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<p style="text-align: right;">9</p> <p>1 and fall of 2008 it was the town's intention to</p> <p>2 put a request for proposals out for the</p> <p>3 beginning of the 2009 year, correct?</p> <p>4 A. Yes.</p> <p>5 Q. And it was to be a five-year contract, correct?</p> <p>6 A. That was my understanding.</p> <p>7 Q. And this request for proposals, you returned</p> <p>8 your handwritten notations to Mr. Cushing,</p> <p>9 didn't you?</p> <p>10 A. They were transmitted to him.</p> <p>11 Q. And was that via e-mail?</p> <p>12 A. No. I don't believe so. I believe it was done</p> <p>13 by fax, but I really don't know. It was not in</p> <p>14 person.</p> <p>15 Q. And you kept a copy for yourself?</p> <p>16 A. I did.</p> <p>17 Q. And where did you keep that copy?</p> <p>18 A. In my office.</p> <p>19 Q. And up until very recently you've had it in your</p> <p>20 office for the duration of time between 2008 to</p> <p>21 2012?</p> <p>22 A. I believe so.</p> <p>23 Q. Directing your attention to Page 005, they're</p> <p>24 numbered in the lower right-hand corner.</p>	<p style="text-align: right;">11</p> <p>1 respond to the town's request that the bidding</p> <p>2 process be opened up to other bidders.</p> <p>3 Q. And who made that request?</p> <p>4 A. That request was made by the Recreation Director</p> <p>5 in the presence of the town manager in the</p> <p>6 meeting that we had within days of this being</p> <p>7 done.</p> <p>8 Q. And --</p> <p>9 A. Or a week.</p> <p>10 Q. To establish the timeframe, this would be</p> <p>11 sometime in the August, September timeframe of</p> <p>12 2008?</p> <p>13 A. Well, the meeting would have been in September</p> <p>14 of 2008.</p> <p>15 Q. So this would have followed shortly thereafter?</p> <p>16 A. Yes.</p> <p>17 MR. GILL: When you say this, you mean</p> <p>18 the exhibit?</p> <p>19 MR. FOLLANSBEE: The exhibit.</p> <p>20 Q. And the recommendation to include the words</p> <p>21 comparable business enterprise --</p> <p>22 A. Well, it wasn't a recommendation. That was</p> <p>23 suggested language which was intended to</p> <p>24 accomplish what I had been directed to do.</p>
<p style="text-align: right;">10</p> <p>1 MR. GILL: So let me just ask you, it</p> <p>2 says D005. Who put that mark? Who put the</p> <p>3 numbers?</p> <p>4 MR. FOLLANSBEE: As I understand it, the</p> <p>5 defendants, the town of Duxbury in a request for</p> <p>6 production of documents has designated it D005.</p> <p>7 MR. GILL: The D documents were produced</p> <p>8 by the town?</p> <p>9 MR. FOLLANSBEE: This particular set was</p> <p>10 produced by the town. There were other</p> <p>11 documents that were produced by the town that</p> <p>12 don't have a number on them.</p> <p>13 MR. GILL: Okay. Thank you.</p> <p>14 Q. (By Mr. Follansbee) Are you on the right page</p> <p>15 now, sir?</p> <p>16 A. I'm on the page that you've directed me to.</p> <p>17 Q. And now, at the top there's a handwritten</p> <p>18 notation after the word golf course operation, a</p> <p>19 handwritten notation. Can you read what that</p> <p>20 says?</p> <p>21 A. Yes. It says or comparable business enterprise.</p> <p>22 Q. And was it your recommendation to include that</p> <p>23 language in the final version of the RFP?</p> <p>24 A. Well, I drafted that as suggested language to</p>	<p style="text-align: right;">12</p> <p>1 Q. And do you have a specific memory of what you</p> <p>2 were directed to do?</p> <p>3 A. Not a specific memory, but a general memory that</p> <p>4 it was to open up to other bidders beyond the</p> <p>5 narrow categories of those who were currently</p> <p>6 managing golf courses in order to maximize the</p> <p>7 pool of available bids.</p> <p>8 Q. Did you have an understanding of what a</p> <p>9 comparable business enterprise would be? What</p> <p>10 type of business?</p> <p>11 A. Well, I think that the words mean, comparable</p> <p>12 would be similar, business means you have to be</p> <p>13 in a business setting, and enterprise I assume</p> <p>14 would be for profit.</p> <p>15 Q. Did you have any discussion with Mr. Cushing or</p> <p>16 Mr. MacDonald with regard to what would be a</p> <p>17 similar business to run a municipal golf course?</p> <p>18 A. Well, I -- prior to this or --</p> <p>19 Q. Prior to. Let's start prior to this. Prior to</p> <p>20 you putting the language in, did you have an</p> <p>21 understanding of that?</p> <p>22 A. Yes. I think my memory was that there was just</p> <p>23 a discussion that some entity that was running</p> <p>24 some type of recreational facility similar to a</p>

<p style="text-align: center;">13</p> <p>1 golf course should be able to submit a proposal.</p> <p>2 As a matter of fact, Mr. Cushing told me</p> <p>3 that he and the town manager had been riding in</p> <p>4 the car and they had gone by some type of golf,</p> <p>5 I think it was like a practice range facility in</p> <p>6 Pembroke or one of the -- some town. I got the</p> <p>7 idea it was near Route 53. I don't know the</p> <p>8 name of it.</p> <p>9 Q. If I suggested to you the name was Sandbaggers,</p> <p>10 does that refresh your memory?</p> <p>11 A. It could very well be, but -- I don't know that</p> <p>12 but it could be a name similar to that.</p> <p>13 And that Mr. Cushing told me that</p> <p>14 Mr. MacDonald said these are the type of people</p> <p>15 who should be able to put in a bid and we should</p> <p>16 give them a proposal, and Mr. Cushing told me</p> <p>17 that he believes they did, in fact, give them,</p> <p>18 whatever that entity is, a proposal.</p> <p>19 But he actually told me this after. He</p> <p>20 didn't say it at the time of the meeting so I</p> <p>21 don't want to misconstrue.</p> <p>22 Q. When did that conversation you just described</p> <p>23 where Mr. Cushing said he gave them the RFP.</p> <p>24 A. Right.</p>	<p style="text-align: center;">15</p> <p>1 incorrect. The town would have received it.</p> <p>2 MR. FOLLANSBEE: Well, the town would</p> <p>3 have received it. I want to know if he received</p> <p>4 it because --</p> <p>5 MR. GILL: Different question. That's</p> <p>6 fine.</p> <p>7 MR. FOLLANSBEE: I asked him whether he</p> <p>8 remembers receiving it.</p> <p>9 MR. GILL: Go ahead. Try again.</p> <p>10 Q. (By Mr. Follansbee) Do you remember receiving a</p> <p>11 copy?</p> <p>12 A. I said no. I don't remember this specifically.</p> <p>13 Q. Do you remember responding to a request under</p> <p>14 the Freedom of Information Act pertaining to</p> <p>15 public records for the North Hill Golf Course in</p> <p>16 December of 2008?</p> <p>17 A. Not without seeing it.</p> <p>18 MR. FOLLANSBEE: I'd ask that be marked</p> <p>19 as the next exhibit.</p> <p>20 (Exhibit No. 7 ID marked.)</p> <p>21 Q. Sir, I'm showing you what's been marked as</p> <p>22 Exhibit Number 7.</p> <p>23 MR. GILL: Exhibit 3?</p> <p>24 MR. FOLLANSBEE: This is Exhibit 7.</p>
<p style="text-align: center;">14</p> <p>1 Q. When was that?</p> <p>2 A. That was sometime in the last year when we were,</p> <p>3 you know, reviewing the circumstances, trying to</p> <p>4 understand what the definition encompassed.</p> <p>5 Q. I'd like to show you what's been marked as</p> <p>6 Exhibit Number 2.</p> <p>7 MS. COOK: Do you have copies, Steve?</p> <p>8 MR. FOLLANSBEE: Pardon me?</p> <p>9 MS. COOK: Copies?</p> <p>10 MR. FOLLANSBEE: I thought I passed it</p> <p>11 down.</p> <p>12 Q. Do you remember receiving a copy of Exhibit</p> <p>13 Number 2?</p> <p>14 A. Well, I don't remember receiving it, but.</p> <p>15 Q. Do you recall receiving a FOIA request from my</p> <p>16 office shortly after the decision was made to</p> <p>17 reject all the proposals in early December of</p> <p>18 2008?</p> <p>19 A. No.</p> <p>20 MR. GILL: Well, let's just keep the</p> <p>21 record straight. The letter is addressed to</p> <p>22 Richard MacDonald, town manager.</p> <p>23 MR. FOLLANSBEE: I understand.</p> <p>24 MR. GILL: So the you part would be</p>	<p style="text-align: center;">16</p> <p>1 MR. EDGE: Can I ask why it is Exhibit 7?</p> <p>2 MR. FOLLANSBEE: We have others that are</p> <p>3 pre-marked.</p> <p>4 MR. GILL: No problem. So may I have the</p> <p>5 question then. I lost track with all that</p> <p>6 excitement.</p> <p>7 Q. Have you had a chance to look at Exhibit Number</p> <p>8 7?</p> <p>9 A. I have.</p> <p>10 Q. Do you remember a request from my office to</p> <p>11 review the documents pertaining to the RFP</p> <p>12 process in North Hill in early December of 2008?</p> <p>13 A. I remember an issue with respect to those, yes.</p> <p>14 Q. And the documents were being kept at your office</p> <p>15 down at the Cape, correct?</p> <p>16 A. They were.</p> <p>17 Q. Let's go back to the fall of 2008. Were you</p> <p>18 present when the non-price proposals were opened</p> <p>19 at Duxbury Town Hall?</p> <p>20 A. No.</p> <p>21 Q. Were you present when the price proposals were</p> <p>22 opened at town hall?</p> <p>23 A. I was present when proposals that were in</p> <p>24 non-price and price envelopes were opened.</p>

<p style="text-align: right;">17</p> <p>1 Q. So you were present when the entire process was</p> <p>2 opened at once or --</p> <p>3 A. I believe there were two sets of envelopes for</p> <p>4 each proposer in a room, and they were either, I</p> <p>5 don't know exactly what was opened but I</p> <p>6 remember things were taken out of an envelope</p> <p>7 and shown to me.</p> <p>8 Q. At that -- do you know when that took place?</p> <p>9 A. Sometime late in the fall of 2008.</p> <p>10 MR. FOLLANSBEE: I'd ask that be marked</p> <p>11 as the next exhibit.</p> <p>12 (Exhibit No. 8 ID marked.)</p> <p>13 (Discussion off the record.)</p> <p>14 Q. Sir, am I correct that Exhibit Number 8 is an</p> <p>15 invoice for your services to the town of Duxbury</p> <p>16 on the North Hill matter?</p> <p>17 A. Yes.</p> <p>18 Q. Directing your attention to the entry on</p> <p>19 11/26/08, it references an appearance at the</p> <p>20 meeting at Duxbury Town Hall with Richard</p> <p>21 MacDonald and Gordon Cushing.</p> <p>22 Is that the meeting that you were</p> <p>23 referring to in your earlier answer when the</p> <p>24 envelopes were opened?</p>	<p style="text-align: right;">19</p> <p>1 town. But it didn't mean anything to me because</p> <p>2 with the exception of perhaps Mr. Johnson and</p> <p>3 Mr. Gunnarson, I didn't know any of the people</p> <p>4 involved, the corporations and entities. I had</p> <p>5 no idea who any of the people were.</p> <p>6 Q. Now, at the meeting on November 26th, had the</p> <p>7 evaluations been done by the three evaluators</p> <p>8 who were designated by Mr. MacDonald to review</p> <p>9 the proposals?</p> <p>10 A. I had received no information about any of the</p> <p>11 evaluation process. Nothing. I did not know</p> <p>12 who the evaluators were and I had no information</p> <p>13 up until that time when I appeared on the 26th.</p> <p>14 Q. Okay. When you got there on the 26th, were you</p> <p>15 provided with copies of the proposals and the</p> <p>16 evaluations?</p> <p>17 A. This is -- my memory was that the proposals were</p> <p>18 -- there was -- there were some type -- this is</p> <p>19 just memory, manila envelopes and the proposals</p> <p>20 were there, the price proposals were there and</p> <p>21 the evaluations were definitely there. That's</p> <p>22 the first time I knew the identity of the</p> <p>23 evaluators. This was the first time I saw the</p> <p>24 evaluations.</p>
<p style="text-align: right;">18</p> <p>1 A. Well, I can't be sure but I believe that is.</p> <p>2 Q. Prior to the meeting had you had any</p> <p>3 conversation since with Mr. Cushing -- we'll</p> <p>4 leave it with Mr. Cushing at the moment. Had</p> <p>5 you had any conversations with Mr. Cushing</p> <p>6 regarding the proposals that had been received</p> <p>7 on October 24th?</p> <p>8 MR. GILL: That would be just a yes or no</p> <p>9 answer, please.</p> <p>10 A. Regarding the proposals?</p> <p>11 Q. Yeah. The proposals in the RFP were due on</p> <p>12 October 24th. Between October 24th and this</p> <p>13 meeting on 11/26, had you had any conversations</p> <p>14 with Mr. Cushing regarding the proposals that</p> <p>15 had been received?</p> <p>16 A. No, not that I can remember.</p> <p>17 Q. Had you had any conversations with Mr. MacDonald</p> <p>18 about the proposals that had been received?</p> <p>19 A. Other than the fact that there had been</p> <p>20 proposals, I don't remember any conversations.</p> <p>21 Q. Nobody talked to you about who had submitted a</p> <p>22 proposal or anything in that nature?</p> <p>23 A. There might have been a list that I had seen of,</p> <p>24 you know, names that had been prepared by the</p>	<p style="text-align: right;">20</p> <p>1 Q. And how long -- do you recall how long the</p> <p>2 meeting was?</p> <p>3 A. I would say it was a three-hour meeting.</p> <p>4 Q. And do you remember --</p> <p>5 A. Maybe four hours. It was a lengthy meeting.</p> <p>6 Q. In that three or four hours, what happened at</p> <p>7 the meeting?</p> <p>8 A. Well, there was a lot of things that happened.</p> <p>9 I think that the evaluations were looked at and</p> <p>10 there was questions raised about the</p> <p>11 evaluations. The price proposals were opened</p> <p>12 and the non-price were available.</p> <p>13 I do not remember -- there was a lot of</p> <p>14 inquiry into the non-price. This is the best of</p> <p>15 my memory. I don't have a -- this is a general</p> <p>16 memory, not a specific memory.</p> <p>17 I definitely know that the evaluations</p> <p>18 were looked at and there were questions and</p> <p>19 issues talked about that, and the price</p> <p>20 proposals were also looked at. And I don't</p> <p>21 remember -- I don't remember any real detail</p> <p>22 into the non-price proposals.</p> <p>23 Q. Now, if you look at your entry for the date</p> <p>24 December 1, 2008, it indicates that you were</p>

<p style="text-align: right;">21</p> <p>1 preparing for a meeting and then it indicates</p> <p>2 that you were reviewing the RFP and the various</p> <p>3 proposals. Do you remember doing --</p> <p>4 A. Well, I see the entry date but that would not</p> <p>5 necessarily have been done on that date, because</p> <p>6 I know that on the 26th I was given all the</p> <p>7 materials to look into, asked to look into all</p> <p>8 of the issues regarding the price, the non-price</p> <p>9 and the evaluations in particular.</p> <p>10 And I took those with me and I worked</p> <p>11 during the weekend, because I remember that was</p> <p>12 Thanksgiving weekend, looking at those and</p> <p>13 working on a memorandum which I subsequently</p> <p>14 issued on -- at the beginning of either on</p> <p>15 December 1st or December 2nd.</p> <p>16 Q. Did you discuss the price proposals and the</p> <p>17 non-price proposals and the evaluations with</p> <p>18 anybody other than Mr. Cushing and Mr. MacDonald</p> <p>19 from the 26th -- and I think you're right, that</p> <p>20 was the day before Thanksgiving -- up until</p> <p>21 Monday the 1st of December?</p> <p>22 A. No one with the exception of my partner, Brian</p> <p>23 Wall, who I asked to review the memorandum, I</p> <p>24 believe on that Monday.</p>	<p style="text-align: right;">23</p> <p>1 is it fair to say you had no discussion with</p> <p>2 anyone at the Inspector General's office about</p> <p>3 these documents?</p> <p>4 MR. KREIGER: Objection.</p> <p>5 A. About those specific documents, yes. I did not</p> <p>6 discuss with the Inspector General any of the</p> <p>7 specifics of the documents.</p> <p>8 Q. Did you discuss anything regarding the North</p> <p>9 Hill Country Club RFP process with anyone in the</p> <p>10 Inspector General's office between November 26,</p> <p>11 2008, the day before Thanksgiving, and Monday,</p> <p>12 December 1, 2008?</p> <p>13 A. Between November 26th of 2008 and possibly up to</p> <p>14 and including December 2nd of 2008, I have a</p> <p>15 memory of a discussion with the Inspector</p> <p>16 General about general procurement issues that</p> <p>17 related to my inquiry, but they were not</p> <p>18 specific of the North Hill Country Club, and the</p> <p>19 North Hill Country Club was not identified or</p> <p>20 discussed or any of the aspects beyond general</p> <p>21 procurement questions.</p> <p>22 Q. Do you know when you had this conversation that</p> <p>23 you remember with the Inspector General's</p> <p>24 office?</p>
<p style="text-align: right;">22</p> <p>1 Q. So you had no discussion with anybody from the</p> <p>2 Inspector General's office during that period of</p> <p>3 time; is that correct?</p> <p>4 A. What date again?</p> <p>5 Q. From the day before Thanksgiving, which was</p> <p>6 November 26, 2008, up until December 1st of</p> <p>7 2008.</p> <p>8 A. No. That's a different question. You asked</p> <p>9 whether -- the question you asked me before --</p> <p>10 Q. I'm sorry. Go ahead.</p> <p>11 A. Why don't I let you rephrase the question,</p> <p>12 because the answer to the question is did I have</p> <p>13 no discussion with the Inspector General, which</p> <p>14 I think was your question. The answer to that</p> <p>15 is no, that's incorrect.</p> <p>16 Q. That wasn't my question. My question was,</p> <p>17 during the period of time that you just</p> <p>18 described, you indicated that you discussed</p> <p>19 these materials with one other person other than</p> <p>20 Mr. MacDonald and Mr. Cushing, and that was your</p> <p>21 partner, Brian Wall?</p> <p>22 A. Exactly.</p> <p>23 Q. And my question is, during that same period of</p> <p>24 time, November 26, 2008 until December 1, 2008,</p>	<p style="text-align: right;">24</p> <p>1 A. I don't with specifics, no.</p> <p>2 Q. We can eliminate a few days, correct? You</p> <p>3 didn't do it over Thanksgiving or Saturday or</p> <p>4 Sunday, correct?</p> <p>5 A. Yes.</p> <p>6 Q. So to your memory you did it the day after</p> <p>7 Thanksgiving or Monday the 1st of December,</p> <p>8 2008?</p> <p>9 A. I believe that I had it on the 26th, but I'm not</p> <p>10 sure. I'm not sure whether -- I have a vague</p> <p>11 memory that I had a discussion on the 26th, but</p> <p>12 I'm not clear because I had many discussions</p> <p>13 with the Inspector General. I'm not certain of</p> <p>14 that date.</p> <p>15 Q. Do you know who you spoke with at the Inspector</p> <p>16 General's office?</p> <p>17 A. I don't.</p> <p>18 Q. And it wasn't something you included in your</p> <p>19 billing record, obviously, correct?</p> <p>20 A. I did not, as many, many things that I do are</p> <p>21 not included in my billing records.</p> <p>22 Q. Well, you generally -- you do include telephone</p> <p>23 conferences, correct?</p> <p>24 A. Only to the extent that they're able to be</p>

1 **recorded.**
2 **Q.** When you say recorded, do you -- what do you
3 mean by recorded?
4 **A.** **Well, only if, for instance, if I have a**
5 **telephone conference that is made out of the**
6 **office or a telephone conference that I don't**
7 **report to my billing people and they don't get**
8 **it, then obviously it's not listed.**
9 **Q.** Would a telephone conference with other members
10 of your firm be recorded also?
11 **A.** **No.**
12 **Q.** If someone else from your firm had a telephone
13 conference regarding the North Hill process with
14 somebody else, would it be included in your
15 bill?
16 MR. GILL: Objection. You can answer.
17 **A.** **It could if it were reported.**
18 **Q.** It would be incumbent upon that individual to
19 make a notation?
20 **A.** **Exactly.**
21 **Q.** And in 2008, in addition to your partner who you
22 identified as Brian Wall?
23 **A.** **Yes.**
24 **Q.** Who else worked for your firm?

1 **A.** **I'm sorry. I can't remember. I know Gail**
2 **O'Neill worked for my firm. Sam, she got**
3 **married. I don't remember her name.**
4 **Q.** Was Gail O'Neill a lawyer?
5 **A.** **No. There was a lawyer but -- no. I can't**
6 **remember.**
7 **Q.** If I suggested to you there was a woman named
8 Jessica Burgess, do you remember her working for
9 you?
10 **A.** **She has worked for me. I don't know whether she**
11 **worked at that time.**
12 **Q.** Do you know where she works now?
13 **A.** **I don't.**
14 **Q.** She was an attorney, correct?
15 **A.** **She was. She is.**
16 **Q.** But she was an attorney when she worked in your
17 firm?
18 **A.** **Yes.**
19 **MR. FOLLANSBEE: I'd ask this be marked**
20 **as the next exhibit.**
21 (Exhibit No. 9 ID marked.)
22 **Q.** Sir, I'm going to show you Exhibit Number 9.
23 MR. GILL: Just a way around this one, I
24 see this one has a town Bates number on it.

1 Exhibit 8 was also produced by the town, I
2 presume? That was the bill.
3 MR. FOLLANSBEE: I'm not sure. It
4 certainly has been Bates stamped by them.
5 MR. GILL: That's why I was asking, yeah.
6 MR. FOLLANSBEE: Yeah.
7 MR. GILL: So you don't know from where
8 it came?
9 MR. FOLLANSBEE: I don't know if it was a
10 FOIA request or whether the town provided it.
11 MR. KESTEN: Either way, the town did it.
12 MR. FOLLANSBEE: That's right.
13 **Q.** (By Mr. Follansbee) Directing your attention to
14 Exhibit Number 9, is this the memo that you were
15 describing that you drafted concerning the RFP
16 process at North Hill in early December?
17 **A.** **No.**
18 **Q.** Do you remember drafting this document?
19 **A.** **I drafted this after. The memo that I worked on**
20 **during the weekend of Thanksgiving of 2008 was**
21 **one in which I was attempting to see whether or**
22 **not, given the information that we had from the**
23 **evaluators, whether or not the evaluations were**
24 **sufficient to allow the town to make an award.**

1 **Q.** Do you remember how long that memo was?
2 **A.** **I remember it took awhile to do it because I had**
3 **to look at the evaluations. But when I finally**
4 **edited it, I'm going to say it was probably**
5 **three pages.**
6 **Q.** And if you look back at Exhibit Number 8, is
7 there any reference to that memo in your billing
8 records?
9 **A.** **Yeah. I believe, I don't know, but I believe it**
10 **would be review and analysis of the town's**
11 **request for proposals.**
12 **Q.** But as far as, for instance, on November 24th
13 you indicate drafting and preparation of
14 additional correspondence. Is there any
15 indication that you were drafting a memo? You
16 have an entry also on December 2nd for drafting
17 a memo. I just want to make sure I have the
18 right memo.
19 Is Exhibit Number 9 the one that you
20 drafted on December 2nd?
21 **A.** **Well, I don't see -- I don't have any idea about**
22 **that. I do not do the billing. I don't do the**
23 **billing entries, so I don't know how they do**
24 **those. I don't see any drafting of a memo on**

<p style="text-align: right;">29</p> <p>1 December 2nd. I don't know.</p> <p>2 Q. Do you know --</p> <p>3 A. There's a lot of documents that are done so I</p> <p>4 just can't tell you with specificity which is</p> <p>5 which.</p> <p>6 Q. Do you know who you drafted the memo to?</p> <p>7 A. On December 1st?</p> <p>8 Q. The long one that you took over the weekend.</p> <p>9 A. To the town manager.</p> <p>10 Q. Now, after the town manager -- well, strike</p> <p>11 that.</p> <p>12 When you reviewed the price proposals as</p> <p>13 you indicate at least on the billing entry on</p> <p>14 December 1st, it indicates that all the price</p> <p>15 proposals were reviewed, did you recognize a</p> <p>16 problem with the price proposal received by CALM</p> <p>17 Golf?</p> <p>18 A. I remember that the price proposal from CALM</p> <p>19 Golf -- I'm not sure. I didn't know who CALM</p> <p>20 Golf was at this time and so I don't know that I</p> <p>21 noted it to be CALM Golf.</p> <p>22 But I did note that one of the price</p> <p>23 proposals did not conform to the requirements</p> <p>24 for cash proposal and would require elimination</p>	<p style="text-align: right;">31</p> <p>1 (Exhibit No. 10 ID marked.)</p> <p>2 Q. Sir, directing your attention to what's now been</p> <p>3 marked as Exhibit Number 10, and these were the</p> <p>4 evaluation forms for the RFP in 2008 for the</p> <p>5 North Hill Country Club.</p> <p>6 MR. GILL: I don't mean to interrupt you.</p> <p>7 Which exhibit are we marking this?</p> <p>8 MR. FOLLANSBEE: This is Exhibit 10.</p> <p>9 MR. GILL: It says Exhibit 1.</p> <p>10 MR. FOLLANSBEE: That would be for --</p> <p>11 MR. GILL: So we're going to re-mark it?</p> <p>12 MR. FOLLANSBEE: Yes.</p> <p>13 MR. GILL: Thank you. Sorry to interrupt</p> <p>14 you.</p> <p>15 MR. FOLLANSBEE: That's okay.</p> <p>16 Q. (By Mr. Follansbee) On the top of Exhibit Number</p> <p>17 10, first page, the evaluator is Gordon Cushing</p> <p>18 filled out the form and is giving an overall</p> <p>19 rating on this particular candidate for not</p> <p>20 advantageous.</p> <p>21 As far as Mr. Cushing's evaluations, did</p> <p>22 they conform in your opinion to the requirements</p> <p>23 of the RFP and Chapter 30B, Section 6?</p> <p>24 A. Are you talking about all of the pages of</p>
<p style="text-align: right;">30</p> <p>1 if it got to that point. One of them was in</p> <p>2 percentages and percentages was not permissible.</p> <p>3 Q. So it was your conclusion -- and I'm not trying</p> <p>4 to put words in your mouth -- but at least one</p> <p>5 of the price proposals that included percentages</p> <p>6 would have been nonresponsive and ineligible for</p> <p>7 an award?</p> <p>8 A. Absolutely. Absolutely.</p> <p>9 Q. That left four remaining proposals to consider,</p> <p>10 correct?</p> <p>11 A. Yes. Correct.</p> <p>12 Q. Do you recall that, of the four proposals that</p> <p>13 were left, the proposal of Johnson Golf</p> <p>14 Management had achieved the rating of highly</p> <p>15 advantageous in every category except one</p> <p>16 evaluator who did not give them highly</p> <p>17 advantageous for financial matters?</p> <p>18 MR. KREIGER: Objection.</p> <p>19 A. I don't recall at this point any of the</p> <p>20 evaluations. I do recall that Johnson</p> <p>21 throughout the process consistently received</p> <p>22 extremely favorable non-price evaluations.</p> <p>23 MR. FOLLANSBEE: I'd ask that be marked</p> <p>24 as the next exhibit.</p>	<p style="text-align: right;">32</p> <p>1 this --</p> <p>2 Q. I think Mr. Cushing's --</p> <p>3 A. -- six pages?</p> <p>4 Q. -- go, Page 6 through 11 appear to be</p> <p>5 Mr. Cushing's.</p> <p>6 MR. GILL: I think he's talking about</p> <p>7 these little numbers here on the lower left-hand</p> <p>8 corner. Is that right?</p> <p>9 MR. FOLLANSBEE: Yes.</p> <p>10 A. Okay. I would say that they are the best</p> <p>11 example of this effort to comply with the</p> <p>12 statute.</p> <p>13 Q. In your opinion he had complied with the</p> <p>14 statute, hadn't he?</p> <p>15 A. He generally complied with the statute, yes.</p> <p>16 Q. Do you have any -- you seem to have some</p> <p>17 reservation about that. Is there anything about</p> <p>18 his evaluations that you feel didn't comply with</p> <p>19 the statute?</p> <p>20 A. Only in that the statute in my view requires a</p> <p>21 statement of reasons for the ratings and the</p> <p>22 composite ratings.</p> <p>23 Q. And is that Page 11?</p> <p>24 A. Well, Page 11 would be that effort, yes.</p>

<p style="text-align: right;">33</p> <p>1 Q. Now, as of December 2, 2008 there were only</p> <p>2 three people that knew the price proposals in</p> <p>3 the town of Duxbury, correct?</p> <p>4 MR. COVINO: Objection.</p> <p>5 A. Are you asking me my knowledge now or my</p> <p>6 knowledge at a previous time?</p> <p>7 Q. Well, at the time on December 2nd of 2008, was</p> <p>8 it your understanding that you, Richard</p> <p>9 MacDonald and Gordon Cushing were the only three</p> <p>10 people that knew the price proposals?</p> <p>11 A. It was my understanding that to the extent that</p> <p>12 the price proposals could have been seen prior</p> <p>13 to when I appeared at town hall, that the people</p> <p>14 who opened them were Mr. Cushing and</p> <p>15 Mr. MacDonald.</p> <p>16 Q. And so when you wrote your memo on December 2nd,</p> <p>17 that was clearly your understanding, correct?</p> <p>18 A. Well, I don't think writing my memo had anything</p> <p>19 to do with -- I'm not sure on when I was present</p> <p>20 on November 26th whether Barbara Ripley was</p> <p>21 called into the room. I don't remember that.</p> <p>22 Q. So there's a possibility Barbara Ripley might</p> <p>23 have known the price proposals?</p> <p>24 A. Possibility, right.</p>	<p style="text-align: right;">35</p> <p>1 prepare your memo, did you review Chapter 30B6?</p> <p>2 A. I had the Inspector General's manual and 30B6.</p> <p>3 Q. So you had both? You had the manual as well as</p> <p>4 the general law?</p> <p>5 A. I did.</p> <p>6 Q. And with regard to Mr. Dixon, Mr. Dixon had not</p> <p>7 provided an overall rating. And his begins on,</p> <p>8 in Exhibit 10, on the lower right-hand corner</p> <p>9 with the number 12.</p> <p>10 A. Well, actually, Mr. Dixon's problems are greater</p> <p>11 than that description. His problems are or the</p> <p>12 problems of his evaluations are there are no</p> <p>13 reasons for anything and there is no composite</p> <p>14 rating. So there are no reasons for the</p> <p>15 individual categories as required by law and</p> <p>16 there's no reasons for a composite rating and</p> <p>17 there's no composite rating.</p> <p>18 Q. And Mr. Dixon didn't know the price proposals,</p> <p>19 correct?</p> <p>20 MR. COVINO: Objection.</p> <p>21 A. I never talked -- I have no idea. I never</p> <p>22 talked or spoke to or had any contact with any</p> <p>23 of the evaluators at any time, so I have no idea</p> <p>24 what Mr. Dixon knew or what he didn't know or</p>
<p style="text-align: right;">34</p> <p>1 Q. And so it would be four people instead of three?</p> <p>2 A. If your question is who did I know at the time</p> <p>3 -- if your question is on December 2nd when I</p> <p>4 wrote the memorandum who did I think would be</p> <p>5 told --</p> <p>6 Q. Yes.</p> <p>7 A. -- who knew. Okay. I can answer that question.</p> <p>8 Q. All right. Who did you think --</p> <p>9 A. I believed then that Mr. Cushing, Mr. MacDonald</p> <p>10 and me and possibly Barbara Ripley were the only</p> <p>11 people who knew the price proposals.</p> <p>12 Q. Now, when you look at the ratings done by</p> <p>13 Mr. Floreano, and those would be the last five</p> <p>14 pages of Exhibit 10, Mr. Floreano used the word</p> <p>15 qualified and not qualified for the overall</p> <p>16 rating, correct?</p> <p>17 A. He did.</p> <p>18 Q. And under the statute for an overall rating,</p> <p>19 there's no requirement of any special language,</p> <p>20 is there?</p> <p>21 MR. COVINO: Objection.</p> <p>22 A. I believe there is. I believe that it has to</p> <p>23 use the same terms.</p> <p>24 Q. When you were working over the weekend to</p>	<p style="text-align: right;">36</p> <p>1 any evaluators.</p> <p>2 Q. Well, except for Gordon?</p> <p>3 A. Well, I knew Gordon because I was in the room</p> <p>4 with him.</p> <p>5 Q. So did you consider the option of having</p> <p>6 Mr. Dixon give his reasons for the ratings and</p> <p>7 providing an overall rating?</p> <p>8 A. No. I have no memory of doing that and I'm not</p> <p>9 sure that that legally could be done. I know</p> <p>10 that's been suggested. I see no support for</p> <p>11 that in the Inspector General's manual or in the</p> <p>12 statute.</p> <p>13 Q. Well, the only prohibition in the statute would</p> <p>14 be that the evaluators are not supposed to know</p> <p>15 the price proposals while they're doing their</p> <p>16 evaluations, correct?</p> <p>17 MR. COVINO: Objection.</p> <p>18 A. No. Actually, the statute's very clear, and the</p> <p>19 Inspector General's manual is even clearer that</p> <p>20 in this number of instances in which it says</p> <p>21 that the evaluators, when you have more than one</p> <p>22 evaluator, cannot see the price proposals until</p> <p>23 the non-price evaluations are completed.</p> <p>24 Q. And the non-price evaluations were done before</p>

1 you had your meeting on November 26th; is that
 2 correct?
 3 **A. Yes.**
 4 **Q.** Mr. Cushing had done it correctly, correct?
 5 **A. I didn't necessarily know that on November 26th.**
 6 **I didn't know on November 26th exactly what had**
 7 **been done correctly. I knew that there were**
 8 **issues and I was being asked to look at them.**
 9 **Q.** And from when you did your review, you were
 10 satisfied that Mr. Cushing had done it
 11 correctly, weren't you?
 12 **A. I was satisfied that he had come close enough to**
 13 **the statutory requirements to conclude that he**
 14 **had done them correctly.**
 15 **Q.** And to your knowledge, he was the only one of
 16 the evaluators who had any knowledge of the
 17 price proposals, correct?
 18 **A. To my knowledge -- well, I didn't have any**
 19 **knowledge as to who had information about the**
 20 **price proposals.**
 21 **Q.** Well, you had knowledge that you, Gordon
 22 Cushing, Richard MacDonald and possibly Barbara
 23 Ripley had information about the price
 24 proposals, correct?

1 **A. I had knowledge of who had seen the price**
 2 **proposals in my presence.**
 3 **Q.** And other than that, you had no knowledge,
 4 correct?
 5 **A. No.**
 6 **Q.** And did you inquire of anybody about who else
 7 may have seen the price proposals?
 8 **A. I don't remember making any inquiry like that.**
 9 **Q.** Now, shortly after December 8th you became aware
 10 of the lawsuit that Johnson Golf Management had
 11 filed in Middlesex Superior Court, correct?
 12 **A. I don't remember the day it was filed.**
 13 **Q.** Do you remember appearing on December 29, 2008
 14 in Superior Court?
 15 **A. I do. I'm not sure of the date but I remember**
 16 **at the end of December.**
 17 **Q.** Is that Exhibit Number 3?
 18 **A. It says -- that's what I see.**
 19 **Q.** Directing your attention to Page 15, you
 20 indicate to the Court on line 10 that when the
 21 documents were opened, it appeared immediately
 22 that there was a problem. Was that on November
 23 26th?
 24 **A. I don't know. I don't have any timeframe, but**

1 **the date that we opened the documents,**
 2 **Mr. Cushing, Mr. MacDonald and me, was I believe**
 3 **November 26th.**
 4 **Q.** And you indicate on line 11 and 12 and 13 that
 5 the problem was immediately noted and the
 6 problem was that only one of the evaluators had
 7 filled out the form correctly. So that would
 8 have been Mr. Cushing, correct?
 9 **A. Well, no. That's not what I said. I said it**
 10 **appeared immediately there was a problem, and**
 11 **then I said the problem was only one of the**
 12 **evaluators had filled out the form correctly as**
 13 **required. Those are two different thoughts.**
 14 **Q.** And what's the distinction between those?
 15 **A. The distinction is that when the documents were**
 16 **opened with Mr. Cushing and me and**
 17 **Mr. MacDonald, a cursory review indicated**
 18 **immediately that there was a problem because you**
 19 **-- just to look at these, Mr. Dixon's forms were**
 20 **not complete just by looking at it.**
 21 **And then I went on to identify what the**
 22 **problem was. The problem was that only one of**
 23 **the evaluators had filled out the form**
 24 **completely as required. That doesn't mean that**

1 **I knew that on November 26th, but I ultimately**
 2 **determined that that was, and I think that each**
 3 **of those statements is correct.**
 4 **Q.** Directing your attention to Page 17, beginning
 5 on line 14 you indicate that the town contacted
 6 the Inspector General's office?
 7 **A. That's correct.**
 8 **Q.** Was that you that contacted someone at the
 9 Inspector General's office?
 10 **A. I contacted someone at the Inspector General's**
 11 **office, yes.**
 12 **Q.** And the Inspector General or someone in that
 13 office told you that if the composite ratings
 14 were not made, that you can't do them and you
 15 were advised to reject all the bids?
 16 **MR. COVINO: Objection.**
 17 **A. No. That's not what that says.**
 18 **Q.** All right. What did happen? What did the
 19 Inspector General's office tell you to do?
 20 **A. My memory of the conversation with the Inspector**
 21 **General, first of all, it was not related. It**
 22 **was a general inquiry. At the time that I made**
 23 **it we wanted to make the award. At least we --**
 24 **I -- my job was to see whether or not given**

<p style="text-align: center;">41</p> <p>1 everything that we had, the town could make the</p> <p>2 award.</p> <p>3 So I made a general inquiry about the</p> <p>4 fact that if this is what my analysis was at</p> <p>5 this particular time, if the evaluator had not</p> <p>6 completed the form, did the chief procurement</p> <p>7 officer have the right to interpolate that data</p> <p>8 and essentially make the award based on what the</p> <p>9 chief procurement officer's determination, his</p> <p>10 or her reading of what was there.</p> <p>11 That's what I was making an inquiry.</p> <p>12 That was my initial possibility that I was</p> <p>13 pursuing, so to see whether the town could make</p> <p>14 the award.</p> <p>15 The Inspector General's office told me</p> <p>16 that the composite rating was required by 30B</p> <p>17 and that reasons were required by 30B, and that</p> <p>18 the town, if it attempted to try to remedy the</p> <p>19 problem, would face the challenge of -- would</p> <p>20 face the possibility that there would be a</p> <p>21 number of challenges to the procurement based on</p> <p>22 what the town did.</p> <p>23 And that given all of that -- and in</p> <p>24 addition, there was discussion about training,</p>	<p style="text-align: center;">43</p> <p>1 Q. Has anyone made you aware of what the town</p> <p>2 manager testified to at his deposition last week</p> <p>3 regarding the rejection of all the bids?</p> <p>4 MR. COVINO: Objection.</p> <p>5 A. I'm sorry?</p> <p>6 Q. Has anybody discussed with you what the town</p> <p>7 manager said last week?</p> <p>8 A. No.</p> <p>9 Q. Would you be surprised to know that the town</p> <p>10 manager said he didn't decide to reject all of</p> <p>11 the bids, that that was your decision?</p> <p>12 MR. COVINO: Objection.</p> <p>13 A. I would say that I had a number of conversations</p> <p>14 with the town manager prior to his making the</p> <p>15 decision that the bids were going to be rejected</p> <p>16 and requesting me to draft language, which is</p> <p>17 what this memo is, for his office to do. So I</p> <p>18 had a number of conversations.</p> <p>19 And further, I have no question in my</p> <p>20 mind that the town manager considered the</p> <p>21 information that I gave him and made a decision</p> <p>22 to reject the bids.</p> <p>23 Q. And one of your concerns was if you didn't</p> <p>24 reject all the bids, the town would be faced</p>
<p style="text-align: center;">42</p> <p>1 about the fact that the evaluators had training</p> <p>2 available to them from the Inspector General's</p> <p>3 office.</p> <p>4 There was forms, there was things to be</p> <p>5 done that should be done in the future. And</p> <p>6 that the town, given the fact that it would face</p> <p>7 the possibility of numerous challenges, do</p> <p>8 anything to try to do it correct.</p> <p>9 What had been done was probably best</p> <p>10 served by having the evaluators trained properly</p> <p>11 and doing it again, if, in fact, the town</p> <p>12 decided that that was the course to go.</p> <p>13 Q. And you don't know who that was at the Inspector</p> <p>14 General's office --</p> <p>15 A. I don't.</p> <p>16 Q. -- that told you? And do you know when you had</p> <p>17 that conversation with them?</p> <p>18 A. I just said it would have been some point</p> <p>19 between November 26th when I found out about the</p> <p>20 issues and December 2nd when the Inspect -- when</p> <p>21 the town manager decided to reject all bids. I</p> <p>22 believe, but I'm not certain and I can't -- my</p> <p>23 -- I have a vague memory that it could have been</p> <p>24 on the 26th.</p>	<p style="text-align: center;">44</p> <p>1 with claims from disappointed bidders?</p> <p>2 MR. COVINO: Objection.</p> <p>3 A. Not claims. One of the principal concerns of</p> <p>4 all of the discussions that took place from</p> <p>5 November 26th until when the decision was made</p> <p>6 by the town manager to reject all the bids was</p> <p>7 the timeframe.</p> <p>8 The contract was set to expire on the</p> <p>9 31st. There was an inordinate, if not</p> <p>10 inexplicable amount of time that took place</p> <p>11 between the time when the bids were received and</p> <p>12 when the town had acted on them, and that there</p> <p>13 was a concern that the rebidding process could</p> <p>14 not be done in time for the course to open on</p> <p>15 January 1st to award a contract before December</p> <p>16 31st.</p> <p>17 And the concern was that if the town took</p> <p>18 action and made an award based on data that did</p> <p>19 not comply with the statute, that that would</p> <p>20 result in protests which would delay -- the</p> <p>21 protest process would delay the town's ability</p> <p>22 to put it out and rebid it.</p> <p>23 Q. At the time that you were reviewing all this</p> <p>24 there were five proposals and you had already</p>

1 made a determination that the CALM Golf
2 proposal, because of their failure to honor the
3 requirements on the price proposal, would be
4 nonresponsive, correct?
5 **A. Once again, I had no idea. I had never heard of**
6 **any of the people except for Mr. Johnson and**
7 **Mr. Gunnarson who I believe either was the**
8 **person who had run the course before or was**
9 **related to the person who had run the course**
10 **before. So I had no idea, no. I had no**
11 **understanding.**

12 **I knew that when I looked at the -- we**
13 **weren't even at the point that we were looking**
14 **at the price proposals. Beyond -- we were**
15 **looking at evaluations primarily at this time.**
16 **And when I say we, I'm talking about the town**
17 **manager, Mr. Cushing and me. At this meeting**
18 **that's what we were primarily focused on.**

19 **But it did come -- it came up at the**
20 **meeting, and I think it was Mr. Cushing that**
21 **noted that one of the proposals, and I don't**
22 **know whether he identified the proposer because**
23 **he knows all the people involved, one of the**
24 **proposers had apparently not been able to read**

1 **the documents, the RFP, and submitted a**
2 **non-cash, a -- not a specific proposal in cash**
3 **which is what it required.**

4 **Q. So whether it was CALM --**

5 **A. That was not an issue. In other words, if your**
6 **question is was the inquiry related to somehow,**
7 **would that bid be --**

8 **Q. Saved?**

9 **A. Saved. That was not on the table.**

10 **Q. So that bid was dead?**

11 **A. Whoever had submitted a percentage, my view, I**
12 **didn't need any consultation or I didn't need**
13 **anything beyond my ability to read to determine**
14 **that that bid was nonresponsive, and so there**
15 **was only four bids remaining.**

16 **Q. So there were four live bids, so-to-speak?**

17 **A. Exactly. Correct.**

18 **Q. Out of those four, Johnson Golf was the only one**
19 **of the four operating a golf course, correct?**

20 **MR. COVINO: Objection.**

21 **A. I didn't know that. My review of the actual**
22 **non-price proposals was very limited. And I had**
23 **said already to you, and I can say it to you**
24 **again, that I don't play golf. I may have not**

1 **mentioned that. I have never -- I have no**
2 **knowledge of golf, none whatsoever. I don't**
3 **know any of the people, any of the names.**

4 **So I didn't know how many people were**
5 **running what because I have never been on a golf**
6 **course since the time I went to college, if even**
7 **before that just a couple of times. A couple of**
8 **unsuccessful stints convinced me that golf was**
9 **not for me.**

10 **Q. I think you had made that clear in prior**
11 **encounters.**

12 **And in that regard, your role prior to**
13 **this when Johnson Golf was running the course at**
14 **various time when you were asked to interpret**
15 **contractual items, you incurred some wrath of**
16 **the golfers at North Hill, didn't you, when you,**
17 **according to their protest, were siding with**
18 **Johnson Golf?**

19 **MR. KREIGER: Objection.**

20 **A. I would say that the North Hill Committee for**
21 **the most part was pretty consistently critical**
22 **of anything that I did, either I did or I didn't**
23 **do.**

24 **Q. I see. And I mean, you remember newspaper**

1 **articles and complaints from these folks?**

2 **A. I do.**

3 **Q. About town counsel reviewing the contract and**
4 **taking the side of the operator rather than the**
5 **golfer?**

6 **MR. KREIGER: Objection.**

7 **A. And I remember telephone calls complaining.**

8 **Q. So you were quite aware of their feelings about**
9 **Johnson Golf Management?**

10 **MR. COVINO: Objection.**

11 **A. I don't know. I was aware of -- like everybody,**
12 **I was more aware of their feelings towards me,**
13 **that they did not think that, I don't know**
14 **whether it's because I didn't know about golf.**
15 **They disagreed with how I interpreted things.**
16 **But for whatever, there was no question. There**
17 **was in the past some documentation and calls and**
18 **complaints about my ability to interpret things**
19 **correctly.**

20 **Q. And one of their, meaning the folks up at North**
21 **Hill, the North Hill management group, North**
22 **Hill Advisory Committee if you will, one of**
23 **their big objections was that they wanted to be**
24 **able to get 18 hole tee times on weekends and**

<p style="text-align: right;">49</p> <p>1 holidays, and you had interpreted the contract</p> <p>2 to say that's the prerogative of the operator on</p> <p>3 how he does his tee times and it's not a</p> <p>4 contractual right for the golfers to insist on</p> <p>5 that.</p> <p>6 MR. KREIGER: Objection.</p> <p>7 Q. Is that correct?</p> <p>8 A. To this day when I've looked at issues of the</p> <p>9 background in this case, I have never been able</p> <p>10 to understand whatsoever the complaints about</p> <p>11 the 18 tee time thing. I don't understand.</p> <p>12 I've never been able to understand it.</p> <p>13 I do know that when I looked at the</p> <p>14 issue, I didn't look at it in terms of golf</p> <p>15 issues. I looked at it as legal issues. And I</p> <p>16 believe that the rights of the operator or the</p> <p>17 person, the manager of the golf course, was</p> <p>18 broad in terms of how it, he or she were going</p> <p>19 to run the course.</p> <p>20 And I thought that the language in the</p> <p>21 management's agreement made it very clear that</p> <p>22 the complaints that had been made were not</p> <p>23 legitimate in the sense that they trumped the</p> <p>24 management right and prerogatives that are in</p>	<p style="text-align: right;">51</p> <p>1 approved and sent out to prospective bidders?</p> <p>2 A. I don't remember it being discussed. As a</p> <p>3 matter of fact I believe that the new RFP was</p> <p>4 done immediately, within, I think, I think the</p> <p>5 second RFP was done within days after the</p> <p>6 rejection of the bids. I'm not even sure I</p> <p>7 viewed it. I might have, but I don't remember</p> <p>8 it.</p> <p>9 Q. But no one had a discussion with you about</p> <p>10 eliminating the word flat?</p> <p>11 A. I don't remember any discussion.</p> <p>12 Q. You indicated earlier in your testimony this</p> <p>13 morning that there was going to be instruction</p> <p>14 given to the various evaluators. Was that ever</p> <p>15 done?</p> <p>16 MR. COVINO: Objection.</p> <p>17 MR. KREIGER: Objection.</p> <p>18 A. I indicated that the Inspector General said that</p> <p>19 they had materials and help available and that</p> <p>20 the town should avail itself of that assistance.</p> <p>21 Q. Did the town --</p> <p>22 A. And if the town was to go out to bid a second</p> <p>23 time --</p> <p>24 Q. Are you done?</p>
<p style="text-align: right;">50</p> <p>1 the management agreement.</p> <p>2 Q. Now, with regard to the decision -- well, strike</p> <p>3 that.</p> <p>4 After the bids had been rejected and the</p> <p>5 initial hearing had taken place, authorization</p> <p>6 was given for a new RFP which was done in</p> <p>7 January of 2009, correct?</p> <p>8 A. No. The new RFP was done immediately.</p> <p>9 MR. COVINO: Steve, I'm sorry to</p> <p>10 interrupt. If you're going to jump to a new</p> <p>11 topic, can we take five?</p> <p>12</p> <p>13 (Recess taken.)</p> <p>14</p> <p>15 Q. Now, with regard to the second RFP process that</p> <p>16 was due in early January of 2009, did you have a</p> <p>17 role in drafting any of the documents for the</p> <p>18 RFP?</p> <p>19 A. Not that I remember.</p> <p>20 Q. And do you recall that there had been a change</p> <p>21 of one word; the word flat payment was changed</p> <p>22 so that it was just payment in the second RFP?</p> <p>23 A. I recall it now. I didn't recall it then.</p> <p>24 Q. Did anyone discuss that with you before it was</p>	<p style="text-align: right;">52</p> <p>1 A. No. If the town were to go out to bid a second</p> <p>2 time, that the town should avail itself of the</p> <p>3 opportunity.</p> <p>4 Q. And when the decision was made to go out a</p> <p>5 second time, did the town avail itself of the</p> <p>6 opportunity, as you describe it, to give</p> <p>7 instruction to the various individuals who were</p> <p>8 going to do the evaluations?</p> <p>9 A. I don't know whether the town did it. But I</p> <p>10 will tell you that I was very frustrated during</p> <p>11 the time of review of what the town had done, at</p> <p>12 the amount of time that it had taken for the</p> <p>13 process to be done, the lack of documentation</p> <p>14 and dates, and the fact that it had been done so</p> <p>15 haphazardly.</p> <p>16 I on my own remember specifically saying</p> <p>17 we need to make sure that the evaluators are</p> <p>18 properly trained. I made a recommendation that</p> <p>19 no one from the North Hill Committee be on the</p> <p>20 subsequent new evaluation team, and that secrecy</p> <p>21 and confidentiality be transmitted and made</p> <p>22 absolutely viable.</p> <p>23 What the town did beyond that after that</p> <p>24 meeting and after I left town hall on the 26th,</p>

1 **my role in the second RFP process pretty much**
 2 **was even less than in the first and so I don't**
 3 **know what the town did in terms of either**
 4 **picking evaluators or educating them.**
 5 **Q.** Why was it that you were recommending no one on
 6 the North Hill Advisory Committee be on the
 7 evaluations?
 8 **A.** **Because I remember that in the immediate**
 9 **timeframe of while this process was being**
 10 **conducted, I remember that Mr. Johnson had**
 11 **transmitted some type of communication in which**
 12 **there was a suggestion that the North Hill**
 13 **Committee was not favorable to him.**
 14 **And in order to take any issues away from**
 15 **the table about that, I told Mr. MacDonald and**
 16 **Mr. Cushing that it was not a good idea to have**
 17 **people from the North Hill Committee on the**
 18 **evaluation team.**
 19 **Q.** Am I correct in the town of Duxbury that
 20 Mr. MacDonald is the chief procurement officer?
 21 **MR. KREIGER:** Objection.
 22 **A.** **He is. He may have delegated that at this point**
 23 **to Mr. Lambiese. I'm not sure, but at that time**
 24 **Mr. MacDonald was the chief procurement officer.**

1 **Q.** When you -- let me just --
 2 **A.** **In 2008.**
 3 **Q.** All right. In 2008 there's no question
 4 Mr. MacDonald was the chief procurement officer?
 5 **A.** **No question.**
 6 **Q.** And that remained so in 2009 as well, correct?
 7 **A.** **To the best of my knowledge.**
 8 **Q.** And he never delegated that role to you, did he?
 9 **A.** **Absolutely not. I believe the delegation has to**
 10 **be done in writing.**
 11 **Q.** Now, when the -- were you present when the bids
 12 were opened for the new RFP in January of 2009?
 13 **A.** **When you say when the bids were opened, I**
 14 **believe in 2009 I have a memory that I was**
 15 **present when they were opened for the first time**
 16 **with the witness.**
 17 **Q.** And who was the witness?
 18 **A.** **I don't remember when she got married but --**
 19 **Q.** Barbara Ripley?
 20 **A.** **Barbara Ripley or Barbara Miller. Yes, it was,**
 21 **definitely.**
 22 **Q.** Who else was there?
 23 **A.** **To my memory it was -- I don't have a specific**
 24 **memory but I believe it was Mr. MacDonald,**

1 **Mr. Cushing and me. I don't remember anyone**
 2 **else.**
 3 **Q.** At the time back in November, or, I'm sorry.
 4 Once the decision was made on December
 5 2nd that Mr. MacDonald was going to reject all
 6 the bids, did you give any instruction to the
 7 four people that you thought had information
 8 about the price proposals? Did you give them
 9 any instruction not to disclose that information
 10 to anybody?
 11 **MR. KREIGER:** Objection.
 12 **A.** **My memory is that I gave that instruction on the**
 13 **26th of November when, at that time I believe I**
 14 **took possession of the documents. And the**
 15 **documents, in fact, were authorized by the town**
 16 **manager for me to keep them secure at my office**
 17 **because I had concerns about the security of the**
 18 **documents at town hall.**
 19 **And I have no question that I emphasized**
 20 **that's the reason I was taking possession of the**
 21 **documents, that the contents of the price**
 22 **proposals in particular could not be disclosed**
 23 **to anyone. I specifically remember talking**
 24 **about this in the event that it was determined**

1 **that we had to go out to rebid.**
 2 **Q.** And why is it that you felt the price proposals
 3 could not be disclosed?
 4 **A.** **Because the statute makes it very clear. It**
 5 **uses the word that it be kept confidential until**
 6 **the evaluation process is complete, and we were**
 7 **going out to bid again and you had some**
 8 **expectation the same bidders were going to bid.**
 9 **If they knew everybody's position in the first**
 10 **round, it would obviously influence their**
 11 **decision on the second round.**
 12 **And we were looking at it from the**
 13 **viewpoint of the town getting the maximum**
 14 **return. We obviously wanted the maximum return.**
 15 **Q.** As you understood the law, Chapter 30B says that
 16 once the evaluations are complete, all the
 17 documents are public documents, correct?
 18 **A.** **The law says that but the law contemplates --**
 19 **does not contemplate a continuing bid process**
 20 **where for some reason the procurement is not**
 21 **made because of failure to comply with the law**
 22 **in the first instance. So I interpreted that**
 23 **and I, again on this issue, consulted the**
 24 **Inspector General.**

1 **Q.** Who did you consult with on that topic?

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

3 **Q.** Do you know when that took place?

4 **A.** **Around the time of that -- around the time I**

5 **believe that both you, meaning Mr. Follansbee**

6 **and Mr. Edge, both requested the information,**

7 **but I believe it was in the timeframe when you**

8 **requested it initially. I think you were the**

9 **first person.**

10 **Q.** So if I suggest to you that my letter on the

11 FOIA request, I think we marked it as an

12 exhibit, was December 8, 2008, is that

13 consistent with your memory?

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

15 MR. GILL: You're talking about Exhibit

16 7?

17 MR. FOLLANSBEE: Yes. Exhibit 7. Well,

18 I think there were -- Exhibit 7 was a letter to

19 Attorney Troy.

20 MR. GILL: Yep.

21 MR. FOLLANSBEE: And there was another

22 exhibit which was the FOIA request itself which

23 I think that's Exhibit 2.

24 MR. GILL: Exhibit 2.

1 **Q.** And the exhibits that we just referenced, those

2 are the ones you're talking about where my

3 office certainly requested, and then it's your

4 memory that Attorney Edge, his office requested

5 the same information?

6 **A.** **Yeah. I actually wasn't referring to any of the**

7 **exhibits. I remember -- I do have a memory that**

8 **your office and Mr. Edge's office made a request**

9 **for those documents during this particular**

10 **timeframe.**

11 **Q.** Once the proposals were received in January of

12 2009 and the evaluations were completed, did you

13 discuss the award of the contract with

14 Mr. MacDonald?

15 **A.** **Well, first of all, I didn't have any**

16 **information about when the proposals were**

17 **received. I was not involved in the process.**

18 **That was done at town hall.**

19 **I didn't know until after the court case**

20 **was filed and I was appearing for the court**

21 **presentation and needed information who the**

22 **evaluators were. And I didn't know, you know,**

23 **where the process, except to the extent that I**

24 **was -- right before the court proceedings I**

1 **spoke to Mr. MacDonald and --**

2 MR. GILL: I'm going to caution you to

3 worry about the privilege here because --

4 MR. FOLLANSBEE: Privilege has been

5 waived.

6 MR. GILL: My understanding is that the

7 privilege has only been waived as to some

8 topics, but not as to other topics.

9 My understanding is that the selectmen

10 voted not to waive it as to the litigation, and

11 that he is now talking about a conversation that

12 took place in order to carry on litigation.

13 MR. FOLLANSBEE: My understanding is,

14 Art, you can correct me if I'm wrong, is

15 slightly different than what counsel has just

16 articulated.

17 My understanding was you didn't want me

18 to inquire about legal advice he was giving in

19 executive session to the selectmen.

20 MR. KREIGER: Well, the reservation of

21 the privilege, the non-waiver was a little

22 broader than that. It was more as Bob described

23 it.

24 It's the line between the discussions

1 between Mr. Troy and the town about the

2 procurement process or as part of the

3 procurement process on the one hand versus

4 discussions about litigation and litigation

5 strategy.

6 So if he was talking with Mr. MacDonald

7 about how to prepare for that hearing --

8 MR. FOLLANSBEE: No. My question had to

9 do with his award letter for the contract.

10 MR. KREIGER: All right. So let's --

11 THE WITNESS: Maybe you just start off

12 with a new question.

13 MR. KREIGER: Maybe it was the answer

14 that went across the line.

15 THE WITNESS: And, I'm sorry, I'm going

16 to keep a copy of the selectmen's letter.

17 MR. GILL: So you're going to have a new

18 question?

19 MR. FOLLANSBEE: Sure.

20 Can I have this marked as the next

21 exhibit, please.

22 (Exhibit No. 11 ID marked.)

23 (Discussion off the record.)

24 MR. GILL: We'll withdraw Number 11.

<p style="text-align: right;">61</p> <p>1 It's the same document. It's actually been</p> <p>2 pre-marked as Exhibit Number 4.</p> <p>3 MR. KREIGER: This is Sullivan Exhibit</p> <p>4 13, correct?</p> <p>5 MR. FOLLANSBEE: Correct.</p> <p>6 MR. GILL: So Exhibit 4 is the award of</p> <p>7 contract to the North Hill Golf Course Country</p> <p>8 Club.</p> <p>9 MR. FOLLANSBEE: That's correct.</p> <p>10 MR. GILL: There's probably a date on</p> <p>11 here. January 15, 2009. Okay. Got it.</p> <p>12 Q. (By Mr. Follansbee) Now, directing your</p> <p>13 attention to Exhibit Number 4, did you draft</p> <p>14 this document?</p> <p>15 A. I did.</p> <p>16 Q. And it makes reference to the fact that the</p> <p>17 author of the document has done certain things.</p> <p>18 And, for example, on the third page, 3 of 4 at</p> <p>19 the bottom of it, the underlined portion</p> <p>20 regarding the examination of the proposal of</p> <p>21 CALM Golf, are you the person who reviewed CALM</p> <p>22 Golf's proposal or was it Mr. MacDonald who</p> <p>23 reviewed the proposal?</p> <p>24 MR. COVINO: Objection.</p>	<p style="text-align: right;">63</p> <p>1 Q. But he had the evaluations done at the time, no?</p> <p>2 A. Absolutely. The meeting, the only meeting that</p> <p>3 I was at was one in which all of the materials</p> <p>4 had been received and a decision was to be made</p> <p>5 and it was made at that meeting.</p> <p>6 Q. And after the decision was made you drafted this</p> <p>7 document?</p> <p>8 A. Exactly.</p> <p>9 Q. To substantiate what had been taking place at</p> <p>10 that meeting?</p> <p>11 A. Maybe not to substantiate, to replicate to the</p> <p>12 extent it needed to be put into a legal form. I</p> <p>13 took notes of the deliberations and I used those</p> <p>14 notes and the documentation to draft this</p> <p>15 document at the town manager's request.</p> <p>16 Q. Now --</p> <p>17 MR. KREIGER: Steve, excuse me. The</p> <p>18 underlining here, I take it is yours?</p> <p>19 MR. FOLLANSBEE: The underlining is mine</p> <p>20 or it was another witness. It wasn't on the</p> <p>21 original.</p> <p>22 MR. KREIGER: Okay.</p> <p>23 Q. When you say you made a cursory review yourself</p> <p>24 of the proposals, approximately how long did you</p>
<p style="text-align: right;">62</p> <p>1 A. Well, Mr. MacDonald reviewed all of the</p> <p>2 proposals in my presence. And in addition to</p> <p>3 that, I, in a cursory sense to prepare this</p> <p>4 following that meeting, I made a cursory review</p> <p>5 to the extent that I needed it to supplement my</p> <p>6 notes from the meeting. The price proposal, I</p> <p>7 mean at the -- whatever you term, call the</p> <p>8 opening, what I believe to be the official</p> <p>9 opening of the price proposals in the second</p> <p>10 round.</p> <p>11 Q. Let me help you out with the dates. The</p> <p>12 proposals were due on January 9, 2009 and this</p> <p>13 letter is dated January 15th of 2009.</p> <p>14 Is it your testimony that it was all done</p> <p>15 at once? Were the proposals opened, handed out</p> <p>16 to evaluators, they came back and then there was</p> <p>17 a meeting?</p> <p>18 A. Oh. I had no idea. When I -- the only time I</p> <p>19 had any participation in the process was after</p> <p>20 everything had been received, whenever that was,</p> <p>21 price and non-price, and they were going to be</p> <p>22 opened at the meeting at which time everything</p> <p>23 was looked at, and that's the meeting at which</p> <p>24 the town manager made his decision.</p>	<p style="text-align: right;">64</p> <p>1 spend reviewing the proposals? This is in the</p> <p>2 second round.</p> <p>3 A. I can't tell you, except that the decision</p> <p>4 relies on the evaluations principally and not</p> <p>5 the proposals. So it would not -- there would</p> <p>6 not have been a great need to look at the</p> <p>7 proposals.</p> <p>8 The decision had already been made to</p> <p>9 award when I drafted so there was no reason to</p> <p>10 delve into the proposals except to the extent</p> <p>11 that I needed some information.</p> <p>12 Q. Well, on Page 3 of 4 of the portion that's</p> <p>13 underlined at the bottom regarding CALM Golf,</p> <p>14 this indicates in the third line that CALM Golf</p> <p>15 had experience at the Rockland Golf Course. Are</p> <p>16 those your words or are those Mr. MacDonald's</p> <p>17 words?</p> <p>18 MR. COVINO: Objection.</p> <p>19 A. Those were actually Mr. Cushing's words at the</p> <p>20 meeting.</p> <p>21 Q. Mr. Cushing was not an evaluator, nor the chief</p> <p>22 procurement officer, correct?</p> <p>23 A. No. Mr. Cushing provided the information at the</p> <p>24 meeting about the proposals and about the</p>

<p style="text-align: right;">65</p> <p>1 different entities that were involved.</p> <p>2 Q. And when Mr. Cushing provided that information,</p> <p>3 did he provide any information about Rockland</p> <p>4 Golf Course being in bankruptcy?</p> <p>5 A. He could have. I believe that that information</p> <p>6 had been sent by Mr. Johnson. But I think the</p> <p>7 law requires that you're only allowed to</p> <p>8 consider information that's developed in the</p> <p>9 course of the RFP.</p> <p>10 Q. So actually, the only information you can</p> <p>11 consider would be information that is in the</p> <p>12 actual proposal that the proposers submitted,</p> <p>13 correct?</p> <p>14 A. That's my understanding of the law.</p> <p>15 Q. And so when the author of this document on Page</p> <p>16 3 talks about CALM Golf having sufficient</p> <p>17 financial information in the second to last</p> <p>18 line, that financial information of necessity</p> <p>19 would have been in their non-price proposal,</p> <p>20 correct?</p> <p>21 MR. GILL: Objection. Do you mean to ask</p> <p>22 about the document?</p> <p>23 MR. FOLLANSBEE: What document?</p> <p>24 MR. GILL: The document that's -- let me</p>	<p style="text-align: right;">67</p> <p>1 certain representations that could have been</p> <p>2 relied upon, too, and to the extent that</p> <p>3 Mr. Cushing who was the person who provided the</p> <p>4 information at the meeting about the</p> <p>5 capabilities of the different entities, that</p> <p>6 would have been relied upon.</p> <p>7 Mr. Cushing did make specific references.</p> <p>8 There was an inquiry about the relative</p> <p>9 strengths and weaknesses of each of the two</p> <p>10 entities that Mr. MacDonald had determined were</p> <p>11 going to be considered in making the award.</p> <p>12 There was a discussion.</p> <p>13 Q. So at this point on the -- by the 15th at least</p> <p>14 it had been narrowed down to either CALM Golf or</p> <p>15 Johnson Golf, correct?</p> <p>16 A. Is that the date of this document?</p> <p>17 Q. This is the 15th.</p> <p>18 A. It had been decided.</p> <p>19 Q. What you've indicated is that -- there was a</p> <p>20 discussion concerning the relative merits of</p> <p>21 CALM Golf and Johnson Golf?</p> <p>22 A. There was one discussion. There was one</p> <p>23 meeting. There was no other discussions. It</p> <p>24 was all decided from the point that the</p>
<p style="text-align: right;">66</p> <p>1 see, Exhibit 4.</p> <p>2 MR. FOLLANSBEE: Yes. Page 3 of 4. At</p> <p>3 the bottom of the page the author of the</p> <p>4 document is referencing the fact that CALM Golf</p> <p>5 has sufficient financial information to be</p> <p>6 considered the most advantageous proposal, and I</p> <p>7 want to know where that information comes from.</p> <p>8 A. First of all, there is not an author of the</p> <p>9 document. This document is created from an</p> <p>10 account of my notes of the meeting, what was</p> <p>11 said at the meeting, and particularly focused on</p> <p>12 the evaluations.</p> <p>13 Because my understanding was that the</p> <p>14 purpose of the evaluations was to provide the</p> <p>15 judgments about the non-price aspects of the</p> <p>16 procurement that is supposed to be binding on</p> <p>17 the procurement officer. That's why it's being</p> <p>18 sent out to evaluators.</p> <p>19 The evaluations gave CALM Golf certain</p> <p>20 ratings, I don't have it in front of me but you</p> <p>21 must have it here, about financial information,</p> <p>22 and so to the extent that those evaluations</p> <p>23 supported that, those were relied upon.</p> <p>24 To the extent that the proposal made</p>	<p style="text-align: right;">68</p> <p>1 proposals and price proposals were opened until</p> <p>2 the end of that meeting. All of the discussion</p> <p>3 took place at town hall at that meeting and the</p> <p>4 decision was made at the end of that meeting by</p> <p>5 Mr. MacDonald.</p> <p>6 This document was drafted subsequent to</p> <p>7 that. There was no further discussions about</p> <p>8 the decision between the end of the meeting at</p> <p>9 town hall till this document -- I don't know the</p> <p>10 date of this document -- of the two, but my</p> <p>11 memory is that there was not a substantial</p> <p>12 amount of time between the meeting and the</p> <p>13 drafting of this decision.</p> <p>14 Q. Well, there was only six days between the bid</p> <p>15 opening and this decision so you have a</p> <p>16 relatively short window, correct?</p> <p>17 A. I guess. Assuming that, you know, that the</p> <p>18 price proposals came in on the date that you</p> <p>19 said they came in.</p> <p>20 Q. All the proposals had to be in by January 9th.</p> <p>21 So at the bottom of Page 3 this decision</p> <p>22 says that the "examination of the proposal of</p> <p>23 CALM Golf gives me confidence." The me is</p> <p>24 Mr. MacDonald, not you; is that correct?</p>

1 **A. This was sent -- yes. The me -- this was sent**
 2 **to Mr. MacDonald beforehand to review and to**
 3 **determine whether this was consistent with his**
 4 **findings. My effort to replicate what had been**
 5 **said at the meeting was sent to him in a draft**
 6 **form for his review and determination as to**
 7 **whether or not whatever is in this document**
 8 **comported with his findings.**

9 **Q. Were you aware from your own review at or about**
 10 **the time that this letter was drafted that the**
 11 **entity CALM Golf had no assets?**

12 **MR. COVINO: Objection.**

13 **A. I was not one of the evaluators and I never**
 14 **looked beyond the evaluations or the**
 15 **recommendations by Mr. Cushing, except to the**
 16 **extent that when I prepared this draft I needed**
 17 **a specific piece of information and then I would**
 18 **have looked.**

19 **I looked in a cursory manner to see if in**
 20 **each of the categories there was something that**
 21 **stood out that I needed to note, but at no point**
 22 **-- I did not at any point either at any time**
 23 **look in a detailed fashion because I had no role**
 24 **in selecting who the award was going to go to**

1 **and I had no recommendations as to that award.**

2 **And as I've already said, which is**
 3 **obviously, you know, clear, you would not want**
 4 **somebody who knows nothing about the field or**
 5 **any of the entities involved to have any input**
 6 **into any type of an award about something that**
 7 **he doesn't know anything about.**

8 **Q. Well, the indication that CALM Golf had**
 9 **experience at Rockland Golf Course, does that**
 10 **recommendation originate from their proposal or**
 11 **from the conversations with Mr. Cushing?**

12 **A. I don't know that. I believe -- I'm certain**
 13 **that it was said at the meeting by Mr. Cushing**
 14 **because I do -- this meeting I remember a little**
 15 **bit more than I would an ordinary meeting**
 16 **because the matter was in litigation and I was**
 17 **paying attention, and it was a long meeting and**
 18 **it was detailed and I do remember that there was**
 19 **a considerable amount of discussion.**

20 **Each proposal was reviewed in its -- each**
 21 **proposal in the sense of, I'm not talking about**
 22 **the details of how many -- who the manager was**
 23 **going to be or any of that stuff. That was not**
 24 **-- it actually, this account or this award**

1 **tracks the way in which the meeting reviewed the**
 2 **proposals.**

3 **Q. The --**

4 **A. Again, because I -- we had the statute with us,**
 5 **we meaning -- when I say we, I'm obviously the**
 6 **only one with the statute. When I say in the**
 7 **room, I have the book open, I've got the**
 8 **guidelines, we're trying to follow the law. The**
 9 **town manager, he's not looking at the statute**
 10 **and neither is the Recreation Director.**

11 **The statute as I read it required -- it**
 12 **has a presumption in favor of the government**
 13 **entity getting the most amount of money for the**
 14 **award and requires you, in picking the most**
 15 **responsive proposal, it requires you to set**
 16 **forth reasons when you, in effect, bypass a**
 17 **proposal.**

18 **At this meeting we had available and**
 19 **Gordon Cushing had familiarity with the**
 20 **proposals, the non-price proposals, and the town**
 21 **manager had some understanding, although**
 22 **obviously from my observations it was clear he**
 23 **was relying on Mr. Cushing to give him that**
 24 **information.**

1 **And so we took, we meaning the three of**
 2 **us sitting in the room, it was probably my**
 3 **recommendation that we kind of track the statute**
 4 **and we go to the highest price, given that, you**
 5 **know, and look at highest price first. And that**
 6 **was Eagles Nest, and that's how the meeting**
 7 **proceeded.**

8 **Eagles Nest, the proposal was talked**
 9 **about, Mr. Cushing gave all of the information**
 10 **that he had available to him and we looked at**
 11 **the evaluations in particular.**

12 **And so I would say that the town manager**
 13 **was listening to -- I believe he was looking at**
 14 **the evaluations and I was looking at them and we**
 15 **looked at those things, and then afterwards he**
 16 **would ask Mr. Cushing to weigh in on the golf**
 17 **portion. And basically, this decision tracks**
 18 **that discussion.**

19 **Q. Well, on a simple matter, was one of the things**
 20 **that the three of you were looking at in all of**
 21 **these proposals the financial information that**
 22 **was being given by the proposer?**

23 **MR. COVINO: Objection.**

24 **A. Not particularly.**

1 **Q.** And in order to -- is it your memory that in
2 order to get a rating of highly advantageous for
3 your financial situation, you needed to provide
4 audited financial statements?
5 **MR. GILL:** Objection.
6 **A.** **I didn't know anything about that at that time.**
7 **I didn't know anything about that.**
8 **Q.** Had you read the RFP?
9 **A.** **I had reviewed it but I hadn't focused on any of**
10 **the details to that extent, and I don't think**
11 **there was any discussion about audited or**
12 **unaudited, so.**
13 **Q.** That never came up in the meeting?
14 **A.** **I don't remember any discussion about audited or**
15 **unaudited, unless it was specifically flagged by**
16 **one of the evaluators and one evaluator said**
17 **this is not, you know, the financial thing, then**
18 **that was discussed. But I do remember it was**
19 **focused on the evaluations.**
20 **Q.** On the last page of the decision it indicates
21 that only two -- and this, again, is the
22 underlined portion of the last page. It
23 indicates that only two of the proposers were
24 currently operating a golf course.

1 Was that a significant factor in the
2 decision?
3 **MR. GILL:** Objection.
4 **A.** **I'm sorry. Where is that?**
5 **Q.** On the last page of Exhibit Number 4.
6 **MR. GILL:** He's talking about --
7 **Q.** The underlined portion.
8 **MR. GILL:** -- the portion he's underlined
9 or someone from his office underlined.
10 **A.** **There must have been something noted. That had**
11 **to be something said at the meeting.**
12 **Q.** And --
13 **A.** **I do remember -- I mean, at the end when there**
14 **was a discussion that the town manager had**
15 **primarily with Mr. Cushing, it was about the --**
16 **it was about CALM Golf and Johnson, and there**
17 **was a discussion that CALM Golf, they were both**
18 **running courses.**
19 **And I think that the town manager, what I**
20 **observed was that he was weighing in his mind**
21 **Johnson's a sure thing because Johnson was**
22 **running the course and, you know, had done a**
23 **good job running the course.**
24 **And he specifically asked, I do remember**

1 **this, Mr. Cushing, was CALM Golf running it, and**
2 **I remember one inquiry very much. He said if I**
3 **make this award to CALM Golf, Gordon, can CALM**
4 **Golf run this course, can they do the job. I**
5 **remember that specifically, and Mr. Cushing said**
6 **yes.**
7 **And so there was a discussion about --**
8 **the town manager was, his questions to**
9 **Mr. Cushing reflected a concern and interest**
10 **that whoever got the award was going to be able**
11 **to run the course and that there wouldn't be any**
12 **failures.**
13 **Q.** And his --
14 **A.** **Failures in the sense of not being able to run**
15 **the course.**
16 **Q.** And Mr. Cushing was not unequivocal at all about
17 that?
18 **A.** **No.**
19 **Q.** Did he indicate what course they were running?
20 **A.** **He did, but I have to tell you, I didn't**
21 **remember. I don't remember it now. There was a**
22 **course -- there was a discussion about courses.**
23 **I think there might have been more than one.**
24 **Two. I don't remember.**

1 **I remember that I thought that -- the**
2 **discussion was that there was more than one**
3 **course and that there might have been two and**
4 **that they could do -- they could do the job. I**
5 **don't remember the names because I don't, you**
6 **know, outside of North Hill I don't know too**
7 **many names of courses.**
8 **Q.** Do you recall yourself reviewing any of the
9 financial information being provided by either
10 CALM Golf or Johnson Golf?
11 **A.** **If I did it was very, very cursory in fashion.**
12 **I didn't see that I had any role in doing**
13 **anything other than interpreting the evaluation**
14 **data.**
15 **And at this point you're talking about**
16 **this decision and identifying the reasons for**
17 **the town manager's decision. So I don't -- to**
18 **answer it, I do not recall looking at any**
19 **financial data.**
20 **Q.** After Mr. MacDonald made the decision on the
21 15th of January 2009 --
22 **A.** **Excuse me. No. He did not make the decision on**
23 **the 15th of January.**
24 **Q.** Mr. MacDonald did not make the decision on

<p style="text-align: right;">77</p> <p>1 January 15th to award the contract?</p> <p>2 A. No. He made it on whatever day the meeting was.</p> <p>3 The decision was made. I was asked to draft</p> <p>4 something for his review. I drafted a document</p> <p>5 for his review. It was signed, I believe, on</p> <p>6 the 15th if it says the 15th, but I don't think</p> <p>7 -- I don't know what -- I don't remember the day</p> <p>8 the decision was made.</p> <p>9 Q. But he certainly didn't convey to CALM Golf that</p> <p>10 they had won the contract before that letter was</p> <p>11 signed, did he?</p> <p>12 A. I had no idea what he did.</p> <p>13 Q. Do you recall receiving a settlement proposal</p> <p>14 from my office on January 16, 2009?</p> <p>15 A. I don't remember any dates. I remember</p> <p>16 receiving some documents.</p> <p>17 MR. KREIGER: I didn't hear that answer.</p> <p>18 (The answer was read back.)</p> <p>19 MR. FOLLANSBEE: Could I have this</p> <p>20 marked.</p> <p>21 (Exhibit No. 11 ID marked.)</p> <p>22</p> <p>23 (Recess taken.)</p> <p>24</p>	<p style="text-align: right;">79</p> <p>1 MR. KREIGER: So that's a yes or no</p> <p>2 question to start with. Not privileged.</p> <p>3 MR. GILL: So, let's see --</p> <p>4 A. I'm not sure I understand what the question is,</p> <p>5 to verify.</p> <p>6 Q. Well, for instance, at the bottom of it, at the</p> <p>7 bottom of Page 1 in my letter I indicate to you</p> <p>8 that CALM Golf is not presently managing any</p> <p>9 golf courses.</p> <p>10 Did you endeavor to find out whether or</p> <p>11 not that was accurate information or whether the</p> <p>12 information that you had received in the week</p> <p>13 before that from Mr. Cushing, that they were</p> <p>14 running Rockland, obviously one of those is</p> <p>15 true, one of them isn't. Did you attempt to</p> <p>16 verify which one was true?</p> <p>17 MR. GILL: I just --</p> <p>18 MR. KREIGER: Objection.</p> <p>19 MR. GILL: Before he answers that, I</p> <p>20 think we have to step out and talk about the</p> <p>21 privilege issue.</p> <p>22 MR. FOLLANSBEE: Sure.</p> <p>23 MR. GILL: So if you'll excuse us for a</p> <p>24 minute.</p>
<p style="text-align: right;">78</p> <p>1</p> <p>2 Q. Referring to what's been now marked as Exhibit</p> <p>3 Number 11, do you recall receiving this</p> <p>4 settlement proposal from my office?</p> <p>5 A. I do.</p> <p>6 Q. And the date of it is one day after the written</p> <p>7 decision by Mr. MacDonald, correct?</p> <p>8 A. Well, that's the date of the document. I don't</p> <p>9 know whether that's the date he received it.</p> <p>10 Q. Now, with regard to the information in this</p> <p>11 letter, did you ever attempt to verify whether</p> <p>12 or not the letter was accurate?</p> <p>13 MR. GILL: Now, does that come within the</p> <p>14 privilege? I don't know what your answer is.</p> <p>15 Does that come into the privilege?</p> <p>16 THE WITNESS: Yeah. I would have to say</p> <p>17 the settlement proposal litigation, I would be</p> <p>18 concerned about violating the selectmen's</p> <p>19 directive to me about the privilege.</p> <p>20 MR. KREIGER: I'm not sure. Depending on</p> <p>21 what the answer is. Your question is did he do</p> <p>22 anything to verify --</p> <p>23 MR. FOLLANSBEE: The information</p> <p>24 contained in the letter.</p>	<p style="text-align: right;">80</p> <p>1 MR. KREIGER: My objection is independent</p> <p>2 of the privilege issue. Just a regular</p> <p>3 objection.</p> <p>4</p> <p>5 (Recess taken.)</p> <p>6</p> <p>7 MR. GILL: All right. On examination I</p> <p>8 believe that the answer would violate the</p> <p>9 instruction given by the selectmen.</p> <p>10 MR. FOLLANSBEE: Well, we have</p> <p>11 selectmen's counsel here so why don't I have</p> <p>12 them weigh in on that.</p> <p>13 MR. KREIGER: Well, I guess I'd like to</p> <p>14 go question by question. At some point I'll</p> <p>15 weigh in more broadly perhaps, but certainly the</p> <p>16 current question is whether Mr. Troy did</p> <p>17 anything to verify the statements in the last</p> <p>18 paragraph of Page 1 of Exhibit 11, correct?</p> <p>19 MR. FOLLANSBEE: That is correct.</p> <p>20 MR. KREIGER: The answer to that question</p> <p>21 is not privileged.</p> <p>22 MR. GILL: Well, the problem with that is</p> <p>23 that the answer indicates whether there's a</p> <p>24 communication, and it says in the letter</p>

<p style="text-align: center;">81</p> <p>1 extending to communications concerning</p> <p>2 litigation or litigation strategy. So I don't</p> <p>3 think we can answer the question.</p> <p>4 My suggestion is that we move on, we can</p> <p>5 rediscuss it at lunch and come back to it if you</p> <p>6 want. There's no point wasting a lot of time at</p> <p>7 this point. Does that make sense to you?</p> <p>8 MR. FOLLANSBEE: Let me ask a couple</p> <p>9 more, then we'll follow that lead.</p> <p>10 Q. (By Mr. Follansbee) The second to last paragraph</p> <p>11 on Page 1.</p> <p>12 MR. FOLLANSBEE: I'm sorry.</p> <p>13 MR. KREIGER: Go ahead.</p> <p>14 Q. On the second to last paragraph on Page 1.</p> <p>15 MR. GILL: We're talking about Exhibit</p> <p>16 11?</p> <p>17 MR. FOLLANSBEE: Exhibit 11.</p> <p>18 Q. The indication in the letter is that the golf</p> <p>19 course at Rockland is being run by a different</p> <p>20 company called C.P.L. and they're in bankruptcy.</p> <p>21 Did you do anything to verify whether that</p> <p>22 information was accurate?</p> <p>23 MR. GILL: I think the answer would be</p> <p>24 the same.</p>	<p style="text-align: center;">83</p> <p>1 that either one of you, absent a showing from</p> <p>2 you that you have the power or authority to</p> <p>3 change what the town has voted, if you have some</p> <p>4 document to suggest that there's been a change</p> <p>5 in this, show it to me and I'll be sure to look</p> <p>6 at it.</p> <p>7 MR. KREIGER: Well, two things. First of</p> <p>8 all, I keep saying the initial questions are</p> <p>9 just yes or no questions that don't conceivably</p> <p>10 violate any privilege.</p> <p>11 Second of all is, although this comes in</p> <p>12 the context of a settlement letter, this is not</p> <p>13 what I would consider discussion about the</p> <p>14 litigation. This is a discussion about facts</p> <p>15 about the bidders, the public bidding process,</p> <p>16 which discussions about that process and the</p> <p>17 course of that process were waived by the</p> <p>18 selectmen.</p> <p>19 And as I understand the selectmen's vote,</p> <p>20 I was there for it, I drafted the language of</p> <p>21 that waiver, that partial waiver, the questions</p> <p>22 that are being asked call for information as to</p> <p>23 which privilege has been waived.</p> <p>24 MR. GILL: Okay. So let's move on.</p>
<p style="text-align: center;">82</p> <p>1 MR. FOLLANSBEE: Well --</p> <p>2 MR. KREIGER: Let me cut through this. I</p> <p>3 don't think the answer to either of those</p> <p>4 questions are privileged. Those are yes or no.</p> <p>5 Questions to start with, I think we can get</p> <p>6 that. It may involve conversations, but let's</p> <p>7 get there.</p> <p>8 MR. FOLLANSBEE: So I think the privilege</p> <p>9 is waived.</p> <p>10 A. I can't --</p> <p>11 MR. GILL: I don't think it's waived.</p> <p>12 We'll talk about it at lunch and come back after</p> <p>13 and see whether the position is changed or not.</p> <p>14 MR. KESTEN: Excuse me. It's not your</p> <p>15 privilege to waive. It's the town's. It's not</p> <p>16 up to you, Mr. Gill, nor Mr. Troy. It's up to</p> <p>17 the town which is represented by Mr. Kreiger</p> <p>18 here, so it's not yours to waive or to invoke.</p> <p>19 MR. GILL: Normally I would agree with</p> <p>20 you if it's a private party. In this case it's</p> <p>21 a public entity and the public entity has taken</p> <p>22 a vote.</p> <p>23 That vote is at least in large part an</p> <p>24 instruction to this witness, and I don't believe</p>	<p style="text-align: center;">84</p> <p>1 We'll talk about it at lunch.</p> <p>2 MR. EDGE: Steve, can you simply change</p> <p>3 the question so that it's not referencing the</p> <p>4 fact that it's in the settlement proposal?</p> <p>5 Simply ask the question has he reviewed whether</p> <p>6 CALM provided unaudited financial statements.</p> <p>7 That has nothing to do with the settlement</p> <p>8 proposal. Just change the question.</p> <p>9 MR. FOLLANSBEE: Why didn't you speak up</p> <p>10 earlier?</p> <p>11 MR. EDGE: Just change the question to</p> <p>12 get the facts, not about the settlement proposal</p> <p>13 itself.</p> <p>14 Q. (By Mr. Follansbee) Did you ever make an inquiry</p> <p>15 as to whether or not the Rockland Golf Course,</p> <p>16 C.P.L., Inc., was in bankruptcy?</p> <p>17 MR. GILL: Now, you know, I don't think</p> <p>18 that solves the problem.</p> <p>19 MR. FOLLANSBEE: Let me rephrase it.</p> <p>20 Q. Did you ever look at the court records in the</p> <p>21 bankruptcy court to determine whether or not</p> <p>22 C.P.L., Inc. was in bankruptcy?</p> <p>23 A. I did not.</p> <p>24 Q. Did you ever make a determination yourself as to</p>

<p style="text-align: right;">85</p> <p>1 whether CALM Golf was operating the Rockland 2 Golf Course? 3 A. I did not. 4 Q. Did you ever look at the non-price proposal by 5 CALM Golf in order to determine whether or not 6 they had any assets? 7 A. If I did, as I said earlier, it would just be a 8 cursory examination. 9 Q. At some point much later you came to a 10 determination that CALM Golf didn't have any 11 assets, correct? 12 A. At some point subsequent during the litigation I 13 reviewed information relating to financial. 14 Q. And you made a determination yourself much later 15 than this that CALM Golf had no assets, correct? 16 A. I didn't make any determination. 17 MR. KREIGER: Objection. 18 A. The town manager -- anything with respect to any 19 determinations about the award or whether the 20 award should be in any way varied or voided, 21 that was made by the town manager. And whether 22 the town manager upon receipt of this document 23 made any inquiry, I don't know. You'd have to 24 ask him.</p>	<p style="text-align: right;">87</p> <p>1 the board of selectmen about the information 2 contained in Exhibit Number 11? 3 A. That information -- 4 MR. GILL: That would just be yes or no. 5 A. Yes. 6 Q. Do you know when you had that discussion? 7 A. I don't. I can't remember. 8 Q. Do you recall if you had that discussion before 9 the parties went back to Judge Smith in 10 Middlesex Superior Court in late January? 11 A. I don't. 12 Q. Now, you remember a subsequent hearing in front 13 of Judge Smith, I believe it was January 27, 14 2009, where the issue of an injunction was 15 argued? Do you recall that? 16 A. I do. 17 Q. And do you recall representing to the Court at 18 that hearing that the expression comparable 19 business enterprise had been authored by a 20 consultant hired by the town? 21 A. I'd have to see it. If you're referring to 22 anything that I said, I need to look at it. 23 Q. All right. 24 A. The passage.</p>
<p style="text-align: right;">86</p> <p>1 Q. I did. 2 A. Okay. 3 Q. Were you concerned yourself, when you received 4 the information from my office in this letter, 5 did you have a concern yourself that something 6 was amiss with CALM Golf's proposal? 7 A. I forwarded the information to the town manager 8 and it was discussed. 9 Q. Well, absent the discussion that you had with 10 anybody, when you looked at this information 11 yourself knowing that a day earlier or several 12 days earlier the award letter had been written 13 to CALM Golf, did you have concerns based on the 14 information I provided to your office that there 15 was something wrong with that decision? 16 MR. GILL: Objection. 17 A. There were issues raised that I thought should 18 be considered by the town. I forwarded them to 19 the town manager and I discussed them with the 20 town manager, and I think at some point these 21 issues came before the board of selectmen. 22 Q. That was -- you anticipated my next question. 23 Did you discuss -- I don't want the substance of 24 the discussion. Did you have a discussion with</p>	<p style="text-align: right;">88</p> <p>1 MR. FOLLANSBEE: I'd ask that be marked 2 as the next exhibit. 3 (Exhibit No. 12 ID marked.) 4 A. What page? 5 Q. I'll get you a page in a minute. Page 22, if 6 you look at line 16 and 17. 7 Now, at that point you were telling Judge 8 Smith that the town hired a consultant and 9 that's why they talk about comparable business 10 enterprise, because it was the consultant that 11 did that, correct? 12 MR. GILL: Objection. 13 MR. COVINO: Objection. 14 A. No, that's not correct. 15 Q. Please correct me. 16 A. Actually, what I'm talking about here, I'm not 17 talking about one or two sentences, I'm bringing 18 to the attention of the Court that you have 19 consistently misrepresented the amount of money 20 that CALM Golf bid. 21 Because throughout this transcript you 22 said that CALM Golf bid \$300,000 and you talk 23 about a gap between that and another bid. That 24 was not correct. It was \$300,000, and I don't</p>

<p style="text-align: center;">89</p> <p>1 know what the percentage is but I say here five</p> <p>2 percent, so I'm correcting that.</p> <p>3 And then I talk about other instances</p> <p>4 where you've only read a portion of the RFP, and</p> <p>5 the part of the RFP you read was about the</p> <p>6 proposer managing one golf course, but you</p> <p>7 neglected to bring up the fact that the RFP</p> <p>8 actually, as we noted earlier, said a person</p> <p>9 managing a golf course or a comparable business</p> <p>10 enterprise.</p> <p>11 The sentence that you refer to simply</p> <p>12 refers to the fact that the town, which I</p> <p>13 believed at the time to be true, it hired a</p> <p>14 consultant to assist in the procurement process</p> <p>15 because they wanted to open it up to people</p> <p>16 other than people running municipal golf</p> <p>17 courses. I do not say at any point here that</p> <p>18 the consultant created that phrase.</p> <p>19 Q. Well, on line 19 when you say, "And for that</p> <p>20 reason, that's why they talk about comparable</p> <p>21 business experience," who are you referring to</p> <p>22 as the they?</p> <p>23 A. I'm talking about the RFP.</p> <p>24 Q. The RFP is talking about comparable business</p>	<p style="text-align: center;">91</p> <p>1 people from the North Hill Committee and</p> <p>2 selectmen.</p> <p>3 It was documented in a series of e-mails</p> <p>4 that took place during the approximate ten-day</p> <p>5 time in which the RFP was drafted. It had been</p> <p>6 represented to the North Hill Committee that an</p> <p>7 independent consultant was hired and that</p> <p>8 Mr. Cushing was going to meet with the</p> <p>9 independent consultant in early 2008.</p> <p>10 I had discussions with the town manager</p> <p>11 and Mr. Cushing at my meeting that the</p> <p>12 consultant had been hired and it was going to be</p> <p>13 referred to someone who had experience in golf</p> <p>14 course procurements.</p> <p>15 And at the date of this hearing no one</p> <p>16 had given me any information to the contrary, so</p> <p>17 I believed that the town had hired a consultant.</p> <p>18 Usually when a consultant works for an entity,</p> <p>19 they're hired. They don't do it for free. That</p> <p>20 the consultant had reviewed, and in effect,</p> <p>21 approved the RFP.</p> <p>22 Q. Had there ever been an RFP to hire a consultant?</p> <p>23 A. I had no part of that if there had been one at</p> <p>24 town hall. I don't know the -- I don't know the</p>
<p style="text-align: center;">90</p> <p>1 experience?</p> <p>2 A. Right.</p> <p>3 Q. And those were your words that you added to the</p> <p>4 RFP, correct?</p> <p>5 A. Those were words that I added at the instruction</p> <p>6 of the town.</p> <p>7 Q. Did you tell Judge Smith that the expression</p> <p>8 comparable business enterprise was added by you</p> <p>9 at the direction of the town or were you --</p> <p>10 A. It wasn't asked. There was no inquiry about</p> <p>11 that.</p> <p>12 Q. Who's the consultant that you hired or you</p> <p>13 thought you hired?</p> <p>14 MR. COVINO: Objection.</p> <p>15 MR. GILL: Objection. There's no</p> <p>16 testimony that he hired a consultant.</p> <p>17 MR. FOLLANSBEE: The town. I'm sorry.</p> <p>18 You're right.</p> <p>19 Q. Who is the consultant that you told the Court</p> <p>20 that the town had hired?</p> <p>21 A. Well, at the time that this hearing was held I</p> <p>22 believed that the town had hired a consultant.</p> <p>23 And that belief was shared by many people who</p> <p>24 had participated in the process, including</p>	<p style="text-align: center;">92</p> <p>1 answer to that.</p> <p>2 Q. When you stated that the town had hired a</p> <p>3 consultant, this was in 2009, when did you find</p> <p>4 out that the town actually hadn't hired a</p> <p>5 consultant?</p> <p>6 A. I found out that for the first time, that the</p> <p>7 information I gave the Court -- incidentally,</p> <p>8 Mr. Cushing and Mr. MacDonald were in the</p> <p>9 courtroom on this day. I did not receive any</p> <p>10 information from either of them that anything I</p> <p>11 said was incorrect.</p> <p>12 I found out for the first time that a</p> <p>13 consultant in effect had not done everything</p> <p>14 that I believed it had done during the course of</p> <p>15 this litigation.</p> <p>16 Q. Do you know when --</p> <p>17 MR. KREIGER: Can I -- I know we're</p> <p>18 reserving motions to strike. Can we get an</p> <p>19 answer to the question you just asked.</p> <p>20 MR. FOLLANSBEE: When he first found out?</p> <p>21 MR. KREIGER: When did you first find out</p> <p>22 the town hadn't hired a consultant. It's a</p> <p>23 question. I'm requesting --</p> <p>24 MR. FOLLANSBEE: I'm going to ask the</p>

<p style="text-align: right;">93</p> <p>1 same question.</p> <p>2 MR. COVINO: I'd object because it's got</p> <p>3 to be established that he actually found out</p> <p>4 first. Let's start there.</p> <p>5 Q. Have you subsequent to 2009 --</p> <p>6 MR. KESTEN: I don't object. I approve</p> <p>7 of the question.</p> <p>8 Q. Did you find out at some point that the town</p> <p>9 never hired a consultant to do any work on this</p> <p>10 RFP?</p> <p>11 A. I found out in increasing amounts of disclosure</p> <p>12 what the town had done, and that took place from</p> <p>13 a period of time in which I received some</p> <p>14 information about the fact about the</p> <p>15 consultant's role following, in October of 2010,</p> <p>16 following remarks I made at a public meeting.</p> <p>17 And I received additional information which I</p> <p>18 was never able to verify during this litigation,</p> <p>19 and in particular, recently in the last three or</p> <p>20 four months.</p> <p>21 Q. So is it your -- just so I'm clear, is it your</p> <p>22 testimony that prior to October of 2010 you had</p> <p>23 no information at all that the town had not</p> <p>24 hired a consultant?</p>	<p style="text-align: right;">95</p> <p>1 with the entire procurement document."</p> <p>2 That isn't true, is it?</p> <p>3 A. In my opinion, it is correct. That's a correct</p> <p>4 statement. There is not -- what I was referring</p> <p>5 to, town hall, town hall is a building.</p> <p>6 If you're asking me to whom I was</p> <p>7 referring, I was referring to the board of</p> <p>8 selectmen and the town manager, particularly</p> <p>9 with respect to allegations of conspiracy.</p> <p>10 And I was, when I'm speaking about in the</p> <p>11 sentence immediately proceeding, and I'm simply</p> <p>12 saying that the selectmen and the board of</p> <p>13 selectmen and the town manager did not</p> <p>14 participate in any conspiracy and they did not</p> <p>15 have any input -- not any input. Strike that.</p> <p>16 They did not have anything in the procurement</p> <p>17 document.</p> <p>18 And I think that is a correct statement.</p> <p>19 I don't think there's one portion of the</p> <p>20 procurement document that either the town</p> <p>21 manager or the board of selectmen inserted.</p> <p>22 Q. What input was there from the procurement</p> <p>23 company down in Plymouth?</p> <p>24 A. Well, at the time I believed that the</p>
<p style="text-align: right;">94</p> <p>1 A. I didn't have any information, no.</p> <p>2 Q. And with regard to the statement that a</p> <p>3 consultant had drafted the entire document --</p> <p>4 MR. GILL: Where are you looking?</p> <p>5 A. What is that statement?</p> <p>6 Q. That's a statement that you made before the</p> <p>7 selectmen in October of 2010.</p> <p>8 A. I'd have to see the statement once again.</p> <p>9 Q. Okay.</p> <p>10 MR. FOLLANSBEE: Next exhibit.</p> <p>11 (Exhibit No. 13 ID marked.)</p> <p>12 A. What page?</p> <p>13 Q. Towards the back of the document, it's Page 64</p> <p>14 and 65 on the small numbering system.</p> <p>15 A. Okay.</p> <p>16 MR. GILL: You're talking about the</p> <p>17 underlined portions?</p> <p>18 MR. FOLLANSBEE: Yes. It goes over two</p> <p>19 pages.</p> <p>20 Q. Have you had a chance to review that, sir?</p> <p>21 A. I have.</p> <p>22 Q. And this statement is a little more detailed and</p> <p>23 in it you say that, on the top of Page 65, "The</p> <p>24 honest answer is town hall had nothing to do</p>	<p style="text-align: right;">96</p> <p>1 procurement company in Plymouth had worked with</p> <p>2 the Recreation Director who I knew, everyone in</p> <p>3 the room knew, he had produced the document to</p> <p>4 review and design the RFP.</p> <p>5 Q. In line 14 and 15 on Page 65, and I'm quoting,</p> <p>6 "So what happened was that company designed the</p> <p>7 RFP completely."</p> <p>8 That isn't true, is it?</p> <p>9 A. When you send a document to a consultant, the</p> <p>10 consultant reviews the document, approves the</p> <p>11 document, and in my view has designed the RFP.</p> <p>12 Yes. That's why you use a consultant.</p> <p>13 Q. So it's your testimony that if Mr. Gordon had</p> <p>14 written the entire RFP himself and sent it to</p> <p>15 somebody in Plymouth and got no information back</p> <p>16 from them, it's your testimony that that company</p> <p>17 designed the RFP completely?</p> <p>18 MR. GILL: Objection.</p> <p>19 Q. Is that it?</p> <p>20 MR. GILL: Objection.</p> <p>21 A. No. My testimony is that when you have a</p> <p>22 document like an RFP and you send it to a</p> <p>23 consultant and the consultant reviews the</p> <p>24 document, that the consultant in effect has</p>

1 **designed the RFP, has approved it, yes.**
 2 **Q.** Now, actually, do you know the name of that
 3 person that's down in Plymouth?
 4 **A.** **I've seen it. I don't know it.**
 5 **Q.** When you say at the bottom of Page 64, "I know
 6 they're in Plymouth to design those," who did
 7 you think was in Plymouth?
 8 **A.** **I actually didn't know the identity of the**
 9 **consultant, except that it was referred to as**
 10 **the RFP lady, I believe. And there -- I had**
 11 **been told that there was someone in Plymouth**
 12 **that was going to be reviewing and providing**
 13 **services to the town with respect to that.**
 14 **Q.** Who told you that?
 15 **A.** **At the meeting with the town manager and**
 16 **Recreation Director. I believe the Recreation**
 17 **Director was the person who provided that**
 18 **information.**
 19 **Q.** When you say at the meeting, when did this
 20 meeting take place?
 21 **A.** **In the meeting in early September of 2008. And**
 22 **as I said, in the chain of e-mails there was a**
 23 **representation that it was sent to the same**
 24 **person. They called the person RFP lady, and**

1 **there's repeated references to that fact.**
 2 **Q.** Do you include yourself as somebody in town
 3 hall?
 4 **A.** **No.**
 5 **Q.** Do you include Gordon Cushing as somebody in
 6 town hall?
 7 **A.** **No.**
 8 **Q.** Why isn't Gordon Cushing someone in town hall?
 9 **A.** **He's not at town hall.**
 10 **Q.** Who does he work for?
 11 **A.** **He works for the town but he's in a different**
 12 **building.**
 13 **I specifically was referring to the**
 14 **allegations of conspiracy that had been made**
 15 **against the board of selectmen and the town**
 16 **manager, and I was simply pointing out there was**
 17 **nothing in the RFP that reflects any**
 18 **participation by them in terms of the content of**
 19 **the RFP. The only part of the RFP that the**
 20 **selectmen had talked about putting in, which was**
 21 **eliminating the practice driving range facility.**
 22 **Q.** That was from Ms. Sullivan, right?
 23 **A.** **I think both Ms. Sullivan and Mr. Martecchini**
 24 **both discussed. That was taken out of the**

1 **document.**
 2 **Q.** So that wouldn't be input?
 3 **A.** **The question isn't input. It's a question of**
 4 **what is actually in the RFP.**
 5 **Q.** Well, you say they had no input.
 6 **A.** **No. I do not say they had no input. I say they**
 7 **have no input that's reflected in the substance**
 8 **of the document. That's what I'm saying.**
 9 **Q.** Now, you indicate that there were allegations
 10 that the selectmen were involved in a
 11 conspiracy. When were those allegations?
 12 **A.** **The allegations had been that the town of**
 13 **Duxbury was sued by Johnson Golf since early**
 14 **2009 as being part of the conspiracy.**
 15 **Q.** But there were no specific allegations ever made
 16 against anybody on the board of selectmen, were
 17 there?
 18 **A.** **I think the board of selectmen felt that the**
 19 **allegations were directed at them and at the**
 20 **town and they are the chief executives of the**
 21 **town.**
 22 **Q.** But you're not aware of any specific allegation
 23 on the part of Johnson Golf suggesting that the
 24 board of selectmen was involved in a conspiracy,

1 are you?
 2 **A.** **I have never really understood that Johnson Golf**
 3 **has ever specified any person within the town of**
 4 **Duxbury, any officer, any person that was**
 5 **specifically involved in the conspiracy.**
 6 **I think the town of Duxbury and all its**
 7 **officials had been named as defendants by virtue**
 8 **of the fact that they're corporate officers of**
 9 **the town. The town has been sued and accused of**
 10 **conspiracy.**
 11 **Q.** Well, they've been more precisely accused of
 12 rigging the bid, correct?
 13 **A.** **I don't know whether that's more precise or**
 14 **less.**
 15 **Q.** Well, that's the nature of the complaint, isn't
 16 it?
 17 **A.** **I couldn't really characterize it.**
 18 **MR. FOLLANSBEE: Might be a good time to**
 19 **break for lunch.**
 20 **MR. GILL: Okay.**
 21 **MR. KREIGER: Back at two o'clock?**
 22 **MR. FOLLANSBEE: Yeah. That's fine.**
 23
 24

(Recess taken.)

<p style="text-align: right;">101</p> <p>1</p> <p>2</p> <p>3</p> <p>4 (Exhibits No. 14-16 ID marked.)</p> <p>5 Q. Going back to Exhibit Number 11.</p> <p>6 MR. KREIGER: Actually, I'm sorry, can we</p> <p>7 put that on the record that there's going to</p> <p>8 be --</p> <p>9 (Discussion off the record.)</p> <p>10 MR. FOLLANSBEE: Going back on the</p> <p>11 record.</p> <p>12 Having had a chance to consider the</p> <p>13 privilege issue at lunch, is there a change in</p> <p>14 anybody's position regarding my questions on</p> <p>15 Exhibit Number 11?</p> <p>16 MR. GILL: Mr. Kreiger and I didn't get</p> <p>17 an opportunity to discuss that at lunch.</p> <p>18 MR. FOLLANSBEE: Would you like an</p> <p>19 opportunity to discuss it now?</p> <p>20 MR. GILL: No. I think you've indicated</p> <p>21 you're hoping to move it along so we'll do it in</p> <p>22 a discussion.</p> <p>23 MR. FOLLANSBEE: I'm moving this along</p> <p>24 but I'm reserving all my questions on this to</p>	<p style="text-align: right;">103</p> <p>1 evaluation forms from the January 2009 RFP</p> <p>2 process, and Exhibit 16 is a copy of Exhibit 11</p> <p>3 from Mr. Lanzetta's deposition. I'll get</p> <p>4 everybody copies of the three exhibits.</p> <p>5 In reverse order, this is 16. That</p> <p>6 should have been 15, the one I just handed out.</p> <p>7 MR. GILL: So what have we re-marked as</p> <p>8 Lanzetta Exhibit 11?</p> <p>9 MR. FOLLANSBEE: That is Number 16, and</p> <p>10 Number 14 would be 30B6. Here's a copy and</p> <p>11 here's the original.</p> <p>12 MR. GILL: 30B is 14, you said?</p> <p>13 MR. FOLLANSBEE: Correct.</p> <p>14 Q. (By Mr. Follansbee) Sir, directing your</p> <p>15 attention to Exhibit 14 which is a copy of 30B6,</p> <p>16 Chapter 30B6, was it your testimony earlier</p> <p>17 today that the statute was specific as to the</p> <p>18 language to be used in the composite ratings?</p> <p>19 A. It was my testimony that I believe that 30B --</p> <p>20 or maybe it's in the manual that I had seen</p> <p>21 something that indicated that the ratings are</p> <p>22 supposed to use the same categories. Because it</p> <p>23 talks about a rating in number 1, the highly</p> <p>24 advantageous, then it says a composite rating</p>
<p style="text-align: right;">102</p> <p>1 come back until there's a resolution.</p> <p>2 MR. GILL: I understand.</p> <p>3 MR. KREIGER: I had no idea Mr. Gill</p> <p>4 wanted to talk to me over lunch. I thought he</p> <p>5 wanted to talk about it with Mr. Troy.</p> <p>6 We were at the same restaurant. I was</p> <p>7 available for the entire hour, so I had no idea</p> <p>8 that he wanted to talk to me. We could have had</p> <p>9 a conversation that would have been productive.</p> <p>10 MR. GILL: I don't really want to go down</p> <p>11 this road. I didn't know you were in the same</p> <p>12 restaurant until we were walking out to get back</p> <p>13 here, but actually, by that time I had forgotten</p> <p>14 about it. You didn't raise it, and it's on the</p> <p>15 record that we were going to talk.</p> <p>16 MR. KREIGER: Not that we were going to</p> <p>17 talk, that you were going to talk about it with</p> <p>18 your client.</p> <p>19 MR. GILL: Let's not go down this road.</p> <p>20 MR. KREIGER: I'm afraid we're down it.</p> <p>21 MR. FOLLANSBEE: We've marked three more</p> <p>22 exhibits, Exhibits 14, 15 and 16.</p> <p>23 Exhibit 14 is a copy of Chapter 30B,</p> <p>24 Section 6, Exhibit 15 is the non-price</p>	<p style="text-align: right;">104</p> <p>1 for each proposal.</p> <p>2 And I actually interpret the statute, and</p> <p>3 I think the manual, that the composite rating is</p> <p>4 supposed to be in the same terminology.</p> <p>5 Q. But that's not what it says, correct?</p> <p>6 A. Well, it says for each evaluation criteria a</p> <p>7 rating of each proposal is highly advantageous,</p> <p>8 advantageous, not advantageous or unacceptable,</p> <p>9 and the reasons for the rating. Then it says 2,</p> <p>10 a composite rating for each proposal and the</p> <p>11 reason for rating.</p> <p>12 In reading 1 and 2 together I conclude,</p> <p>13 and I'd have to look at the manual to see</p> <p>14 whether there's something in the manual about</p> <p>15 that that concludes that and/or that defines the</p> <p>16 composite rating as using the same category,</p> <p>17 otherwise, if that's not the case, the composite</p> <p>18 rating would have no standard, and I think the</p> <p>19 big problem is with the statute.</p> <p>20 Q. Well, when you consulted with the Inspector</p> <p>21 General's office about what to do about the</p> <p>22 first RFP process, where were you when you made</p> <p>23 the phone calls?</p> <p>24 A. I don't know that.</p>

<p style="text-align: right;">105</p> <p>1 Q. Did you call from your office?</p> <p>2 A. I don't know. I just -- I already told you that</p> <p>3 sometime between November 26th and December 2nd</p> <p>4 before the action was taken I consulted with the</p> <p>5 Inspector General's office. I don't recall</p> <p>6 where.</p> <p>7 I told you that I had a memory but it's</p> <p>8 not -- I'm not certain because I'm not sure</p> <p>9 that's the same event that I remember, that I</p> <p>10 did make a call from town hall. I left the room</p> <p>11 with Mr. MacDonald and Mr. Cushing, but I'm not</p> <p>12 positive that's the day so I can't answer that</p> <p>13 question.</p> <p>14 Q. Do you use a cell phone?</p> <p>15 A. I don't know what kind of phone I used.</p> <p>16 Q. No. I said do you customarily use a cell phone?</p> <p>17 A. I do.</p> <p>18 MR. FOLLANSBEE: I'd ask this be marked</p> <p>19 as the next exhibit.</p> <p>20 (Exhibit No. 17 ID marked.)</p> <p>21 MR. GILL: This is 17?</p> <p>22 MR. FOLLANSBEE: 17.</p> <p>23 Q. Sir, did you have a chance to examine Exhibit</p> <p>24 17?</p>	<p style="text-align: right;">107</p> <p>1 General is stating on May 14, 2012 that that was</p> <p>2 the first contact made by the town to the</p> <p>3 Inspector General's office concerning the RFP</p> <p>4 process at North Hill?</p> <p>5 MR. COVINO: Objection.</p> <p>6 A. Well, no. All this letter says is that the</p> <p>7 first contact made to the office by JGM, which I</p> <p>8 assume is Johnson Golf Management, was a letter</p> <p>9 of protest on December 9th, and I think I</p> <p>10 received some notification of that.</p> <p>11 And it says that the town's first contact</p> <p>12 was made the same day. That's their records of</p> <p>13 when Johnson Golf Management and the town</p> <p>14 discussed, I guess, different issues.</p> <p>15 Q. Well, but they indicate that no contact had been</p> <p>16 made by the town of Duxbury prior to that.</p> <p>17 MR. COVINO: Objection.</p> <p>18 A. They don't indicate that. They indicate what</p> <p>19 their records show. And as I told you</p> <p>20 previously, I made an inquiry, a general</p> <p>21 inquiry.</p> <p>22 I did not make an inquiry on behalf of</p> <p>23 the town of Duxbury, because the town had an</p> <p>24 award under consideration and I wanted</p>
<p style="text-align: right;">106</p> <p>1 A. I have.</p> <p>2 Q. Do you have any memory now about Jessica Burgess</p> <p>3 being with your firm in December of 2008?</p> <p>4 A. It appears that she was employed by my firm at</p> <p>5 that time.</p> <p>6 Q. And the reference to her calling about the</p> <p>7 Public Records Law, is that consistent with your</p> <p>8 memory of how the transactions were going on in</p> <p>9 December of 2008?</p> <p>10 MR. KREIGER: Objection.</p> <p>11 A. I don't understand that question.</p> <p>12 Q. Maybe it wasn't a good question.</p> <p>13 Do you recall my office and Attorney Edge</p> <p>14 making FOIA requests for public records</p> <p>15 pertaining to the process at the North Hill</p> <p>16 Country Club, the RFP process in 2008?</p> <p>17 A. I recall that you made a request, and I believe</p> <p>18 Attorney Edge did for the non-price and the</p> <p>19 price proposals.</p> <p>20 Q. Did you ever speak to Attorney Burgess to have</p> <p>21 her inquire about the Public Records Law to the</p> <p>22 Inspector General's office?</p> <p>23 A. I could have.</p> <p>24 Q. Do you have any explanation why the Inspector</p>	<p style="text-align: right;">108</p> <p>1 information in which we could judge the criteria</p> <p>2 on the documentation that the town had received.</p> <p>3 And so I did not call, I already</p> <p>4 testified, on behalf of the town of Duxbury, nor</p> <p>5 did I call about the North Hill. I had general</p> <p>6 questions about the areas, and I've already</p> <p>7 identified to you the three or four areas that I</p> <p>8 have a memory that we spoke about.</p> <p>9 Q. Do you recall how many times between</p> <p>10 Thanksgiving of 2008 and January 30th of 2009</p> <p>11 you spoke to the IG's office yourself of this?</p> <p>12 A. Myself or my office?</p> <p>13 Q. Just yourself about the process --</p> <p>14 A. No.</p> <p>15 Q. -- at North Hill.</p> <p>16 A. I had, about North Hill, after the December 9th</p> <p>17 date, I had numerous calls back and forth to the</p> <p>18 Inspector General's office. The town manager</p> <p>19 instructed me to work in tandem with the</p> <p>20 Inspector General's office, and at various times</p> <p>21 where there were critical points I would speak</p> <p>22 to the Inspector General's office numerous times</p> <p>23 during one day.</p> <p>24 I have no idea how many. I don't have</p>

<p style="text-align: right;">109</p> <p>1 any specific number that I can tell you right 2 now, but there was a considerable amount of 3 interaction between the Inspector General's 4 office and my office by telephone. 5 Q. Do you know anybody at the Inspector General's 6 office that you spoke to? 7 A. Do I know them? 8 Q. Do you know a name of anyone you spoke to? 9 A. I spoke to -- I don't -- I can't recall the 10 names off the top of my head. I know I spoke -- 11 I can recall John Craven. I spoke to him 12 numerous times. And as a matter of fact, he 13 called me a number of times, because I believe 14 there were two protests by Johnson Golf during 15 the interim period of time. So I was calling 16 him for information, he was calling me for 17 information. 18 Q. When you say there were two protests, there were 19 two letters -- 20 A. Or two -- 21 Q. -- requesting an investigation? 22 A. Exactly. I understood. I never actually saw 23 the letters. 24 Q. And no investigation ever took place, correct?</p>	<p style="text-align: right;">111</p> <p>1 office regarding the background of CALM Golf and 2 the Rockland Golf Course, did you cross check 3 that information with anyone at the Inspector 4 General's office? 5 A. No. Mr. MacDonald received this communication 6 and he followed up on it. 7 Q. When you say Mr. MacDonald received the 8 communication, from my office? 9 A. This communication, yes. The letter January 10 16th indicates you had left him a handwritten 11 note, and I believe that he had called me about 12 that handwritten note prior to the time when I 13 received this letter. 14 Q. Well, what about the -- I'm talking more about 15 the other information in the letter regarding 16 the lack of assets of CALM Golf, material 17 misrepresentations by CALM Golf in their 18 proposal. Did you ever discuss any of those 19 issues with the Inspector General's office? 20 A. I did not because the award had been made. I 21 believe that you had raised those issues with 22 the Inspector General's office. 23 Q. Did you raise those issues with anybody in town 24 government other than Mr. MacDonald?</p>
<p style="text-align: right;">110</p> <p>1 A. The last -- not the last. There were two 2 letters. A communication about the first 3 investigation, I think, I received from 4 Mr. Craven because he had asked me to send 5 documents and he said he was going to contact 6 somebody, I don't know, in the Attorney General 7 something. I can't say from memory so I'm not 8 going to say. 9 And he -- when I was prepared to send the 10 documents, he informed me that the investigation 11 had been closed. 12 Q. Did he say anything else other than the 13 investigation was closed? 14 A. There was a lot of conversations. I mean, I 15 can't really remember them. There was a lot of 16 conversations. A lot of different issues, 17 because in the second process the town manager 18 had instructed me to cross check to the best 19 that I could if there was something legal, just 20 about legal, if there were legal issues, to 21 cross check it with the Inspector General. 22 Q. And now, when Mr. MacDonald told you to cross 23 check with the Inspector General, after you got 24 the information in Exhibit Number 11 from my</p>	<p style="text-align: right;">112</p> <p>1 MR. GILL: Now, I'm just going to caution 2 you about the privilege issue again. 3 MR. KREIGER: Can I -- 4 MR. FOLLANSBEE: Would you like to wait 5 on that? 6 MR. KREIGER: Well, there was no 7 instruction not to answer yet so let's -- no. 8 Actually, can I hear the question, and not just 9 that last one, the last two. 10 (The last two questions and answer were 11 read back.) 12 MR. GILL: So I caution you because I 13 don't know whether your answer calls for the 14 disclosure of information that it seeks from the 15 waiver as voted on by the selectmen. 16 MR. KREIGER: My view is that the answer 17 to that is going to be within the waiver. 18 MR. GILL: Respectfully, neither one of 19 us knows what the answer is. It is only the 20 witness, so he's going to have to make the call 21 on this one. 22 A. The answer to that question is I don't remember 23 at this time who I would have discussed it with 24 in addition to Mr. MacDonald. Obviously if</p>

<p style="text-align: right;">113</p> <p>1 someone from town government called me, and 2 sometimes the selectmen did, I would have talked 3 to them. I could have talked to Mr. Cushing 4 about it. 5 In the back of my mind without, you know, 6 remembering it specifically, I believe that I 7 discussed the contents of this letter with 8 Mr. Edge to get some type of response. 9 Q. Did you get a response from Mr. Edge? 10 A. I believe I discussed it with him, yes. 11 Q. What did Mr. Edge have to tell you? 12 A. I don't remember what Mr. Edge said. 13 MR. FOLLANSBEE: Could I have that marked 14 as the next exhibit, please. 15 (Exhibit No. 18 ID marked.) 16 Q. Now, directing your attention to Exhibit 18, 17 this is your itemized bill for professional 18 services from the period of January 5, 2009 19 through January 23, 2009. 20 Directing your attention to Page 2, on 21 January 12, 2009, was that the day where you had 22 the extensive meeting to review everything with 23 Gordon Cushing and Richard MacDonald at town 24 hall?</p>	<p style="text-align: right;">115</p> <p>1 A. No. They were the -- there was no 2 correspondence from the selectmen about who 3 should receive the contract, no. 4 Q. Was there any conversation with anybody -- I'm 5 sorry. 6 Was there any conversation as opposed to 7 correspondence between yourself and Elizabeth 8 Sullivan about whom she would like to see get 9 the award of the contract? 10 A. No. 11 Q. Was there any conversation with you and 12 Ms. Sullivan about her being unhappy with 13 Johnson Golf Management? 14 A. On that day? Is that what -- 15 Q. No. At any time. 16 A. Certainly after the lawsuit was filed. Many of 17 the town officials, including the selectmen, 18 were increasingly frustrated and unhappy with 19 the situation at North Hill. 20 Q. Now, the lawsuit was filed on the 12th of 21 December 2008. Was their frustrations evident 22 by a month later on January 12, 2009? 23 MR. GILL: Now, again, let me just 24 caution you on the privilege because it seems to</p>
<p style="text-align: right;">114</p> <p>1 A. It looks like it. 2 Q. And on that same day you reviewed the price 3 proposals of the various entities that were 4 bidding for the contract and the non-price 5 evaluation forms, correct? 6 A. Yes. 7 Q. It also indicates you reviewed correspondence 8 from two individuals, Elizabeth Sullivan and 9 Andre Martecchini. Do you know what that 10 correspondence was about? 11 A. No. I have no idea. 12 Q. Have they ever indicated to you that they had an 13 interest in what was going on up at North Hill? 14 A. What was going on at North Hill? 15 Q. Yes. 16 A. I don't understand the question. 17 Q. Well, you reviewed correspondence from them on 18 the same day that you met with Mr. Cushing and 19 Mr. MacDonald to make an award of the contract, 20 correct? 21 A. Yes. 22 Q. Were they corresponding with you about their 23 input as to who should receive the award of the 24 contract?</p>	<p style="text-align: right;">116</p> <p>1 me once the lawsuit's pending, there's a chance 2 to run afoul of the instruction from the 3 selectmen on privilege. On the other hand, 4 there may be communications which you had with 5 them that doesn't run afoul of it, so you'll 6 have to make that judgment. 7 A. Well, this is 2012. I don't remember any 8 conversations that happened in 2008. 9 Q. So you don't -- the conversations that you 10 described in November of 2008 were speculation? 11 You don't remember those? Because you had a 12 pretty specific conversation you were talking 13 about with Gordon Cushing and Mr. MacDonald 14 around Thanksgiving of 2008. 15 Is it now your testimony that you really 16 don't remember that conversation? 17 A. No. No. I remember conversations from 18 meetings. I don't call those conversations. I 19 remember discussions at meetings that I had with 20 respect to a number of matters. 21 You're asking me about unidentified 22 conversations over a period of time during 2008 23 with different members of the board of 24 selectmen, and I don't know. I wouldn't</p>

1 **remember any particular conversation.**
 2 **Q.** Were you surprised that Judge Smith issued an
 3 injunction in this case on February 2nd of 2009?
 4 MR. GILL: Objection.
 5 MR. COVINO: Objection.
 6 **A. No. I think that the discussion at the court**
 7 **indicated his concern about the course being**
 8 **kept open.**
 9 **Q.** Well, let me -- there were two appearances at
 10 the court on that subject, the first at the end
 11 of December was to keep the course open, the
 12 second on February 2nd of 2009.
 13 Do you remember that nine-page opinion by
 14 Judge Smith where he said the plaintiff had a
 15 likelihood of success on the merits?
 16 MR. COVINO: Objection.
 17 **A. I remember reading a decision of Judge Smith but**
 18 **it -- that's not all that it said. It had a**
 19 **number of different components. Obviously it**
 20 **speaks for itself.**
 21 **Q.** And that's the one I want to know if you were
 22 surprised by the issuance of that decision.
 23 **A. I didn't remember being surprised or not**
 24 **surprised. It's not something that I experience**

1 **when it comes to court proceedings. You make**
 2 **your argument and then the Court rules.**
 3 **Q.** And subsequent to that, did you indicate to the
 4 town of Duxbury that Judge Smith had ruled that
 5 the plaintiff had very little likelihood of
 6 success on the merits?
 7 MR. GILL: Objection.
 8 MR. COVINO: Objection.
 9 MR. FOLLANSBEE: He did it at a public
 10 hearing, but.
 11 **Q.** Go ahead. They've said their objection. Now
 12 you can answer.
 13 **A. Whatever portions of Judge Smith's decision that**
 14 **you are referring to, there were other sections.**
 15 **I don't have it in front of me. Unless I do, I**
 16 **can't recall precisely.**
 17 **He described Johnson's chances as slim,**
 18 **he used the word heavy burden, and so obviously**
 19 **that's a subjective interpretation. However you**
 20 **want to read Judge Smith's decision, I read it**
 21 **and sections which support, you know, any**
 22 **interpretations that I made. You obviously see**
 23 **other sections that interpret yours and support**
 24 **yours.**

1 **Q.** At the meeting on the 12th of January in 2009,
 2 is that where the decision was made to award the
 3 contract to CALM Golf?
 4 **A. Well, once again I'm not looking at -- I'm just**
 5 **looking at a billing statement, so it looks like**
 6 **that's the date.**
 7 **Q.** And that --
 8 **A. That's the only time we're in town hall on that**
 9 **page.**
 10 **Q.** And given the fact that the bids were due in
 11 town hall on the 9th of January, that gave a
 12 three-day window for the evaluations to be
 13 completed; is that correct?
 14 MR. COVINO: Objection.
 15 **A. Once again, I don't know anything about the**
 16 **evaluation process. I don't know who is -- I**
 17 **know they had intended to have certain people**
 18 **evaluate and some couldn't make it. And how it**
 19 **was done, I don't know. I didn't have anything**
 20 **to do with that.**
 21 **If your question is they received them on**
 22 **the 9th and the meeting was on the 12th, that**
 23 **appears to be three days.**
 24 **Q.** I'll show you what's been marked.

1 MR. FOLLANSBEE: I think I gave you a
 2 copy of this. This is Exhibit 15, the non-price
 3 evaluation forms.
 4 **Q.** According to your billing record you reviewed
 5 these on January 9th, correct?
 6 **A. On January 9th?**
 7 **Q.** I'm sorry. January 12th.
 8 **A. Yes. At town hall.**
 9 **Q.** And you also reviewed each of the proposals,
 10 correct?
 11 **A. I see here that we've reviewed the -- that I**
 12 **reviewed the price proposals and the non-price**
 13 **evaluation forms.**
 14 MR. GILL: You're looking at an exhibit
 15 when you say that.
 16 **A. That's only by looking at this exhibit, Exhibit**
 17 **18. I thought that's what you were directing my**
 18 **attention to.**
 19 **Q.** Well, yes. Exhibit 18, if you look at the entry
 20 on the 12th of January.
 21 **A. Yes. Where is that?**
 22 **Q.** So --
 23 MR. GILL: Which entry are you looking
 24 at?

<p style="text-align: right;">121</p> <p>1 Q. On the 12th of January. You were just saying</p> <p>2 you had looked at price proposals.</p> <p>3 A. No. I'm saying the statement. You directed my</p> <p>4 attention to the statement. The statement only</p> <p>5 reflects that we reviewed -- that I reviewed, in</p> <p>6 conjunction with the town manager and</p> <p>7 Mr. Cushing, the price proposal sheets and the</p> <p>8 non-price evaluation forms. It does not reflect</p> <p>9 that I reviewed the actual price proposals.</p> <p>10 Q. You mean the non-price proposals?</p> <p>11 A. I'm sorry. My mistake.</p> <p>12 Q. Now, when you received Exhibit 11 and it was</p> <p>13 called to your attention that there were</p> <p>14 material misrepresentations in the non-price</p> <p>15 proposals submitted by CALM Golf, did that raise</p> <p>16 any red flags that concerned you?</p> <p>17 MR. GILL: Objection.</p> <p>18 MR. COVINO: Objection.</p> <p>19 A. Well, I see it here in the statement. It's all</p> <p>20 listed here that they were transmitted</p> <p>21 immediately to the town manager, who's the chief</p> <p>22 procurement officer, and the Recreation</p> <p>23 Director.</p> <p>24 There were telephone conferences, which</p>	<p style="text-align: right;">123</p> <p>1 MR. GILL: Which one is that?</p> <p>2 MR. FOLLANSBEE: It was Exhibit 11 at the</p> <p>3 deposition of Mr. Lanzetta.</p> <p>4 MR. GILL: Yep. We got it.</p> <p>5 Q. Do you remember seeing this document before,</p> <p>6 sir?</p> <p>7 A. I've seen it at some point, yes.</p> <p>8 Q. You didn't attend Mr. Lanzetta's deposition; is</p> <p>9 that correct?</p> <p>10 A. I did not.</p> <p>11 Q. And why was that?</p> <p>12 A. I don't remember why I didn't.</p> <p>13 Q. But subsequently you were given a copy of this</p> <p>14 exhibit?</p> <p>15 A. I assume I was if I've seen it.</p> <p>16 MR. GILL: Do we need to know what the</p> <p>17 cross outs are on the top?</p> <p>18 MR. FOLLANSBEE: That's the way it was on</p> <p>19 the original exhibit.</p> <p>20 MR. GILL: I see.</p> <p>21 MR. FOLLANSBEE: For the record, the</p> <p>22 cross outs on Exhibit 16 are consistent with</p> <p>23 Exhibit 11 at the Lanzetta deposition. That's</p> <p>24 the way the document was presented.</p>
<p style="text-align: right;">122</p> <p>1 means there were more than one, with the town</p> <p>2 manager, telephone conferences with Mr. Cushing.</p> <p>3 Apparently there was some correspondence. There</p> <p>4 was also a telephone conference with you.</p> <p>5 MR. GILL: You say this because you're</p> <p>6 reading it from the bill.</p> <p>7 THE WITNESS: I'm reading from the bill,</p> <p>8 correct.</p> <p>9 Q. Well, let's clear that up. As far as the</p> <p>10 telephone conferences with me and you, we have</p> <p>11 spoken on the phone once in the entire history</p> <p>12 of this case, correct?</p> <p>13 A. No, that's not correct.</p> <p>14 Q. Really. When do you think you talked to me</p> <p>15 other than one time?</p> <p>16 A. I talked to you -- we worked out the arrangement</p> <p>17 for to continue through with the injunction. I</p> <p>18 talked to you briefly, the best of my memory,</p> <p>19 about different inquiries that you made. I</p> <p>20 don't remember exactly how many times I had</p> <p>21 talked to you. I don't think it's fair to say</p> <p>22 we've only talked once.</p> <p>23 Q. Now, with regard to --</p> <p>24 MR. FOLLANSBEE: Do you have Exhibit 16?</p>	<p style="text-align: right;">124</p> <p>1 MR. GILL: He didn't say what they were?</p> <p>2 MR. FOLLANSBEE: I believe he crossed</p> <p>3 something out. I don't know what the word is.</p> <p>4 MR. GILL: No one asked him that?</p> <p>5 MR. FOLLANSBEE: If we go through the</p> <p>6 transcript, I'm sure it's there.</p> <p>7 Q. (By Mr. Follansbee) Now, when you first received</p> <p>8 a copy of this, were you concerned about the</p> <p>9 fact that all the items going down the left side</p> <p>10 that were in Mr. MacDonald's decision were</p> <p>11 contradicted by Mr. Lanzetta?</p> <p>12 A. I don't know whether the word concerned is the</p> <p>13 correct word. When I saw any data with respect</p> <p>14 to the case that should be brought to the town's</p> <p>15 attention, I immediately forwarded it to the</p> <p>16 town and discussed it with the town manager who</p> <p>17 had to make the decision as to what was</p> <p>18 appropriate to do.</p> <p>19 Q. Was any consideration given that or to the idea</p> <p>20 of rescinding the award to CALM and making an</p> <p>21 award to Johnson Golf?</p> <p>22 A. Well, that would definitely, in my view, be</p> <p>23 something that was discussed in the course of</p> <p>24 litigation, and there were discussions, but I</p>

<p style="text-align: right;">125</p> <p>1 don't think that I'm able to reveal them.</p> <p>2 Q. But you believe you had such discussions?</p> <p>3 A. Every single piece of paper that came into my</p> <p>4 office, if it didn't otherwise go to the town,</p> <p>5 we would send it to the town and we would</p> <p>6 discuss the issues it related to. I would</p> <p>7 discuss them directly with the town manager, and</p> <p>8 we also had convening some executive sessions</p> <p>9 during the pendency of the case in which the</p> <p>10 issues were talked about.</p> <p>11 The town manager in turn was the primary</p> <p>12 person who spoke directly to the selectmen, and</p> <p>13 I believe spoke to the selectmen on a regular</p> <p>14 basis.</p> <p>15 Q. Let me backtrack for a minute, and when the</p> <p>16 lawsuit was first initiated in December of 2008,</p> <p>17 why wasn't it turned over to insurance counsel?</p> <p>18 MR. GILL: Is that --</p> <p>19 A. I don't know about that.</p> <p>20 MR. GILL: Okay. I was going to caution</p> <p>21 you on the privilege issue there.</p> <p>22 A. There were no -- I was not part of any</p> <p>23 discussions. That's not my responsibility. The</p> <p>24 town is served and the town manager becomes</p>	<p style="text-align: right;">127</p> <p>1 A. Well, whatever. I don't know exactly. The town</p> <p>2 did notify the insurance company.</p> <p>3 Q. And is that something that's done by the town</p> <p>4 manager?</p> <p>5 A. Absolutely. That's done in-house. And at that</p> <p>6 point the insurance company assigned counsel and</p> <p>7 also issued some correspondence related to what</p> <p>8 its position was in terms of defending the town</p> <p>9 under a reservation of rights and citing a</p> <p>10 number of exceptions to the policy as well as</p> <p>11 the late notice to the town. From the town to</p> <p>12 the company.</p> <p>13 Q. You're familiar with the town bylaws regarding</p> <p>14 the engagement of counsel, correct?</p> <p>15 A. Not without seeing them.</p> <p>16 (Exhibit No. 19 ID marked.)</p> <p>17 Q. Directing your attention to Exhibit 19 which was</p> <p>18 also marked as Exhibit 3 at the Sullivan</p> <p>19 deposition, and I refer you to the second page</p> <p>20 of the exhibit.</p> <p>21 Am I correct that the procedure would be</p> <p>22 to get the consent and approval of the board of</p> <p>23 selectmen before engaging services of town</p> <p>24 counsel?</p>
<p style="text-align: right;">126</p> <p>1 aware of the lawsuit and then the town manager</p> <p>2 makes a decision as to what the town's response</p> <p>3 is. I can't answer that question.</p> <p>4 Q. That would be strictly the town manager?</p> <p>5 A. The town manager deals -- as a practical matter</p> <p>6 he may consult with the selectmen, but the town</p> <p>7 manager makes a determination as to how it's</p> <p>8 handled, then I receive notification.</p> <p>9 I wouldn't know anything about the</p> <p>10 relationship between the insurance company and</p> <p>11 the town manager. That's the town manager's</p> <p>12 office's responsibility. They notify insurance</p> <p>13 or they have an agent who notifies the</p> <p>14 insurance.</p> <p>15 I don't know exactly what the</p> <p>16 relationship is, but I believe the town manager</p> <p>17 has an insurance person that's in-house that</p> <p>18 notifies the insurance company.</p> <p>19 Q. And at some point this case was turned over to</p> <p>20 the insurance company, insurance counsel,</p> <p>21 correct?</p> <p>22 A. At some point. It was a considerable point in</p> <p>23 time after the case was filed.</p> <p>24 Q. Almost two years, correct?</p>	<p style="text-align: right;">128</p> <p>1 A. No. Because this document has to be read in</p> <p>2 conjunction with the Town Manager Act. The Town</p> <p>3 Manager Act is a state statute. It supersedes</p> <p>4 any bylaws or any provisions to the contrary, so</p> <p>5 the operative -- this would be operative to the</p> <p>6 extent it was consistent with the Town Manager</p> <p>7 Act.</p> <p>8 And obviously, the relationship between</p> <p>9 the town manager and the board of selectmen and</p> <p>10 how they dealt with that issue would be between</p> <p>11 them.</p> <p>12 Q. So is it your suggestion that there's anything</p> <p>13 in the Town Manager Act that supersedes that</p> <p>14 provision that I just called to your attention?</p> <p>15 A. I know there are provisions -- I don't have the</p> <p>16 Town Manager Act in front of me -- that deals</p> <p>17 directly with the appointment power of town</p> <p>18 counsel and the supervision of town counsel.</p> <p>19 MR. FOLLANSBEE: May I ask that be marked</p> <p>20 as the next exhibit.</p> <p>21 (Exhibit No. 20 ID marked.)</p> <p>22 MR. GILL: Do you have a specific page</p> <p>23 you want to refer him to?</p> <p>24 MR. FOLLANSBEE: No. He seemed to think</p>

<p style="text-align: right;">129</p> <p>1 that the Town Manager Act provided something</p> <p>2 different and I'd just like him to enlighten me</p> <p>3 on what is there in the Town Manager Act that</p> <p>4 supersedes the general bylaws of the town of</p> <p>5 Duxbury on the utilization of town counsel.</p> <p>6 A. It would be two parts. I think Section 3A makes</p> <p>7 the town manager the chief administrative</p> <p>8 officer of the town responsible to the board of</p> <p>9 selectmen for the effective management of all</p> <p>10 town affairs placed in the manager's charge by</p> <p>11 the selectmen by-law or voted at town meeting.</p> <p>12 That would be 3A.</p> <p>13 And then section C15 says the town</p> <p>14 manager shall oversee the activities of the town</p> <p>15 counsel under the direction of the board of</p> <p>16 selectmen.</p> <p>17 Q. And it's your testimony that those provisions</p> <p>18 are inconsistent with Exhibit 19 which says no</p> <p>19 town department or official shall request</p> <p>20 services of town counsel as such without first</p> <p>21 obtaining the consent and approval of the board</p> <p>22 of selectmen?</p> <p>23 A. No. I didn't say they were inconsistent. I</p> <p>24 said the bylaws would only be ineffective to the</p>	<p style="text-align: right;">131</p> <p>1 (Recess taken.)</p> <p>2</p> <p>3 Q. Having an opportunity to confer with Duxbury</p> <p>4 counsel, do you have an answer to the question</p> <p>5 about whether or not you had a conversation</p> <p>6 regarding the decision to cancel the award to</p> <p>7 CALM Golf in 2010?</p> <p>8 MR. GILL: It's my understanding from</p> <p>9 conversation with both counsel who are here for</p> <p>10 the town, Mr. Kreiger and Mr. Kesten, they had</p> <p>11 advised that they say in their opinion it is not</p> <p>12 covered by the vote that was taken with regard</p> <p>13 to the privilege, or else if it was covered by</p> <p>14 the vote, that they have the power and authority</p> <p>15 to waive that portion of the privilege.</p> <p>16 Is that correct?</p> <p>17 MR. KREIGER: Mostly. Can I modify that</p> <p>18 a little bit.</p> <p>19 When you say covered by the vote, it's my</p> <p>20 view that the waiver extends to the question and</p> <p>21 any responsive answer, and that even absent the</p> <p>22 vote I would have the authority to waive</p> <p>23 privilege on behalf of the town. But -- so</p> <p>24 it's, as I said, you were close.</p>
<p style="text-align: right;">130</p> <p>1 extent it was not consistent.</p> <p>2 Q. Do you think the bylaw is effective or</p> <p>3 ineffective in this instance?</p> <p>4 A. I don't have an opinion on that.</p> <p>5 Q. Were you involved in the decision in 2010 to</p> <p>6 cancel the award to CALM Golf?</p> <p>7 A. I don't know what you mean by the word involved,</p> <p>8 but to the extent there was legal issues I could</p> <p>9 have been consulted.</p> <p>10 Q. Whose decision was it to rescind the award to</p> <p>11 CALM Golf in the fall of 2010?</p> <p>12 A. It was the town manager's decision.</p> <p>13 Q. Did he seek your advice about that?</p> <p>14 A. That once again is, without getting into the</p> <p>15 conversation, that's a conversation that was</p> <p>16 attended to litigation and -- but I can answer</p> <p>17 the question by saying he did discuss those</p> <p>18 issues with me and as well as members of the</p> <p>19 board of selectmen.</p> <p>20 MR. FOLLANSBEE: Could we have a</p> <p>21 five-minute recess. I'd like to talk to you</p> <p>22 about this issue.</p> <p>23 (Exhibits No. 21-22 ID marked.)</p> <p>24</p>	<p style="text-align: right;">132</p> <p>1 MR. GILL: So then to the extent that the</p> <p>2 answer might violate the instruction contained</p> <p>3 in the vote taken by the selectmen, from what I</p> <p>4 understand, that you and Mr. Kesten are taking</p> <p>5 responsibility for that --</p> <p>6 MR. KREIGER: I am --</p> <p>7 MR. GILL: -- and you are holding the</p> <p>8 witness harmless.</p> <p>9 MR. KREIGER: I didn't say that.</p> <p>10 MR. GILL: I'm asking you that, and</p> <p>11 without that he won't testify. With that he</p> <p>12 will.</p> <p>13 MR. KREIGER: I'm not going to indemnify</p> <p>14 any witness on the case. I'm not sure --</p> <p>15 MR. GILL: I'm asking you to hold him</p> <p>16 harmless. If there's a finding he shouldn't</p> <p>17 have given the testimony, if it wasn't waived,</p> <p>18 if some judge said that there wasn't a waiver,</p> <p>19 he shouldn't have testified to that, I want you</p> <p>20 to hold him harmless.</p> <p>21 MR. KREIGER: No. The witness will be</p> <p>22 free to say Mr. Kreiger advised me at the</p> <p>23 deposition that the privilege was waived and</p> <p>24 here's the information I answered. I'm not</p>

<p style="text-align: right;">133</p> <p>1 holding the witness harmless.</p> <p>2 MR. GILL: But we're not going to take</p> <p>3 responsibility for it. If you're not willing to</p> <p>4 do that, then you're going to have to deal with</p> <p>5 that in the future. It's up to you.</p> <p>6 MR. KREIGER: Okay.</p> <p>7 MR. FOLLANSBEE: So are you instructing</p> <p>8 the witness not to answer the question?</p> <p>9 MR. GILL: Based on Mr. Kreiger's failure</p> <p>10 to give us the assurance that we've asked for,</p> <p>11 the answer to that is yes, we will not answer</p> <p>12 the question. Without that assurance, we will</p> <p>13 not answer the question.</p> <p>14 MR. FOLLANSBEE: I'm reserving my right</p> <p>15 to continue my inquiry on these topics, and if</p> <p>16 someone else has questions that aren't going to</p> <p>17 be covered by privilege --</p> <p>18 MR. KREIGER: Well, the fact is that the</p> <p>19 conversation is not covered by the privilege in</p> <p>20 any event, so I don't know. You keep asking yes</p> <p>21 or no questions and not even getting the yes or</p> <p>22 no to the initial question.</p> <p>23 MR. FOLLANSBEE: I understand.</p> <p>24 MR. KREIGER: So I would say that</p>	<p style="text-align: right;">135</p> <p>1 of selectmen.</p> <p>2 Q. And do you recall who were the members of the</p> <p>3 board of selectmen in that? Let me see if I can</p> <p>4 remember who they were. The board of selectmen</p> <p>5 we're talking about at that juncture would be</p> <p>6 Sullivan, Dahlan and Donato.</p> <p>7 A. I believe so.</p> <p>8 Q. Was that done at a selectmen's meeting or did</p> <p>9 you talk to them privately?</p> <p>10 A. I know I spoke to the -- I know I spoke to</p> <p>11 Mr. Dahlan and I believe I spoke to Selectmen</p> <p>12 Sullivan. I don't know which one was chair at</p> <p>13 the time.</p> <p>14 Q. Mr. Dahlan was the chair.</p> <p>15 A. All right. I did speak to Mr. Dahlan in</p> <p>16 conjunction with the steps that the town had</p> <p>17 taken in order to effectuate the court order of</p> <p>18 Judge Smith.</p> <p>19 Q. Which court order are you talking about?</p> <p>20 A. I think initially I would need, you know, to</p> <p>21 consult with some documentation to give you the</p> <p>22 dates. I don't know the dates.</p> <p>23 At some point, I believe it was in the</p> <p>24 fall of 2010, I believe Judge Smith vacated the</p>
<p style="text-align: right;">134</p> <p>1 regardless of any discussion of any waiver, the</p> <p>2 witness should answer whether he's spoken to</p> <p>3 Mr. MacDonald on that issue.</p> <p>4 MR. GILL: Well, you can give a yes or</p> <p>5 no.</p> <p>6 Q. (By Mr. Follansbee) Did you speak to</p> <p>7 Mr. MacDonald on that issue?</p> <p>8 A. I'm sorry. Could you tell me the issue.</p> <p>9 Q. Yes. The issue in 2010 of rescinding the award</p> <p>10 to CALM Golf.</p> <p>11 A. Did I speak to Mr. MacDonald about that issue?</p> <p>12 Q. Yes.</p> <p>13 MR. GILL: Or I guess subsuming that</p> <p>14 question, did Mr. MacDonald speak to the</p> <p>15 witness.</p> <p>16 MR. FOLLANSBEE: Yes.</p> <p>17 A. I think there were some discussions about the</p> <p>18 issue, yes.</p> <p>19 Q. Did you speak to anyone else in town government</p> <p>20 about that issue?</p> <p>21 MR. GILL: Just yes or no.</p> <p>22 A. Yes.</p> <p>23 Q. And to whom did you speak?</p> <p>24 A. I believe that that was discussed with the board</p>	<p style="text-align: right;">136</p> <p>1 injunction for a period of time, but I would</p> <p>2 need to -- I'd need confirmation of whether I'm</p> <p>3 speaking right.</p> <p>4 Q. When the injunction was vacated, that had to do</p> <p>5 with the issue of a bond, correct?</p> <p>6 A. Correct.</p> <p>7 Q. There was a hearing before Judge Smith where</p> <p>8 Judge Smith wanted to know how much money was</p> <p>9 collected in membership fees. Is that your</p> <p>10 memory?</p> <p>11 A. I don't know whether that was the hearing. I'm</p> <p>12 referring more to the -- there was an order that</p> <p>13 he issued at some point. For a brief period of</p> <p>14 time the injunction was vacated which meant that</p> <p>15 the town was no longer enjoined from taking any</p> <p>16 action, and I would need the document to refresh</p> <p>17 my memory.</p> <p>18 Q. During that period of time in the fall of 2010</p> <p>19 when the injunction was vacated, there was no</p> <p>20 impediment on the town's behalf to deal with</p> <p>21 CALM Golf, correct?</p> <p>22 A. Exactly. As soon as the injunction was vacated,</p> <p>23 albeit temporarily, the town didn't know it was</p> <p>24 a temporary vacation, and the town manager</p>

<p style="text-align: right;">137</p> <p>1 specifically believed that he had the authority</p> <p>2 to act on the award, the outstanding award that</p> <p>3 had been made.</p> <p>4 Q. And the award that you're referencing is the</p> <p>5 award letter dated January 15th of 2009 that you</p> <p>6 drafted after meeting with Mr. MacDonald and</p> <p>7 Mr. Cushing, correct?</p> <p>8 A. Yes.</p> <p>9 Q. And in the fall of 2010 did you meet with</p> <p>10 Mr. Edge or Attorney Edge, Attorney Geary and</p> <p>11 their clients, Mr. Lanzetta and Mr. Morosco?</p> <p>12 A. We did.</p> <p>13 Q. And who else attended the meeting?</p> <p>14 A. I believe Mr. Cushing could have been there but</p> <p>15 I don't remember.</p> <p>16 Q. Was Mr. MacDonald there?</p> <p>17 A. Oh, definitely. Mr. MacDonald was the one who</p> <p>18 initiated the meeting. He said he wanted --</p> <p>19 once again, this is during the time now that the</p> <p>20 town believed that the injunction has been</p> <p>21 vacated and they may act on the award.</p> <p>22 The town manager instructed me to set up</p> <p>23 a time in which CALM Golf and the principals and</p> <p>24 their attorneys, Mr. Geary was there, too, now</p>	<p style="text-align: right;">139</p> <p>1 discussion between Mr. Cushing and the town</p> <p>2 manager and me.</p> <p>3 I'm not absolutely certain that</p> <p>4 Mr. Cushing -- I have to tell you, I believe he</p> <p>5 was there, but I'm not absolutely certain about</p> <p>6 that.</p> <p>7 Q. What did the representatives from CALM, either</p> <p>8 the two individuals who were the principals or</p> <p>9 their attorneys, what did they say about their</p> <p>10 ability to run the course?</p> <p>11 A. They said they were ready to run.</p> <p>12 Q. Did that satisfy yourself and Mr. MacDonald?</p> <p>13 A. Well, Mr. MacDonald was the person to satisfy,</p> <p>14 not me, because he was the person who is the</p> <p>15 town administrator. The town manager, I'm</p> <p>16 sorry. Chief procurement officer. It did not</p> <p>17 satisfy Mr. MacDonald.</p> <p>18 There were three things that were</p> <p>19 discussed. One was that unlike the</p> <p>20 representations that were made when they</p> <p>21 originally got the award, that they were able to</p> <p>22 do -- undertake the duties, they, since that</p> <p>23 time, had received another award from some other</p> <p>24 golf course in the area. And I think that had</p>
<p style="text-align: right;">138</p> <p>1 that I'm thinking about it, Attorney Geary --</p> <p>2 Q. John Geary?</p> <p>3 A. Yes. John Geary. And so I believe that it was</p> <p>4 Mr. Geary, I believe Mr. Edge, town manager,</p> <p>5 Mr. Cushing, me. I think those are the only</p> <p>6 people. I'm sorry. And then the two people.</p> <p>7 Q. Mr. Lanzetta and Mr. Morosco from CALM Golf?</p> <p>8 A. I know Mr. Lanzetta's name because I, you know,</p> <p>9 just remember his name. I'm not sure about the</p> <p>10 second person, his name, but two people came</p> <p>11 from CALM Golf and came to town hall.</p> <p>12 And there was a meeting at which it was</p> <p>13 said that, you know, it appears that the</p> <p>14 injunction has been vacated and now the town</p> <p>15 manager said I want to know, you know, about</p> <p>16 your capabilities and whether or not you're able</p> <p>17 to run the course starting immediately.</p> <p>18 Q. How long did the meeting take place?</p> <p>19 A. I'm going to say the meeting was an hour, an</p> <p>20 hour and 15 minutes. We're talking about the</p> <p>21 meeting -- there were two parts to the meeting.</p> <p>22 There was the part of the meeting that the CALM</p> <p>23 Golf people were there, that was probably an</p> <p>24 hour, an hour and 15 minutes, then there was a</p>	<p style="text-align: right;">140</p> <p>1 been relatively recent, although I don't</p> <p>2 remember that, but I don't think it was a</p> <p>3 longstanding award.</p> <p>4 And they, meaning Morosco and Lanzetta if</p> <p>5 Morosco was the other person, they, you know,</p> <p>6 would have to deal with those issues. So there</p> <p>7 was some, you know, they could do it but they --</p> <p>8 things have changed.</p> <p>9 The second was that one or two of them</p> <p>10 had made commitments to be in Florida for the</p> <p>11 winter and do some kind of golf things down</p> <p>12 there. And the third was they would need to, or</p> <p>13 they might need to renegotiate the price, the</p> <p>14 commitment that they had made.</p> <p>15 Q. What --</p> <p>16 A. I remember those things.</p> <p>17 Q. Did they give you anything specific about what</p> <p>18 they needed to renegotiate the price?</p> <p>19 A. The town manager said -- immediately cut that</p> <p>20 off. That was not --</p> <p>21 Q. That's not going to happen?</p> <p>22 A. That's not a possibility. And he -- I think, I</p> <p>23 think he asked me whether that even could be</p> <p>24 done, and my memory was that I said I didn't</p>

1 **think. It can't be renegotiated, no.**
 2 **Q.** And, but the issue, the second issue that you
 3 addressed, that one of these individuals would
 4 be in Florida for the winter, did that make any
 5 difference to the contract?
 6 **A.** **It made a difference to the town manager. It**
 7 **may have been either one or two, I can't**
 8 **remember, but it was commitments in Florida.**
 9 **This is in the fall of 2011 and the course**
 10 **obviously needs to be run.**
 11 **Q.** Just so the record is clear, it was 2010.
 12 **A.** **I'm sorry. I keep on -- I'm sorry. The dates,**
 13 **that's why I need documents to remember the**
 14 **years.**
 15 MR. GILL: Would it help your testimony
 16 to have the documents?
 17 THE WITNESS: Yes.
 18 **Q.** What document do you think you'd need?
 19 **A.** **If I knew when Judge Smith's order was, that**
 20 **helps me.**
 21 **Q.** Okay.
 22 **A.** **Just because I can --**
 23 MR. GILL: Do you have that available?
 24 MR. FOLLANSBEE: I probably have it here

1 someplace, but it wasn't anything I was going to
 2 inquire about so I don't have a copy of it.
 3 MR. GILL: Do you know the date of it?
 4 MR. FOLLANSBEE: I know it was the fall
 5 of -- he's absolutely correct. It was the fall
 6 of 2010.
 7 **Q.** Did anyone -- did the town manager say to you or
 8 to anybody in your presence why it made a
 9 difference that either of these individuals
 10 would be in Florida?
 11 **A.** **I don't remember him saying anything. I know**
 12 **that the Florida information was perplexing.**
 13 **Q.** And the first issue that you raised, by the fall
 14 of 2010 the entity CALM Golf was running the
 15 Strawberry Valley Golf Course in Abington?
 16 **A.** **I don't know that that's what the issue was,**
 17 **but.**
 18 **Q.** But you said they were running another local
 19 course?
 20 **A.** **I remember that there was something they had**
 21 **received relatively recently. I'm going to say**
 22 **-- I just -- that's just my memory. I don't**
 23 **know.**
 24 **Q.** Why was that a negative issue?

1 **A.** **Because they -- the CALM Golf people indicated**
 2 **that there was -- I can't remember. I'm**
 3 **speculating. I have no memory of it.**
 4 **This was the first time that I had seen**
 5 **either of these two individuals, assuming that**
 6 **the other two were their principals. I also**
 7 **think that the -- it was the first time that the**
 8 **town manager saw them.**
 9 **And I think that, you know, for my**
 10 **conversation with him afterwards, that he was**
 11 **concerned that all of the information he had**
 12 **received, he was concerned that they would not**
 13 **be able to start up and continue on and run the**
 14 **course.**
 15 **Q.** Was he more concerned about seeing them
 16 face-to-face than he was about the information
 17 that I had sent in January of 2009 saying that
 18 they had total assets of \$169?
 19 MR. GILL: Objection.
 20 MR. COVINO: Objection.
 21 **A.** **That was not, to my memory, discussed.**
 22 **Q.** Their financial situation was not discussed with
 23 the town manager?
 24 **A.** **I don't remember. Outside of the fact that**

1 **there was a request to reduce the amount of the**
 2 **payments to the town, I don't remember any**
 3 **discussion about finances.**
 4 **Q.** Shortly thereafter, there was a hearing before
 5 Judge Smith on November 24th, the day before
 6 Thanksgiving in 2010, and at that hearing a
 7 letter rescinding the award to CALM Golf was
 8 distributed to anyone in attendance, correct?
 9 **A.** **Right.**
 10 **Q.** And shortly thereafter did you meet with the
 11 office of the Inspector General?
 12 **A.** **I did.**
 13 **Q.** And who attended that meeting?
 14 **A.** **I'm not sure whether -- I had a meeting, I**
 15 **believe, at the Inspector General's office. I'm**
 16 **not sure it pertained to this issue. I can't**
 17 **remember. I'm sorry. I had several meetings**
 18 **with the Inspector General but I don't remember.**
 19 **Q.** Did you have a meeting at the office of the
 20 Inspector General with Mr. Dahlan, Mr. Cushing
 21 and Mr. MacDonald all in attendance with you?
 22 **A.** **Right. At some point the town manager and the**
 23 **chairman of the selectmen, Mr. Dahlan, with the**
 24 **town determined that the -- this, I believe, was**

1 following Judge Smith's order that said that the
2 Court would not prohibit the town from going out
3 and rebidding.

4 They had a meeting with the Inspector
5 General. Prior to that I think that there was
6 some consultation that I had. I'm not clear on
7 the timetable of how it worked. But the town
8 manager had concluded at the end of the meeting
9 with the CALM Golf people that he was not going
10 to -- he was not confident that they could run
11 the course.

12 And I don't know how chronologically it
13 worked but there was an inquiry, what were CALM
14 Golf's rights visa vie the town in view of the
15 fact that the -- this question did the town have
16 the authority to rescind that award, and there
17 was consultation with the Inspector General
18 about that.

19 I'm not sure about the timeframe because
20 I don't have a calendar and I don't have a
21 chronology here, but it's during -- in the same
22 fall period of 2010.

23 And the Inspector General advised the
24 town that it could do that, and the town then

1 met with the Inspector General about other
2 issues. When I say the town, that was
3 Mr. Dahlan, Mr. MacDonald, me. I'm not sure
4 when this happened, though. And --

5 Q. Was Mr. Cushing there as well?

6 A. I don't know. I think he was but I'm not sure.

7 Q. Now, before you had the meeting with the
8 Inspector General, did you provide any
9 information to the Inspector General about CALM
10 Golf?

11 A. I think the Inspector General asked us for our
12 -- the file. As the town, not me, but for the
13 town. I think some -- there was some request
14 for supplemental documentation. I don't
15 remember that either.

16 Q. Did anyone in town hall tell the Inspector
17 General -- who did you meet with at the
18 Inspector General's office? The individuals?

19 A. Without a chronology, if this was the meeting, I
20 think we had one meeting with --

21 MR. GILL: Do you recall or are you
22 speculating?

23 THE WITNESS: Well, I don't recall how
24 many meetings there were that I was involved in.

1 A. But the meeting that Mr. Dahlan and
2 Mr. MacDonald and Mr. Cushing and I were at,
3 there were, I believe, a number of people at the
4 meeting from the Inspector General's office.
5 And I don't know who they were but there was a
6 number of them, four or five.

7 Q. Do you know Barbara Hansberry?

8 A. Yes.

9 Q. Was she one of them?

10 A. She was there.

11 Q. She's counsel to the Inspector General?

12 A. Yes.

13 Q. Was the Inspector General, Mr. Sullivan, there
14 himself?

15 A. Yes, at the meeting that I'm talking about. The
16 timeframe I'm not clear on. It's around this
17 timeframe.

18 MR. KESTEN: December 6th is what I was
19 told.

20 Q. Did you tell anyone at the Inspector General's
21 office that the town was unaware of the limited
22 resources of CALM Golf when they awarded the bid
23 to them back in 2009?

24 A. No. I don't remember saying that. I don't

1 remember the discussion being about that. I
2 think the discussion was perspective, but I
3 don't remember that, no.

4 Q. Do you remember anybody from the Duxbury side,
5 yourself, Cushing, Dahlan, MacDonald, telling
6 somebody at the Inspector General's office we
7 had no idea that CALM had limited assets when we
8 awarded the contract in 2009?

9 A. No. I don't remember that.

10 Q. As far as that meeting, who was the principal
11 spokesperson for the town of Duxbury?

12 A. I think there was -- I think that there was --
13 everybody spoke that I remember. I think
14 Mr. Dahlan spoke, Mr. MacDonald, I spoke, and so
15 did Mr. Cushing if he were there. I think he
16 was there. I'm thinking he was there. It was
17 more of a -- there was -- they had a lot of
18 questions and it was like a conversation thing.

19 Q. What did the town collectively, the individuals
20 from the town, what did they tell the Inspector
21 General was the reason why it suddenly -- you
22 were going to rescind the award to CALM Golf?

23 A. Just what I just told you.

24 Q. That two of them were going to be in Florida,

<p>149</p> <p>1 they had another golf course?</p> <p>2 A. We told them everything that I just said, that</p> <p>3 we had them in and --</p> <p>4 MR. GILL: Who's the we?</p> <p>5 A. That the town had had them in and that</p> <p>6 Mr. MacDonald had determined after the meeting</p> <p>7 that CALM could not get the award, that the town</p> <p>8 wanted to rebid and undertake a process and</p> <p>9 needed help and wanted help in doing that. And</p> <p>10 the Inspector General said that they would help</p> <p>11 the town.</p> <p>12 Q. Now, was any consideration given by the town of</p> <p>13 Duxbury, now that they had determined that CALM</p> <p>14 Golf was inappropriate to run the golf course,</p> <p>15 was there any consideration given to awarding a</p> <p>16 contract to Johnson Golf Management?</p> <p>17 A. When you say consideration, the person who would</p> <p>18 have to make that decision would be the town</p> <p>19 manager.</p> <p>20 Q. And did that -- was that a discussion that ever</p> <p>21 came up?</p> <p>22 A. I don't remember.</p> <p>23 Q. Well, they were the only other qualified bidder</p> <p>24 from the 2009 process, correct?</p>	<p>151</p> <p>1 MR. GILL: He can answer?</p> <p>2 MR. KREIGER: I objected unrelated to</p> <p>3 privilege. Go ahead.</p> <p>4 A. There was a letter from the Inspector General to</p> <p>5 the town subsequently.</p> <p>6 Q. And was that the letter in late January of 2011?</p> <p>7 A. I think there were two copies of essentially the</p> <p>8 same letter.</p> <p>9 (Discussion off the record.)</p> <p>10 MR. FOLLANSBEE: I'd ask that be marked</p> <p>11 as the next exhibit.</p> <p>12 (Exhibit No. 23 ID marked.)</p> <p>13 Q. Sir, directing your attention to Exhibit 23, the</p> <p>14 last page of the exhibit is the fax cover sheet</p> <p>15 to you. And is this one of the letters that you</p> <p>16 were just referring to from the Inspector</p> <p>17 General?</p> <p>18 A. Yes.</p> <p>19 Q. And if Attorney Kesten is right, which I'm quite</p> <p>20 confident that he feels he is, the meeting took</p> <p>21 place on December 6th, and this letter is some</p> <p>22 five or six weeks later, correct?</p> <p>23 A. I would have to defer to someone else's memory.</p> <p>24 I don't remember. I mean, I see this letter is</p>
<p>150</p> <p>1 A. I think --</p> <p>2 MR. COVINO: Objection.</p> <p>3 A. I think the frame of reference that was looked</p> <p>4 at was that all of the bids, other bids had</p> <p>5 already been rejected legally, there were four</p> <p>6 of them, and that the only viable or the only</p> <p>7 live connection was the award to CALM Golf that</p> <p>8 had not been -- or maybe by this time had been.</p> <p>9 I guess you're right, just previously had just</p> <p>10 been vacated. And that therefore, everything</p> <p>11 from the old process had been in effect</p> <p>12 nullified.</p> <p>13 And I think that the town manager was</p> <p>14 interested in doing it effectively and making</p> <p>15 sure that it was done right. And part of the</p> <p>16 reason for the meeting was to enlist the</p> <p>17 Inspector General's help in doing it right, and</p> <p>18 the Inspector General promised that help.</p> <p>19 Q. Did the Inspector General give the town anything</p> <p>20 in writing saying that this process was</p> <p>21 appropriate?</p> <p>22 A. There was a letter.</p> <p>23 MR. KREIGER: Objection.</p> <p>24 Q. There was a letter?</p>	<p>152</p> <p>1 dated January 21st, but I honestly don't</p> <p>2 remember when the meeting was. I have no reason</p> <p>3 to dispute Mr. Kesten's account, but I don't</p> <p>4 know.</p> <p>5 MR. GILL: Do you know or not?</p> <p>6 THE WITNESS: I don't know.</p> <p>7 MR. GILL: There you go.</p> <p>8 Q. Let's address the letter itself, and it's</p> <p>9 addressed to Mr. MacDonald, and according to</p> <p>10 this, Mr. Sullivan, the Inspector General, has</p> <p>11 learned certain information from the town of</p> <p>12 Duxbury.</p> <p>13 Now, if you look at the second paragraph,</p> <p>14 it says according to the town the request for</p> <p>15 proposals, one of the evaluators was privy to</p> <p>16 the price prior to the completion of the</p> <p>17 technical scoring.</p> <p>18 That isn't true, is it?</p> <p>19 A. I think what that means to say is that the</p> <p>20 technical scoring was not completed because the</p> <p>21 forms were not filled out. That's what I think</p> <p>22 that means.</p> <p>23 Q. Well --</p> <p>24 A. That's how I read it.</p>

1 Q. Well --

2 A. **In other words the --**

3 Q. Actually, he goes on to say when it became known

4 to the town that somebody was privy to the price

5 proposal, the town canceled the request for

6 proposal process.

7 A. **Right.**

8 Q. That isn't why the town canceled the process, is

9 it?

10 MR. COVINO: Objection.

11 A. **Well, the town rejected all bids because of the**

12 **problems with the evaluations.**

13 Q. But it had nothing to do with someone knowing

14 the prices, did it?

15 A. **Mr. Cushing knew the prices. I think this means**

16 **Mr. Cushing knew -- I'm interpreting. I have no**

17 **idea what it means because I didn't write it.**

18 **But I think it means that Mr. Cushing,**

19 **who is one of the evaluators, was privy to the**

20 **price proposals, which he was, plural, prior to**

21 **the completion of the technical scoring which**

22 **was the evaluation. Because these were not**

23 **complete, in their view, this is wrong. I have**

24 **no idea what it meant, what it means.**

1 Q. Who gave them the information? Because

2 according to Mr. Sullivan's letter, according to

3 the town this is the information he was given,

4 so --

5 A. **Again --**

6 Q. -- who gave him the information that one of the

7 evaluators had the prices prior to completion of

8 the technical scoring?

9 A. **I'm not sure anyone gave him that information.**

10 **I don't read it the same way you do. I read it**

11 **as that Mr. Cushing who was there at meeting, he**

12 **conceivably could have done it. I believe he**

13 **was there.**

14 **I don't know who said what but whatever**

15 **was said, I think that what it is saying is that**

16 **Mr. Cushing was one of the evaluators and he**

17 **knew the prices before the non-price evaluation**

18 **process was completed.**

19 Q. Well --

20 A. **And that, according to the Inspector General's**

21 **manual, should not be done lawfully.**

22 Q. Well --

23 A. **You're asking me what the Inspector General**

24 **meant and I can't tell you what they meant, what**

1 **he or she --**

2 Q. That wasn't my question. My question was, what

3 did the town tell the Inspector General?

4 MR. COVINO: Objection.

5 A. **I don't know. I can't answer that question.**

6 **Maybe Mr. MacDonald or Mr. Cushing or Mr. Dahlan**

7 **can remember better than I.**

8 Q. Maybe Mr. Dahlan can remember better than you.

9 The other folks you just mentioned, we've

10 already questioned them.

11 Now, the next item, item 2, it indicates

12 in a footnote that the town informed this office

13 that at the time, meaning back in January of

14 2009, it did not know that the highest proposal

15 lacked the assets and equipment to perform the

16 contract.

17 Who told them that?

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

19 Q. Did you?

20 A. **No.**

21 Q. Did Mr. MacDonald tell them that?

22 MR. COVINO: Objection.

23 A. **I don't -- once again, I don't remember with any**

24 **specifics anything other than that there was an**

1 **exchange of information, that the questions were**

2 **being asked by people from the Inspector**

3 **General's office and a lot of people contributed**

4 **back and forth.**

5 **And I don't remember exactly what was**

6 **said, except I, to the extent anything was said**

7 **to the Inspector General, my memory is that the**

8 **town told the Inspector General exactly what the**

9 **facts were. I don't think anybody gave the**

10 **Inspector General any erroneous information.**

11 **MR. FOLLANSBEE: I'd ask this be marked**

12 **as the next exhibit.**

13 (Exhibit No. 24 ID marked.)

14 MS. COOK: Just so the record is clear,

15 did we skip Exhibits 21 and 22?

16 MR. FOLLANSBEE: No. I had them

17 pre-marked and I have not used them yet.

18 Q. The letter in front of you, the most recent

19 exhibit, 24, is a letter to Richard MacDonald

20 dated January 27th from the Inspector General,

21 and it indicates there's a copy to you on the

22 second page.

23 And it's similar to the other letter, but

24 in the third paragraph, the last sentence, it

says the town informed this office that at the time it did not know that the highest proposal lacked the assets and equipment to perform the contract. So what had been a footnote is now in the body of it.

Did anybody from the town, to your knowledge, tell the Inspector General that?

A. Is this the same question you asked me before?

I don't remember anybody telling -- saying that.

MR. FOLLANSBEE: Okay. Just for identification purposes, we pre-marked Exhibit Number 22 which is the memorandum and decision on plaintiff's renewed application for injunctive relief issued by the Court on February 2, 2009.

This is probably an opportune time to suspend. If between now and our next get together we can clear up what is privileged and what the claims are going to be for privilege, it might move along a little bit faster.

MR. KESTEN: Should we try and get another date now?

(The deposition suspended at 3:58 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 ROBERT S. TROY, 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 2nd day of July, 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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CERTIFICATE

I, ROBERT S. TROY, 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.

ROBERT S. TROY