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COMMONWEALTH OF MASSACHUSETTS
MIDDLESEX, ss. SUPERIOR COURT DOCKET
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 MICHAEL MARLBOROUGH, taken
on behalf of the Plaintiff, pursuant to the
applicable provisions of the Massachusetts Rules
of Civil Procedure, before Jessica F. Story,
Certified Shorthand Reporter and Notary Public
in and for the Commonwealth of Massachusetts, at
the offices of Follansbee & McLeod, LLP, 536
Granite Avenue, Braintree, Massachusetts, on
Monday, July 18, 2011, commencing at 1:36 p.m.

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Michael T. Rufo, Thomas K. Garrity, Richard
Manning, W. James Ford, and Gordon Cushing (Ex
officio)

ALSO PRESENT:

Douglas Johnson
Jason Laramie

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PROCEEDINGS

MICHAEL MARLBOROUGH, a witness called on
behalf of the Plaintiff, first having been
satisfactorily identified by his Massachusetts
driver's license, then duly sworn, on oath
deposes and says as follows:

MR. FOLLANSBEE: Same stipulations?

MR. KESTEN: Yes.

EXAMINATION BY MR. FOLLANSBEE:

- Q. First of all, could you please state your full
name and residential address.
- A. It's Michael Marlborough, and residential
address is 30 Otter Rock Road, Duxbury.
- Q. How long have you lived there?
- A. Since 1991.
- Q. What business are you in, sir?
- A. I'm in the convention and trade show industry.
- Q. Where is your business located?
- A. Braintree.

- 1 **Q.** Have you been deposed before?
- 2 **A.** **No, I have not.**
- 3 **Q.** Just by way of background, we'll be asking
4 questions today, and you have to make a verbal
5 response. You can't make a gesture or a nod
6 like you just did. So when we ask a question,
7 we need a verbal response.
- 8 If you don't understand my question, just
9 say so and I'll try to rephrase it and make it
10 more intelligible.
- 11 **A.** **Okay.**
- 12 **Q.** Could you please give us your educational
13 background starting with high school.
- 14 **A.** **Yes. I went to Dover Sherborn Regional from**
15 **Dover, Mass, and I went to the University at**
16 **Albany and I have a bachelors degree in design.**
- 17 **Q.** When did you get the bachelors degree?
- 18 **A.** **1980.**
- 19 **Q.** I gather from your involvement in this matter
20 you're a golfer?
- 21 **A.** **Yes, I am.**
- 22 **Q.** And how often do you play golf?
- 23 **A.** **I try to play a couple times a week.**
- 24 **Q.** That's been pretty consistent since the early

- 1 1990's?
- 2 **A.** **Yes.**
- 3 **Q.** Do you maintain a handicap?
- 4 **A.** **Yes, I do.**
- 5 **Q.** What is your index?
- 6 **A.** **I think right now it's 9.4.**
- 7 **Q.** So Mr. Doolin would have to give you strokes if
8 you played?
- 9 **A.** **He probably lied.**
- 10 **MR. KESTEN:** Is that why you're doing
11 this, to get handicaps under oath?
- 12 **Q.** As far as the golf courses that you play, are
13 you currently a member at any golf course?
- 14 **A.** **Yes.**
- 15 **Q.** Where is that?
- 16 **A.** **In Halifax, Mass.**
- 17 **Q.** Is that the Halifax Country Club?
- 18 **A.** **Yes.**
- 19 **Q.** How long have you been a member at Halifax?
- 20 **A.** **Since last year.**
- 21 **Q.** And that's an 18 hole course?
- 22 **A.** **Yes.**
- 23 **Q.** And what does an annual membership cost at
24 Halifax?

- 1 **A.** **\$3,100.**
- 2 **Q.** Is that an individual membership?
- 3 **A.** **It is.**
- 4 **Q.** Am I correct -- maybe I'm not correct. Is
5 Halifax exclusively private or is it open to the
6 public?
- 7 **A.** **It's private.**
- 8 **Q.** Prior to being a member at Halifax, had you had
9 memberships at any other golf courses?
- 10 **A.** **North Hill.**
- 11 **Q.** When did you maintain a membership at North
12 Hill?
- 13 **A.** **Beginning in 1991.**
- 14 **Q.** So from 1991 until last year?
- 15 **A.** **There were a couple of years that I did not get**
16 **a full membership in that time.**
- 17 **Q.** What years were those?
- 18 **A.** **I can't remember.**
- 19 **Q.** Did you have a membership at North Hill in 2009?
- 20 **A.** **No.**
- 21 **Q.** And in 2010?
- 22 **A.** **No.**
- 23 **Q.** How about 2008?
- 24 **A.** **No. I don't believe so. I think 2007 was the**

- 1 **last, but I'm not positive.**
- 2 **Q.** So essentially, from '91 to 2007 you maintained
3 a membership there?
- 4 **A.** **Like I said, with maybe a year or two where I**
5 **did not have a full membership.**
- 6 **Q.** Okay. Now, in -- I'm sorry. At some point you
7 became a member of the North Hill Advisory
8 Committee; is that correct?
- 9 **A.** **Yes.**
- 10 **Q.** And do you remember when you first were
11 appointed to the North Hill Advisory Committee?
- 12 **A.** **I don't know the exact year, no.**
- 13 **Q.** I think we have -- are you still a member of the
14 North Hill Advisory Committee?
- 15 **A.** **Yes.**
- 16 **Q.** How did you become a member of the North Hill
17 Advisory Committee?
- 18 **A.** **I believe a member of the Advisory Committee**
19 **elected not to come back to the committee and I**
20 **was asked if I'd have any interest.**
- 21 **Q.** Who asked you that?
- 22 **A.** **I don't recall.**
- 23 **Q.** Was it other folks who were on the committee?
- 24 **A.** **Yes, I believe so, but I don't recall exactly**

1 **who it was.**

2 **Q.** In the years that you were a member at the North
3 Hill Country Club, what was the most you ever
paid for a membership there?

5 **A.** **I want to say a little over \$800.**

6 **Q.** Is that a function of the fact that it's a 9
7 hole course as opposed to an 18 hole course?

8 **MR. JORDAN:** Objection.

9 **Q.** You can answer that.

10 **A.** **I don't know how to answer that.**

11 **Q.** Well, there's quite a discrepancy between the
12 \$800 membership at North Hill and the \$3,100
13 membership at Halifax. I'm assuming that part
14 of the distinction is one is completely private
15 and the other is also open to the public.

16 Is that fair to say?

17 **A.** **I would say that's fair to say.**

18 **Q.** Is another fact that one is a 9 hole course as
19 opposed to an 18 hole course?

20 **A.** **I wouldn't say that, because I'm aware of 9 hole
21 courses that have higher memberships than
22 Halifax.**

23 **Q.** What courses would those be?

24 **A.** **Hopedale Country Club.**

1 **Q.** Is that private?

2 **A.** **Semi-private, I believe.**

3 **Q.** Do you know what it costs there?

4 **A.** **I don't, but I believe it's more than \$3,000.**

5 **Q.** Do you know of any other 9 hole courses that are
6 more than \$3,000?

7 **A.** **I believe Whitinsville Golf Club would be, too.**

8 **Q.** Is that private or public?

9 **A.** **I believe that's private.**

10 **Q.** Where is that located?

11 **A.** **In Whitinsville, Massachusetts.**

12 **MR. FOLLANSBEE:** Didn't even know there
13 was a Whitinsville, Massachusetts.

14 **MR. KESTEN:** I've been there.

15 **Q.** And Hopedale I assume is in Hopedale,
16 Massachusetts?

17 **A.** **Yes.**

18 **MR. KESTEN:** That's because you went to
19 law school.

21 **MR. FOLLANSBEE:** That I got in high
22 school. I didn't learn anything in law school.

22 **MR. KESTEN:** Me neither.

23 **Q.** As far as your golf participation at North Hill
24 Country Club, did you play in any leagues?

1 **A.** **Yes, I did.**

2 **Q.** Were you a member of the Thursday night league?

3 **A.** **Yes, I was.**

4 **Q.** You're familiar with the North Hill Men's
5 Association?

6 **A.** **I don't recall it being the Men's Association.
7 It was the North Hill Golf Association.**

8 **Q.** North Hill Golf Association. You must have been
9 overhearing Lenny's comments about sexism in
10 golf.

11 **MR. KESTEN:** In this room.

12 **Q.** Were there any women in the North Hill Golf
13 Association?

14 **A.** **Yes.**

15 **Q.** And on a ratio, how many men and how many women?
16 Do you have any idea?

17 **A.** **It was definitely predominantly men.**

18 **Q.** Would they be essentially the fellows and women,
19 if any, who played in the Thursday night league?

20 **A.** **Yes.**

21 **Q.** Did they also play as a group on weekends?

22 **A.** **Yes.**

23 **Q.** And was it the practice of the North Hill Golf
24 Association to block out tee times for its

1 members on weekends?

2 **A.** **Not to my knowledge. When you say block out,
3 no.**

4 **Q.** Would tee times be obtained by individual
5 members and other members would fill in the
6 foursomes?

7 **A.** **Yes.**

8 **Q.** And was it the custom and practice that the
9 North Hill Golf Association would play as a
10 collective group on most weekend mornings?

11 **A.** **I'm not sure how to answer that.**

12 **Q.** Would they have consecutive tee times for the
13 members of the groups?

14 **A.** **Sometimes, because we'd set up matches, one
15 foursome against another foursome. So if there
16 were two groups of us going out, we'd try to get
17 consecutive tee times.**

18 **Q.** For how many years did you participate in the
19 North Hill Golf Association?

20 **A.** **From 1991.**

21 **Q.** Up until when?

22 **A.** **I think it was 2007.**

23 **Q.** And did the group go to another golf course
24 beginning in 2007?

1 **A. The group? It's hard to say because the group**
 2 **went to any number of different golf courses,**
 3 **different groups within the group.**

4 **Q.** Would the other golf courses, would they include
 5 Green Harbor and Marshfield?

6 **A. That's two of them.**

7 **Q.** Was there a course called CrossWinds in Plymouth
 8 that the group went to?

9 **A. Some of the group played there.**

10 **Q.** Did you play in either of those places?

11 **A. Yes, I did.**

12 **Q.** Where did you principally play?

13 **A. I principally played at North Hill for most of**
 14 **that time.**

15 **Q.** But you did also participate in the Thursday
 16 league somewhere else?

17 **A. I did.**

18 **Q.** Where was that?

19 **A. I did one year at CrossWinds, not nearly as**
 20 **regularly just because of the ride.**

21 **Q.** And did they also play -- did the Thursday night
 22 group play at Green Harbor?

23 **A. I think some of the people did, but hard to say**
 24 **as a group.**

1 **Q.** Did you play over there?

2 **A. I did. Last year was the only year that I did**
 3 **and it was intermittent.**

4 **Q.** Are you currently a member at North Hill as well
 5 as --

6 **A. No.**

7 **Q.** -- Halifax?

8 **A. No.**

9 **Q.** How many rounds per year would you average
 10 playing?

11 **A. I'd say 40 to 50.**

12 **Q.** Those are 18 hole rounds?

13 **A. Yes.**

14 **Q.** Now, in 2004 do you recall an issue coming up at
 15 the North Hill Country Club regarding tee time
 16 policies?

17 **A. Yes.**

18 **Q.** And were you a member of the North Hill Advisory
 19 Committee at that time?

20 **A. Yes.**

21 **Q.** When you first -- as I understand it there was
 22 going to be a change in the tee time policy
 23 regarding 18 hole tee times in 2004; is that
 24 correct?

1 **A. Yes.**

2 **Q.** And what was your understanding as to what the
 3 policy had been prior to that?

4 **A. My understanding was that as a 9 hole golf**
 5 **course you would book a 9 hole tee time, and**
 6 **then approximately two and a half hours later**
 7 **there'd be another tee time to go back out which**
 8 **is typical of 9 hole golf courses.**

9 **Q.** Where you say that's typical of a 9 hole golf
 10 course, what other golf courses are you familiar
 11 with?

12 **A. Again, Hopedale as an example.**

13 **Q.** Any other 9 hole golf course where that was the
 14 typical procedure?

15 **A. I can't think of one.**

16 **Q.** How did you become aware of what the policy was
 17 at Hopedale?

18 **A. My father used to be the chairman of the greens**
 19 **committee there.**

20 **Q.** And Hopedale was a private course?

21 **A. Semi-private.**

22 **Q.** Do you know how many members there were at
 23 Hopedale?

24 **A. I do not.**

1 **Q.** Now, the policy at Hopedale on weekends, was it
 2 limited to members weekend mornings?

3 **A. I'm not sure.**

4 **Q.** Do you know what the limitations were for public
 5 play there?

6 **A. I do not.**

7 **Q.** When the change in the tee time policy was
 8 initiated in 2004, did you have occasion to
 9 write a letter to the editor of the *Duxbury*
 10 *Clipper*?

11 **A. I don't believe so.**

12 **Q.** Did you authorize your name to be submitted to
 13 the *Duxbury Clipper* with some other members of
 14 the North Hill golf group?

15 **A. I don't recall.**

16 **Q.** I'm going to show you what was marked this
 17 morning as Exhibit Number 2 in Mr. Doolin's
 18 deposition as this letter to the editor dated --
 19 received by the Town of Duxbury on January 13,
 20 2004, and just ask you to take a look at that.
 21 It's a letter.

22 (Witness complies.)

23 **A. I do recall it now.**

24 **Q.** And you authorized -- do you know who drafted

1 the letter?

2 **A. I do not.**

3 **Q.** Did somebody ask you your permission to include
4 your name with that letter when it was
5 submitted?

6 **A. Yes.**

7 **Q.** Did you authorize that?

8 **A. Yes.**

9 **Q.** And with regard to Exhibit Number 2, what was
10 your objection to the tee time policy that was
11 being implemented by Johnson Golf Management?

12 **MR. JORDAN:** Objection. You can answer.
13 I was objecting to the question but you can
14 still answer.

15 **A. My objection is, to me, a round of golf is 18**
16 **holes. And having been a golfer most of my**
17 **life, I had played 9 hole courses and it's**
18 **usually the policy, the way that I always was**
19 **used to it.**

20 **I can understand if the slot has been**
21 **blocked off and you're making the turn, that**
22 **that group should go out and then the group**
23 **making the turn should go off next and just**
rotate them that way, but that was not the way

1 **it was written up.**

2 **It was basically written up that if**
3 **somebody took the tee times during the turn**
4 **time, you might have to wait for hours. That**
5 **was my objection.**

6 **Q.** And once the policy was implemented, did you
7 continue to play golf there?

8 **A. Not as much.**

9 **Q.** Did you have any occasion where you'd have to
10 wait for hours to get your second 9 holes in?

11 **A. I left a couple of times because I was waiting**
12 **so long.**

13 **Q.** That's two instances that you can remember, two
14 or three instances you left?

15 **A. I think that's fair to say, two to three.**

16 **Q.** And any other time you were able to successfully
17 make a turn and complete your 18 holes?

18 **A. Eventually, a-huh.**

19 **Q.** You understood that the price that you were
20 paying for a membership at the North Hill
21 Country Club was substantially less than what
22 you would pay at an 18 hole course; is that
23 correct?

24 **A. Yes.**

1 **Q.** Do you know how much your father was paying for
2 his membership at Hopedale?

3 **A. I do not.**

4 **Q.** Did you ever inquire as to what the membership
5 rates were at Hopedale?

6 **A. I did not.**

7 **Q.** Have you compared --

8 **MR. FOLLANSBEE:** That's a good point.

9 **Q.** Did I misunderstand you when you said that the
10 prices at Hopedale now are \$3,000 a year or
11 greater than that?

12 **A. I believe them to be. I'm not 100 percent**
13 **positive.**

14 **Q.** And do you know what the -- do you know what the
15 individual rate is now at North Hill Country
16 Club for a membership?

17 **A. I do not.**

18 **Q.** And you're on the North Hill Advisory Committee?

19 **A. I don't know what it is this year. I don't know**
20 **if it's changed.**

21 **Q.** Do you know what it was last year?

22 **A. I think an individual is maybe \$860.**

23 **Q.** And as of now you don't know what rates are
24 being charged there this year?

1 **A. I do not.**

2 **Q.** Have you attended any meetings of the North Hill
3 Advisory Committee in 2011?

4 **A. No.**

5 **Q.** Did you attend any meetings of the North Hill
6 Advisory Committee in 2010?

7 **A. There may have been one or two, but I'm not**
8 **sure.**

9 **Q.** And in 2009 do you recall attending any meetings
10 of the North Hill Advisory Committee?

11 **A. I think there were some but I can't tell you how**
12 **many.**

13 **Q.** Was it the custom and practice in the early
14 years that you were on the committee that you'd
15 have meetings on a monthly basis?

16 **A. Yes.**

17 **Q.** Of the North Hill Advisory Committee?

18 **A. A-huh.**

19 **Q.** When did the committee cease to have monthly
20 meetings?

21 **A. I think right around the time -- well, I can't**
22 **tell you exactly. I don't know.**

23 **Q.** Do you know who on the committee most recently
24 was charged with the job of keeping the minutes

- 1 of the meetings?
- 2 **A. I think it varied.**
- 3 **Q.** Did you ever keep the minutes of the meetings?
- 4 **A. I did.**
- 5 **Q.** When do you recall doing that?
- 6 **A. Again, it's hazy, all the years.**
- 7 **Q.** Do you recall any particular year that you did
- 8 the minutes?
- 9 **A. It's long ago now. I am really not exactly**
- 10 **sure.**
- 11 **Q.** We have some minutes that were entered into
- 12 evidence. Let's see. We've got Exhibit Number
- 13 4 or the minutes of the meeting held on January
- 14 10, 2007. Can you take a look at Exhibit Number
- 15 4.
- 16 **A. Sure.**
- 17 **Q.** According to Exhibit Number 4, you were one of
- 18 the individuals on the committee who was present
- 19 for that meeting. Is that correct?
- 20 **A. A-huh. Yes.**
- 21 **Q.** And as far as the format of this, does this --
- 22 does the format of these minutes look familiar
- 23 to you?
- 24 **A. Yes.**

- 1 **Q.** Is this the format that the committee would
- 2 generally keep the minutes in?
- 3 **A. Yes.**
- 4 **Q.** When you did the minutes yourself, after the
- 5 minutes were prepared and submitted to all the
- 6 committee members, who would physically keep
- 7 possession of the minutes as a public record?
- 8 **A. I believe Gordon Cushing.**
- 9 **Q.** Did Mr. Cushing ever prepare the minutes
- 10 himself?
- 11 **A. I do not know.**
- 12 **Q.** Do you know of anybody other than yourself --
- 13 and I know you said you did it occasionally. Do
- 14 you know of anybody else on the committee in
- 15 2007, for instance, who would do the minutes?
- 16 **A. I don't remember. I think I did some but I**
- 17 **don't remember anybody else.**
- 18 **Q.** And were minutes kept of every meeting that you
- 19 attended?
- 20 **A. Yes.**
- 21 **Q.** Now, one of the --- if you look at the last
- 22 page, the last page of Exhibit Number 4.
- 23 **A. Okay.**
- 24 **Q.** It indicates that certain tasks are being

- 1 assigned in order to prepare a new Request For
- 2 Proposals; is that correct?
- 3 **A. Yes.**
- 4 **Q.** And one of the tasks at the end of this
- 5 indicated that you were going to do some calling
- 6 around to obtain more information. Do you
- 7 recall doing that?
- 8 **A. Yes.**
- 9 **Q.** Who did you call to get information from?
- 10 **A. Let's see. I really don't recall.**
- 11 **Q.** Well, at the top it indicates that similar golf
- 12 course operations needed to be researched. One
- 13 of them is mentioned to be Highland Links in
- 14 Truro and Bungay in Bellingham.
- 15 Did you contact either of those courses?
- 16 **A. I did not.**
- 17 **Q.** The next paragraph indicates that Hopedale
- 18 Country Club and Needham Country Club were going
- 19 to be involved, as well. Did you contact either
- 20 of those courses?
- 21 **A. Not the courses. I did contact the assistant**
- 22 **pro at Needham for some basic information.**
- 23 **Q.** Did he provide it to you?
- 24 **A. Yes.**

- 1 **Q.** Now, once you got that information, did you
- 2 share it with other committee members?
- 3 **A. Yes.**
- 4 **Q.** Did you do that in writing?
- 5 **A. Not that I recall.**
- 6 **Q.** What information do you recall getting from the
- 7 assistant pro at Needham?
- 8 **A. Just rates and things like that that we're**
- 9 **charging.**
- 10 **Q.** The rates would include membership rates as well
- 11 as daily fee rates?
- 12 **A. Yep.**
- 13 **Q.** And Needham is a private course, correct?
- 14 **A. I believe so.**
- 15 **Q.** Although it's owned by the town, it's run as a
- 16 private course?
- 17 **A. Yes.**
- 18 **Q.** That's a 9 hole course, correct?
- 19 **A. Yes.**
- 20 **Q.** Did you contact any other public courses to get
- 21 comparable information?
- 22 **A. I don't believe I did.**
- 23 **Q.** Did you ever contact anyone in Hingham regarding
- 24 the South Shore Country Club?

1 **A. I did not.**

2 **Q.** Are you familiar with that course?

3 **A. Yes.**

4 **Q.** Is that a publicly owned golf course on the
5 South Shore?

6 **A. Yes, to my knowledge.**

7 **Q.** Did you ever play there?

8 **A. Yes.**

9 **Q.** When did you most recently play there?

10 **A. I'd say approximately five, six years ago.**

11 **Q.** Do you know if anyone else on the committee
12 contacted the folks in Hingham to find out what
13 the rates were at that golf course?

14 **A. I don't know that for sure.**

15 **Q.** Did you contact -- do you know if anyone on the
16 committee contacted anybody at Braintree for the
17 rates on their municipal golf course?

18 **A. I don't know for sure.**

19 **Q.** Are you familiar with the Pembroke Country Club
20 in Pembroke?

21 **A. Yes.**

22 **Q.** That's the next town over from Duxbury, correct?

23 **A. Yes.**

24 **Q.** Is that a public golf course?

1 **A. Yes.**

2 **Q.** Do you know if anyone checked to find out what
3 the rates for membership and daily fee was
4 there?

5 **A. I believe so, but I'm not 100 percent positive.**

6 **Q.** Do you know who? Who do you think may have done
7 that?

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

9 **Q.** Now, Mr. Sheehan -- according to the minutes of
10 Exhibit Number 4, Mr. Emmett Sheehan volunteered
11 to research on manpower and equipment in case
12 the Town of Duxbury wanted to run the golf
13 course themselves.

14 Was that an option that the committee was
15 considering, to run it as a town owned facility?

16 **A. Yes.**

17 **Q.** Was that fully explored?

18 **A. I wouldn't say fully, no.**

19 **Q.** Was a determination made that the town didn't
20 want to invest in that venture?

21 MR. JORDAN: Objection.

22 **A. No.**

23 **Q.** It was not made?

24 **A. Could you ask that again?**

1 **Q.** Sure.

2 Was a decision made by the Town of
3 Duxbury that they didn't want to run it with
4 town employees?

5 **A. I do not believe so.**

6 **Q.** What do you believe was the reason they didn't
7 do it that way?

8 **A. I believe it was never fully explored.**

9 **Q.** In 2007 you were preparing -- the committee was
10 preparing to go out with a new RFP the following
11 year; is that correct?

12 **A. Yes.**

13 **Q.** And in order to effectuate that, did you have
14 access to the old contract and the old RFP that
15 Duxbury had been involved with?

16 **A. Yes.**

17 **Q.** Were you on the committee in 1999 when it went
18 out to bid most recently? And actually, it was
19 the end of 1998. Were you involved in that
20 process?

21 **A. No.**

22 **Q.** So you came to the committee sometime after that
23 contract was signed?

24 **A. Soon after that, yes.**

1 **Q.** You're familiar with that contract; is that
2 correct?

3 **A. Yes.**

4 **Q.** Just for identification, Exhibit Number 3 from
5 Mr. Doolin's deposition is the contract between
6 the Town of Duxbury and Johnson Golf Management.
7 Is that correct?

8 **A. Yes.**

9 **Q.** And as I understand it, one of your roles as a
10 committee member was to ensure compliance with
11 this contract by the vendor, Johnson Golf
12 Management?

13 **A. Yes.**

14 **Q.** Did you have any contractual issues that you
15 felt were not being met by Johnson Golf
16 Management with regard to Exhibit Number 3 while
17 you were a member of the committee?

18 **A. Can you say that again?**

19 **Q.** Are there any contract issues that you felt had
20 come up while you were a member of the committee
21 in which you felt that Johnson wasn't fulfilling
22 its contractual obligations?

23 **A. Yes.**

24 **Q.** What do you remember as being any one of those?

1 **A. I believe there's language in there about the**
 2 **golf course operation being run by a certified**
 3 **PGA professional and it was not.**

4 **Q.** When you say you believe that the contract
 5 required the golf course operation to be run by
 6 a PGA professional, do you know where that is in
 7 the contract?

8 **A. I'll find it.**

9 (Discussion off the record.)

10 **A. It's actually in Exhibit C, the operation plan.**

11 **Q.** Okay. Any particular paragraph?

12 **A. It says, "All golf play will be supervised by**
 13 **the manager's designee. He will have a team**
 14 **consisting of a Class A professional who will be**
 15 **responsible for managing the pro shop, golf**
 16 **repair facility, starters and rangers.**
 17 **Fivesomes will not be allowed unless prior**
 18 **written consent is allowed in the tournament."**

19 **Q.** With regard to the team, the manager's team, it
 20 would include a Class A grade professional. Is
 21 that what you're saying?

22 **A. I'm saying that it says exactly, "a Class A**
 23 **professional who will be responsible for**
 24 **managing the pro shop, golf repair facility,**

1 **starters and rangers."**

2 **Q.** Okay. And who -- in the years that you were on
 3 the North Hill Advisory Committee, who was the
 4 golf pro at North Hill Country Club?

5 **A. I don't believe there was one.**

6 **Q.** Are you familiar with Mr. Bill Allen?

7 **A. I am.**

8 **Q.** Do you know him to be a golf professional?

9 **A. I believe him to be a self-employed golf**
 10 **professional.**

11 **Q.** Why do you believe he's a self-employed golf
 12 professional?

13 **A. He has his own website and he works at a number**
 14 **of different courses.**

15 **Q.** What other courses did he work at with the
 16 exception of North Hill Country Club?

17 **A. I don't recall exactly.**

18 **Q.** When you say he worked at other golf courses,
 19 you don't know any other golf course he worked
 20 at?

21 **A. Actually, I think he worked at South Shore**
 22 **Country Club, also.**

23 **Q.** What years did he work at South Shore Country
 24 Club?

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

2 **Q.** Now, you indicate he had his own website. Did
 3 you ever look at the Johnson website?

4 **A. Yes.**

5 **Q.** Was he listed as a golf pro on the Johnson Golf
 6 website?

7 **A. Yes.**

8 **Q.** And did you ever see him working at North Hill
 9 Country Club?

10 **A. Not in the capacity as called out in the**
 11 **contract.**

12 **Q.** What capacity did you see him working as?

13 **A. I saw him giving lessons.**

14 **Q.** What is the function of a golf pro?

15 **A. According to this right here, to basically run**
 16 **the golf operations.**

17 **Q.** When you say he's running the golf operations,
 18 you mean managing a pro shop?

19 **A. Managing a pro shop, managing the starters and**
 20 **rangers, the first tee, all those things.**

21 **Q.** Where does it say he's responsible for managing
 22 the first tee?

23 **A. It doesn't in this.**

24 **Q.** Does it say it anywhere else?

1 **A. No.**

2 **Q.** So your understanding that the golf pro should
 3 also be managing the first tee --

4 **A. I would think.**

5 **Q.** -- who -- in your understanding, who should be
 6 giving lessons at the golf course?

7 **A. The golf professional.**

8 **Q.** So the golf professional is out on the golf
 9 range giving lessons. Who would perform those
 10 other tasks during that time?

11 **A. Well, again, I refer to the language here. It**
 12 **says the golf professional is supposed to be**
 13 **responsible for managing the starters and**
 14 **rangers, and that did not happen.**

15 **Q.** When you say that did not happen, did you have a
 16 conversation with Bill Allen and ask him what he
 17 was doing there?

18 **A. No.**

19 **Q.** Have you ever talked to Bill Allen about what
 20 his role was?

21 **A. No.**

22 **Q.** Did you ever talk to anybody at Johnson Golf
 23 about what Bill Allen's role was at North Hill
 24 Country Club?

1 **A. No.**

2 **Q.** How did you make a determination that Mr. Allen
3 was not responsible for managing the pro shop?

4 **A. By being there and seeing, just observing.**

5 **Q.** What did you observe?

6 **A. I observed that he had nothing to do with those
7 responsibilities.**

8 **Q.** What would you have expected to observe in order
9 to make a conclusion that he was managing the
10 pro shop?

11 **A. Interaction with the starters and rangers.**

12 **Q.** Anything else?

13 **A. Nope.**

14 **Q.** In the years that Johnson Golf Management was
15 operating the North Hill Country Club, did you
16 ever bring to the attention of someone at
17 Johnson Golf the fact that you were dissatisfied
18 with Mr. Allen's position as the golf
19 professional?

20 **A. I don't recall.**

21 **Q.** Did you ever write any letters to anybody at
22 Johnson Golf saying we really need to have a
23 golf pro managing the pro shop?

24 **A. I don't believe so.**

1 **Q.** Did you ever talk to Mr. Johnson and say, you
2 know, under the contract you're supposed to have
3 a golf pro handling the starters and rangers,
4 why don't you do that?

5 **A. I don't believe so.**

6 **Q.** So other than your dissatisfaction regarding
7 Mr. Allen as a golf professional at North Hill
8 Country Club, were there any other issues of
9 contract compliance that you were dissatisfied
10 with with Johnson Golf operating the golf
11 course?

12 **A. I think there's some language in there about
13 prior written consent from the Town of Duxbury
14 in terms of fee structures. As an example, I
15 don't believe Mr. Johnson ever got permission
16 from the town to charge four dollars for the use
17 of the putting green.**

18 **Q.** Did you bring that to the attention of anybody
19 at Johnson Golf?

20 **A. I believe it was discussed at advisory committee
21 meetings.**

22 **Q.** And was a conclusion reached as to that issue?
23 (Discussion off the record.)

24 **Q.** Do you recall who was being charged four dollars

1 for the use of the practice facilities?

2 **A. Non-members and people that did not have tee
3 times, is my understanding.**

4 **Q.** If someone were playing golf that day, they'd be
5 allowed to use the practice facilities without
6 charge; is that correct?

7 **A. Yes.**

8 **Q.** And if they weren't playing golf that day or
9 didn't have an annual membership, there was an
10 implementation of a four dollar fee charged?

11 **A. Yes.**

12 **Q.** Did the committee ever send a letter to Johnson
13 Golf asking them to cease that practice?

14 **A. I do not know.**

15 **Q.** When the committee discussed that, did they take
16 a vote saying, as a committee we're against this
17 policy?

18 **A. I don't recall.**

19 **Q.** Was it ever communicated to anybody at Johnson
20 Golf not to charge that fee?

21 **A. I don't recall that, either.**

22 **Q.** Other than the golf professional issue and this
23 four dollar fee that you just discussed, were
24 there any other contract compliance issues with

1 Johnson Golf during their tenure as manager that
2 you were dissatisfied with?

3 **A. I don't recall any more.**

4 **Q.** In the year 2007 -- in the years 2007 and 2008
5 leading up to the RFP process to obtain a new
6 contract, did you have, as a member of the North
7 Hill Advisory Committee, a role in drafting and
8 preparing the so-called Request For Proposals?

9 **A. Yes.**

10 **MR. FOLLANSBEE: And I'd ask, just so
11 we're clear, I'll ask this be marked the first
12 exhibit at this deposition.**

13 (Exhibit No. 1 ID marked.)

14 **Q.** Sir, with regard to Exhibit Number 1, this is
15 the RFP that was issued for a new contract
16 sometime in the fall of 2008 with a bid date of
17 October 24, 2008.

18 Are you familiar with this document?

19 **A. Yes.**

20 **Q.** Did you have a role in drafting this document?

21 **A. Yes.**

22 **Q.** What role did you play in drafting the document?

23 **A. Just as a member of the North Hill Advisory
24 Committee.**

1 Q. And do you know who physically put the document
2 together?

3 A. **I do not.**

4 Q. As far as your recommendations and information
5 that you and committee members wanted included
6 in this, did you submit those to somebody in
7 writing?

8 A. **I believe so, but I don't recall specifics.**

9 Q. With regard to the period of 2007 and 2008,
10 before this document was in final form, did you
11 have a chance to review preliminary drafts of
12 this document?

13 A. **Yes.**

14 Q. Did you make comments on those drafts?

15 A. **We all did, yes.**

16 Q. Did you submit those back to somebody?

17 A. **Yes.**

18 Q. To whom did you submit those?

19 A. **I believe to Gordon Cushing.**

20 Q. Did you also have discussions with other
21 municipal officials regarding the content of the
22 RFP?

23 A. **I did not personally.**

24 Q. Did you have meetings of the North Hill Advisory

1 Committee of which town officials came to
2 discuss what would be in the RFP?

3 A. **Gordon Cushing, I think, was the only town
4 official.**

5 Q. Did you ever have a meeting with the town
6 manager regarding the RFP process?

7 A. **I don't recall a meeting about the RFP process,
8 no.**

9 Q. I'm showing you a printout of an e-mail, and I'd
10 ask you to take a look at that. The e-mail was
11 dated May 7, 2007 and references a May meeting
12 of the North Hill Advisory Committee.

13 A. **Okay.**

14 Q. Having had a chance to look at this, do you
15 recall a meeting where the town manager came to
16 the North Hill Advisory Committee to speak about
17 the upcoming contract?

18 A. **Now I do, yes.**

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

21 (Exhibit No. 2 ID marked.)

22 Q. Now, having refreshed your memory a little bit
23 about the town manager coming to speak about the
24 contract, do you remember what was discussed at

1 that meeting?

2 A. **Not specifically, no.**

3 Q. In the RFP did you have a chance as part of the
4 drafting process to consider what the committee
5 wanted as far as a qualified provider?

6 A. **I'm sorry. Can you repeat that?**

7 Q. Yeah.

8 Did the committee discuss what
9 qualifications you were looking for from a
10 manager who would be managing the golf course?

11 A. **I can't remember specifics.**

12 Q. Well, for instance, if you look at Exhibit
13 Number 1, it indicates on, I believe it's on
14 Page 6, it indicates some criteria that would be
15 considered in order to rate the various
16 proposals.

17 Did you have a chance to review that as
18 it went into the RFP?

19 A. **We did.**

20 Q. Were you comfortable with the evaluation
21 standards that were put forth over the next
22 three or four pages?

23 A. **Yes, as a committee.**

24 Q. You personally agreed with the committee's

1 decision?

2 A. **Yes.**

3 Q. Would it be fair to say that one of the things
4 the committee was looking for was somebody with
5 adequate experience managing a 9 hole municipal
6 golf course; is that correct?

7 A. **Yes.**

8 Q. There's mention in the criteria standards of
9 another kind of company called a comparable
10 business enterprise. Are you familiar with that
11 expression?

12 A. **Vaguely.**

13 Q. Do you know where that phrase originated?

14 A. **I do not.**

15 Q. Did you have any understanding as to what a
16 comparable business enterprise would be?

17 A. **I think I had a vague understanding.**

18 **MR. FOLLANSBEE: I'll regret this.**

19 Q. What is your vague understanding?

20 **MR. KESTEN: Do you regret it already?**

21 **MR. FOLLANSBEE: Yes, I do.**

22 A. **I'm not sure how to answer that.**

23 Q. Can you give me any example of what you vaguely
24 believe a comparable business enterprise would

- 1 be?
- 2 **A. No.**
- 3 **Q.** Do you have any reason to believe that Mr. Bill Allen is not a Class A PGA pro?
- 5 **A. No, I do not.**
- 6 **Q.** In the bid process, when Exhibit Number 1 was submitted and proposals were received from five different vendors, did you have any role in looking at the proposals?
- 10 **A. I did not.**
- 11 **Q.** Did you discuss it with any of the folks who became the evaluators in the fall of 2008?
- 13 **A. Did not.**
- 14 **Q.** Did you have any discussion with Mr. Floreano or Mr. Dixon or Mr. Cushing about the evaluations they did?
- 17 **A. Did not.**
- 18 **Q.** Have you ever had any conversation with them about their evaluations?
- 20 **A. I have not.**
- 21 **Q.** Did you discuss -- before coming to testify today, did you discuss anything with Mr. Doolin about the RFP process?
- 23 **A. No, not about the RFP process.**

- 1 **Q.** When was the last time you talked to Mr. Doolin about North Hill Country Club?
- 2
- 3 **A. This morning just in the -- I knew he was being deposed and I was being deposed. That was it.**
- 4
- 5 **Q.** That was the extent of the conversation; you were both being deposed today?
- 6
- 7 **A. Yes.**
- 8 **Q.** There was no conversation about problems you may have had with Johnson Golf in the past?
- 9
- 10 **A. No.**
- 11 **Q.** Was it your hope that Johnson Golf would not be the successful proposer in late 2008, early 2009?
- 13
- 14 MR. JORDAN: Objection.
- 15 **Q.** You can answer it.
- 16 **A. I'm not going to answer that.**
- 17 MR. KESTEN: He can't make you. He could make you. He could go to court, but it's not relevant, and in my judgment, you probably won't have to.
- 19
- 21 MR. FOLLANSBEE: Thank you for your judgment.
- 22
- 23 MR. KESTEN: You're welcome.
- 24 **Q.** Why do you hesitate to answer that question?

- 1 MR. KESTEN: He's not hesitating. He says he's not going to.
- 2
- 3 MR. FOLLANSBEE: I view that as somewhat hesitant.
- 4
- 5 **Q.** Why are you reluctant to answer that question?
- 6 **A. I guess more or less because I care less now that I've been at another country club for a couple of years.**
- 7
- 8
- 9 **Q.** But at the time you cared; is that correct?
- 10 **A. Yes.**
- 11 **Q.** And at the time your preference was clearly to have Johnson Golf not be managing North Hill Country Club, correct?
- 13
- 14 **A. No. I would say that is not true.**
- 15 **Q.** Did you ever say to anyone at Johnson Golf you had an agenda and part of the agenda was to get rid of them?
- 17
- 18 **A. No.**
- 19 **Q.** Are you happy now that you're at Halifax Country Club?
- 20
- 21 **A. Yes.**
- 22 **Q.** Has your golf game improved at Halifax Country Club?
- 23
- 24 **A. No.**

- 1 MR. KESTEN: Would you like to lie about your handicap?
- 2
- 3 (Discussion off the record.)
- 4 MR. FOLLANSBEE: Let me take a five-minute break. We might be close.
- 5
- 6
- 7 (Recess taken.)
- 8
- 9 **Q.** In the RFP process in the summer of 2008, were you aware of outside consultants hired by the town to help draft the RFP which is now Exhibit Number 1?
- 10
- 11
- 12
- 13 **A. I think there was a consultant, but I don't recall who it was.**
- 14
- 15 **Q.** Now, when you say you think there was a consultant, did anybody tell you there was a consultant?
- 16
- 17
- 18 **A. I recall that it was mentioned that it was going to be looked at by someone, but I don't recall anything further.**
- 19
- 20
- 21 **Q.** Do you know who mentioned that it was going to be looked at?
- 22
- 23 **A. I do not recall.**
- 24 **Q.** And you never met with any consultant yourself;

- 1 is that correct?
- 2 **A. No.**
- 3 **Q.** Other than the meetings that Mr. McCarthy might
4 have come to and Gordon Cushing, did you meet
5 with any other municipal official about input
6 into the RFP?
- 7 **A. No.**
- 8 **Q.** So the only ones you know that had input in the
9 RFP process were members of the committee,
10 Mr. McCarthy and Mr. Cushing; is that correct?
- 11 **A. Correct.**
- 12 **Q.** Did anyone from the board of selectmen ever give
13 you any feedback about the RFP process?
- 14 **A. Not that I recall.**
- 15 **Q.** Did you ever discuss it with any members of the
16 board of selectmen?
- 17 **A. No.**
- 18 **Q.** Do you remember that there used to be a
19 residential house on the premises?
- 20 **A. I do.**
- 21 **Q.** And there was a decision made by the town to
22 tear that house down; is that correct?
- 23 **A. Yes.**
- 24 **Q.** Did you agree with that decision?

- 1 **A. I don't think I had an opinion.**
- 2 **Q.** In the, I believe it was in the minutes we had
3 this morning, Exhibit Number -- do you have
4 Exhibit Number 4 to Mr. Doolin's deposition?
- 5 These would have been the minutes of January
6 10th. It's on Page 2. It references a
7 discussion.
- 8 **A. Okay.**
- 9 **Q.** It indicates in the minutes that the committee
10 as a group was disappointed to hear this because
11 a restored house could be a good benefit in
12 bringing in a greens superintendent who could
13 live on the premises.
- 14 Do you recall that topic coming up?
- 15 **A. I don't until I see it now.**
- 16 **Q.** Do you have a -- now that your memory is
17 refreshed on the topic coming up, did you agree
18 that having the house could be beneficial?
- 19 **A. I don't remember.**
- 20 **Q.** Independently of that, do you believe having a
21 residence available for a greens superintendent
22 would be beneficial?
- 23 **A. I don't think I have an opinion one way or**
24 **another. I was never in the house so I don't**

- 1 **know enough about it.**
- 2 **Q.** Do you know what was being done with the house
3 when -- I mean, was someone living in the house
4 while you were on the board?
- 5 **A. I believe someone was but I can't recall**
6 **specifics.**
- 7 **Q.** When you were on the board, as far as your
8 dealings with the representatives of Johnson
9 Golf, would your primary contact be Joseph
10 Eckstrom?
- 11 **A. Yes.**
- 12 **Q.** Other than that, do you recall dealing with
13 anybody else?
- 14 **A. As far as a member of the --**
- 15 **Q.** A member of the Johnson staff dealing with your
16 board.
- 17 **A. There were times when Doug's daughter came to**
18 **some meetings.**
- 19 **Q.** That would be Kelly Johnson?
- 20 **A. Yes.**
- 21 **Q.** Did you ever have any conflict with either
22 Mr. Eckstrom or Kelly Johnson about any issues?
- 23 **A. Not to my knowledge.**
- 24 **Q.** And I don't know whether I've covered this with

- 1 you or not. If I have, I'll withdraw it.
- 2 Do you remember an individual named Tyler
3 who worked at the golf course?
- 4 **A. Yes.**
- 5 **Q.** Were you a member of the committee when Tyler
6 was let go?
- 7 **A. Yes.**
- 8 **Q.** Did you have an opinion as to whether or not he
9 should be let go?
- 10 **A. Personally, no.**
- 11 **Q.** Did you ever express any dissatisfaction with
12 Johnson that they had fired him?
- 13 **A. I did not.**
- 14 **MR. FOLLANSBEE: We're concluded.**
15 **Thanks.**
- 16
- 17 (The deposition concluded at 2:47 p.m.)
18
19
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24

CERTIFICATE

Commonwealth of Massachusetts
Essex, ss.

I, Jessica F. Story, Certified Shorthand Reporter, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify: that MICHAEL MARLBOROUGH, the witness whose deposition is hereinbefore set forth, was satisfactorily identified by his Massachusetts driver's license, then duly sworn by me, and that such deposition is a true record of the testimony given by the said witness.

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

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal this 28th day of July, 2011.

Jessica F. Story, CSR, RPR

My commission expires
on September 13, 2013

CERTIFICATE

I, MICHAEL MARLBOROUGH, do hereby certify that I have read the foregoing transcript of my testimony, and further certify that said transcript is a true and accurate record of said testimony.

Signed under the pains and penalties of perjury this ____ day of _____, 2011.

MICHAEL MARLBOROUGH

ERRATA SHEET

PAGE LINE

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