

<p style="text-align: center;">1</p> <p style="text-align: center;">VOLUME: II PAGES: 1 - 96 EXHIBITS: 1 - 12</p> <p style="text-align: center;">COMMONWEALTH OF MASSACHUSETTS</p> <p>MIDDLESEX, ss. SUPERIOR COURT DOCKET NO. 08-04641-B</p> <p>-----X JOHNSON GOLF MANAGEMENT, INC.,</p> <p style="padding-left: 40px;">Plaintiff,</p> <p style="text-align: center;">vs</p> <p>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,</p> <p style="text-align: center;">Defendants</p> <p>-----X</p> <p>CONTINUED DEPOSITION OF RICHARD MACDONALD, 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 Street, Braintree, Massachusetts, on Thursday, June 14, 2012, commencing at 1:03 p.m.</p> <p>-----X BRAMANTI & LYONS COURT REPORTING, INC. REGISTERED PROFESSIONAL REPORTERS 92 STATE STREET, BOSTON, MA 02109 TEL: 617.723.7321 / FAX: 617.723.7322 www.bramanti-lyons.com</p>	<p style="text-align: center;">3</p> <p>1 <u>I N D E X</u></p> <p>2 <u>Continued Deposition of:</u> <u>Page</u></p> <p>3 RICHARD MACDONALD</p> <p>4 Examination by Mr. Follansbee 5</p> <p>5</p> <p>6 <u>Exhibits</u> <u>Page</u></p> <p>7 1 2008 Non-Price Proposal</p> <p>8 Evaluation Forms 12</p> <p>9 2 December 2, 2008 Memorandum 13</p> <p>10 3 Affidavit 21</p> <p>11 4 October 24, 2008 Bidder Sheets 25</p> <p>12 5 January 15, 2009 Award to CALM 32</p> <p>13 6 Transcript from October 4, 2010 Hearing 48</p> <p>14 7 Memorandum from Gordon Cushing 52</p> <p>15 8 October 25, 2010 Letter From</p> <p>16 Deponent to Attorney Follansbee 54</p> <p>17 9 October 12, 2010 Letter from</p> <p>18 Attorney Follansbee to Deponent 55</p> <p>19 10 November 24, 2010 CALM Rescission Letter 58</p> <p>20 11 October 25, 2010 Termination</p> <p>21 Letter to Johnson Golf 64</p> <p>22 12 IFB 71</p> <p>23</p> <p>24</p>
<p style="text-align: center;">2</p> <p>1 <u>A P P E A R A N C E S:</u></p> <p>2</p> <p>3 Stephen R. Follansbee, Esq.</p> <p>4 Follansbee & McLeod, LLP</p> <p>5 536 Granite Street</p> <p>6 Braintree, Massachusetts 02184</p> <p>7 Attorney for the Plaintiff</p> <p>8</p> <p>9 Leonard H. Kesten, Esq.</p> <p>10 Brody, Hardoon, Perkins & Kesten, LLP</p> <p>11 One Exeter Plaza</p> <p>12 Boston, Massachusetts 02116</p> <p>13 Attorney for the Defendants,</p> <p>14 Town of Duxbury and North Hill Advisory</p> <p>15 Committee, Consisting of Michael Doolin,</p> <p>16 Chairman, Scott Whitcomb, Robert M. Mustard,</p> <p>17 Jr., Michael Marlborough, Anthony Floreano,</p> <p>18 Michael T. Rufo, Thomas K. Garrity, Richard</p> <p>19 Manning, W. James Ford, and Gordon Cushing (Ex</p> <p>20 officio)</p> <p>21</p> <p>22 Arthur P. Kreiger, Esq.</p> <p>23 Anderson & Kreiger, LLP</p> <p>24 One Canal Park, Suite 200</p> <p>Cambridge, Massachusetts 02141</p> <p>Attorney for the Defendants,</p> <p>Town of Duxbury and North Hill Advisory</p> <p>Committee, Consisting of Michael Doolin,</p> <p>Chairman, Scott Whitcomb, Robert M. Mustard,</p> <p>Jr., Michael Marlborough, Anthony Floreano,</p> <p>Michael T. Rufo, Thomas K. Garrity, Richard</p> <p>Manning, W. James Ford, and Gordon Cushing (Ex</p> <p>officio)</p> <p><u>ALSO PRESENT:</u></p> <p>Douglas Johnson</p> <p>Jason Laramie</p> <p>Judge Paul Chernoff</p>	<p style="text-align: center;">4</p> <p>1 P R O C E E D I N G S</p> <p>2</p> <p>3</p> <p>4 MR. FOLLANSBEE: Stipulations?</p> <p>5 MR. KESTEN: It's a continued deposition,</p> <p>6 right?</p> <p>7 MR. FOLLANSBEE: Yes.</p> <p>8 MR. KESTEN: So --</p> <p>9 MR. FOLLANSBEE: Do you want to see what</p> <p>10 the stipulations were the first go around?</p> <p>11 MR. KESTEN: We'll do the usual. Reserve</p> <p>12 all objections except as to form until the time</p> <p>13 of trial, reserve all motions to strike until</p> <p>14 the time of trial.</p> <p>15</p> <p>16</p> <p>17 RICHARD MACDONALD, a witness called on</p> <p>18 behalf of the Plaintiff, first having been</p> <p>19 satisfactorily identified by his Massachusetts</p> <p>20 driver's license, then duly sworn, on oath</p> <p>21 deposes and says as follows:</p> <p>22</p> <p>23</p> <p>24</p>

EXAMINATION BY MR. FOLLANSBEE:

- 1 **Q.** Good afternoon, Mr. MacDonald. Do you remember
2 your last deposition?
3
4 **A.** **I remember being here.**
5 **Q.** Do you remember the testimony at all?
6 **A.** **I did not read it, to be honest with you.**
7 **Q.** Okay. Did you do anything to prepare for
8 today's deposition?
9 **A.** **Yes.**
10 **Q.** Did you review any documents?
11 **A.** **Yes.**
12 **Q.** And in addition to reviewing the documents, did
13 you have any discussions with anyone other than
14 counsel about your testimony today?
15 **A.** **Yes.**
16 **Q.** Did you discuss your testimony with Mr. Cushing?
17 **A.** **Yes.**
18 **Q.** And did he tell you what he had said at his
19 deposition recently?
20 **A.** **Not word for word. We reviewed his testimony in**
21 **my office. We discussed, yes.**
22 **Q.** Well, if you recall back in 2009 in December you
23 didn't have a memory of the RFP process?
24 **A.** **Yes.**

- 1 **Q.** Do you now have a memory of the RFP process?
2 **A.** **It's been talked to death.**
3 MR. KREIGER: What was the answer?
4 THE WITNESS: It's been talked to death,
5 yes.
6 **Q.** So you do have a memory of it now?
7 **A.** **I have some memory of it, yes.**
8 **Q.** Now, what I'd like to do is first go back to
9 your previous deposition, and were you
10 instructed by anyone to indicate that you didn't
11 remember the RFP process?
12 **A.** **No.**
13 **Q.** Now, with regard to the RFP, you understand when
14 I say the RFP process we're talking about the
15 North Hill Golf Course in 2008 and 2009?
16 **A.** **I understand. And your question was again?**
17 **Q.** My question was, were you instructed by anybody
18 prior to your previous deposition to indicate
19 that you did not remember anything about the RFP
20 process?
21 **A.** **No.**
22 **Q.** Now, do you recall the documents for the RFP
23 were circulated to various town officials during
24 the summer of 2008?

- 1 **A.** **I'm not going to testify to the dates, but they**
2 **were -- you're talking about the RFP?**
3 **Q.** The RFP, yes.
4 **A.** **Draft RFP?**
5 **Q.** Draft copies of the RFP being circulated to
6 various town officials including the North Hill
7 Advisory Committee, yourself, the selectmen and
8 town counsel.
9 **A.** **Draft RFP was in discussions, I believe with**
10 **Gordon Cushing, and to be discussed with the**
11 **North Hill Advisory Committee to make**
12 **recommendations to the board of selectmen.**
13 **Q.** And did you ever review any of the draft RFPs in
14 the calendar year 2008?
15 **A.** **Did I look specifically at the draft RFP?**
16 **Q.** Yes.
17 **A.** **Not that I recall, no.**
18 **Q.** Were you copied on e-mails when they were
19 circulated?
20 **A.** **I'm sure I was but I don't recall which specific**
21 **e-mails. I remember there was one e-mail**
22 **evidently about the existing clubhouse or there**
23 **was in the RFP to build a clubhouse and that had**
24 **already been built and it should have been**

- 1 **eliminated, but it was an e-mail, I believe,**
2 **from one of the selectmen and I just concurred**
3 **that shouldn't be in there, obviously.**
4 MR. KREIGER: Can we take a break for now
5 if you don't mind.
6 MR. KESTEN: Hey, we've been at this for
7 about 90 seconds.
8
9 (Recess taken.)
10
11
12 **Q.** Do you have the question?
13 **A.** **No. What was the question?**
14 **Q.** The question again was prior to your last
15 deposition testimony -- I forget.
16 MR. FOLLANSBEE: What was my last
17 question?
18 MR. KREIGER: I don't think there was a
19 pending question. I wouldn't have taken a break
20 if he hadn't answered.
21 **Q.** All right. Let's go back to the fall of 2008.
22 The contract with Johnson Golf Management
23 was about to expire and the final draft of the
24 RFP under your signature was issued and made

<p style="text-align: right;">9</p> <p>1 available to prospective bidders. Do you</p> <p>2 remember that?</p> <p>3 A. Yes.</p> <p>4 Q. And do you remember certain individuals were</p> <p>5 appointed to the evaluation committee?</p> <p>6 A. Yes.</p> <p>7 Q. And that was your function as the chief</p> <p>8 procurement officer in the town of Duxbury,</p> <p>9 correct?</p> <p>10 MR. KREIGER: Objection.</p> <p>11 Q. You can answer the question.</p> <p>12 A. Repeat the question.</p> <p>13 Q. Yes. You appointed the evaluation committee as</p> <p>14 part of your function as the chief procurement</p> <p>15 officer of the town of Duxbury, correct?</p> <p>16 A. I don't remember. It was me or the selectmen.</p> <p>17 Q. Did you ever designate your role as chief</p> <p>18 procurement officer to anybody else in the town</p> <p>19 of Duxbury regarding the North Hill project?</p> <p>20 MR. KREIGER: Objection.</p> <p>21 A. No. Delegate? I'm not clear on the question.</p> <p>22 MR. KESTEN: Did he delegate his</p> <p>23 authority?</p> <p>24 MR. KREIGER: You said designate.</p>	<p style="text-align: right;">11</p> <p>1 MR. JOHNSON: What?</p> <p>2 MR. KESTEN: October 24th.</p> <p>3 MR. FOLLANSBEE: The evaluations couldn't</p> <p>4 have been done.</p> <p>5 MR. KESTEN: The evaluations? You're</p> <p>6 right. My bad. After the evaluations were</p> <p>7 done. Go ahead.</p> <p>8 Q. On November 24th --</p> <p>9 MR. KESTEN: Correct.</p> <p>10 Q. -- 2008, did you have a meeting with Gordon</p> <p>11 Cushing at which time the price proposals were</p> <p>12 opened?</p> <p>13 A. I'm not testifying to the date because I don't</p> <p>14 know the dates.</p> <p>15 Q. Well, did you and Gordon Cushing open the price</p> <p>16 proposals together?</p> <p>17 A. Yes.</p> <p>18 Q. And that was in November of 2008?</p> <p>19 A. I don't know the date.</p> <p>20 Q. Do you remember looking at the price proposals?</p> <p>21 A. No.</p> <p>22 Q. Did you look at the evaluations?</p> <p>23 A. I had a cursory review.</p> <p>24 Q. When did you first have a cursory review of the</p>
<p style="text-align: right;">10</p> <p>1 Q. Did you delegate your authority as the chief</p> <p>2 procurement officer to any other individual in</p> <p>3 the town of Duxbury?</p> <p>4 MR. KREIGER: Objection.</p> <p>5 A. No.</p> <p>6 Q. Do you remember meeting with Gordon Cushing and</p> <p>7 Steven Studley on or about November 17, 2008 to</p> <p>8 open up the various proposals and evaluations?</p> <p>9 A. Yes.</p> <p>10 Q. And what do you remember about that meeting?</p> <p>11 A. I'm not -- the date is not clear to me but I</p> <p>12 remember meeting to open the proposals.</p> <p>13 Q. And when you say open the proposals, what</p> <p>14 specifically do you remember opening?</p> <p>15 A. The non-price proposals.</p> <p>16 Q. And once you opened the non-price proposals,</p> <p>17 what was the next step in the process?</p> <p>18 A. I think Gordon took them and copied them.</p> <p>19 Q. And he made copies available to the evaluators?</p> <p>20 A. Correct.</p> <p>21 Q. After the evaluations were done on or about</p> <p>22 November 24, 2008 --</p> <p>23 MR. KESTEN: Come on. You know better</p> <p>24 than that.</p>	<p style="text-align: right;">12</p> <p>1 evaluations?</p> <p>2 A. I don't remember that.</p> <p>3 MR. FOLLANSBEE: I'd ask this be marked</p> <p>4 as the first exhibit.</p> <p>5 (Exhibit No. 1 ID marked.)</p> <p>6 Q. Sir, if you take a look at Exhibit Number 1 in</p> <p>7 front of you, these are documents that were</p> <p>8 provided to us from the town of Duxbury</p> <p>9 purporting to be the evaluation sheets from the</p> <p>10 RFP process in the fall of 2008. I'd ask you to</p> <p>11 take a look at those, then I'll ask you a few</p> <p>12 questions about them.</p> <p>13 MR. KESTEN: Why don't you focus him on</p> <p>14 something.</p> <p>15 Q. Did you make a determination to reject all of</p> <p>16 the proposals in 2008?</p> <p>17 MR. KESTEN: First round of bidding,</p> <p>18 right?</p> <p>19 MR. FOLLANSBEE: In the first RFP, yes.</p> <p>20 2008.</p> <p>21 A. First RFP? The first RFP price proposals?</p> <p>22 Q. The non-price proposals and the price proposals,</p> <p>23 did you make a determination on behalf of the</p> <p>24 town of Duxbury to reject all the proposals?</p>

<p style="text-align: right;">13</p> <p>1 A. No.</p> <p>2 Q. Who made that determination?</p> <p>3 A. Town counsel.</p> <p>4 MR. FOLLANSBEE: I'd ask this be marked</p> <p>5 the next exhibit.</p> <p>6 (Exhibit No. 2 ID marked.)</p> <p>7 Q. Did you have a conversation with town counsel</p> <p>8 about the rejection of all the proposals?</p> <p>9 MR. KREIGER: I'm sorry, Steve. Could</p> <p>10 you just identify the exhibit.</p> <p>11 MR. KESTEN: It's a memo dated December</p> <p>12 2, 2008.</p> <p>13 The question is, did you have a</p> <p>14 conversation with town counsel about rejecting</p> <p>15 all the proposals.</p> <p>16 THE WITNESS: Yes.</p> <p>17 Q. And what did town counsel tell you?</p> <p>18 A. To the best of my recollection, it was in the</p> <p>19 best interest of the town of Duxbury. I don't</p> <p>20 remember specifics.</p> <p>21 Q. Did he give you any reason why he thought it was</p> <p>22 in the best interest of the town of Duxbury to</p> <p>23 reject the proposals?</p> <p>24 A. There was flaws in the process. I don't</p>	<p style="text-align: right;">15</p> <p>1 answer.</p> <p>2 Q. So it's your testimony that one of the proposals</p> <p>3 was done incorrectly and they had given the</p> <p>4 wrong type of price proposal, correct?</p> <p>5 A. That was one of the issues.</p> <p>6 Q. And why would that be an issue to reject any</p> <p>7 other bid other than that person's bid?</p> <p>8 A. I can't answer that.</p> <p>9 Q. Why can't you answer that?</p> <p>10 A. Because I have relied on legal counsel to review</p> <p>11 these along with Gordon.</p> <p>12 Q. So as far as your role as the chief procurement</p> <p>13 officer, you didn't have any personal knowledge</p> <p>14 of the 30B process as far as what needed to be</p> <p>15 in the composite scores?</p> <p>16 A. Correct.</p> <p>17 Q. And you hadn't reviewed Chapter 30B in years</p> <p>18 prior to this, correct?</p> <p>19 A. Correct.</p> <p>20 Q. And you certainly don't profess that you had any</p> <p>21 knowledge in 2008 that a specific section of</p> <p>22 Chapter 30B would have required you to reject</p> <p>23 the proposals, correct?</p> <p>24 A. Correct.</p>
<p style="text-align: right;">14</p> <p>1 remember the exact but there were concerns about</p> <p>2 flaws in the process.</p> <p>3 Q. Did you personally make a determination under</p> <p>4 Chapter 30B that there was a flaw in the process</p> <p>5 requiring the rejection of all the proposals?</p> <p>6 A. No.</p> <p>7 Q. And if Mr. Cushing has suggested in his</p> <p>8 testimony that it was your decision, after</p> <p>9 reviewing the evaluations that you made the</p> <p>10 determination, would he be incorrect?</p> <p>11 A. Yes.</p> <p>12 Q. Now, when you say town counsel made the</p> <p>13 determination, you're referring to Attorney</p> <p>14 Robert Troy, correct?</p> <p>15 A. Yes.</p> <p>16 Q. And did Attorney Troy ever tell you what it was</p> <p>17 about the process that was so flawed that it</p> <p>18 required everyone -- it required you to reject</p> <p>19 the bids?</p> <p>20 A. I believe it was Gordon looked at it first and</p> <p>21 then it was reviewed by counsel. The</p> <p>22 evaluations or the composites weren't done</p> <p>23 properly. One of them had submitted a price</p> <p>24 proposal that had an incorrect process or</p>	<p style="text-align: right;">16</p> <p>1 Q. Were you familiar with the individuals on the</p> <p>2 North Hill Advisory Committee in 2008?</p> <p>3 A. Familiar?</p> <p>4 Q. Yes. Did you know them?</p> <p>5 A. Some of them.</p> <p>6 Q. Did you know Mr. Doolin?</p> <p>7 A. Yes.</p> <p>8 Q. Did you know Mr. Doyle, Mr. Doolin's</p> <p>9 father-in-law, Bob Doyle?</p> <p>10 A. Yes.</p> <p>11 Q. And had either Mr. Doolin or Mr. Doyle made</p> <p>12 known to you their dissatisfaction with Johnson</p> <p>13 Golf Management?</p> <p>14 A. There were issues of complaints for Johnson Golf</p> <p>15 Management.</p> <p>16 Q. And do you recall with any specificity what the</p> <p>17 complaints were?</p> <p>18 A. No. It was typical. I took it as typical of</p> <p>19 any golf course. All members complain about the</p> <p>20 way golf courses are run.</p> <p>21 Q. I never asked you this at your first deposition.</p> <p>22 Are you a golfer yourself?</p> <p>23 A. If you want to call it that.</p> <p>24 Q. Do you play?</p>

- 1 **A. Yes.**
 2 **Q.** What's your handicap?
 3 **A. I just went from a 9 to a 12, so that tells you.**
 4 **Q.** That's just part of aging.
 5 Where do you play golf?
 6 **A. Atkinson Country Club.**
 7 **Q.** Where is that?
 8 **A. Atkinson, New Hampshire.**
 9 **Q.** So as far as you were concerned, in 2008 any
 10 complaints that you were hearing were typical
 11 groushings among golfing members?
 12 **A. That's how I took them.**
 13 **Q.** It didn't -- in your mind it didn't create a
 14 predisposition to get rid of Johnson Golf
 15 Management at North Hill for the town of
 16 Duxbury, did it?
 17 **A. Not me.**
 18 **Q.** Now, after -- directing your attention to the
 19 memo which has been marked as Exhibit Number 2,
 20 if you could, it's a one-page memo, if you could
 21 just review that, I'll ask you a few questions
 22 about that process.
 23 **A. Okay.**
 24 **Q.** Is that consistent with your memory? It's a

- 1 memo from Attorney Troy to you.
 2 MR. FOLLANSBEE: Do you need a copy of
 3 that?
 4 MR. KREIGER: Yeah.
 5 MR. KESTEN: It's not to him.
 6 **Q.** As Attorney Kesten accurately pointed out, the
 7 memo is not to you. Could you tell us who
 8 Barbara Ripley is?
 9 **A. Executive assistant to the town manager at the**
 10 **time.**
 11 **Q.** She was working in your office?
 12 **A. Yes.**
 13 **Q.** And would it be typical fashion when there's a
 14 cc at the bottom of a memo like this that has
 15 your name, would you receive a copy of it, also?
 16 **A. Usually.**
 17 **Q.** And do you recall receiving this?
 18 **A. No.**
 19 **Q.** Do you recall writing a letter rejecting all the
 20 bids?
 21 **A. No.**
 22 **Q.** Do you have any memory of signing a letter
 23 rejecting all the bids?
 24 **A. No.**

- 1 **Q.** Would somebody else be authorized to sign your
 2 name to such a letter?
 3 **A. No.**
 4 **Q.** Having reviewed the material in this litigation
 5 for the last three and a half years, are you
 6 comfortable that you actually did reject all the
 7 bids?
 8 **A. Yes.**
 9 **Q.** If I suggested to you that was done on or about
 10 December 3, 2008, would that comport with your
 11 memory?
 12 **A. I don't remember the dates.**
 13 **Q.** Now, once you rejected the bids, do you recall
 14 receiving a request from my office asking under
 15 the Freedom of Information Act to review all
 16 documents?
 17 **A. Yes.**
 18 **Q.** And did you provide those documents to us?
 19 **A. Any request was sent to town counsel's office.**
 20 **Q.** That's Attorney Troy, correct?
 21 **A. Yes.**
 22 **Q.** Did you authorize Attorney Troy to remove all of
 23 the non-price proposals and price proposals and
 24 evaluations from town hall and bring them to his

- 1 office in Sandwich in early December of 2008?
 2 **A. Yes.**
 3 **Q.** Why did you do that?
 4 **A. He wanted them.**
 5 **Q.** And you were not concerned that public records
 6 were being removed from town hall to his office?
 7 **A. Town counsel Attorney Troy asked that he keep**
 8 **them and I said okay.**
 9 **Q.** And did he tell you why it was necessary for him
 10 to keep them?
 11 **A. I believe it was safe keeping.**
 12 **Q.** And are the documents safe in town hall?
 13 **A. I assume they would be, yeah.**
 14 **Q.** So was there any other reason other than safe
 15 keeping why the records would be removed to his
 16 law office in Sandwich?
 17 **A. No.**
 18 **Q.** Sir, I'm showing you an affidavit and ask you to
 19 take a look at that. It's an unsigned copy.
 20 (Witness complies.)
 21 MR. KESTEN: Did you mark this?
 22 MR. FOLLANSBEE: I haven't marked that
 23 yet.
 24 **Q.** Do you recall in mid December of 2008 that

<p style="text-align: right;">21</p> <p>1 Johnson Golf Management filed litigation against</p> <p>2 the town of Duxbury?</p> <p>3 A. I remember they filed litigation. I don't know</p> <p>4 the exact date.</p> <p>5 Q. Do you remember being asked to provide an</p> <p>6 affidavit by Attorney Troy as part of the</p> <p>7 preliminary hearing injunction?</p> <p>8 A. Repeat the question.</p> <p>9 Q. Do you remember being requested by Attorney Troy</p> <p>10 to sign an affidavit as part of the preliminary</p> <p>11 hearing process in Woburn Superior Court?</p> <p>12 A. Do I remember that? No.</p> <p>13 Q. Do you remember going to court and having a</p> <p>14 hearing in front of Judge Smith for a</p> <p>15 preliminary hearing injunction?</p> <p>16 A. Yes.</p> <p>17 MR. FOLLANSBEE: I'd ask that be marked</p> <p>18 as the next exhibit.</p> <p>19 (Exhibit No. 3 ID marked.)</p> <p>20 Q. I'm going to direct your attention to item</p> <p>21 number 10 in the affidavit. Can you read that</p> <p>22 to yourself and then I will ask you a couple of</p> <p>23 questions.</p> <p>24 (Witness complies.)</p>	<p style="text-align: right;">23</p> <p>1 Q. And he requested you sign that under the pains</p> <p>2 and penalties of perjury?</p> <p>3 A. Yes.</p> <p>4 Q. And you did it and provided it to the Court?</p> <p>5 MR. KREIGER: Objection.</p> <p>6 MR. FOLLANSBEE: I'll withdraw the</p> <p>7 question.</p> <p>8 MR. KREIGER: I just don't know if that</p> <p>9 was the one that was filed.</p> <p>10 MR. FOLLANSBEE: Exactly. The copy that</p> <p>11 was provided to us was not signed. The one in</p> <p>12 court, we'll get the one in court if we have to.</p> <p>13 MR. KREIGER: Okay.</p> <p>14 Q. Now, once you rejected all the bids did you have</p> <p>15 any involvement in preparing a new RFP for the</p> <p>16 golf course which would be put into effect in</p> <p>17 January of 2009 for a bid opening?</p> <p>18 A. No.</p> <p>19 Q. Were you familiar with the fact that somebody</p> <p>20 under your supervision was going to do that?</p> <p>21 MR. KREIGER: Objection.</p> <p>22 Q. You can answer the question.</p> <p>23 A. Was I familiar that was someone was going to do</p> <p>24 that?</p>
<p style="text-align: right;">22</p> <p>1 MR. KESTEN: What's the question?</p> <p>2 MR. FOLLANSBEE: I just asked him to</p> <p>3 review number 10 and I'll ask him a few</p> <p>4 questions.</p> <p>5 MR. KESTEN: Okay.</p> <p>6 Q. In paragraph number 10 you suggest that the bids</p> <p>7 were rejected due to some deficiency in the RFP</p> <p>8 process. Can you tell us what that deficiency</p> <p>9 was?</p> <p>10 A. I believe the evaluators did not complete the</p> <p>11 evaluation properly. One of them didn't finish</p> <p>12 it, and I think terminology was wrongly used in</p> <p>13 one of them. I'm not sure.</p> <p>14 Q. But you didn't have any personal knowledge</p> <p>15 yourself as to what they had done?</p> <p>16 A. No. Again, I had a cursory review of this.</p> <p>17 Q. And so with regard to the conclusions in the</p> <p>18 affidavit, were those your conclusions or were</p> <p>19 those the conclusions of town counsel?</p> <p>20 A. Town counsel.</p> <p>21 Q. Is it fair to say that all the conclusions in</p> <p>22 that affidavit were conclusions of town counsel</p> <p>23 rather than you?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">24</p> <p>1 Q. Yeah.</p> <p>2 A. Yes.</p> <p>3 Q. Who was going to do that?</p> <p>4 A. Gordon along with town counsel to make sure it</p> <p>5 was legally okay.</p> <p>6 Q. So the only two individuals that were going to</p> <p>7 be involved in the process were Gordon Cushing</p> <p>8 and Robert Troy?</p> <p>9 A. Yes.</p> <p>10 Q. And did you approve that?</p> <p>11 A. Yes.</p> <p>12 Q. Now, once the price proposals were opened, what</p> <p>13 individuals in town government had knowledge of</p> <p>14 what the prices were?</p> <p>15 MR. KESTEN: Which time?</p> <p>16 MR. FOLLANSBEE: In December of 2008.</p> <p>17 MR. KESTEN: First bid.</p> <p>18 MR. FOLLANSBEE: The first bid.</p> <p>19 A. Who had knowledge?</p> <p>20 Q. Who knew what the price proposals were when they</p> <p>21 were opened?</p> <p>22 MR. KESTEN: Are you asking who was in</p> <p>23 the room?</p> <p>24 MR. FOLLANSBEE: Yes.</p>

1 **A. Barbara as a witness, I know Gordon was there,**
2 **obviously I was there. I don't know who else.**

3 **MR. FOLLANSBEE: That's the next exhibit.**

4 (Exhibit No. 4 ID marked.)

5 **Q.** Sir, I'd represent to you that what's been
6 marked as Exhibit 4 are documents that we
7 received from the town of Duxbury purporting to
8 be the bid sheet for the North Hill Golf Course
9 together with the price proposals from the
10 October 2008 RFP process.

11 Is any of the handwriting on that first
12 page yours?

13 **A. No.**

14 **Q.** And does the list of bidders comport with your
15 memory as to the number of bidders that you had
16 and who they were?

17 **A. Yes.**

18 **Q.** If you look at the last page of the exhibit,
19 that's the price proposals sheet for CALM Golf.
20 As you can see at the bottom it gives a number
21 plus a percentage of revenues each year.

22 Is this the price proposal that you
23 indicated earlier in your testimony did not
24 comply with the RFP?

1 **A. I don't remember seeing this piece of paper but**
2 **I know the issue was they gave a fee plus a**
3 **percentage.**

4 **Q.** Under the RFP that had been issued by the town
5 of Duxbury, that was not permitted, correct?

6 **A. Yes.**

7 **Q.** And as the chief procurement officer, you would
8 not have considered a bid that didn't comply
9 with the RFP, would you?

10 **A. That was brought to the attention of town**
11 **counsel.**

12 **Q.** Who brought it to the attention of town counsel?

13 **A. I think Gordon and myself.**

14 **Q.** So is it your testimony that Gordon and yourself
15 opened up the price proposals and Barbara Ripley
16 was present as a witness but Attorney Troy was
17 not present for the opening of the price
18 proposals?

19 **A. Gordon opened the price proposals. I did not**
20 **open the price proposals.**

21 **Q.** When I say you opened them, I don't mean
22 physically. You were both together at the table
23 opening them?

24 **A. Correct.**

1 **Q.** So as soon as the envelopes were opened, you got
2 to look at them, Gordon got to look at them,
3 correct?

4 **A. I may have looked at them cursory. I put my**
5 **faith in Gordon as I do and I still do for that.**
6 **He was opening them and I assume recording them,**
7 **but I'm not sure. I forget the process.**

8 **Q.** And so you don't know who made the handwriting
9 on the right-hand side?

10 **A. Looks like Gordon but I can't confirm that.**

11 **MR. KREIGER: Right-hand side of what?**

12 **MR. FOLLANSBEE:** The right-hand side of
13 the exhibit.

14 **MR. KREIGER:** Back on the front. Okay.

15 **Q.** Did you have any conversation -- after the price
16 proposals were opened and you became aware that
17 one of them was noncompliant, did you have any
18 discussions with Attorney Troy about that issue?

19 **A. Right then?**

20 **Q.** Yes. Right then. Let's start there.

21 **A. Not that I can recall.**

22 **Q.** Did you have any discussions with him within the
23 next several days after that as to what you were
24 going to do now?

1 **A. There was -- yes. We called him about this**
2 **issue. I think I did anyway.**

3 **Q.** What did Attorney Troy tell you?

4 **A. I think that he came up to the office and looked**
5 **at them and that was when it was decided to**
6 **cancel the bids.**

7 **Q.** Have you had a chance to review any of Attorney
8 Troy's billing records on this case?

9 **A. No.**

10 **Q.** You know they were made available to the public
11 several weeks ago?

12 **A. Correct.**

13 **Q.** But you haven't looked at them yourself?

14 **A. No.**

15 **Q.** Did you look at them as the chief executive
16 officer of the town to determine whether they
17 were suitable to be paid when they were issued?

18 **A. At the time?**

19 **Q.** Yes.

20 **A. Yeah.**

21 **Q.** And would that be your practice, to review his
22 bills every month?

23 **A. Yes.**

24 **Q.** So if Attorney Troy in his billing records

<p style="text-align: right;">29</p> <p>1 indicated that he met with you on the 26th of</p> <p>2 November and the bid opening had been the 24th</p> <p>3 of November for the price proposals, would that</p> <p>4 be consistent with your memory, that he came to</p> <p>5 meet you several days later?</p> <p>6 A. Yes.</p> <p>7 Q. And then you're of the belief that then the</p> <p>8 records were all taken to his office down on the</p> <p>9 Cape, correct?</p> <p>10 MR. KREIGER: Objection.</p> <p>11 A. It was either the first or the second round he</p> <p>12 took them all. I'm not sure which one.</p> <p>13 Q. Did you ever call the Inspector General's office</p> <p>14 about this case?</p> <p>15 A. Me?</p> <p>16 Q. Yes.</p> <p>17 A. No.</p> <p>18 Q. Did you ever meet with anyone at the Inspector</p> <p>19 General's office concerning this case?</p> <p>20 A. Yes.</p> <p>21 Q. When was that?</p> <p>22 A. I don't have the date.</p> <p>23 Q. Do you know what year it was?</p> <p>24 A. End of 2010, beginning of 2011. Somewhere</p>	<p style="text-align: right;">31</p> <p>1 gave an injunction awarding temporary management</p> <p>2 to Johnson Golf Management?</p> <p>3 A. No.</p> <p>4 Q. So is it your testimony that in February of 2009</p> <p>5 when Judge Smith issued a nine-page order,</p> <p>6 you've never read that order?</p> <p>7 A. No.</p> <p>8 Q. Did you have any conversations with Attorney</p> <p>9 Troy about the fact that an injunction had been</p> <p>10 issued?</p> <p>11 A. Yes.</p> <p>12 Q. And what did he tell you about the injunction?</p> <p>13 A. I don't recall specifics.</p> <p>14 Q. Do you remember issuing an award letter to CALM</p> <p>15 Golf in January of 2009 awarding them the</p> <p>16 contract?</p> <p>17 A. I remember the award letter, yeah.</p> <p>18 Q. And did you draft the award letter?</p> <p>19 A. No.</p> <p>20 Q. Who drafted it?</p> <p>21 A. Attorney Troy.</p> <p>22 Q. Had you reviewed all the proposals prior to</p> <p>23 writing the award letter?</p> <p>24 A. No.</p>
<p style="text-align: right;">30</p> <p>1 around there. Wintertime.</p> <p>2 Q. Let's go back to December of 2008.</p> <p>3 Once the bids had been rejected, did</p> <p>4 anyone say to you that they were changing any of</p> <p>5 the words in the RFP?</p> <p>6 A. The word flat was used. If I recall it was</p> <p>7 Gordon wanting that in there because of the</p> <p>8 percentage that was bid by CALM.</p> <p>9 Q. So it's your memory that Gordon wanted to insert</p> <p>10 the word flat?</p> <p>11 A. Right.</p> <p>12 Q. To make it clear that you couldn't do a</p> <p>13 percentage?</p> <p>14 A. Correct.</p> <p>15 Q. Do you have any memory that the original bid</p> <p>16 said that it had to be flat and then Gordon took</p> <p>17 that word out for the second?</p> <p>18 A. No. No, I don't.</p> <p>19 Q. You don't. Had that ever been brought to your</p> <p>20 attention that that's what happened?</p> <p>21 A. No.</p> <p>22 Q. Have you read any of the pleadings in this case?</p> <p>23 A. No.</p> <p>24 Q. Did you read the decision of Judge Smith when he</p>	<p style="text-align: right;">32</p> <p>1 Q. Had you reviewed any of the proposals prior to</p> <p>2 writing the award letter?</p> <p>3 A. No.</p> <p>4 Q. Did you know what you were signing when you</p> <p>5 signed the award letter?</p> <p>6 A. I was signing a document prepared by town</p> <p>7 counsel, yes.</p> <p>8 MR. FOLLANSBEE: I'd ask this be marked</p> <p>9 the next exhibit.</p> <p>10 (Exhibit No. 5 ID marked.)</p> <p>11 Q. Sir, I'd ask you to take a look at what's been</p> <p>12 now marked as Exhibit Number 5, and is this the</p> <p>13 award letter dated January 15, 2009 giving the</p> <p>14 contract to the entity known as CALM Golf?</p> <p>15 A. Yes.</p> <p>16 Q. And is it fair to say that your testimony is now</p> <p>17 that you didn't write this letter; Attorney Troy</p> <p>18 did?</p> <p>19 A. Yes.</p> <p>20 Q. And that despite what it says in here, you</p> <p>21 didn't review any financial data of CALM Golf at</p> <p>22 all, did you?</p> <p>23 A. Very cursory review of all proposals. Very</p> <p>24 cursory.</p>

1 **Q.** When it says on page, it's Page 3 of 4 at the
2 bottom beginning with the word examination,
3 those aren't your words, are they?
4 **A. I didn't write this letter.**
5 **Q.** Although you signed and issued the award to CALM
6 Golf, you had no idea what CALM Golf's assets
7 were, did you?
8 **A. No.**
9 **Q.** And are you now aware that at the time CALM Golf
10 had total assets of \$169?
11 **A. That's what I had been told.**
12 **Q.** And you've actually seen documentation to that
13 effect, correct?
14 **A. No.**
15 **Q.** Well, do you recall at your last deposition we
16 gave you some documentation about CALM Golf?
17 **A. No. I don't remember.**
18 **Q.** Okay.
19 MR. KESTEN: Do we need to do this?
20 We'll stipulate as to that's what their proposal
21 says.
22 MR. FOLLANSBEE: We'll stipulate that the
23 total assets --
24 MR. KESTEN: That's what their proposal

1 says. That's all I can say.
2 MR. FOLLANSBEE: Okay.
3 **Q.** You had no other financial information about
4 CALM Golf other than what was in their proposal,
5 correct?
6 **A. Correct.**
7 **Q.** Did you know Mr. Lanzetta or Mr. Morosco
8 personally?
9 **A. No.**
10 **Q.** Have you ever met either of them?
11 **A. I don't believe I met either one of them.**
12 **Q.** Did you know anything about their business?
13 **A. No.**
14 **Q.** Did you know anything about the Rockland Golf
15 Course?
16 **A. No.**
17 **Q.** Were you aware at the time that the Rockland
18 Golf Course was in bankruptcy?
19 **A. No.**
20 **Q.** So if Gordon Cushing has testified that he told
21 you or sent you an e-mail that the Rockland Golf
22 Course was in bankruptcy in 2008, he'd be in
23 error?
24 **A. No. I just don't remember that happening.**

1 **Gordon would not lie.**
2 **Q.** Had you ever delegated your responsibilities as
3 chief procurement officer to Attorney Troy?
4 **A. For this process?**
5 **Q.** For any process.
6 MR. KREIGER: Objection.
7 **A. Yes.**
8 **Q.** When did you do that?
9 **A. For this RFP.**
10 **Q.** Did you do that in writing?
11 **A. No.**
12 **Q.** So is it your testimony that despite signing the
13 award letter, you were giving full control over
14 the award of the contract to Attorney Troy?
15 MR. KREIGER: Objection.
16 **A. I put the process, the assembling of all**
17 **materials to Gordon, and the legalities of it**
18 **all to Attorney Troy because I wanted to make**
19 **sure it was a clean and proper process.**
20 **Q.** And as far as the ultimate decision to award the
21 contract, did you also delegate that to Attorney
22 Troy?
23 MR. KREIGER: Objection.
24 **A. The ultimate signature was mine. The legal**

1 **procedures and the process and the**
2 **recommendations were ultimately Attorney Troy's.**
3 **Q.** So when you say the recommendations, the
4 decision to bypass the three highest financial
5 bids was something that Bob Troy made?
6 **A. I don't recall specifically. I remember it was**
7 **probably discussed in my office with Troy,**
8 **Gordon, and specifics I don't remember.**
9 **Q.** Nobody forced you to sign this letter; you did
10 this of your own free will, correct?
11 **A. Yes.**
12 **Q.** Now, with regard to Exhibit Number 5, at the,
13 again, at the bottom of Page 3 you indicate that
14 CALM Golf had experience at the Rockland Golf
15 Course. Did you do anything to confirm for
16 yourself whether or not that was true?
17 **A. No.**
18 **Q.** So if Attorney Troy told you that they had
19 experience at Rockland Golf Course, that was
20 good enough for you?
21 **A. He wrote the letter.**
22 **Q.** And you -- in other words, you relied on the
23 fact that he was telling you the truth, that
24 they had experience at the Rockland Golf Course?

- 1 **A. Yes.**
2 **Q.** And you relied upon the fact that he was telling
3 you the truth, that they had sufficient
4 financial material to run the golf course,
5 correct?
6 **A. Yes.**
7 **Q.** Have you since learned that they were not
8 running the Rockland Golf Course?
9 **A. You know, are they? I don't know if they're**
10 **running it or not running it. I really don't**
11 **know.**
12 **Q.** As far as the various companies that are listed
13 in Exhibit Number 5, the second paragraph of
14 Page 4 of Exhibit 5, you indicate, it indicates
15 that only two of the proposers were running a
16 golf course, the two being CALM and Johnson.
17 Was that knowledge that you had or were
18 you relying on Attorney Troy?
19 MR. KESTEN: In which paragraph?
20 MR. FOLLANSBEE: The second paragraph of
21 Page 4 of 4.
22 **A. What was the question?**
23 **Q.** Yeah. The question was, did you have personal
24 knowledge that these were the only two running a

- 1 golf course or were you relying on Attorney Troy
2 saying these were the only two?
3 **A. I don't know if it was specific to Troy, but**
4 **that was my understanding.**
5 **Q.** Were you at all surprised that between the
6 October 24th bid and the January 9th bid, that
7 CALM Golf had raised their price proposal from
8 \$280,000 total to \$512,000 total?
9 **A. Was I surprised?**
10 **Q.** Yes.
11 **A. I didn't give it any consideration.**
12 **Q.** Do you know Attorney Geary?
13 **A. Yes.**
14 **Q.** He's a former member of the North Hill Advisory
15 Committee, correct?
16 **A. Yes.**
17 **Q.** And he became counsel for CALM Golf in the
18 winter of 2008, correct?
19 **A. I don't know the date.**
20 **Q.** Did you have any communication with Attorney
21 Geary about the RFP process at North Hill?
22 **A. Not that I recall.**
23 **Q.** Is it possible you had communication with him?
24 **A. Possible.**

- 1 **Q.** Did you have any communication with any of the
2 principals of CALM Golf?
3 **A. No.**
4 **Q.** Did you ever disclose to anybody other than
5 Barbara Ripley and Gordon Cushing the terms of
6 the price proposals?
7 **A. No.**
8 **Q.** When Attorney Geary was appointed to the North
9 Hill Advisory Committee, do you know who
10 appointed him?
11 **A. No. Would have been a board of selectmen**
12 **appointment.**
13 **Q.** And are they the appointing authority for
14 anybody to that committee?
15 **A. Yes.**
16 **Q.** Shortly after the RFP process -- I'm sorry.
17 Shortly after Exhibit Number 5 was issued,
18 within a day or so did you receive a
19 communication from my office indicating that we
20 would settle the litigation if you rescinded the
21 award to CALM Golf?
22 **A. I don't remember.**
23 **Q.** You don't remember that coming?
24 **A. It may have happened. I don't remember it**

- 1 **specifically.**
2 **Q.** Did you ever discuss with Attorney Troy or the
3 board of selectmen the possibility of rescinding
4 the award to CALM Golf in the winter of 2009 and
5 issuing a contract to Johnson Golf?
6 **A. Not that I remember.**
7 **Q.** Were you ever made aware of any offers to settle
8 this action being extended from Johnson Golf?
9 **A. No.**
10 **Q.** So at any time have you --
11 **A. Not that I remember.**
12 **Q.** You don't remember any time since this
13 litigation began that an offer of settlement was
14 made?
15 **A. Not that I remember.**
16 **Q.** Okay. Is there anything that could refresh your
17 memory on that topic?
18 **A. Minutes of selectmen meetings. And the offer of**
19 **settlement wouldn't be with me. It would be**
20 **with the board of selectmen.**
21 **Q.** Now, with regard to this actual litigation, did
22 the board of selectmen authorize you to engage
23 Attorney Troy to defend this case?
24 **A. Attorney Troy is town counsel so he would have**

1 **defended the case.**
2 **Q.** But don't the bylaws of the town require that to
3 engage counsel on a case, it needs the
4 authorization from the board of selectmen?
5 **A. Board of selectmen appoint town counsel.**
6 **Q.** I understand that, but as far as engaging him to
7 perform services, do the bylaws require that the
8 board of selectmen authorize that?
9 **A. Not that I know of.**
10 **Q.** So anybody in town could pick up the phone and
11 call Bob Troy and say I want you to defend me on
12 this case?
13 **A. No. No.**
14 **Q.** Who can do that? Who has the authority to pick
15 up the phone and say Attorney Troy, I want you
16 to defend this case?
17 **A. Me.**
18 **Q.** And where do you get that authority?
19 **A. From the board of selectmen.**
20 **Q.** And is it on a case-by-case basis?
21 **A. The Town Manager Act says the board of selectmen**
22 **appoints town counsel and the operations of town**
23 **counsel are by the town manager.**
24 **Q.** It does not require authorization on a

1 case-by-case basis?
2 **A. If it does, I don't recall it.**
3 **Q.** Now, do you recall an issue at the North Hill
4 Country Club between my client, Johnson Golf
5 Management, and the town regarding the
6 demolition of a residence that was on the
7 property?
8 **A. Yes.**
9 **Q.** And what do you recall about that?
10 **A. In the previous contract?**
11 **Q.** Yes. The contract that began in 1999 and ran
12 until December 31st of 2008.
13 **A. There were freeze-ups in the building creating a**
14 **lot of damage. The building was torn down, and**
15 **you came to my office with Doug. Troy, I think**
16 **Gordon was there, and we agreed that -- there**
17 **were a bunch of issues, a fence around for the**
18 **carts that were being vandalized, a different**
19 **process maybe for PILOT payments. I don't know.**
20 **There were a bunch of issues to kind of settle**
21 **the issue. It was agreed to.**
22 **Q.** And your memory is that I was there?
23 **A. Yes.**
24 **Q.** Do you know what year that was?

1 **A. No.**
2 **Q.** Is that -- if I suggested to you that the
3 building was torn down in 2007, does that
4 comport with your memory, that it was
5 approximately 2007, 2008 that the building was
6 torn down?
7 **A. Approximately. Could have been 2006, 2007,**
8 **could have been 8. I'm not sure.**
9 **Q.** Now, with regard to that, was there ever a
10 change order signed to the contract with regard
11 to the fact that the building was no longer
12 going to be there?
13 **MR. KREIGER: Objection.**
14 **A. I don't know.**
15 **Q.** Was there ever any financial compensation to
16 Johnson Golf Management for the loss of the use
17 of that building?
18 **A. No.**
19 **Q.** Why was that?
20 **A. There was an agreement.**
21 **Q.** What was the agreement again?
22 **A. I believe that they were -- I don't remember all**
23 **the issues. It was he was not going to have to**
24 **test water as many times, we put up a fence for**

1 **the carts, there was a different arrangement for**
2 **the PILOT, I think.**
3 **Q.** And the PILOT is payment in lieu of taxes?
4 **A. Correct.**
5 **Q.** And --
6 **A. It was agreed to at that table.**
7 **Q.** You have a very specific memory of that?
8 **A. Yeah.**
9 **Q.** How sure are you that that's what the agreement
10 was?
11 **A. I remember the conversation. I think that the**
12 **fence was put up.**
13 **Q.** You're 100 percent sure that I was there?
14 **A. I believe you were, yeah. Troy, you, Doug, me,**
15 **and I don't know if Gordon was there or not but**
16 **I think he was.**
17 **Q.** Do you remember Attorney Troy telling the Court
18 -- strike that.
19 **Did you have any discussions with**
20 **Attorney Troy in December of 2008 with regard to**
21 **what the Inspector General's office was advising**
22 **the town to do?**
23 **A. 2008, no.**
24 **Q.** Did Attorney Troy ever tell you that the

1 Inspector General had told him that the town
2 should reject all the bids?
3 **A. I don't recall that specific conversation.**
4 **Q.** Did you ever give a directive to Attorney Troy
5 to contact the Inspector General and find out
6 what they say about the process?
7 **A. Not that I recall.**
8 **Q.** Do you recall Attorney Troy telling Judge Smith
9 up in Superior Court in Woburn that the
10 expression comparable business enterprise in the
11 RFP was created by a consultant?
12 **A. I remember that being said. I don't know what**
13 **court date that was.**
14 **Q.** And did you ever ask Attorney Troy who the
15 consultant was?
16 **A. I knew what he meant.**
17 **Q.** What did he mean?
18 **A. He meant Pamela Hagley from Plymouth.**
19 **Q.** Have you ever met Pamela Hagley?
20 **A. Yes.**
21 **Q.** And have you ever done any RFPs with Pamela
22 Hagley?
23 **A. No.**
24 **Q.** Did Pamela Hagley have anything to do with

1 drafting the RFP for the North Hill Golf Course?
2 **A. Not that I'm aware of.**
3 **Q.** Can you explain why Attorney Troy would be
4 telling a superior court judge that a consultant
5 had drafted this language?
6 **A. No.**
7 **Q.** Did it puzzle you that that was a representation
8 that he was making?
9 **A. I think he was mistaken in the fact that he**
10 **thought Pamela Hagley drafted this thing.**
11 **Q.** But in 20-20 hindsight, didn't Bob Troy himself
12 draft the words comparable business enterprise?
13 **A. Yes.**
14 **Q.** So how is it possible that he could be mistaken
15 thinking somebody else did it?
16 **A. Ask him.**
17 **Q.** We will in two weeks.
18 (Discussion off the record.)
19 **Q.** With regard to Pamela Hagley, how did you know
20 that Attorney Troy meant Pamela Hagley when he
21 said consultant?
22 **A. Because Pamela Hagley was brought up early in**
23 **the process because she was a procurement**
24 **officer in Plymouth and they had done their own**

1 **-- I believe they had done their own procurement**
2 **for the, is it CrossWinds or Cross Fields.**
3 **They're a publicly owned course. I don't know**
4 **what the name of it is. And it was -- she would**
5 **be someone to talk to about the process.**
6 **Q.** And as the chief procurement officer in Duxbury,
7 you knew that you had never hired any
8 consultant, correct?
9 **A. I never hired a consultant, no.**
10 **Q.** And you'd be the person to do that, correct? If
11 someone was going to hire a consultant, it would
12 be you?
13 **A. Yes.**
14 **Q.** Do you recall Attorney Troy going to a hearing
15 before the Duxbury selectmen, addressing the
16 issue of the draft, the person who drafted the
17 RFP?
18 **A. Be more specific.**
19 **Q.** Okay. On October 4, 2010 there was a hearing
20 before the selectmen and the town was taking an
21 initiative to determine whether to evict Johnson
22 Golf Management from the premises. Do you
23 remember that?
24 **A. Yeah.**

1 **Q.** And you remember being there for that hearing?
2 **A. Yes.**
3 **Q.** And do you remember Mr. Donato from the board of
4 selectmen asking you or Bob Troy who drafted the
5 request for proposals?
6 **A. Yes.**
7 **Q.** Do you remember what Attorney Troy's answer was?
8 **A. No. Not specific, no.**
9 **MR. FOLLANSBEE: All right. Can we mark**
10 **this as the next exhibit.**
11 (Exhibit No. 6 ID marked.)
12 **Q.** If you look at the underlined portion on the
13 lower right-hand corner of the first page of the
14 exhibit and then it goes on to the next page, if
15 you read that to yourself, then I'll ask a few
16 questions for you.
17 (Witness complies.)
18 **A. Okay.**
19 **Q.** Now that you've had a chance to review that,
20 does that refresh your memory as to what
21 Attorney Troy's response was?
22 **A. Yes.**
23 **Q.** And you knew at the time that this was totally
24 untrue, didn't you?

- 1 **A. I knew it was incorrect. He didn't have all the**
 2 **facts there.**
 3 **Q.** He didn't have what?
 4 **A. That he didn't have all the facts.**
 5 **Q.** Well, let's go back to the first page of the
 6 exhibit.
 7 **A. Okay.**
 8 **Q.** At the bottom he says they hired a procurement
 9 company. That isn't true, is it?
 10 **A. Correct.**
 11 **Q.** And if you go to the next page towards the top
 12 he says, "The honest answer is town hall had
 13 nothing to do with the entire procurement
 14 document." That's not true, is it?
 15 **A. Correct.**
 16 **Q.** And then it says that the RFP was sent out to a
 17 vendor. That isn't true, is it?
 18 **A. Correct.**
 19 **Q.** And a little further down, line 14 and 15, it
 20 says that company designed the RFP completely.
 21 That isn't correct, is it?
 22 **A. Correct.**
 23 **Q.** And then the next sentence, "There was no input
 24 here at town hall." That isn't correct, is it?

- 1 **A. Correct.**
 2 **Q.** So what part of it is correct?
 3 **A. Mr. Cushing saying uhm-hmmm.**
 4 **Q.** Mr. Cushing saying uhm-hmmm. Well, actually,
 5 Mr. Cushing is basically confirming the
 6 misrepresentation that Attorney Troy was making,
 7 correct?
 8 MR. KREIGER: Objection.
 9 MR. KESTEN: Objection.
 10 **Q.** Am I correct?
 11 **A. You'll have to ask Mr. Cushing.**
 12 **Q.** The uhm-hmmm indicates that he's agreeing with
 13 the misrepresentation that Attorney Troy has
 14 just made, correct?
 15 MR. KREIGER: Objection.
 16 **Q.** You can answer.
 17 **A. I can't speak for Mr. Cushing.**
 18 **Q.** Now, shortly thereafter, well, strike that.
 19 At that meeting, you're the town manager.
 20 You've just heard this ridiculous story from
 21 Attorney Troy, and the board of selectmen is
 22 asking for the information from him and from
 23 you. Why didn't you speak up and correct him?
 24 **A. Because he's town counsel. I rely on town**

- 1 **counsel for all advice. I don't know what his**
 2 **motive was. I don't know why he says what he**
 3 **says.**
 4 **Q.** But you knew he was lying at the time, didn't
 5 you?
 6 MR. KREIGER: Objection.
 7 **A. I knew that was incorrect.**
 8 **Q.** You knew he was asked a direct question from a
 9 member of the board of selectmen and he was
 10 giving them misinformation, correct?
 11 **A. Correct.**
 12 **Q.** And they had not only addressed their question
 13 to him, but they addressed it to you and you
 14 didn't say a word, did you?
 15 MR. KESTEN: No. It wasn't they. One.
 16 MR. FOLLANSBEE: One. Correct.
 17 **Q.** One member of the board of selectmen had
 18 addressed that question to you and to him and
 19 you knew he was giving a misrepresentation but
 20 you didn't say a word, correct?
 21 **A. We were in a lawsuit and I was leaving**
 22 **everything up to town counsel.**
 23 **Q.** And as far as that particular evening, did you
 24 ever advise anybody on the board of selectmen

- 1 yourself that the information that Attorney Troy
 2 had given them was inaccurate?
 3 **A. No.**
 4 **Q.** Were you aware later that Mr. Cushing on his own
 5 initiative contacted the board of selectmen and
 6 told them that information was inaccurate?
 7 **A. No.**
 8 **Q.** Did you receive any memo from Mr. Cushing
 9 saying, look, everybody in town hall had
 10 something to do with this?
 11 **A. With what?**
 12 **Q.** Drafting the RFP.
 13 **A. Did I receive a memo from Gordon?**
 14 **Q.** From Gordon Cushing.
 15 **A. Saying that everyone in town hall had something**
 16 **to do with this?**
 17 **Q.** Yes.
 18 **A. Not specifically.**
 19 **MR. FOLLANSBEE: Could you mark that,**
 20 **please.**
 21 (Exhibit No. 7 ID marked.)
 22 **A. I remember that.**
 23 **Q.** And this came out shortly after the meeting and
 24 it was basically making the selectmen aware that

1 people in town hall did have something to do
 2 with drafting the RFP?
 3 **A. Well, I remember this. I don't know who it was**
 4 **drafted to. Doesn't say.**
 5 **Q.** But you remember Gordon was correcting what Troy
 6 had said?
 7 **A. I think he was asked to give this information at**
 8 **a selectmen's meeting, so this is in response to**
 9 **that.**
 10 **Q.** I understand, but it also directly contradicts
 11 what Troy had said, correct?
 12 **A. Yes.**
 13 **Q.** And what Gordon said was accurate and what Troy
 14 said was a misrepresentation, correct?
 15 **A. Correct.**
 16 **Q.** Now, shortly thereafter did you receive -- do
 17 you recall receiving a Freedom of Information
 18 Act request from my office asking for the name
 19 of this alleged consultant?
 20 **A. I've received many from your office.**
 21 **Q.** They were all well drafted, weren't they?
 22 **A. I don't recall specifics.**
 23 **MR. FOLLANSBEE: I'll ask this be marked**
 24 **as the next exhibit.**

1 (Exhibit No. 8 ID marked.)
 2 **A. Okay.**
 3 **Q.** Now, would you have any difficulty understanding
 4 what I wanted if I sent you a Freedom of
 5 Information Act request that said give me a copy
 6 of the contract with the consultant that drafted
 7 this thing?
 8 **A. No.**
 9 **Q.** Did you draft that letter that I just showed you
 10 that's the most recent exhibit?
 11 **A. No.**
 12 **Q.** Who drafted it?
 13 **A. Attorney Troy.**
 14 **Q.** And did he ask you to sign it?
 15 **A. Yeah.**
 16 **Q.** Did you read it before you signed it?
 17 **A. Yes.**
 18 **Q.** Did you really believe that it was burdensome to
 19 just answer the question and say that the reason
 20 I am not going to send you that consultant
 21 contract is because there is no consultant
 22 contract?
 23 **A. We're in litigation. He drafted it. He asked**
 24 **me to sign and send it and I did.**

1 **Q.** And --
 2 **A. My biggest concern in any of this is that if I**
 3 **did not listen to town counsel and it ended up**
 4 **not being the correct decision by me, it would**
 5 **affect the town of Duxbury. So if he told me to**
 6 **send something, I did.**
 7 **Q.** And if he told you to sign something, you signed
 8 it?
 9 **A. Yeah.**
 10 **Q.** And that was irrespective of the accuracy of it?
 11 MR. KREIGER: Objection.
 12 **A. I didn't see the original request.**
 13 **Q.** I'd be happy to get it for you.
 14 MR. FOLLANSBEE: Let's take a five-minute
 15 break.
 16
 17 (Recess taken.)
 18
 19 (Exhibit No. 9 ID marked.)
 20 **Q.** Have you had a chance to look at Exhibit Number
 21 9?
 22 **A. Yes.**
 23 **MR. FOLLANSBEE: And do you fellows want**
 24 **a copy of this one?**

1 MR. KESTEN: Thank you.
 2 MR. KREIGER: Thank you.
 3 **Q.** Exhibit Number 9 is the request from our office
 4 that Exhibit Number 8 responded to. Is there a
 5 reason why you didn't respond and say there was
 6 no consultant?
 7 **A. I am sure when I got this I just immediately**
 8 **would forward it to Troy, probably without**
 9 **reading it and for him to respond. That's the**
 10 **response and he asked me to sign it and I did.**
 11 **Q.** So you didn't even know what I was asking for?
 12 **A. I may have looked at it. I can't remember,**
 13 **Mr. Follansbee, but it's pretty lengthy and I**
 14 **sent it to Troy.**
 15 **Q.** But at that point you knew that there had not
 16 been a consultant hired, correct?
 17 **A. Correct.**
 18 **Q.** Now, shortly after that in October or November
 19 of 2010, do you recall meeting with Attorney
 20 Geary and Attorney Edge?
 21 **A. With Lanzetta and --**
 22 **Q.** Morosco?
 23 **A. Is that his name? I do. I don't remember the**
 24 **date but I remember meeting them.**

1 MR. KESTEN: What date did you put on
2 there?
3 MR. FOLLANSBEE: October, November 2010.
4 Q. During that time period you had made an award to
5 CALM Golf and you were now meeting with CALM
6 Golf and their attorneys, correct?
7 A. Yes.
8 Q. What happened at that meeting?
9 MR. KESTEN: During that time period?
10 The award was made in November.
11 Q. The award was made in 2009 and you met with them
12 in the fall of 2010. What was that meeting
13 about?
14 A. **I don't recall specifics of why he had the**
15 **meeting, just that I was uncomfortable when we**
16 **had the meeting and after the meeting.**
17 Q. What made you uncomfortable about the meeting?
18 A. **The answers to some of the questions or some of**
19 **the statements that were made by Lanzetta and, I**
20 **can't think of -- I keep on -- what's the guy's**
21 **name?**
22 Q. Morosco?
23 A. **Morosco.**
24 Q. I mean, were you uncomfortable because they

1 didn't have any assets or were you uncomfortable
2 because they were over their head?
3 A. **No. It was something, I don't remember all the**
4 **bids but I remember two things that stuck out to**
5 **me were that Morosco spent a lot of time in**
6 **Florida and that bothered me as far as giving**
7 **time on the course, and I believe they wanted to**
8 **adjust the dollar amount given to the town. I**
9 **don't remember all of it. I think the reason**
10 **was the late start, maybe, or something. I'm**
11 **not sure, but it was a reduction in dollar**
12 **amount that bothered me.**
13 Q. And I'm going to show you --
14 (Exhibit No. 10 ID marked.)
15 Q. That's a letter dated November 24, 2010.
16 A. **Yep.**
17 Q. And in that letter you rescinded your award to
18 CALM Golf, correct?
19 A. **Yes.**
20 Q. And you indicated that you were now rejecting
21 all the bids again, correct?
22 A. **Correct.**
23 Q. Now, I can understand based on what you just
24 said that you arrived at the decision to reject

1 the bid of CALM Golf. Why did you reject all
2 the other bids?
3 A. **Advice of town counsel.**
4 Q. So as far as that letter is concerned, that was
5 another -- and by that letter I mean the most
6 recent Exhibit 10, that's your November 24th
7 letter?
8 A. **Yes.**
9 Q. Is that another letter that Attorney Troy
10 drafted and just asked you to sign and you said
11 okay and signed it?
12 A. **Correct.**
13 Q. Had you discussed with Attorney Troy the fact
14 that you were going to rescind the award to
15 CALM?
16 A. **I don't recall that specifically. I'm sure it**
17 **was discussed but I just don't recall it.**
18 Q. Did you discuss the option of, at this juncture
19 knowing you were rescinding it to CALM, you
20 could award it to Johnson and end the
21 litigation?
22 A. **I don't remember that conversation.**
23 Q. Do you think you had that conversation?
24 A. **I don't want to say. I don't remember.**

1 Q. Did it concern you that the only entity that you
2 met with was CALM Golf and yet you were
3 rescinding the bid process for all five bidders?
4 A. **Did it concern me?**
5 Q. Yes.
6 A. **No. Because I was taking legal advice.**
7 Q. And the legal advice was that this was the way
8 to go?
9 A. **Obviously.**
10 Q. Now, at that time in the fall of 2010 with the
11 exception of an issue regarding security,
12 meaning a bond, were there any other issues that
13 concerned you about Johnson Golf Management and
14 their performance at North Hill?
15 A. **No. I made it quite clear to anyone that if**
16 **Johnson Golf won this bid, I would have no**
17 **problem giving them a contract. I said that to**
18 **more than one person.**
19 Q. In the fall of 2010 Johnson had been running the
20 golf course all through 2009 and all through
21 2010 up until at least November 24th, and you
22 didn't have a problem with their job
23 performance, correct?
24 A. **No.**

<p style="text-align: right;">61</p> <p>1 Q. And that --</p> <p>2 A. The statement of me having no problem issuing a</p> <p>3 contract to Johnson Golf was before the first --</p> <p>4 well, during the process for the first RFP.</p> <p>5 Q. And that continued during the second RFP as</p> <p>6 well, correct?</p> <p>7 A. I have no problem with Johnson Golf Management.</p> <p>8 Q. And all this talk about them being late with</p> <p>9 their payments all the time, did you ever</p> <p>10 investigate that issue?</p> <p>11 A. What do you mean investigate?</p> <p>12 Q. Did you ever try to analyze and find out whether</p> <p>13 that allegation was true or false, that they had</p> <p>14 been late with their rent payments?</p> <p>15 A. I only went by what Gordon would tell us.</p> <p>16 Q. And the contract that was established at that</p> <p>17 October 4, 2010 meeting, the contract called for</p> <p>18 the payment in arrears every month, correct?</p> <p>19 A. The payment in arrears?</p> <p>20 Q. Yes. In other words, the March payment would</p> <p>21 not be due until April 1st.</p> <p>22 A. I believe you're right.</p> <p>23 Q. And that's the way they had it and they had</p> <p>24 actually been paying early for most of their</p>	<p style="text-align: right;">63</p> <p>1 hearing is where Bob made the statement.</p> <p>2 MR. FOLLANSBEE: Yes.</p> <p>3 Q. That's the one where Attorney Troy made the</p> <p>4 statement about the consultant and folks were</p> <p>5 talking about whether payments were on time or</p> <p>6 not on time.</p> <p>7 A. I don't know the specifics. I assume it was an</p> <p>8 update on the lawsuit.</p> <p>9 MR. KESTEN: You're talking about the</p> <p>10 hearing -- it was the hearing regarding Johnson</p> <p>11 Golf, problems at the golf course in front of</p> <p>12 the selectmen.</p> <p>13 THE WITNESS: Okay. Yeah. I remember</p> <p>14 the hearing. I remember being here obviously.</p> <p>15 I don't remember the specifics of it.</p> <p>16 Q. But based on your testimony a few minutes ago</p> <p>17 you were comfortable they were managing the golf</p> <p>18 course okay and the town was getting their</p> <p>19 money, correct?</p> <p>20 A. The town was getting their money. Gordon always</p> <p>21 said they're late or someone said they're late</p> <p>22 and Gordon was looking into it.</p> <p>23 And my concern was, I think at some point</p> <p>24 we sent a letter out, they're late, I don't</p>
<p style="text-align: right;">62</p> <p>1 tenure?</p> <p>2 A. I don't remember that whole conversation. I</p> <p>3 don't know how it was resolved.</p> <p>4 Q. It wasn't an issue for you, right?</p> <p>5 A. No. My issue is we got a check.</p> <p>6 Q. And you got a check every year that Johnson was</p> <p>7 there, correct?</p> <p>8 A. Yes. Still owes us water money but that's</p> <p>9 beside the point.</p> <p>10 Q. How much do you think he owes you?</p> <p>11 A. \$600 is what I am told.</p> <p>12 Q. We can settle right now.</p> <p>13 MR. KESTEN: We'll waive the \$600 and</p> <p>14 drop the lawsuit and go back to work.</p> <p>15 MR. JOHNSON: That will never happen.</p> <p>16 Q. What was your understanding of the purpose of</p> <p>17 that hearing before the selectmen on October 4,</p> <p>18 2010?</p> <p>19 A. Was that the eviction one or was that --</p> <p>20 Q. Yes.</p> <p>21 A. Which one was that, the eviction one?</p> <p>22 Q. Yes.</p> <p>23 MR. KESTEN: Well, not the eviction.</p> <p>24 You're talking about the one, the October 4th</p>	<p style="text-align: right;">64</p> <p>1 know, but there was a process. And I think it</p> <p>2 was discussed between Gordon and Bob about this</p> <p>3 payment issue. And quite frankly, I don't</p> <p>4 remember how it was resolved.</p> <p>5 Q. Do you remember --</p> <p>6 A. They worked together on the contract language</p> <p>7 and --</p> <p>8 Q. When you say they worked together, you mean</p> <p>9 Gordon Cushing and Robert Troy?</p> <p>10 A. Correct. And it was -- I don't know if it was</p> <p>11 clear or unclear how the payments were made, you</p> <p>12 know, in advance, not in advance. There was a</p> <p>13 discrepancy in opinions on that, and I just, I</p> <p>14 don't recall how it was resolved.</p> <p>15 Q. Do you remember sending a letter to Johnson Golf</p> <p>16 saying that you were terminating their contract</p> <p>17 at North Hill?</p> <p>18 A. I believe I did.</p> <p>19 MR. FOLLANSBEE: I'd ask that be marked</p> <p>20 as the next exhibit.</p> <p>21 (Exhibit No. 11 ID marked.)</p> <p>22 Q. Do you remember this letter?</p> <p>23 A. Yes.</p> <p>24 Q. And was this another letter that Attorney Troy</p>

- 1 drafted and asked you to sign?
- 2 **A. Yes.**
- 3 **Q.** Now, with regard to issue number 1 on Page 1,
- 4 the bond was actually arranged through the
- 5 superior court and Judge Smith, correct?
- 6 **A. There was conversations about that. I don't**
- 7 **remember the specifics.**
- 8 **Q.** Do you remember receiving a form of security
- 9 from Johnson Golf in the sum of \$200,000?
- 10 **A. Well, it wasn't held by us. Is that the one**
- 11 **that was held by a different firm?**
- 12 **Q.** Yes. It was held by TD Banknorth.
- 13 **A. And a law firm, yeah.**
- 14 **Q.** And that's what had been approved by Judge Smith
- 15 in superior court, correct?
- 16 **A. Yeah. I remember that.**
- 17 **Q.** As far as you were concerned, that part of it
- 18 was being resolved in superior court, correct?
- 19 **A. That is a vote by the board of selectmen, not**
- 20 **me. This letter is the culmination of a hearing**
- 21 **before the board of selectmen, not before me.**
- 22 **Q.** So all you're doing is just passing on the
- 23 information that the board made?
- 24 **A. Correct.**

- 1 **Q.** And so you personally had no opinion about the
- 2 information in here?
- 3 **A. Do I have an opinion?**
- 4 **Q.** Yes.
- 5 **A. No. If it's true it's the letter that went out,**
- 6 **I signed it on advice of counsel.**
- 7 **Q.** Now, shortly after this, by this I mean the
- 8 October, November timeframe of 2010, did you
- 9 make a determination to put the North Hill Golf
- 10 Course out to bid one more time?
- 11 **A. I don't know. It wasn't me alone. It might**
- 12 **have been the selectmen and Troy. I don't**
- 13 **remember me saying we're putting it out to bid**
- 14 **again.**
- 15 **Q.** But ultimately because you're the chief
- 16 procurement officer, you're the one that would
- 17 do it?
- 18 **A. Out of my office, yes.**
- 19 **Q.** In the 2010, 2011 timeframe the decision was
- 20 made by the town to use an IFB process instead
- 21 of an RFP process?
- 22 **A. Correct.**
- 23 **Q.** Did you discuss that with the selectmen?
- 24 **A. I want to say we did but I'm not sure.**

- 1 **Q.** Did you discuss it with anybody else? Did you
- 2 discuss it with Attorney Troy?
- 3 **A. I'm sure we did and it may have been at the**
- 4 **suggestion of Scott Lambiase.**
- 5 **Q.** And could you just identify who Scott Lambiase
- 6 is?
- 7 **A. Scott Lambiase is the director of municipal**
- 8 **services and he is a certified purchasing**
- 9 **official.**
- 10 **Q.** What was your understanding as to why you were
- 11 going to utilize an IFB process instead of an
- 12 RFP process?
- 13 **A. It was a suggestion of Scott. It was -- I know**
- 14 **that he has a regular conversation on any issues**
- 15 **with the Inspector General. I'm not privy to**
- 16 **what that conversation was, but Scott, I believe**
- 17 **Scott strongly suggested that IFB is the route**
- 18 **to go and so we did.**
- 19 **Q.** Did you have any role in drafting or approving
- 20 the IFB that was issued in March of 2011?
- 21 **A. No.**
- 22 **Q.** Were you aware that there were two IFBs?
- 23 **A. Two?**
- 24 **Q.** Two.

- 1 **A. No.**
- 2 **Q.** Were you aware that the first time the IFB was
- 3 issued in February of 2011 it resulted in no
- 4 bidders?
- 5 **A. Oh, no. I stand corrected. You're right. The**
- 6 **first time there was no bidders. A second one**
- 7 **was put out with one bidder, yes.**
- 8 **Q.** Let's address the first time. The first time
- 9 the IFB went out it indicated that any bidder
- 10 would have to provide a bid bond, correct?
- 11 **A. Yes.**
- 12 **Q.** And you received no bids?
- 13 **A. Correct.**
- 14 **Q.** And one of the bidders, specifically Eagles Nest
- 15 Landscaping, Mr. Emmett Sheehan, addressed the
- 16 bid opening and said he couldn't get a bid bond.
- 17 Are you familiar with that?
- 18 **MR. KREIGER: Objection.**
- 19 **A. Yes.**
- 20 **Q.** And who told you about that?
- 21 **A. I don't remember.**
- 22 **Q.** Did you discuss it with Mr. Shawn Dahlen?
- 23 **A. I'm sure we discussed it with the board of**
- 24 **selectmen.**

- 1 **Q.** Did you discuss the fact that the town would
2 change and eliminate the bid bond requirement?
3 **A.** **I'm not sure, but I think that Scott Lambiase, I**
4 **think, I'm not sure, called some of the other**
5 **bidders and asked why they didn't bid this time,**
6 **and the reason was the bid bond was too high.**
7 **And for that reason it was reduced. I don't**
8 **know the numbers. I don't know what the**
9 **requirements were. I don't recall those.**
10 **Q.** Now, the IFB that was subsequently issued, the
11 one in March of 2011, did you approve that?
12 **A.** **Yes.**
13 **Q.** Were you familiar with the clause in there that
14 says any decision by the town manager cannot be
15 reviewed by a Court?
16 **A.** **Yes.**
17 **Q.** Who suggested that language?
18 **A.** **Attorney Troy.**
19 **Q.** Had you ever seen that language included in any
20 other proposed contract?
21 **A.** **No.**
22 **Q.** In addition to that, the document indicated that
23 there would be a right by the town to terminate
24 the contract on ten days notice. Were you made

- 1 aware of that provision?
2 MR. KREIGER: Objection.
3 **A.** **Yes.**
4 **Q.** Who suggested that?
5 **A.** **Attorney Troy.**
6 **Q.** And in your experience, did you think that
7 either of those provisions would increase the
8 number of potential bidders?
9 **A.** **Did I think that would increase?**
10 **Q.** Yes. Did you think you'd get more bidders by
11 putting in a clause in the contract that says
12 essentially we can throw you out on ten days
13 notice and you can't go to court?
14 **A.** **Quite frankly, I don't remember. I don't think**
15 **I gave it any thought at the time.**
16 **Q.** Now, you eventually awarded the contract to a
17 company called Pilgrim Golf, correct?
18 **A.** **Yes.**
19 **Q.** Now, that contract was only signed by you,
20 correct?
21 **A.** **Yes. I take that back. I'd have to see it. I**
22 **believe so.**
23 **Q.** Originally in the bid there was a provision for
24 all the selectmen to sign; is that correct?

- 1 **A.** **I don't recall.**
2 **MR. FOLLANSBEE: Why don't we mark this**
3 **as the next exhibit then.**
4 (Exhibit No. 12 ID marked.)
5 **A.** **What page is it on?**
6 **Q.** I'll get it for you. Page 27.
7 **A.** **Okay.**
8 **Q.** The proposed contract was to be signed by the
9 board of selectmen as well as the operator,
10 correct?
11 **A.** **That's what this is.**
12 **Q.** And that was the bid document that was sent out
13 to all the prospective bidders, correct?
14 **A.** **Yes.**
15 **Q.** And that also was how contracts were done in the
16 town of Duxbury, correct?
17 MR. KREIGER: Objection.
18 **A.** **No.**
19 **Q.** Contracts are not signed by the board of
20 selectmen?
21 **A.** **Some are, some aren't.**
22 **Q.** What is the differentiating factor in
23 determining which are signed by the board of
24 selectmen and which are not?

- 1 **A.** **I don't know. I don't recall why the selectmen**
2 **were on this.**
3 MR. KESTEN: The question is what
4 differentiates who decides which contract is
5 signed by both or which contract is signed by
6 one. Is that the --
7 **A.** **The only contract that I'm aware that the**
8 **selectmen sign is usually the town manager**
9 **contract and contracts, labor contracts,**
10 **collective bargaining.**
11 **Q.** In the contract that was signed by my client in
12 1999, do you know whether the selectmen signed
13 that contract?
14 **A.** **I don't know.**
15 **Q.** When the PILOT program was amended in 2005, do
16 you know who signed that on behalf of the town
17 of Duxbury?
18 **A.** **No.**
19 **Q.** Do you remember signing a change to the contract
20 regarding the payment in lieu of taxes program?
21 **A.** **No, I don't.**
22 **Q.** Do you know any reason why when the contract was
23 finally awarded to Pilgrim Golf, it was only
24 signed by you on behalf of the town?

- 1 **A. No.**
- 2 **Q.** Did you discuss that with anybody?
- 3 **A. I don't recall.**
- 4 **Q.** Now, Pilgrim Golf, when you made the award to
- 5 them, did you investigate their background?
- 6 **A. The process was done by Gordon, Scott, and I**
- 7 **don't know what involvement Troy had at that**
- 8 **time. I'm sure he was involved. I just don't**
- 9 **know.**
- 10 **Q.** What was your --
- 11 **A. It was a different process. The IFB was a**
- 12 **different process than the original RFP process.**
- 13 **Q.** What was your involvement as chief procurement
- 14 officer?
- 15 **A. Very little.**
- 16 **Q.** Did you know that Pilgrim Golf wasn't
- 17 incorporated until March 7th of 2011?
- 18 **A. No.**
- 19 **Q.** Until I just said that, did you know it?
- 20 **A. No.**
- 21 **Q.** Would that be a concern that a company was
- 22 created on March 7th and was being awarded a
- 23 contract for a multimillion dollar facility in
- 24 your town two weeks later?

- 1 **A. If it's legal, I have no problem with it.**
- 2 **Q.** How would you make a determination whether it's
- 3 legal?
- 4 **A. It was vetted through the process of Gordon, I'm**
- 5 **sure Troy looked at it. I should -- hopefully**
- 6 **sure Troy looked at it, and Scott Lambiase.**
- 7 **Q.** Now, what offices are you aware that Emmett
- 8 Sheehan holds in the town of Duxbury?
- 9 **A. He is on the cemetery trustees, and I believe he**
- 10 **was just appointed recently as an alternate to**
- 11 **the zoning board of appeals, I think.**
- 12 **Q.** Are you at all uncomfortable that the town is
- 13 contracting with someone who is also on the ZBA
- 14 and on the cemetery trustees?
- 15 **A. No.**
- 16 **Q.** He was also on the North Hill Advisory
- 17 Committee, wasn't he?
- 18 **A. I don't know that. When?**
- 19 **Q.** In 2006, 2007.
- 20 **A. Really? I don't quite recall that.**
- 21 **Q.** You did not recall that. Do you know
- 22 Mr. Sheehan?
- 23 **A. Yes.**
- 24 **Q.** Are you friendly with him?

- 1 **A. Hello.**
- 2 **Q.** Hello and goodbye, not social?
- 3 **A. No.**
- 4 **Q.** With regard to the contract that Mr. Sheehan's
- 5 company signed on March 22nd of 2011, did you
- 6 determine whether or not he had security?
- 7 **A. Did I personally?**
- 8 **Q.** Yes.
- 9 **A. No.**
- 10 **Q.** The bid document in front of you requires that
- 11 before the contract is signed, that the operator
- 12 provide security in the sum of \$300,000 to the
- 13 town.
- 14 Did you ever make a determination whether
- 15 or not that was done?
- 16 **A. I remember there was a process. I believe**
- 17 **Gordon was handling that, I believe Troy was**
- 18 **involved in it, but I don't remember the**
- 19 **specifics of it.**
- 20 **Q.** Do you think it might look fishy to somebody on
- 21 the outside that Mr. Sheehan forms a company, is
- 22 awarded a contract two weeks later and doesn't
- 23 provide security despite the fact that the bid
- 24 document requires the security before the

- 1 signature on the contract?
- 2 MR. KESTEN: Objection.
- 3 MR. KREIGER: Objection.
- 4 **Q.** You can answer the question.
- 5 **A. No.**
- 6 **Q.** You don't think that would look fishy to anyone?
- 7 **A. Depends on the circumstances.**
- 8 **Q.** And what circumstances, given the fact that this
- 9 was certainly a process that was under some
- 10 microscope due to the involvement of the
- 11 superior court, under what circumstances do you
- 12 think it would be appropriate to advertise an
- 13 IFB saying that the successful proposer needs to
- 14 have security before they sign a contract and
- 15 then amend that the day you sign the contract so
- 16 that they don't provide security?
- 17 MR. KESTEN: Objection.
- 18 **A. Because I knew it was under a microscope. I**
- 19 **made sure that this was handed off to legal**
- 20 **counsel to make sure that we were covered. So**
- 21 **those questions, those specific questions you're**
- 22 **asking I can't answer because I'm assuming it**
- 23 **was vetted.**
- 24 **Q.** Since then, since March of 2011, had it ever

<p style="text-align: center;">77</p> <p>1 come to your knowledge that they didn't have the</p> <p>2 security the day they signed the contract?</p> <p>3 A. Yes. I was aware of that going on. I don't</p> <p>4 remember the dollar amount. I don't remember</p> <p>5 the timeframe, I don't remember the dollar</p> <p>6 amounts, and there was talk between Attorney</p> <p>7 Galvin and Attorney Troy. I don't remember the</p> <p>8 specifics.</p> <p>9 Q. Is it your belief that Pilgrim Golf has now</p> <p>10 provided security?</p> <p>11 A. Yes.</p> <p>12 Q. And do you know when that happened?</p> <p>13 A. I don't.</p> <p>14 Q. Has Pilgrim Golf provided audited financial</p> <p>15 statements to the town?</p> <p>16 A. I don't know that.</p> <p>17 Q. Who would know that?</p> <p>18 A. Gordon.</p> <p>19 Q. Would it surprise you that when he was</p> <p>20 questioned at his deposition he said I don't</p> <p>21 know that, only Richard MacDonald would know</p> <p>22 that?</p> <p>23 A. Yeah. That would surprise me.</p> <p>24 Q. Is it a concern of yours that the Inspector</p>	<p style="text-align: center;">79</p> <p>1 damages suffered by the count?</p> <p>2 MR. KREIGER: Objection.</p> <p>3 A. I've never entertained the thought of the</p> <p>4 trouble of rigging bids because I would never</p> <p>5 even consider that.</p> <p>6 Q. But whether you would consider it or not --</p> <p>7 A. I don't consider it funny, either.</p> <p>8 Q. But --</p> <p>9 MR. JOHNSON: It is.</p> <p>10 Q. Sir, believe me, nobody thinks it's funny.</p> <p>11 A. He does.</p> <p>12 Q. He doesn't.</p> <p>13 MR. JOHNSON: Your answer is funny.</p> <p>14 MR. KESTEN: Don't. Don't.</p> <p>15 Q. The issue of impropriety, aside from your</p> <p>16 involvement, has anybody ever explained to you</p> <p>17 that under Massachusetts General Laws that there</p> <p>18 is a right of recovery against the people who</p> <p>19 would rig a bid?</p> <p>20 MR. KREIGER: Objection.</p> <p>21 Q. Aside from your involvement in this process, has</p> <p>22 that ever been explained to you?</p> <p>23 A. No.</p> <p>24 Q. Do you take any comfort on behalf of the town of</p>
<p style="text-align: center;">78</p> <p>1 General has contradicted the statements made by</p> <p>2 town counsel regarding their involvement in this</p> <p>3 process?</p> <p>4 A. Of course.</p> <p>5 Q. When did you first find out that those</p> <p>6 "approvals" from the Inspector General in 2008</p> <p>7 had actually not happened?</p> <p>8 MR. KREIGER: Objection.</p> <p>9 A. I don't know the dates, times.</p> <p>10 Q. Well, you just answered that it is a concern</p> <p>11 that the Inspector General has contradicted your</p> <p>12 former town counsel regarding their involvement</p> <p>13 in the process.</p> <p>14 A. And you asked me when did I become aware of</p> <p>15 that. I'm not sure of the date.</p> <p>16 Q. Was it this year? Was it 2012 you became aware</p> <p>17 of that?</p> <p>18 A. It's been recent. It could have been end of</p> <p>19 last year, beginning of this year. I don't</p> <p>20 recall exact dates, timeframes.</p> <p>21 Q. Now, did anybody ever explain to you that if an</p> <p>22 individual was involved in impropriety and</p> <p>23 rigging a bid under Chapter 30B, that they could</p> <p>24 be held accountable for double the amount of</p>	<p style="text-align: center;">80</p> <p>1 Duxbury and the fact that if the town of Duxbury</p> <p>2 suffers losses as a result of this litigation,</p> <p>3 that they would have a right of recovery against</p> <p>4 the individuals responsible?</p> <p>5 A. Do I take comfort in that?</p> <p>6 Q. Yes.</p> <p>7 A. That --</p> <p>8 MR. KREIGER: Objection.</p> <p>9 A. That the town could go after someone who was</p> <p>10 found to be rigging a bid?</p> <p>11 Q. Yes.</p> <p>12 A. The obvious answer is yes.</p> <p>13 Q. When the RFP process was going on in 2008, were</p> <p>14 you made aware of an issue regarding the North</p> <p>15 Hill Advisory Committee wanting to have 18 hole</p> <p>16 tee times made available for certain people on</p> <p>17 weekends and holidays?</p> <p>18 A. I've heard that.</p> <p>19 Q. Was that a factor for you to consider in the</p> <p>20 RFP?</p> <p>21 A. No.</p> <p>22 Q. How did you become aware of it?</p> <p>23 A. Someone told me. I don't know who it was.</p> <p>24 Q. As the town manager, do you think it's</p>

<p style="text-align: center;">81</p> <p>1 appropriate for members of the North Hill</p> <p>2 Advisory Committee to advocate an RFP in which</p> <p>3 they secure 18 hole tee times for themselves?</p> <p>4 A. Well, it should bother me, but quite frankly, as</p> <p>5 I testified a little earlier, members of golf</p> <p>6 courses are strange people, complaining all the</p> <p>7 time.</p> <p>8 Q. Now, there were occasions in 2010 when Selectmen</p> <p>9 Donato was arguing with Attorney Troy about the</p> <p>10 decision of Judge Smith. Were you present at</p> <p>11 those meetings; do you recall that?</p> <p>12 A. Yes.</p> <p>13 Q. And do you recall Attorney Troy addressing</p> <p>14 Mr. Donato and saying it doesn't matter what you</p> <p>15 think, Judge Smith said my analysis is</p> <p>16 controlling?</p> <p>17 MR. KREIGER: Objection.</p> <p>18 A. I remember a conversation that way. I'm not</p> <p>19 sure of the specific wording.</p> <p>20 MR. KESTEN: You have a big copy of the</p> <p>21 transcript?</p> <p>22 MR. FOLLANSBEE: We didn't get a</p> <p>23 transcript. That's only on video.</p> <p>24 Q. Well, do you remember Mr. Donato reading from</p>	<p style="text-align: center;">83</p> <p>1 different conclusion than Attorney Troy, wasn't</p> <p>2 he?</p> <p>3 A. Yes.</p> <p>4 Q. Did it ever occur to you that Attorney Donato</p> <p>5 may be right and Attorney Troy may be wrong?</p> <p>6 A. Attorney Donato is not town counsel.</p> <p>7 Q. I understand that, but did it occur to you that</p> <p>8 he may be correct and Attorney Troy may be</p> <p>9 incorrect?</p> <p>10 A. No.</p> <p>11 Q. Why is that?</p> <p>12 A. I'm being advised by town counsel.</p> <p>13 Q. Is town counsel in Duxbury clothed with some --</p> <p>14 A. No. But again, as town manager I have to</p> <p>15 protect the interest of the town, and if I --</p> <p>16 I'll repeat. In my opinion, I've already said</p> <p>17 this, if I don't live by what town counsel</p> <p>18 advises me to do and I go against that, that's</p> <p>19 an issue and I did not want to do that.</p> <p>20 Q. What would the issue be?</p> <p>21 A. Well, if we get sued and he was right, it's on</p> <p>22 me.</p> <p>23 Q. And what if you get sued and the selectmen was</p> <p>24 right and the town counsel was wrong?</p>
<p style="text-align: center;">82</p> <p>1 the judge's decision?</p> <p>2 A. He did that a lot. I don't recall which night</p> <p>3 it was.</p> <p>4 Q. Pardon me?</p> <p>5 A. I don't recall which night it was.</p> <p>6 Q. Well, without recalling the specific night, do</p> <p>7 you remember that Mr. Donato, in reading from</p> <p>8 the decision, was telling Attorney Troy and</p> <p>9 anybody who happened to be in the audience that</p> <p>10 Judge Smith had made a determination that there</p> <p>11 was a likelihood that Johnson Golf would succeed</p> <p>12 on the merits of the case?</p> <p>13 A. Yes.</p> <p>14 Q. And that was totally contradicted by what</p> <p>15 Attorney Troy was telling you, correct?</p> <p>16 A. Yes.</p> <p>17 Q. Now, when you had those two divergent points of</p> <p>18 view, did it ever occur to you to read the</p> <p>19 nine-page decision yourself?</p> <p>20 A. No.</p> <p>21 Q. Why is that?</p> <p>22 A. I'm represented by counsel.</p> <p>23 Q. You also had a member of the board of selectmen</p> <p>24 who was an attorney and was coming to a far</p>	<p style="text-align: center;">84</p> <p>1 A. That's a decision the selectmen will have to</p> <p>2 make.</p> <p>3 Q. Did it bother you that Mr. Donato was reading</p> <p>4 excerpts from Judge Smith's actual decision?</p> <p>5 MR. KREIGER: Objection.</p> <p>6 A. Did it bother me?</p> <p>7 Q. Yes.</p> <p>8 A. No.</p> <p>9 (Discussion off the record.)</p> <p>10 Q. With regard to Pilgrim Golf, when they got the</p> <p>11 contract in March of 2011, did you look at any</p> <p>12 of their financials?</p> <p>13 A. I don't recall looking at them, no.</p> <p>14 Q. And they had been in existence for two weeks,</p> <p>15 correct?</p> <p>16 A. Okay.</p> <p>17 MR. KESTEN: So --</p> <p>18 Q. You didn't know that?</p> <p>19 A. I didn't vet them out. That was done by others.</p> <p>20 Q. And let's be clear on who did the vetting.</p> <p>21 A. I'm not sure. I'm sure it was Gordon. I'm sure</p> <p>22 Scott went over it. I'm sure Attorney Troy was</p> <p>23 involved.</p> <p>24 Q. And you were relying on those three individuals?</p>

- 1 **A. Yes.**
- 2 **Q.** Although you made the award of the contract, you
- 3 basically allowed them the freedom to make a
- 4 decision?
- 5 **A. Right.**
- 6 **Q.** As to whether or not to award the contract?
- 7 **A. I had a certified purchasing official, Gordon,**
- 8 **who I trust immensely, and legal counsel.**
- 9 **Q.** And at the time Johnson Golf Management had been
- 10 running the golf course, correct?
- 11 **A. Right.**
- 12 **Q.** You didn't have a problem with the way they were
- 13 running the golf course, correct?
- 14 **A. No.**
- 15 **Q.** So if you had basically made a decision not to
- 16 award a contract in March of 2011, you were
- 17 comfortable that the course would still be run
- 18 okay, correct?
- 19 **A. Yes.**
- 20 **Q.** Is it fair to say that it was your decision, but
- 21 instead of reviewing everything you relied on
- 22 Troy, Lambiase and Cushing, correct?
- 23 **A. Right.**
- 24 **Q.** I may have asked this. Never mind. Strike

- 1 that.
- 2 The meetings or meeting, did you have
- 3 more than one meeting with the Inspector
- 4 General's office yourself?
- 5 **A. Once.**
- 6 **Q.** And you believe it was in the wintertime?
- 7 **A. I think so.**
- 8 **Q.** And do you know who you met with at the
- 9 Inspector General's office?
- 10 **A. There was a host -- from us or them?**
- 11 **Q.** Let's start with the Duxbury folks first.
- 12 **A. Me, Shawn, Gordon and Troy.**
- 13 **Q.** What was the purpose of the meeting?
- 14 **A. I think it was to give them information. I**
- 15 **think it was. I'm not sure. I believe Bob set**
- 16 **this up and it was to give them -- I don't want**
- 17 **to put words in his mouth -- our side of the**
- 18 **story on the bidding process.**
- 19 **Q.** And who spoke on behalf of the town?
- 20 **A. Mostly Bob. Gordon spoke a little, I spoke a**
- 21 **little, but mostly Bob. Shawn spoke a little.**
- 22 **Q.** And so did somebody -- all right. Let's see if
- 23 you can fill in the blanks. Do you know who was
- 24 there from the Inspector General's office?

- 1 **A. The Inspector General himself was there. I**
- 2 **believe the gentleman's name was Mr. Finnico. I**
- 3 **want to say Barbara Hansberry. I'm not sure.**
- 4 **There were a host of people. There must have**
- 5 **been five or six people there and I didn't know**
- 6 **all their names.**
- 7 **Q.** And you know Barbara Hansberry is an attorney?
- 8 **A. Yeah.**
- 9 **Q.** Now, at the meeting, do you remember what your
- 10 input was, what you had to say?
- 11 **A. No. You know, I don't, but I may have started**
- 12 **it off by saying we're here, you know, town**
- 13 **counsel is going to explain the situation. I**
- 14 **think I got it rolling and then he took over**
- 15 **from there.**
- 16 **Q.** Did somebody tell the IG that the reason the
- 17 bids had been rejected in December of 2008 was
- 18 that some of the evaluators had seen the price
- 19 proposals?
- 20 **A. I think Bob went through the whole process with**
- 21 **someone from the Inspector General's office at**
- 22 **the meeting.**
- 23 **Q.** Do you remember him telling the Inspector
- 24 General that one of the evaluators --

- 1 **A. That specific, no, I don't. But I'm sure it was**
- 2 **part of the whole process. I don't remember the**
- 3 **specific conversation.**
- 4 **Q.** And do you remember Bob telling the Inspector
- 5 General that nobody in town knew that CALM Golf
- 6 didn't have any assets?
- 7 **A. I don't remember that specific conversation.**
- 8 **Q.** Did you ever tell the Inspector General that you
- 9 weren't aware in 2009 that CALM Golf had no
- 10 equipment and limited assets?
- 11 **A. Not that I recall.**
- 12 **Q.** And that would -- as far as your involvement,
- 13 that would be the only occasion where you
- 14 addressed the Inspector General specifically
- 15 yourself, correct?
- 16 **A. Yes.**
- 17 **Q.** And you never talked to them on the phone?
- 18 **A. No.**
- 19 **Q.** You never wrote to them?
- 20 **A. No.**
- 21 **Q.** It was just --
- 22 **A. Well, wait a minute --**
- 23 MR. KESTEN: The Inspector General?
- 24 You're talking about the Inspector General

1 himself or anybody in the office?
 2 MR. FOLLANSBEE: Anybody in the office.
 3 **A. I don't want to say I never -- I haven't looked**
 4 **at the file for something. I don't think I did,**
 5 **but I don't want to say never. Bob wrote a**
 6 **letter that I signed but I don't know.**
 7 **Q.** You never remember drafting a letter yourself to
 8 the IG?
 9 **A. No.**
 10 **Q.** And if a letter went out under your signature to
 11 the IG, it's something that Troy drafted and
 12 asked you to sign?
 13 **A. Yes.**
 14 **Q.** As far as calling the IG or the IG's office, you
 15 never did that?
 16 **A. No.**
 17 **Q.** So you had one meeting and only one meeting with
 18 them for your personal input; is that correct?
 19 **A. Yes.**
 20 **MR. FOLLANSBEE: Let me take maybe a**
 21 **five-minute break and we'll be able to wrap this**
 22 **up.**
 23
 24 (Recess taken.)

1 **Q.** In addition to the two IFBs that you did for the
 2 golf course in March of 2011, how many other
 3 IFBs have you done for the town of Duxbury in
 4 the last five years?
 5 **A. None that I recall.**
 6 **Q.** Other than the two RFPs for the golf course in
 7 late 2008, early 2009, how many other RFPs have
 8 you done for the town of Duxbury in the last six
 9 years?
 10 **A. None that I recall.**
 11 **Q.** And with regard to the North Hill Golf Course,
 12 did you understand how much of an investment a
 13 prospective bidder would have to make in
 14 equipment and personnel in order to bid on the
 15 course?
 16 MR. KREIGER: Objection.
 17 **A. An investment?**
 18 **Q.** Well, in the RFP for certain -- there was a list
 19 of all the equipment that the operator would
 20 have to have on the premises to maintain the
 21 golf course. Are you aware of that?
 22 **A. Yes.**
 23 **Q.** Did the town ever do a computation as to what
 24 the cost of that would be when the town was

1 considering running it themselves?
 2 **A. Not that I am aware of.**
 3 **Q.** If someone on the North Hill Advisory Committee
 4 engaged in such a study, they did not
 5 communicate that to you?
 6 **A. No. I take that back. When the town, through**
 7 **the North Hill Advisory Committee, was looking**
 8 **at the possibility of running the course itself,**
 9 **some of the committee or the group itself, I**
 10 **don't recall, there was a list of what would be**
 11 **needed to run the course.**
 12 **Q.** And wasn't a decision eventually arrived at
 13 between the North Hill Advisory Committee,
 14 yourself and the selectmen that the amount of
 15 capital expenditure to acquire all that
 16 equipment mitigated against doing it that way
 17 and suggested the better course for the town was
 18 to put it out to private operations?
 19 **A. Correct.**
 20 MR. KESTEN: Not mitigated.
 21 MR. FOLLANSBEE: Did I say mitigated?
 22 **Q.** And roughly, the expenditure that would have
 23 been necessary was approximately \$3 to \$400,000?
 24 **A. I don't recall the exact number. It was in the**

1 **hundreds of thousands.**
 2 **Q.** So you knew that any prospective bidder in 2011,
 3 if they were going to run the golf course,
 4 they'd have to have the same quantity of
 5 equipment, correct?
 6 **A. Well, it's my recollection that that included**
 7 **the golf carts. It may have included golf**
 8 **carts. And they were strong in some areas**
 9 **because they just got rough quotes, so the**
 10 **numbers weren't exactly concrete but it was up**
 11 **there.**
 12 **Q.** So you knew that whatever prospective bidders
 13 came forward in response to the IFB --
 14 **A. Yes. I understand the question. Yes.**
 15 **Q.** And was it a concern of yours that knowing that
 16 the bidders would have to come up with that kind
 17 of an investment financially, that this ten-day
 18 clause of throwing them out might discourage
 19 them from bidding?
 20 MR. KESTEN: Objection.
 21 **A. Was it a concern of mine at the time, no.**
 22 **Q.** Would it be a concern today as you focus on it
 23 if you had to do it again?
 24 **A. Perhaps.**

MR. FOLLANSBEE: I have nothing

further.

MR. KREIGER: If we could just confer on our side of the table for five minutes.

(Recess taken.)

MR. KESTEN: We have no questions.

(The deposition concluded at 3:48 p.m.)

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 RICHARD MACDONALD, 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 21st day of June, 2012.

Jessica F. Story, CSR, RPR

My commission expires
on September 13, 2013

ERRATA SHEET

Instructions: You are entitled to read and correct your deposition. Please carefully read your testimony, making any necessary changes or corrections by identifying the page and line number, the change desired and the reason. Do not mark the actual transcript. Then date and sign the bottom of this page.

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DATE: _____ SIGNATURE: _____

CERTIFICATE

I, RICHARD MACDONALD, 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 _____, 2012.

RICHARD MACDONALD