It was three years ago. I**

10 **don't remember.**

11 **Q.** I understand that you don't remember right now

12 what they gave you.

13 **A. Yeah.**

14 **Q.** I'm advising you that this is the document that

15 the town provided saying this was their

16 proposal.

17 **A. Yeah.**

18 **Q.** My question is, without an audited financial

19 statement, could they have received a legitimate

20 grade of highly advantageous in the area of

21 finances?

22 **MR. KESTEN:** What does "legitimate" mean?

23 **MR. FOLLANSBEE:** Well, if you followed --

24 **A. Where is the criteria for that?**

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1 **Q.** I think it's right here.

2 **A. Okay.**

3 **Q.** In order to achieve a rate of highly

4 advantageous, the vendor had to provide audited

5 financial statements, didn't they?

6 **A. That's what it says, yes.**

7 **Q.** They did not provide audited financial

8 statements, did they?

9 **A. It doesn't appear here, no.**

10 **Q.** The correct evaluation would have been something

11 less than highly advantageous in that category,

12 correct?

13 **A. It's possible. I don't remember.**

14 **Q.** Well, I'm asking you now, not whether it's

15 possible or not, but what did the RFP say would

16 be the rating if they didn't provide an audited

17 financial statement? What's the best rating

18 they could get?

19 **A. Advantageous.**

20 **Q.** You gave them highly advantageous, correct?

21 **A. Yeah, I did.**

22 **Q.** In the area of Relevant Experience, the only way

23 you could get highly advantageous would be to be

24 managing at least two municipal golf course

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1 operations or other comparable business

2 enterprises, correct?

3 **A. Yes.**

4 **Q.** So it had to be more than one, correct?

5 **A. Yes.**

6 **Q.** And the only business enterprise in the Eagles

7 Nest bid was the landscaping company, correct?

8 **A. I don't remember.**

9 **Q.** Well, take a look at it. It's fairly short.

10 **A. Okay. So what's the question again?**

11 **Q.** The question is, did Eagles Nest purport to have

12 more than one comparable business enterprise?

13 **A. Yes.**

14 **Q.** They do not purport to be managing municipal

15 golf course operations, correct?

16 **A. No.**

17 **Q.** So what are the two comparable business

18 enterprises that Eagles Nest was handling in

19 2008?

20 **A. On a quick look through, their landscaping**

21 **company and their golf course work with Duxbury**

22 **Yacht Club.**

23 **Q.** How is that different?

24 **A. One has to do with residential landscaping and**

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1 **one has to do with the golf course business.**

2 **Q.** The only business they identified was Eagles

3 Nest Landscaping, right?

4 **A. Yes.**

5 **Q.** The proposer, meaning Eagles Nest, were they

6 managing more than one comparable business

7 enterprise for a period of at least three years?

8 **A. Yes.**

9 **Q.** What were the comparable business enterprises?

10 **A. Residential landscaping and the golf course with**

11 **Duxbury Yacht Club.**

12 **Q.** What were the three years that they did work at

13 the Duxbury Yacht Club?

14 **A. I don't see. It says within the last ten. It**

15 **doesn't give -- it says since 2002.**

16 **Q.** So it said -- what does it say they have done at

17 Duxbury Yacht club since 2002?

18 **A. Hydroseeding, irrigation, and general**

19 **hardscaping.**

20 **Q.** It doesn't tell you when they did it though,

21 does it?

22 **A. Since 2002.**

23 **Q.** But you don't know what years they did it; is

24 that correct?

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1 A. Since 2002.

2 MR. KESTEN: Why are we doing this?

3 MR. FOLLANSBEE: I'm not the one who is
saying those are comparable enterprises.

MR. KESTEN: No, but you are. You are
arguing -- I know it doesn't say, we agree, it
doesn't say it. Now what's the point? It says
what it says. He wrote what he wrote. What are
we trying to achieve?

10 Q. (By Mr. Follansbee) When I asked you earlier
this morning what a comparable business
enterprise was, you said you didn't know. Do
you have some memory now as to what a comparable
business enterprise was?

15 MR. KESTEN: What do you mean by memory?

16 MR. FOLLANSBEE: Well, he said he didn't
know what a comparable business enterprise was.

18 MR. KESTEN: Yes.

19 MR. FOLLANSBEE: And I'm wondering if
something has changed since he testified this
morning.

22 MR. KESTEN: Changed his mind that he now
knows?

24 MR. FOLLANSBEE: Okay.

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1 MR. KESTEN: No, that's all. It's
verbiage. Has he rethought it?

3 Q. (By Mr. Follansbee) What do you now say is
comparable business enterprise?

5 A. I believe probably when I was going through
this, as I read it now and it's in front of me,
that I felt a large landscape company that does
all the things that he says here and is working
with a golf course, was a comparable business
enterprise.

11 Q. Under Maintenance, Equipment and Staff, you gave
Eagles Nest a rating of highly advantageous,
correct?

14 A. Yes.

15 Q. Under the RFP, in order to get that type of
rating, they would have to indicate that they
had pesticide insurance, correct?

18 A. Yes.

19 Q. They did not provide any evidence of pesticide
insurance in their bid, did they?

22 A. I don't remember. I don't see under Maintenance
any submission that indicates pesticide
insurance as I reread it.

24 Q. At the Lanzetta deposition, Exhibit No. 6 was

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1 the RFP that was issued with a bid date of
2 January 9, 2009. I'd ask you to take a look at
3 that.

4 MR. KESTEN: This is the second one?

5 MR. FOLLANSBEE: This is the second one.

6 MR. KESTEN: Okay. What do you want --

7 Q. (By Mr. Follansbee) With regard to this one, are
8 you aware of any changes that you made between
9 Exhibit No. 3 of the Lanzetta deposition, which
10 was the October RFP, and Exhibit No. 6 of the
11 Lanzetta deposition, which was the RFP from
12 January?

13 A. I don't remember.

14 Q. If you could look at --

15 A. There may have been.

16 MR. KESTEN: What are we looking for?

17 MR. FOLLANSBEE: Is that No. 6? He's got
18 it in front of him.

19 MR. KESTEN: Yes, Exhibit 6 from
20 Lanzetta's deposition.

21 Q. If you look at page 1 of Exhibit No. 6, and then
22 if we look at page 1 of Exhibit No. 3.

23 A. Yes.

24 Q. Directing your attention to the second

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1 paragraph, do you see where it says that there
2 is to be a flat yearly payment --

3 A. Yes.

4 Q. -- to the town?

5 A. Uh-huh.

6 Q. And that's in Exhibit No. 3?

7 A. Which is the first RFP.

8 Q. The first one.

9 A. Yes.

10 Q. The word "flat" does not appear in the second
11 paragraph of Exhibit No. 6?

12 A. Yeah.

13 Q. Is that correct?

14 A. Yeah.

15 Q. Do you know why the word "flat" was taken out?

16 A. Yes, I do.

17 Q. Why was that word taken out?

18 A. Because -- I changed it because in the first
19 round of the bids when the bids came in, one of
20 the bids after we had seen the price proposals
21 included some payments that were not flat, and
22 since those were rejected and we were going out
23 a second time, I removed the "flat" and just
24 made it yearly, thinking that perhaps that would

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- 1 avoid any confusion.
- 2 Q. Did you think there was some confusion about
- 3 what you said the first time?
- 4 A. **Well, it would appear from the price, ones that**
- 5 **we got the first time, I think four out of five**
- 6 **did it one way and CALM Golf did it another. So**
- 7 **just removed the word to try to clarify.**
- 8 Q. Was that your decision?
- 9 A. **Yeah.**
- 10 Q. Did you have any input from anybody else about
- 11 making that decision?
- 12 A. **No.**
- 13 Q. The entirety of that 40-page document, that
- 14 change was 100 percent done by Gordon Cushing?
- 15 A. **Yes.**
- 16 Q. Is that correct?
- 17 A. **Yes.**
- 18 Q. I'm going to show you Exhibit No. 5A from the
- 19 Lanzetta deposition. That is from the first
- 20 RFP. That was attachment No. 1. And that's
- 21 what the town wanted the price proposals on; is
- 22 that correct?
- 23 A. **That looks right.**
- 24 Q. What any vendor could do was simply fill in what

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- 1 is required there, correct?
- 2 A. **Uh-huh. Yes.**
- 3 Q. That's Exhibit No. 5A. And this is Exhibit No.
- 4 5 from the Lanzetta deposition. And that's what
- 5 you are referring to as the one company out of
- 6 the five bidders that didn't follow the protocol
- 7 in the first RFP process, correct?
- 8 A. **I believe so, yes.**
- 9 Q. That would have been a reason -- aside from the
- 10 decision by the town to reject the bids, that
- 11 could have been, that bid on Exhibit No. 5,
- 12 could have been rejected for being nonconforming
- 13 with the RFP process, correct?
- 14 A. **I don't know the answer to that.**
- 15 Q. But you were aware that CALM was the only vendor
- 16 that failed to submit a bid on a flat basis,
- 17 correct?
- 18 A. **Yes. In round one, yes.**
- 19 Q. Prior to today, have you discussed with anybody
- 20 in the town, aside from counsel, the fact that
- 21 you drafted the original RFP in 2008?
- 22 A. **I don't understand the question.**
- 23 Q. Did the town manager or any other official in
- 24 town ever ask you who drafted the RFP?

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- 1 A. **Yes.**
- 2 Q. Who asked you that?
- 3 A. **Selectmen Donato asked me once.**
- 4 Q. What did you tell him?
- 5 A. **I did.**
- 6 Q. Where did that take place?
- 7 A. **I don't remember.**
- 8 Q. Did anyone else ever ask you who drafted the
- 9 RFP?
- 10 A. **I don't think so.**
- 11 Q. Did you ever tell anybody that an outside
- 12 consultant drafted the RFP?
- 13 A. **No.**
- 14 Q. Have you heard that being represented to
- 15 anybody?
- 16 A. **I have.**
- 17 Q. Who did you hear saying that?
- 18 A. **I don't remember. It may have been the**
- 19 **financial director, but I don't remember.**
- 20 Q. The discussion you had with the selectmen, did
- 21 that take place within the last year?
- 22 A. **No. No.**
- 23 Q. When did that take place?
- 24 A. **I don't remember. Several years ago.**

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- 1 Q. Several years ago?
- 2 A. **Yes.**
- 3 Q. Just so I have a clear understanding of it, you
- 4 had testified earlier this morning that there
- 5 was some problems with customer relations with
- 6 Johnson Golf and you gave a specific instance
- 7 having to do with Warren Johnson and an
- 8 individual.
- 9 Other than that one instance in the 14
- 10 years that Johnson Golf managed the course, were
- 11 you aware of any other problems there?
- 12 A. **Yes.**
- 13 Q. What other problems?
- 14 A. **I don't remember specifics.**
- 15 Q. Do you remember what years they were?
- 16 A. **No.**
- 17 Q. Was it at the beginning of the contract or the
- 18 end of the term? This is up until 2008 I'm
- 19 inquiring about.
- 20 A. **It's spread across the years.**
- 21 Q. The recommendation letter that you issued in
- 22 1997, did that accurately reflect your opinion
- 23 of the job they were doing at North Hill?
- 24 A. **Yeah, absolutely.**

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1 Q. Up until the end of 2008, did they continue to
2 do their job at the same quality and at the same
3 level that you described in that letter?

A. Yes.

MR. FOLLANSBEE: Can I have a five-minute
break?

MR. KESTEN: Sure.

(Recess taken.)

9 Q. (By Mr. Follansbee) Do you still oversee the
10 golf course with the current vendor who is
11 there, Pilgrim Golf?

A. I do.

13 Q. They have been there for a little over a month
14 now?

A. Yes.

16 Q. Is it your function to make sure that they are
17 in compliance with their contract?

A. Yes.

19 Q. Have they provided you with a bond?

20 A. **The town manager is the one that's dealing with**
21 **that aspect. I don't get involved in that.**

22 Q. So that --

23 A. **I don't know the status of the bond. I don't**
24 **know the status.**

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1 Q. To date, you haven't seen a bond?

2 A. **I haven't seen a bond.**

3 Q. As far as the individuals who are the key
4 personnel there, the golf pro and the head
5 superintendent, do you have their names?

A. Yes.

7 Q. Let's start with the superintendent.

8 A. **It's Adam Hardy.**

9 Q. Is he the individual they identified in their
10 bid?

A. No.

12 Q. All right. And who is the golf pro?

13 A. **Paul -- it's Kousamtis, but don't hold me to**
14 **that because I'm not 100 percent sure of the**
15 **last name.**

16 Q. Was he the individual they identified in their
17 bid?

A. No.

19 Q. Their bid was submitted on March 21st, 2011,
20 correct?

A. **I don't remember.**

22 Q. Did you attend the bid opening?

23 A. Yes.

24 Q. They signed a contract within a day of the bid

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opening, didn't they?

2 A. **I don't know that, either.**

3 Q. Did you have anything to do with the preparation
4 of the contract?

A. No.

6 Q. Did you have anything to do with the preparation
7 of the IFB?

A. No.

9 Q. Who did that?

10 A. **The certified town employee now is a gentleman**
11 **named Scott Lambiasi. He is the director of**
12 **inspectional services.**

13 Q. As far as Pilgrim Golf, have they provided all
14 the equipment that was in their bid?

15 A. **To date, I believe so, yes.**

16 Q. What kind of golf carts did they provide?

A. **I believe they are Club Car.**

18 Q. Do you know what color they are?

19 A. **I don't. I think they are white.**

20 Q. Since they have been out, do you have the number
21 of golf carts they provided?

22 A. **Not off the top of my head, no.**

23 Q. Is that something you check off that they have
24 all the equipment and right number of golf

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1 carts?

2 A. **It will be, yes.**

3 Q. Have you done that process yet?

4 A. **Not that specific line item, no.**

5 Q. As far as physically changing the building in
6 any way, has any work been done on the clubhouse
7 in the last month since they have been there?

A. Yes.

9 Q. What's been done?

10 A. **They've painted the inside. They've replaced**
11 **the broken tile around the bar. They have**
12 **cleaned the whole facility. They installed a**
13 **new pro shop counter. They made repairs to the**
14 **broken HVAC system, the broken walk-in cooler.**
15 **I think that's -- to the clubhouse itself, I**
16 **believe that's close to all.**

17 Q. Were any of those, any of the things you
18 described, paid for by the town?

19 A. **No. Not that I am aware of.**

20 Q. Are they operating a food and beverage operation
21 there?

22 A. **Not currently.**

23 Q. Isn't that required under their contract?

24 A. **I don't know. But they are not currently.**

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- 1 Q. Have you discussed that with anybody?
- 2 A. **No.**
- 3 Q. If we can go back to December of 2008, were you
- 4 present when the price proposals of the five
- 5 bidders were opened?
- 6 A. **That's the first round?**
- 7 Q. The first round.
- 8 A. **Yes, I was.**
- 9 Q. Who else was there?
- 10 A. **My memory is that it was myself, the town**
- 11 **manager, the town counsel, and I believe her**
- 12 **name now is Barbara Mello is who is the**
- 13 **assistant to the board of selectmen, town**
- 14 **manager. I'm not sure of her title. It may**
- 15 **have been the finance director. But my memory**
- 16 **is not 100 percent on that person.**
- 17 Q. When the price proposals were opened, you became
- 18 aware of what everybody's price was?
- 19 A. **Correct.**
- 20 Q. At that time you knew that Johnson Golf had bid
- 21 \$140,000 more than CALM Golf; is that correct?
- 22 A. **I don't remember the amount.**
- 23 Q. You don't remember what the prices were?
- 24 A. **No.**

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- 1 Q. From the time that those price proposals were
- 2 opened up until January 9, 2009, did you discuss
- 3 the price proposals with any other person?
- 4 A. **Can you say that one more time.**
- 5 Q. Yes.
- 6 From the time you saw the price proposals
- 7 opened until January 9, 2009, did you discuss
- 8 the price proposals with anybody?
- 9 A. **I don't remember.**
- 10 Q. Do you remember anybody telling you that you
- 11 couldn't discuss the price proposals with
- 12 anybody?
- 13 A. **No.**
- 14 Q. Did you receive any instruction from anybody in
- 15 town government telling you what your role was
- 16 going forward with the second round of bids?
- 17 A. **The second round of bids? Can you ask that one**
- 18 **more time?**
- 19 Q. Yeah. Maybe it wasn't a good question.
- 20 MR. KESTEN: I will stipulate to that.
- 21 Q. After the price proposals were opened in
- 22 December of 2008, did you get any instructions
- 23 from anybody about what you were supposed to be
- 24 doing as far as the next round of bidding was

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- 1 concerned?
- 2 MR. KESTEN: What do you mean? Did they
- 3 get a new RFP and all that stuff?
- 4 MR. FOLLANSBEE: Yes.
- 5 Q. The price proposals were opened?
- 6 A. **Yes.**
- 7 Q. That was sometime in December; is that correct?
- 8 A. **I don't remember.**
- 9 MR. DOUGLAS JOHNSON: No, way before
- 10 that. They were opened the end of October.
- 11 MR. KESTEN: The first set?
- 12 MR. FOLLANSBEE: The first set.
- 13 Q. (By Mr. Follansbee) The bids were rejected in
- 14 early December?
- 15 MR. DOUGLAS JOHNSON: Eight weeks after.
- 16 MR. KESTEN: Can we leave?
- 17 MR. FOLLANSBEE: I guess.
- 18 MR. KESTEN: Doug will just tell you the
- 19 answers.
- 20 MR. DOUGLAS JOHNSON: I know them all.
- 21 MR. KESTEN: I know you do. The bids
- 22 were rejected. From the time the bids were
- 23 rejected the first time.
- 24 Q. (By Mr. Follansbee) From the time the bids were

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- 1 rejected, which was in early December of 2008,
- 2 did you get instructions from anybody in town
- 3 government about what they wanted you to do next
- 4 having to do with the January RFP process?
- 5 A. **Yes.**
- 6 Q. Who gave you the instructions?
- 7 A. **The town manager.**
- 8 Q. What did he tell you to do?
- 9 A. **Start working on a new RFP.**
- 10 Q. Then the new RFP that was created is the RFP
- 11 that was Exhibit No. 6 at the Lanzetta
- 12 deposition, correct?
- 13 A. **I mean, I hesitate to answer because --**
- 14 Q. I'll represent to you that's what the town gave
- 15 us when we asked for the second RFP. You do
- 16 remember making the one-word change of getting
- 17 rid of the word "flat" describing the payment?
- 18 A. **I remember changing that word, yes.**
- 19 Q. You didn't discuss that with anybody else in
- 20 town, correct?
- 21 A. **No.**
- 22 Q. The identity of Barbara Mello, is that the same
- 23 person -- is she also known as Barbara Ripley?
- 24 A. **She was recently remarried, yes.**

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CERTIFICATE

1 MR. FOLLANSBEE: I'm going to suspend the
2 deposition now. I only reserve a right to
3 question him again if documents are forthcoming
4 from the town. He indicated that there had been
5 various drafts of documents circulated earlier
6 in the RFP process. We had requested those.
7 Haven't received them.

8 If they exist, I'd just like an
9 opportunity to question him about the changes
10 that were made. Other than that --

11 MR. KESTEN: I won't agree to that, but I
12 understand the issue. Obviously, if we find
13 them, then we agree that's relevant questions.

14 MR. FOLLANSBEE: Exactly.

15 (Deposition suspended at 1:02 p.m.)
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CERTIFICATE

1
2
3
4 I, GORDON H. CUSHING, do hereby
5 certify that I have read the foregoing
6 transcript of my testimony, and I further
7 certify that said transcript is a true and
8 accurate record of said testimony.

9
10
11
12 Signed under the penalties of perjury
13 this ____ day of _____, 2011.
14
15
16
17
18
19

20
21
22
23
24
GORDON H. CUSHING

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1
2
3 COMMONWEALTH OF MASSACHUSETTS)
4) ss.
5 COUNTY OF MIDDLESEX)

6 I, Robert M. Bramanti, Registered
7 Merit Reporter and Notary Public within and for
8 the Commonwealth of Massachusetts, do hereby
9 certify:

10 That GORDON H. CUSHING, the witness
11 whose deposition is hereinbefore set forth, was
12 duly sworn by me, and that the foregoing
13 transcript is a true record of the testimony
14 given by such witness.

15 I further certify that I am not
16 related to any of the parties in this matter by
17 blood or marriage, and that I am in no way
18 interested in the outcome of this matter.

19 IN WITNESS WHEREOF, I have
20 hereunto set my hand and seal this ____ day
21 of _____ 2011.
22
23
24

Notary Public

My Commission expires:
October 11, 2013

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