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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
C.A. NO. 08-04641-B

-----x
JOHNSON GOLF MANAGEMENT, INC.,

Plaintiff

vs

TOWN OF DUXBURY, and NORTH HILL ADVISORY
COMMITTEE, Consisting of MICHAEL DOOLIN,
CHAIRMAN, SCOTT WHITCOMB, ROBERT M. MUSTARD,
JR., MICHAEL MARLBOROUGH, ANTHONY FLOREANO,
MICHAEL T. RUFO, THOMAS K. GARRITY, Richard
Manning, W. JAMES FORD, and GORDON CUSHING
(EX OFFICIO) and CALM GOLF, INC., and
CHARLES LANZETTA,

Defendants

-----x

DEPOSITION OF SHAWN DAHLEN, taken on
behalf of the Plaintiff, pursuant to the
applicable provisions of the Massachusetts Rules
of Civil Procedure, before James A. Lyons, CSR
No. 117993, a Registered Diplomate Reporter,
Certified Realtime Reporter and Notary Public in
and for the Commonwealth of Massachusetts, at
the offices of Follansbee & McLeod, LLP, 536
Granite Street, 3rd Floor, Braintree,
Massachusetts, on Monday, July 9, 2012,
commencing at 2:02 p.m.

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APPEARANCES:

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

Leonard H. Kesten, Esq.
Brody, Hardoon, Perkins & Kesten, LLP
One Exeter Plaza
699 Boylston Street
Boston, Massachusetts 02116
Attorney for the Town of Duxbury, and
North Hill Advisory Committee, Et Als.

Arthur P. Kreiger, Esq.
Anderson & Kreiger, LLP
One Canal Street, Suite 200
Cambridge, Massachusetts 02141
Special Counsel for the Town of Duxbury

ALSO PRESENT:

Douglas Johnson
Jason Laramée
(For Johnson Golf Management, Inc.)

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STIPULATIONS

It was stipulated and agreed by and between counsel for the respective parties that the witness will read and sign the deposition under the penalties of perjury within 30 days of receipt of the transcript.

It was further stipulated and agreed that all objections, except as to the form of the question, including motions to strike, shall be reserved until the time of trial.

It was further stipulated and agreed that SHAWN DAHLEN appears before us today for his deposition. This witness does not, at present, have adequate documentation attesting to his identity that satisfies the standards required by the Commonwealth of Massachusetts for Notaries Public in administering oaths.

The parties in this action therefore stipulate and agree to hold harmless this Notary Public if this witness is later discovered to have falsified his identity.

DEPOSITION OF SHAWN DAHLEN

1 SHAWN DAHLEN, a witness called on behalf
2 of the Plaintiff, first having been duly sworn,
3 on oath deposes and says as follows:

4 EXAMINATION BY MR. FOLLANSBEE:

5 Q. Mr. Dahlen, could you identify yourself, giving
6 us your name and your occupation and business
7 address?

8 A. Sean Dahlen, 1500 Tremont Street, Duxbury,
9 Mass.

10 Q. And what is your business?

11 A. I'm a builder and a landscaper.

12 Q. And what elective office, if any, do you hold in
13 the Town of Duxbury?

14 A. I am vice chairman of the Board of Selectmen
15 currently.

16 Q. And how long have you had that position?

17 A. Since the end of March 2010.

18 Q. And when you were or before you were elected to
19 the Board of Selectmen, did you have any other
20 positions in town government in Duxbury?

21 A. Yes.

22 Q. And could you tell us what they were?

23 A. I was on the conservation, on the Board of
24

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1 Health. I was on 20 different boards and
2 committees.

3 Do you need them all?

4 Q. What are the major ones, other than the
5 Conservation Commission and the Board of
6 Health?

7 MR. KESTEN: They are all major.

8 A. I can't recall, at the moment.

9 Q. Were you ever on the ZBA?

10 A. No.

11 Q. How long have you been involved in town
12 government, either through elected positions or
13 appointed positions in the Town of Duxbury?

14 A. At least, 30 years.

15 Q. And were you born in Duxbury?

16 A. No.

17 Q. How long have you lived in Duxbury?

18 A. Approximately, 50 years.

19 Q. You must have been pretty close to being born
20 there.

21 Where did you attend school, starting
22 with high school?

23 A. Duxbury High School.

24 Q. And any education beyond that?

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1 A. Yes.

2 Q. Where?

3 A. Wentworth Institute and Wentworth College of
4 Technology.

5 Q. And did you receive a degree from Wentworth?

6 A. Yes.

7 Q. What year was that in?

8 A. 1971 and 1975 -- sorry, 1973 and 1975.

9 Q. And what year did you graduate from Duxbury High
10 School?

11 A. 1971.

12 Q. I could have done the math on that, I guess.

13 In addition to the role you have as the
14 vice chair of the Board of Selectmen right now,
15 are there any other positions in town government
16 that you currently hold?

17 A. Yes.

18 Q. And what are those?

19 A. I am on the local housing partnership, local
20 housing trust, school building committee, public
21 safety building committee.

22 Q. In 2008, did you become aware of the litigation
23 that we're here on today, the case of Johnson
24 Golf Management versus the Town of Duxbury?

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1 A. No.

2 Q. When did you first become aware of it?

3 A. I don't recall.

4 Q. When you were elected to the Board of Selectmen
5 in March of 2010, were you aware of the
6 existence of the lawsuit, at that point?

7 A. Yes.

8 Q. And did you discuss it with any of your
9 colleagues on the Board of Selectmen before you
10 were elected to the Board of Selectmen?

11 A. No.

12 Q. And correct me if I'm wrong, but when you were
13 elected to the Board of Selectmen in March 2010,
14 the other two selectmen were Mrs. Sullivan and
15 Mr. Donato --

16 A. Correct.

17 Q. -- is that correct?

18 A. Correct.

19 Q. And did you discuss with anyone prior to being
20 sworn in as a selectman the fact that you would
21 run or propose to become the chairperson of the
22 Board of Selectmen?

23 A. Not that I recall.

24 Q. How did it come about that you were elected

DEPOSITION OF SHAWN DAHLEN

<p style="text-align: right;">Page 10</p> <p>1 chairperson initially?</p> <p>2 A. I was nominated by Betsy Sullivan.</p> <p>3 Q. And had that been discussed with you prior to</p> <p>4 the nomination?</p> <p>5 A. By whom?</p> <p>6 Q. By Betsy Sullivan.</p> <p>7 A. No.</p> <p>8 Q. Had it been discussed with you by anybody else,</p> <p>9 other than Betsy Sullivan?</p> <p>10 A. Not that I recall.</p> <p>11 Q. Did you discuss with anyone why Mr. Donato would</p> <p>12 not be a suitable candidate for the chairperson</p> <p>13 job?</p> <p>14 A. I don't recall.</p> <p>15 Q. Once you were sworn in on the Board of</p> <p>16 Selectmen, did you ever review --</p> <p>17 MR. FOLLANSBEE: Strike that.</p> <p>18 Q. When you were sworn in on the Board of Selectmen</p> <p>19 in March of 2010, what did you do, if anything,</p> <p>20 to become familiar with the litigation that</p> <p>21 we're here about today?</p> <p>22 A. We had a presentation in executive session</p> <p>23 with town counsel regarding all pending</p> <p>24 litigation.</p> <p style="text-align: center;">DEPOSITION OF SHAWN DAHLEN</p>	<p style="text-align: right;">Page 12</p> <p>1 at the time, and that it involved the town</p> <p>2 being sued with regards to conspiracy or bid</p> <p>3 rigging or something to that effect.</p> <p>4 Q. Did he give you any of the background</p> <p>5 information about the case and how it had</p> <p>6 developed up to that point?</p> <p>7 A. I'm sure he did, but I can't tell you what it</p> <p>8 was.</p> <p>9 Q. Did you become aware that my client, Johnson</p> <p>10 Golf Management, at the time, was operating the</p> <p>11 North Hill Golf Course under a court order?</p> <p>12 A. I was aware of that.</p> <p>13 Q. And did you familiarize yourself with the court</p> <p>14 order itself?</p> <p>15 A. No.</p> <p>16 Q. Had you reviewed --</p> <p>17 MR. FOLLANSBEE: Strike that.</p> <p>18 Q. In the spring of 2010, when you first became a</p> <p>19 member of the Board of Selectmen, did you</p> <p>20 review any documentation regarding the</p> <p>21 litigation, Johnson Golf Management versus the</p> <p>22 Town of Duxbury?</p> <p>23 A. Do you want to repeat that one more time?</p> <p>24 Q. Sure.</p> <p style="text-align: center;">DEPOSITION OF SHAWN DAHLEN</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. And when did that take place?</p> <p>2 A. I don't remember the date.</p> <p>3 Q. Was it the spring of 2010, fairly early in your</p> <p>4 role as selectman?</p> <p>5 A. It was relatively early after I became elected.</p> <p>6 MR. FOLLANSBEE: Could we go off the</p> <p>7 record for just a second?</p> <p>8 (Discussion off the record.)</p> <p>9 Q. (BY MR. FOLLANSBEE) The meeting that you had</p> <p>10 with town counsel, town counsel was Robert Troy;</p> <p>11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. Did you know Mr. Troy prior to becoming a member</p> <p>14 of the Board of Selectmen?</p> <p>15 A. Yes.</p> <p>16 Q. Did you have any social relationship with him or</p> <p>17 is it strictly town politics?</p> <p>18 A. Town politics.</p> <p>19 Q. Now, with regard to the presentation that he</p> <p>20 gave you regarding the outstanding litigation,</p> <p>21 what did he tell you about the Johnson Golf</p> <p>22 litigation?</p> <p>23 A. I don't recall any specifics other than it was</p> <p>24 one of the several cases that we had pending,</p> <p style="text-align: center;">DEPOSITION OF SHAWN DAHLEN</p>	<p style="text-align: right;">Page 13</p> <p>1 In the spring of 2010, when you first</p> <p>2 became a member of the Board of Selectmen, did</p> <p>3 you review any documentation regarding the</p> <p>4 litigation, Johnson Golf Management versus the</p> <p>5 Town of Duxbury?</p> <p>6 A. I would say that I reviewed anything that was</p> <p>7 sent to me as a selectman member by the town</p> <p>8 counsel.</p> <p>9 Q. And did town counsel -- let's start with town</p> <p>10 counsel -- did town counsel explain to you how</p> <p>11 it came to be that Johnson Golf was operating</p> <p>12 the golf course?</p> <p>13 A. I would assume he did.</p> <p>14 Q. And you don't have any memory of that?</p> <p>15 A. Not specifically.</p> <p>16 Q. Do you have any nonspecific memory of it?</p> <p>17 A. My understanding is that he was operating the</p> <p>18 course under court order. That's my general</p> <p>19 memory. Who told me, how I knew it and what</p> <p>20 date, I couldn't remember that.</p> <p>21 Q. At some time in the spring to early summer of</p> <p>22 2010, did you become aware that there was an</p> <p>23 issue with the security for the contract</p> <p>24 between Johnson Golf Management and the Town of</p> <p style="text-align: center;">DEPOSITION OF SHAWN DAHLEN</p>

1 Duxbury?

2 A. Yes.

3 Q. And how did you become aware of that?

4 A. Through town counsel.

5 Q. And what did he tell you about that?

6 A. I don't remember the specifics.

7 Q. Do you remember anything about what he told you
8 about security?

9 A. I believe, we did not have any and that it was
10 part of the contract and that he was working on
11 getting that.

12 Q. And regarding that issue, the security issue,
13 did you have more than one discussion with town
14 counsel about that topic?

15 A. I can't remember.

16 Q. Did you discuss it with your colleagues on the
17 Board of Selectmen?

18 A. If we did, it was in an executive session, I
19 would assume.

20 Q. Well, do you have any memory of having the
21 discussion, first of all?

22 A. The answer is no.

23 Q. Did you suggest any course of action regarding
24 the fact that no security was in existence in

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1 2010?

2 A. Say that again.

3 Q. Did you suggest a course of action to be taken
4 by the Board of Selectmen over the fact that
5 there was no security for the contract in
6 2010?

7 A. Not that I can recall.

8 Q. Did you ever review yourself the contract in
9 existence between Johnson Golf Management and
10 the Town of Duxbury that ran from 1999 until
11 2008?

12 A. Yes.

13 Q. And do you remember when you reviewed that?

14 A. I believe, it was in preparation of a public
15 hearing that we had at the Board of Selectmen.

16 Q. Were you provided a copy of the contract?

17 A. Yes.

18 Q. And who gave it to you?

19 A. I'll make an assumption that it was put in my
20 packet.

21 Q. Well, for those of us that don't get packets
22 customarily, can you describe what your packet
23 is?

24 A. Yes.

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1 All Board of Selectmen members have a
2 file slot; and on Friday of every week, we have
3 all pertinent information that the board needs
4 to review over the weekend for an up-and-coming
5 Monday meeting, and any information including
6 the agenda is included in that packet.

7 MR. FOLLANSBEE: I would ask that this be
8 marked as the first exhibit.

9 (Exhibit No. 1, For Identification,
10 marked.)

11 (Document handed to the witness.)

12 Q. (BY MR. FOLLANSBEE) Directing your attention
13 to what's been marked as Exhibit No. 1, this
14 was given to us as being a copy of the contract
15 between the Town of Duxbury and Johnson Golf
16 Management.

17 Does this look familiar to you as the
18 document that you were given?

19 A. I would be guessing.

20 Q. Well, I'll direct your attention to the
21 signature page, which they did not number. It's
22 about halfway through.

23 A. I see it.

24 Q. And it indicates a signature date of December

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1 21, 1998. And there are signatures of various
2 officials from the Town of Duxbury as well as
3 the President and Treasurer of Johnson Golf
4 Management.

5 Now, did you know Mr. Longo, who is
6 purported to have signed this as the town
7 manager?

8 A. I knew he was the town manager.

9 Q. And did you know him, personally?

10 A. Describe personally.

11 Q. Well, had you ever met him?

12 A. Yes.

13 Q. And had you ever dealt with him as part of your
14 dealings with other town officials?

15 A. Yes.

16 Q. Have you ever discussed this litigation or this
17 contract with Mr. Longo?

18 A. Not to my belief.

19 Q. Now, did you know Mr. Andre Martechinni?

20 A. Yes.

21 Q. And other than knowing him as an official of the
22 Town of Duxbury, a member of the Board of
23 Selectmen, do you have any other relationship
24 with Mr. Martechinni?

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- 1 A. Yes.
 2 Q. What other relationship do you have with him?
 3 A. He is a sailing buddy.
 4 Q. So is it that you sail on the same boat
 5 together?
 6 A. Correct.
 7 Q. Who owns the boat?
 8 A. I do.
 9 Q. So he has the benefit of having a friend with a
 10 boat. Is that what you're saying?
 11 A. That would be correct.
 12 Q. So that works much to his advantage and your
 13 disadvantage, as you understand it?
 14 A. No. I think it's a mutual advantage.
 15 Q. So you would characterize Mr. Martechinni as a
 16 friend as well as a colleague in town
 17 government?
 18 A. That is correct.
 19 Q. And did you know John Tulley (phonetic) who was
 20 a member of the Board of Selectmen, at that
 21 time?
 22 A. John Tuffy, yes.
 23 Q. Tuffy, I'm sorry.
 24 A. Yes.

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- 1 Q. And how about Margaret Kearney, did you know
 2 her?
 3 A. Yes.
 4 Q. Now, when you reviewed what was given to you in
 5 your packet, as the management agreement, is
 6 there anything that you were looking at
 7 particularly?
 8 A. I couldn't possibly recall what I was thinking
 9 back then.
 10 Q. And that was in 2010; correct?
 11 A. Correct.
 12 Q. Other than the issue of having no security,
 13 were there any other issues that were of
 14 concern to you regarding the Johnson Golf
 15 Management contract?
 16 MR. KREIGER: Objection.
 17 Unless I tell you not to, you can
 18 answer.
 19 A. At what point in time?
 20 Q. At the time before you started having hearings
 21 in the fall of 2010.
 22 A. I'm not sure if I ever saw the contract before
 23 that time.
 24 Q. I should have asked you about several other

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- 1 folks.
 2 In addition to the relationship that you
 3 had with Mrs. Sullivan as co-members of the
 4 Board of Selectmen, did you have any personal
 5 relationship with her of a social nature?
 6 A. No.
 7 Q. Are you a member of the Duxbury Yacht Club?
 8 A. Yes.
 9 Q. And how long have you been a member of the
 10 Duxbury Yacht Club?
 11 A. Seven years maybe.
 12 Q. And is Mrs. Sullivan a member of the Duxbury
 13 Yacht Club?
 14 A. Yes.
 15 Q. Do you see her socially there?
 16 A. Once or twice a year.
 17 Q. And what would be the one or two times a year
 18 that you would see her there? Anything
 19 specific?
 20 A. No, nothing specific.
 21 Q. And does she also --
 22 MR. FOLLANSBEE: Strike that.
 23 Q. I assume you keep your boat at the Duxbury Yacht
 24 Club?

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- 1 A. No.
 2 Q. Where do you keep your boat?
 3 A. Marion.
 4 Q. And do you play golf at the Duxbury Yacht Club
 5 Golf Course?
 6 A. No. At least not what I would call playing
 7 golf.
 8 Q. So you would be an infrequent golfer. Is that
 9 what you're saying?
 10 A. Maybe four times in my entire lifetime.
 11 Q. That would qualify as infrequent.
 12 As a member of the Duxbury Yacht Club,
 13 are you automatically a member of the Duxbury
 14 Yacht Club Golf Course?
 15 A. Yes.
 16 Q. Are you familiar with the personnel at the
 17 Duxbury Yacht Club golf course?
 18 A. Some.
 19 Q. Is Mr. Emmett Sheehan a member of the Duxbury
 20 Yacht Club?
 21 A. Yes.
 22 Q. And is he a social friend of yours?
 23 A. No.
 24 Q. How often would you see him at the Duxbury Yacht

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1 Club?

2 A. I'm not sure if I ever see him at the yacht
3 club.

4 Q. And any contact that you've had with
5 Mr. Sheehan, is that through town government as
6 well?

7 A. Some.

8 Q. Is there any other place where you would have
9 contact with Mr. Sheehan?

10 A. We, occasionally, have similar business
11 clients.

12 Q. And do you ever work in conjunction with his
13 firm?

14 A. Do you want to define that?

15 Q. Sure.

16 Do you ever work on projects together
17 with Mr. Sheehan and his company for other
18 clients?

19 A. Do you want to describe "together"?

20 Q. I think it's fairly descriptive. What do you
21 not understand about working together?

22 A. I work for a client or can work for a client at
23 the same time that he may be working for that
24 client, but not together.

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1 Q. So you would be doing different things for the
2 same client at the same time?

3 A. Correct. I may be constructing an addition. He
4 may be doing the landscaping.

5 Q. I see.

6 And is that his principal occupation,
7 landscaping?

8 A. To the best of my knowledge.

9 Q. And the name of his company is Eagle's Nest
10 Landscaping, to my understanding; is that
11 correct?

12 A. Yes.

13 Q. By way of background, before conducting the
14 hearings or the hearing that took place on
15 October 4, 2010 before the Duxbury selectmen,
16 did you make any inquiry of any individuals in
17 town government about the ongoing contract
18 between Johnson Golf Management and the Town of
19 Duxbury?

20 A. Not to my knowledge.

21 Q. Had you discussed it at all with Mr. Gordon
22 Cushing?

23 A. I don't recall.

24 Q. Did you discuss it with Richard MacDonald, the

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1 town manager?

2 A. Do you want to start with meaning discuss what,
3 specifically?

4 Q. Yes.

5 Anything to do with the contract between
6 Johnson Golf Management and the Town of Duxbury,
7 what's been marked as Exhibit No. 1, did you
8 have any discussions with Richard MacDonald
9 regarding that contract?

10 A. I assume so, in preparation for the meeting.

11 Q. And you have no memory of that?

12 A. No.

13 Q. Do you have a memory of the meeting itself?

14 A. Somewhat.

15 Q. And do you remember one of the issues was
16 whether or not Johnson had been making timely
17 payments?

18 A. I remember that.

19 Q. And did you come to a conclusion that Johnson
20 Golf was making timely payments?

21 A. I don't remember what the conclusion was.

22 Q. Do you remember a discussion regarding whether
23 or not the payments were made in advance or in
24 arrears?

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1 A. I remember the discussion.

2 Q. And do you remember what the contract says?

3 A. I don't remember.

4 Q. Was that an issue that you were concerned
5 about?

6 A. That was one of a series of issues that were
7 brought to the board's attention.

8 Q. Do you remember any of the other issues that
9 were brought to the board's attention?

10 A. Yes. I remember there was an issue of whether
11 the audited financial statements had been filed
12 in a proper time.

13 Q. Anything else, other than the payment issue and
14 the audited financial issue?

15 A. I believe, there was an issue with regards to
16 whether alcohol was being served outside of the
17 licensed premises.

18 Q. And who -- if it's more than one, you know, try
19 to be as specific as you can -- but who brought
20 these issues to your attention?

21 A. Town counsel.

22 Q. And did your colleagues on the Board of
23 Selectmen --

MR. FOLLANSBEE: Strike that.

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1 Q. Did you make a determination yourself that the
 2 Board of Selectmen should conduct a hearing?
 3 A. Did I make a determination?
 4 Q. Yes.
 5 A. I don't recall the specifics. I know we had a
 6 hearing, but I don't recall how we got there.
 7 Q. As the chairman of the Board of Selectmen, would
 8 it be up to you as to what gets on the agenda
 9 for a particular meeting?
 10 A. That is correct.
 11 Q. So knowing that a "hearing" on contract
 12 compliance took place on October 4, 2010, was
 13 it your decision to put that on the agenda for
 14 that particular night?
 15 A. Better stated, it would be the policy of the
 16 Board of Selectmen. The chairperson can either
 17 put something on the agenda or assent to it
 18 being on the agenda.
 19 Q. Do you recall whether anybody else asked to have
 20 that on the agenda?
 21 A. I don't.
 22 Q. And when you say assent to someone asking that
 23 it be on the agenda, is that another member of
 24 the Board of Selectmen that would have to make

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1 that suggestion?
 2 A. No.
 3 For an example, if we have an event, an
 4 all alcoholic license, an awards ceremony, that
 5 is not being put on the agenda by the
 6 chairperson of the Board of Selectmen. It's
 7 being put on the agenda by staff.
 8 Q. I see.
 9 And who were the staff people in the fall
 10 of 2010 for the Board of Selectmen?
 11 A. The town manager, Barbara Ripley, now Barbara
 12 Mello and Ann.
 13 Q. Ann?
 14 A. Ann.
 15 Q. You don't know her last name?
 16 A. Give me a second. You're embarrassing me.
 17 Q. I'll help you. Is it Murray?
 18 A. You got it.
 19 MR. FOLLANSBEE: Off the record.
 20 (Discussion off the record.)
 21 Q. (BY MR. FOLLANSBEE) The issue of contract
 22 compliance in the fall of 2010, did anybody
 23 suggest sitting down with Johnson Golf and
 24 finding out if there was a way to get the

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1 security in place?
 2 A. I don't recall.
 3 Q. Was there any discussion of any procedure,
 4 other than having a hearing by the Board of
 5 Selectmen, to determine whether or not Johnson
 6 was in compliance with the contract?
 7 A. I don't recall.
 8 Q. In 2010, were you made aware of any attempts on
 9 the part of Johnson Golf and the Town of Duxbury
 10 to resolve the litigation?
 11 A. I don't remember any specific attempts.
 12 Q. Did you ask anybody on staff or in town hall to
 13 get you copies of the audited financials that
 14 were of concern to you?
 15 A. My memory is that the issues that were believed
 16 to be in noncompliance with regard to the
 17 contract were presented to you. I believe,
 18 you were at the meeting; and that Johnson Golf
 19 was given time to react or respond to any of
 20 those, and then the board evaluated those
 21 comments.
 22 MR. FOLLANSBEE: I'd ask that this be
 23 marked as the next exhibit, please. I believe
 24 it's Exhibit No. 2.

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1 (Exhibit No. 2, For Identification,
 2 marked.)
 3 (Document handed to the witness.)
 4 Q. (BY MR. FOLLANSBEE) Directing your attention
 5 to what's been marked Exhibit No. 2. Do you
 6 recall receiving that on or about October 4,
 7 2010?
 8 A. I don't, specifically, recall receiving this.
 9 Q. Do you recall any written submission by
 10 Mr. Johnson to the Board of Selectmen at the
 11 hearing that took place on October 4, 2010?
 12 A. I believe, we did get documents from
 13 Mr. Johnson -- not from Mr. Johnson, but from
 14 you, I think. I've never met Mr. Johnson.
 15 Q. With regard to this document, do you have any
 16 memory of reading the material that was provided
 17 by Johnson Golf at that meeting?
 18 A. I don't have any specific memory.
 19 Q. Well, directing your attention to page 3 -- and
 20 there is a list -- on page 3, there is items 1
 21 through 8?
 22 A. Yes.
 23 Q. Do you recall being told that the surety bond
 24 issue was being resolved by the judge?

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1 A. I don't, specifically, recall that.
 2 Q. Do you recall a dialogue between yourself and me
 3 at the meeting about the judge having ordered a
 4 certain sum of security in the sum of a half a
 5 million dollars?
 6 A. Again, I don't, specifically, remember a detail
 7 like that.
 8 Q. Is there anything that could refresh your memory
 9 on that?
 10 A. If you have a copy of the board's decision, that
 11 might refresh my memory.
 12 Q. How about a copy of the transcript that was
 13 provided that night?
 14 MR. FOLLANSBEE: Could we mark that as
 15 the next exhibit?
 16 (Exhibit No. 3, For Identification,
 17 marked.)
 18 (Document handed to the witness.)
 19 Q. (BY MR. FOLLANSBEE) Sir, what's been marked as
 20 Exhibit No. 3 which you have before you now is a
 21 copy of the transcript.
 22 A. Go ahead.
 23 Q. And directing your attention to Exhibit No. 3,
 24 the transcript of the Duxbury selectmen's

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1 hearing, October 4, 2010, I'd direct you to
 2 pages 17 and 18.
 3 A. Okay.
 4 Q. And if you see those.
 5 A. Do you have a question?
 6 Q. Does that refresh your memory as to being given
 7 what we've now marked as Exhibit No. 2 at the
 8 meeting?
 9 A. It would appear from this transcript that you
 10 gave us a document.
 11 Q. And did you read the document that we gave to
 12 you?
 13 A. I'm assuming that I did, at the time.
 14 Q. And you don't have any memory of it now?
 15 A. No.
 16 Q. Well, did you --
 17 MR. FOLLANSBEE: Strike that.
 18 Q. Was your concern over the security issue
 19 primarily the fact that Johnson was collecting
 20 money in advance, and the money might disappear
 21 if Johnson breached the contract and walked
 22 away?
 23 A. I would speculate that my concern would be
 24 that, if a bond is required for performance,

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1 that my concern would be that monies collected
 2 in advance of services would be in jeopardy
 3 unless there was a performance bond in place.
 4 Q. And had you made a determination yourself or
 5 sought to make a determination as to whether or
 6 not money was being collected in advance at that
 7 juncture in the fall of 2010?
 8 A. I can't recall that, specifically.
 9 Q. Now, subsequent to the hearing that took place
 10 on October 4th, do you recall making a decision
 11 several weeks later to declare that Johnson Golf
 12 was in default of its contract?
 13 A. Yes, I do remember that.
 14 Q. And did you look at the issue addressed in
 15 Exhibit No. 2 about whether or not the Town of
 16 Duxbury was in breach of contract due to the
 17 fact that it had torn down a residential
 18 structure on the property?
 19 That's in the first paragraph of Exhibit
 20 No. 2.
 21 A. It was my understanding that it was not a breach
 22 of contract.
 23 Q. And how did you come to that understanding?
 24 A. It was explained to myself as a Board of

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1 Selectmen member by both the town manager and
 2 Robert Troy that the building had, or the pipes
 3 had frozen on more than one occasion under the
 4 management of Johnson Golf; and that the last
 5 time that the pipes froze, that the damage
 6 resulting to the structure was greater than the
 7 value of the structure.
 8 And there was a determination by mutual
 9 agreement to remove the building. And then
 10 there was some sort of trade with Mr. Johnson,
 11 which I can't remember the details, in lieu of
 12 that.
 13 Q. And did they give you anything in writing
 14 regarding that topic?
 15 A. If they did, I can't recall, specifically.
 16 Q. But you do have a vivid memory of that?
 17 A. I remember, specifically; because in my
 18 business, I deal with those types of situations
 19 all of the time.
 20 Q. And you were familiar with, at that point, you
 21 had seen a copy of the contract which was
 22 Exhibit No. 1; correct?
 23 A. I'm not sure if I saw the contract. I saw the
 24 copy of the contract during a review of that,

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1 when we had that hearing. I'm not sure if I
2 ever read the contract prior to that date.

3 Q. But if the contract says all changes have to be
4 in writing, would that be something that you
5 would be familiar with, in your own
6 experience?

7 A. Uh-huh.

8 Q. That's a yes or a no?

9 A. Yes, sorry.

10 Q. And at least, as you sit here today, you have
11 no memory as to whether anybody ever represented
12 to you that there was a written change order to
13 the contract regarding the residential building;
14 correct?

15 A. I don't recall getting anything in writing.

16 Q. And the representation to you by Mr. MacDonald
17 and Mr. Troy regarding the frozen pipes, when
18 did that take place?

19 A. I hate to assume, but I'm assuming that it is in
20 conjunction with the general discussion of the
21 hearing that we had.

22 Q. Well, the hearing includes a transcript which is
23 Exhibit No. 3.

24 A. Okay.

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1 Q. Do you have any memory that, at that hearing,
2 somebody said to you, "We made a deal on that,"
3 or was that a conversation that took place at
4 some other time?

5 A. My guess is, if it's not in the transcript, I
6 would presume that it took place at another
7 point in time.

8 Q. Was that in response to your question to them --
9 meaning Troy and MacDonald -- regarding the
10 destruction of this residence that's mentioned
11 in the first paragraph of Mr. Johnson's letter
12 of October 4th, Exhibit 2?

13 A. I don't know if that specific paragraph prompted
14 their response to me.

15 Q. Well, in Mr. Johnson's letter to you, on page 1
16 at the bottom, he indicates that Attorney Troy
17 has provided the court with erroneous
18 information verbally and in writing on a number
19 of occasions.

20 Was that a concern to you when you read
21 it, at the time?

22 A. No.

23 Q. If your attorney was making misrepresentations,
24 you wouldn't be concerned about that?

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1 A. I guess, I wasn't worried about the
2 representations that were being made to me by my
3 own attorney.

4 Q. And when somebody calls that into question, that
5 doesn't concern you?

6 A. I guess my answer to that is, in a situation
7 where both attorneys and both sides aren't in
8 agreement, it's not uncommon to have one party
9 accusing another party of something that will
10 ultimately be decided in a court of law.

11 Q. Have you ever been involved in litigation
12 yourself?

13 A. Yes.

14 Q. And have you ever had a case in the
15 Massachusetts Superior Courts?

16 A. A Massachusetts court. I'm not sure if it was
17 superior or not.

18 Q. What town was it in?

19 A. It would have been in Plymouth County.

20 Q. What kind of case was it?

21 A. It was a suit for specific performance on a
22 purchase and sale.

23 Q. That would have been superior court, as I
24 understand it.

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1 A. Okay.

2 Q. But maybe not.

3 A. I'm not a lawyer.

4 Q. How many years ago was that?

5 A. Oh, 25 maybe, a guess.

6 Q. And other than that, have you had any other
7 court cases, either individually or through your
8 business?

9 A. I was divorced.

10 Q. We'll skip that.

11 Any other civil cases?

12 A. No.

13 Q. Going back to Exhibit No. 2, prior to receiving
14 Exhibit No. 2, had it come to your attention at
15 all that the company CALM Golf that the town was
16 seeking to award the contract to at North Hill
17 had very limited assets?

18 A. Yes.

19 Q. When did that come to your attention?

20 A. I don't know. I don't recall, I should say.

21 Q. And was it a concern of yours --

22 Well, first of all, had you been advised
23 that CALM Golf, at the time that they bid in
24 January of 2009, were reporting that they only

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1 had \$169 in total assets?

2 A. Do you want to repeat that question?

3 Q. Yes.

4 Had it been made known to you that, when
5 CALM Golf bid in January of 2009, their bid
6 document reported that they only had \$169 in
7 total assets?

8 MR. KREIGER: Objection.

9 Go ahead.

10 A. I have heard something to that effect, at some
11 point in time.

12 Q. Do you know from whom you heard that?

13 A. Not for a certainty.

14 Q. Having heard it, being in the business field
15 yourself, did that raise concerns to you about
16 CALM's ability to manage an asset like the North
17 Hill Country Club?

18 A. My assumption is that oftentimes corporations
19 are formed for new ventures, and that it's
20 really the financial backing of the individuals
21 that counts.

22 Q. And how did you come to that assumption?

23 A. I see it on a day-to-day basis or on a regular
24 basis in all sorts of private ventures.

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1 the process would be?

2 A. I'm not sure if I understand that question.

3 Q. It was probably not well-phrased. Let me try it
4 again.

5 In the fall of 2010, Johnson Golf was
6 running the course, and you knew about that;
7 correct?

8 A. Correct.

9 Q. And you knew that the town had received its
10 rent for the past two years from Johnson;
11 correct?

12 A. I don't know that. I can't recall that now, but
13 go ahead.

14 Q. What was your understanding of what the next
15 step was going to be once you took the step of
16 voting on the 18th of October, 2010 to find
17 Johnson in breach of its contract?

18 A. My assumption is that the town manager would
19 take the next legal step from that point.

20 Q. And when you say the town manager was going --

21 A. I'm sorry, my mistake, that town counsel was
22 going to take the next legal step after that
23 point.

24 Q. And the town counsel was Mr. Troy; correct?

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1 Q. Did you discuss your assumption with anybody
2 else in town government, first of all?

3 A. I don't recall, specifically.

4 Q. Do you recall --

5 MR. FOLLANSBEE: Strike that.

6 Q. Did you ever discuss with Mr. MacDonald his
7 decision to award a contract to CALM Golf?

8 A. Not that I can recall.

9 Q. So did you ever say to Richard, "You know, I'm a
10 little worried about CALM only has \$169 in total
11 assets. Are the principals going to sign
12 something guaranteeing anything?"

13 Did you ever have that discussion with
14 him?

15 A. I wouldn't have that kind of discussion with
16 him.

17 Q. Well, would you have that discussion with
18 anybody?

19 A. In advance of that happening, no.

20 Q. And was it your understanding --

21 MR. FOLLANSBEE: Strike that.

22 Q. At or about the time that you voted to find
23 Johnson in default of its contract, what was
24 your understanding about what the next step in

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1 A. That is correct.

2 Q. And did he discuss with you what the next step
3 was going to be?

4 A. I don't have a specific memory of that
5 conversation.

6 Q. Did anyone discuss with you -- whether it was
7 Mr. MacDonald or Mr. Troy -- that the next step
8 was going to be to undertake an eviction
9 proceeding in Plymouth District Court against
10 Johnson Golf?

11 A. I'm sure, as selectmen, we received notice to
12 that effect.

13 Q. Would the selectmen, under the Duxbury by-law,
14 would the selectmen have to approve of counsel
15 engaging in a new lawsuit against Johnson Golf
16 Management?

17 A. My assumption or my reading of the Town Manager
18 Act is that the town manager supervises the
19 day-to-day activities of town counsel. He keeps
20 us informed as to pending litigation. And the
21 Board of Selectmen doesn't approve or disapprove
22 on a day-to-day basis of what his actions are on
23 an ongoing case.

24 Q. I'm not talking about an ongoing case. I'm

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1 talking about a new case which would be an
2 eviction proceeding in Plymouth District Court
3 in the fall of 2010.

4 A. From my humble nonlegal, it's all one case. In
5 other words, it's all about the same matter; so
6 from my perspective, it's you make a move, town
7 makes a move and so on and so on.

8 MR. FOLLANSBEE: Could I have that marked
9 as the next exhibit?

10 (Exhibit No. 4, For Identification,
11 marked.)

12 (Document handed to the witness.)

13 Q. (BY MR. FOLLANSBEE) Sir, directing your
14 attention to what's been now marked as Exhibit
15 No. 4. And there are some highlighted
16 underlined portions on page 2 that I would
17 direct your attention to.

18 A. Okay.

19 Q. You are familiar with this as being an excerpt
20 of the by-laws of the Town of Duxbury;
21 correct?

22 A. Very, very familiar.

23 Q. You're very familiar?

24 A. Yes.

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1 Would you take a few minutes to look at
2 that and tell me what is there in this document
3 that supersedes the by-laws, which were Exhibit
4 No. 4, regarding the use of town counsel?

5 MR. KREIGER: Objection.

6 A. On number 15, "The town manager shall oversee
7 the activities of town counsel under the
8 direction of the Board of Selectmen."

9 Q. And the direction of the Board of Selectmen, in
10 this instance, was to do what?

11 A. Well, what specific instance are you talking
12 about?

13 Q. After you made the determination that Johnson
14 Golf was in a default position with regard to
15 its contract.

16 A. I think I said that from, at least my eyes, as a
17 selectman, a pending legal case between the town
18 and another party, once the Board of Selectmen
19 is aware of and approves of that case
20 proceeding, it doesn't deal with it on a
21 day-to-day basis.

22 Q. Now, with regard to a new case, if a new case
23 comes in -- and I'm not talking about Johnson
24 Golf, I'm just talking about any case -- is it

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1 Q. Now, the by-laws themselves say that no town
2 department or official can request the services
3 of town counsel without your approval;
4 correct?

5 A. 3.1.5 says that, correct.

6 Q. And is it your testimony that that somehow is
7 negated if there is previous litigation between
8 the parties?

9 A. My opinion is that this can't be read as a
10 single document by itself.

11 Q. What other document would you like to read with
12 it?

13 A. The Town Manager Act.

14 Q. The act providing for a town manager in the Town
15 of Duxbury?

16 A. Correct.

17 MR. FOLLANSBEE: Let's mark that as the
18 next exhibit then.

19 (Exhibit No. 5, For Identification,
20 marked.)

21 (Document handed to the witness.)

22 Q. (BY MR. FOLLANSBEE) Directing your attention
23 to what's been now marked as Exhibit No. 5, the
24 Town Manager Act in Duxbury.

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1 your testimony that it would require the Board
2 of Selectmen to take an affirmative step to say
3 town counsel should be engaged to handle this
4 case?

5 A. My reading of it or the practice of it is that
6 the Board of Selectmen are aware, but the
7 day-to-day utilization of town counsel is being
8 managed by the town manager.

9 Example, I'm elaborating, but example,
10 somebody needs a --

11 Q. Please continue to elaborate.

12 A. -- somebody needs a conflict of interest
13 determination. They don't need to come to the
14 Board of Selectmen and have us say to Bob Troy,
15 yes, you may have a conflict of interest
16 opinion from town counsel. They go to the town
17 manager, and the town manager authorizes that.

18 Q. Now, with regard to this particular case, a
19 decision was made, at some point, to refer this
20 matter to the town's insurance company;
21 correct?

22 A. I'm assuming so.

23 Q. And do you know who made that decision?

24 A. No, I don't.

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- 1 Q. Did you make that decision?
 2 A. Absolutely not.
 3 Q. Well, did the Board of Selectmen make that
 4 decision?
 5 A. Not to my knowledge.
 6 Q. Can the Board of Selectmen take action without
 7 you knowing about it?
 8 A. I'm just saying that, to my knowledge, the
 9 Board of Selectmen didn't have a vote on
 10 submitting this to an insurance company.
 11 Q. And let me go back.
 12 For the years 2010 and 2011, you served
 13 as the chairperson of the Board of Selectmen;
 14 correct?
 15 A. Correct.
 16 Q. Now, after this hearing took place in the fall
 17 of 2010 in which a declaration by the selectmen
 18 was that Johnson was in default of its contract,
 19 did you attend a meeting with the Office of the
 20 Inspector General together with other
 21 representatives from Duxbury?
 22 A. Yes.
 23 Q. And do you know when that took place?
 24 A. I believe, in December of 2010.

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- 1 Q. And at that time, by December of 2010, had the
 2 Town of Duxbury already decided to rescind its
 3 award to CALM Golf?
 4 A. I don't have a time line of sequences.
 5 Q. Was that discussed with you by Mr. MacDonald
 6 and/or Mr. Troy, that there was going to be a
 7 rescission of the award to CALM Golf?
 8 A. I don't, specifically, recall.
 9 Q. Were you puzzled by the fact that, if you were
 10 going to boot Johnson Golf out of town, that
 11 CALM Golf wouldn't automatically take over?
 12 A. If I had to reach in on my memory, my assumption
 13 was that the town was attempting to rebid the
 14 project with a proposal; and that whoever was
 15 the appropriate party on the rebid, that they
 16 would manage the course.
 17 Q. Well, why would the town want to rebid if they
 18 had already awarded the contract to CALM Golf?
 19 A. I'm not sure of the specifics.
 20 Q. Well, you knew that they had awarded the
 21 contract to CALM Golf; correct?
 22 A. Correct.
 23 Q. And you knew that CALM Golf was operating
 24 another golf course in the area; didn't you?

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- 1 A. I didn't know that.
 2 Q. Well, did you know anything about CALM Golf at
 3 all?
 4 A. No.
 5 Q. Did anybody ever tell you anything about
 6 Mr. Lanzetta and his reputation in the golf
 7 community?
 8 A. Not specifically.
 9 Q. Did they tell you anything, in general, about
 10 Mr. Lanzetta and CALM Golf?
 11 A. Not specifically.
 12 Q. Who told you --
 13 MR. FOLLANSBEE: Strike that.
 14 Q. Did somebody tell you, We've made a decision,
 15 and we're going to rebid this thing, and we're
 16 not giving it to CALM Golf?
 17 A. I would assume that that was told to me, at
 18 some point in time. I just don't remember
 19 when.
 20 I'll elaborate. The day-to-day operation
 21 of the community of Duxbury is run by the town
 22 manager. It is not run by the Board of
 23 Selectmen. We are the policymakers of the town.
 24 We don't hire, fire, award contracts, sign

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- 1 contracts. All of those things are done by the
 2 town manager.
 3 Q. You don't sign contracts?
 4 A. Well, I may sign some, I guess. I'll take that
 5 back. We don't sign many contracts. You are
 6 right. We signed that contract.
 7 Q. Well, under the Town Manager Act, that's
 8 Exhibit 5, and directing your attention to --
 9 the pages are numbered in the bottom center of
 10 each page -- page 83, and if you look at clause
 11 13 which coincidentally is underlined, it
 12 indicates that the contracts are subject to
 13 execution by the Board of Selectmen; correct?
 14 A. That's what line 13 says.
 15 Q. And what it, specifically, says is that the
 16 town manager can negotiate all of the
 17 contracts, but the Board of Selectmen signs
 18 them, correct?
 19 A. That's what it says.
 20 Q. And is it your testimony that, although it says
 21 that, that's not what Duxbury does?
 22 A. I would say that the Board of Selectmen does not
 23 sign every single contract.
 24 Q. Well, you're not the first person to say that;

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1 so maybe you can help me out.

2 Who makes the determination as to which
3 contracts the Board of Selectmen does sign and
4 which ones it doesn't sign?

5 A. The Board of Selectmen are told by either town
6 counsel or the town manager what the board,
7 specifically, needs to sign as a board versus
8 what Richard signs as town manager.

9 Q. It's your memory that you had a meeting with the
10 Inspector General in the December time frame of
11 2010; correct?

12 A. Yes.

13 Q. And who was at that meeting?

14 A. It was myself, town counsel, town manager,
15 Gordon Cushing. I don't think there was anybody
16 else, but there could have been.

17 Q. And given that you are more of the policy guy
18 rather than the day-to-day guy, why were you
19 attending the meeting?

20 A. I was attending the meeting as chair of the
21 Board of Selectmen to answer questions and
22 address the IG on anything that he might like to
23 ask me.

24 Q. And had you ever met the IG before?

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1 A. No.

2 Q. Other than this one time, have you ever been to
3 the Office of the Inspector General?

4 A. Absolutely not.

5 Q. Do you have a good memory as to what transpired
6 at this meeting?

7 A. You'll tell me later on.

8 Q. What do you remember about the meeting?

9 A. We went to the meeting to explain the situation
10 that the town was in regarding Johnson Golf,
11 the 30B bidding process and to solicit their
12 opinion as to the proper way to proceed from
13 this date.

14 Q. And so by early December of 2010, is it fair to
15 say that the town had reached the end of the
16 road as far as giving a contract to CALM Golf?

MR. KREIGER: Objection.

18 A. I wouldn't -- I don't know the answer to that.

19 Q. Well, did you speak at the meeting?

20 A. I believe so.

21 Q. And what input did you have in the meeting?
22 What did you have to say at the meeting?

23 A. I think I probably voiced my frustration to the
24 Inspector General with regard to the 30B

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1 bidding process.

2 Living in the private sector, as I do,
3 and being in business for 42 years, the
4 decision of my clients is based upon
5 performance and based upon what they think is
6 in their best interests. And I think that a
7 municipality, in this particular case, gets
8 stuck in legal wranglings over details that the
9 rest of us in the private industry don't have to
10 go through.

11 Q. So in the private industry, is it your testimony
12 that, if you want to give a contract to any
13 particular person, you just give it to them?

14 A. It's your decision. If you decide that you want
15 to hire Shawn Dahlen & Company, Inc. to build
16 your house, you hire Shawn Dahlen & Company,
17 Inc. If you decide you don't like me, you
18 decide to hire whoever else you would like to
19 hire.

20 Q. Now, is it your understanding that there were
21 some folks in Duxbury that weren't happy with
22 Johnson Golf and didn't want him or Johnson Golf
23 Management running that golf course?

MR. KREIGER: Objection.

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1 Q. You can answer.

2 A. I heard those comments; not from individuals,
3 but I heard them, in general.

4 Q. Now, in general, what had you heard?

5 A. I heard there was what I'll classify as whining
6 over tee times and other mundane things.

7 Q. And so when you heard that there were people in
8 Duxbury who were doing the whining about the tee
9 times; correct?

10 A. I'm assuming so.

11 Q. You weren't thinking -- I mean, just so I have
12 it right -- you're not suggesting that the
13 people that work for or run Johnson Golf
14 Management were whining about tee times; are
15 you?

16 A. No, no, no. I've never spoken to anybody that
17 works for Johnson Golf Management or
18 Mr. Johnson.

19 Q. And what was your reaction to what you heard
20 about these people whining about their tee
21 times?

22 A. No specific reaction.

23 Q. In the private sector, would that be a reason
24 not to award a contract to a particular person

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1 because some people were whining about their tee
2 times?

3 A. In the private sector, we all can do whatever we
4 want to do whenever we want to do it.

5 Q. And that's completely different than in the
6 public sector; right?

7 A. Absolutely.

8 Q. In the public sector, the Town of Duxbury, like
9 every other municipality, is bound by provisions
10 of Chapter 30B?

11 A. By 30B, correct.

12 Q. Now, you indicated a few minutes ago that you
13 were frustrated with 30B. What was the source
14 of your frustration?

15 A. I think my frustration is that 30B sets up
16 municipalities for potential litigation because
17 of the way the act is, the requirement of the
18 act.

19 Q. And what do you understand would set them up for
20 litigation?

21 A. The fact that there is a specific set of
22 procedures of which, from time to time, there
23 is debate over whether those procedures are --
24 what those procedures are, whether they've been

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1 properly followed, the complexity of the
2 process.

3 For an example, when we start talking
4 about rating and using certain words and
5 somebody misplaces a word, and if that
6 ultimately puts you in a position of it being
7 litigated, I think that, unfortunately, puts
8 towns in a bad position.

9 Q. Prior to voicing your frustration about the 30B
10 process, had you had an occasion to read the
11 request for proposal that was issued by the Town
12 of Duxbury in the Johnson Golf or the North Hill
13 matter?

14 A. I can't recall, exactly, if it was before or
15 afterwards.

16 Q. And when you expressed frustration, you just
17 indicated a second ago that a word here or a
18 word there, is the word that you are referring
19 to the removal of the word "flat" in regard to
20 the payment in the RFP?

21 A. No.

22 Q. So it's nothing specific to this case?

23 A. No. I'm saying for an example, the evaluation
24 process and how the evaluation process, for

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1 example, an RFP, how it differs from --
2 What's the other word?

3 Q. IFB?

4 A. IFB.

5 How substantially different that was.

6 And until we spoke to the Inspector General, we
7 didn't realize that an IFP (phonetic) --

8 Is that the right word.

9 Q. B, IFB.

10 A. -- that an IFB was another way of doing it that
11 made it less cumbersome, you know, less
12 complicated for the community.

13 Q. By less complicated, it meant that you didn't
14 need qualifications?

15 A. No.

16 MR. KREIGER: Objection to that.

17 MR. FOLLANSBEE: You object to that?

18 MR. KREIGER: Yes. You've got my
19 objection, yes.

20 Go ahead.

21 A. It is less onerous on a community is my
22 understanding.

23 Q. And how did you come by that understanding?

24 A. By the fact that that's the process we're using

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1 now.

2 Q. And you think that's a better process than the
3 RFP process?

4 A. Considering we're sitting here taking a
5 deposition, it probably is.

6 Q. You think the IFB process is a better way to
7 go?

8 A. Uh-huh.

9 MR. KESTEN: He has to answer.

10 MR. FOLLANSBEE: Oh, yes.

11 Q. That's a yes or no?

12 A. Yes, sorry.

13 Q. You indicated that, at the meeting with the
14 Inspector General, you voiced your frustration
15 with the 30B process.

16 Did you have anything else to say at the
17 meeting?

18 A. I indicated to the Attorney General (phonetic)
19 that, to the best of my knowledge, that the Town
20 of Duxbury had conducted itself in a proper
21 manner going through the process.

22 Q. And that's the Inspector General that you are
23 referring to, not the Attorney General?

24 A. Sorry, the Inspector General.

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1 Q. And when you told him that you thought that the
2 town had conducted itself in a proper manner,
3 what were you relying on for your conclusion
4 that the town had behaved in a proper manner?

5 A. I am -- and I am including today -- I am
6 convinced that there is nobody that was
7 involved in the process that, specifically,
8 wanted Mr. Johnson not to be awarded the bid.

9 Q. How do you explain Mr. MacDonald's decision to
10 award a contract to CALM Golf when CALM Golf had
11 virtually no experience and no assets?

12 A. You will have to ask Mr. MacDonald.

13 Q. I did.

14 A. Then why are you asking me?

15 Q. Because you indicated that everything was done
16 in a proper manner. I'm simply asking, what was
17 proper about that?

18 A. Unless I had the RFP requirements and
19 qualifications in which to submit a proposal --
20 Like I said before, in my world,
21 oftentimes businesspeople will get together and
22 do a joint venture. And the day you started
23 your law practice with your partner, you had X
24 in the account. It isn't necessarily the same

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1 amount that you have in your account today,
2 after many years of business.

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

5 MR. KREIGER: How about a break, a couple
6 of minute break?

7 MR. FOLLANSBEE: That's fine.
8 (Recess taken.)

9 Q. (BY MR. FOLLANSBEE) I think when we broke, I
10 was asking you about the meeting with the
11 Inspector General in early December of 2010,
12 and you indicated that you voiced your
13 frustration.

14 And my question was, did you have
15 anything else to say at the meeting?

16 A. I think I answered that question with regards
17 to that. To the best of my knowledge then and
18 to the best of my knowledge today, that there
19 were no inappropriate actions by any town
20 officials, to my knowledge, with regards to this
21 process.

22 Q. And is that what you told the Inspector
23 General?

24 A. Yes.

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1 Q. And did anybody at the Inspector General's
2 office say to you, when this was first done in
3 late 2008, we -- meaning the Inspector
4 General -- advise the town to reject all of the
5 bids?

6 A. No. We had no discussions regarding that.

7 Q. Have you discussed that issue -- the rejection
8 of the bids in December of '08 -- have you
9 discussed that with Mr. MacDonald or Mr. Troy,
10 Mr. Cushing?

11 A. I'm sure I have, but I can't remember the
12 conversation.

13 Q. Did any of them ever tell you that the
14 Inspector General had told them to reject all of
15 the bids?

16 A. I don't have any specific recall to that.

17 Q. Do you have a general recall on that?

18 A. Do you want to give me the list of names again?

19 Q. Yes. Cushing, MacDonald or Troy.

20 And the question was, did any of them
21 tell you that the Inspector General had told
22 them to reject all of the bids in the December
23 time frame of 2008?

24 A. My general memory is that Bob Troy would have

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1 been the one that I talked to about it; and the
2 specifics about what was said or wasn't said, I
3 don't recall.

4 Q. So you have no memory --

5 Well, did Bob Troy ever tell you why the
6 bids were rejected?

7 A. My memory is that your bids were rejected
8 because someone had opened -- I probably won't
9 say this the right way -- but the dollar amount
10 or the amount that was being proposed, and
11 people were privy to that before the evaluations
12 were concluded.

13 Q. And who told you that?

14 A. I'll make an assumption that it was Bob Troy.

15 Q. Now, when you met with the Inspector General,
16 you indicated a few minutes ago, are you
17 suggesting that it was the Inspector General's
18 suggestion that you do an IFB instead of an
19 RFP?

20 A. No. I'm not making that assumption -- I mean,
21 I'm not making that suggestion. There were no
22 specific, at that meeting, there were no
23 specific suggestions by the Inspector General,
24 just general discussion.

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1 Q. In the fall of 2010, did you become aware that
 2 the court -- meaning Judge Smith -- had denied
 3 Duxbury's motion for summary judgment?
 4 A. Summary judgment of what?
 5 Q. Well, had you been advised that the town was
 6 trying to have the case thrown out of court in
 7 the fall of 2010?
 8 A. I don't remember the specific time, but that was
 9 one of many comments.
 10 Q. And when you say it was one of many comments,
 11 who made the comment or how did you come by the
 12 knowledge that the town was seeking to have the
 13 case terminated?
 14 A. We were routinely informed by Mr. Troy and
 15 Mr. MacDonald of the status of the case.
 16 Q. And in the fall of 2010, they indicated that the
 17 judge was having a hearing?
 18 A. I can't possibly tell you the time frame. I
 19 couldn't remember Ann's last name, never mind
 20 that.
 21 MR. FOLLANSBEE: Could I have this marked
 22 as the next exhibit, please?
 23 (Exhibit No. 6, For Identification,
 24 marked.)
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1 (Document handed to the witness.)
 2 Q. (BY MR. FOLLANSBEE) Sir, directing your
 3 attention to what's been now marked as Exhibit
 4 6. And this is an order of the court dated
 5 November 24, 2010 denying --
 6 A. What was the date again?
 7 Q. It's on the back page. It should be dated
 8 November 24, 2010.
 9 A. Yes.
 10 Q. Have you ever been given a copy of this decision
 11 prior to today?
 12 A. I'm sure I have.
 13 Q. And when you did receive a copy of it, did you
 14 familiarize yourself with it and read it?
 15 A. Probably, at the time.
 16 Q. And was it your understanding by, at least,
 17 December of 2010 that the town's effort to have
 18 the case terminated was not successful and that
 19 the case would continue?
 20 A. Yes.
 21 Q. Did you give consideration, at that point, to
 22 awarding a contract to Johnson Golf Management
 23 and concluding the case that way?
 24 A. No.
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1 Q. Why is that?
 2 A. I don't recall that as being an option.
 3 Q. What did you think your options were in December
 4 of 2010?
 5 A. Options regarding what?
 6 Q. Regarding what to do with the North Hill
 7 contract.
 8 A. The North Hill contract existed as it did on --
 9 Let me rephrase that. My understanding
 10 of this, basically, means that the case cannot
 11 be thrown out of court and that it will
 12 continue to move on to a trial date, that
 13 that's all it means as part of what appears to
 14 me in a legal system as 400 moves to get to the
 15 endpoint.
 16 Q. And was it ever a conversation that the case
 17 could settle before it moved to a trial?
 18 MR. KREIGER: Objection.
 19 A. Was there ever a possibility? I don't know.
 20 Q. Had it ever been brought up? Had the selectmen
 21 ever brought that topic up with town counsel or
 22 with Mr. MacDonald?
 23 A. In my tenure, I don't believe we ever,
 24 specifically, discussed settling the case.
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1 Q. And do you know any reason why you never even
 2 discussed that?
 3 A. I was unaware that that was an option.
 4 Q. Had you ever been advised that the Johnson Golf
 5 side of the litigation had proposed various
 6 settlements?
 7 A. Not until a subsequent point in time.
 8 Q. When did you find out that Johnson Golf had
 9 proposed various settlements?
 10 A. More recently.
 11 Q. More recently, like, 2012?
 12 A. It could have been '11 or '12.
 13 Q. How did you find that out?
 14 A. I don't recall, specifically.
 15 MR. KESTEN: I advise you not to answer
 16 if it implicates executive session with me or
 17 Mr. Kreiger or both.
 18 MR. FOLLANSBEE: That's a good point.
 19 MR. KESTEN: Thank you, agreed. It was a
 20 great point. I think it's a great point.
 21 MR. FOLLANSBEE: It was a great point.
 22 Let's just get it over with.
 23 Q. (BY MR. FOLLANSBEE) With Attorney Troy, had
 24 the selectmen ever discussed getting rid of this
 DEPOSITION OF SHAWN DAHLEN

case by virtue of a settlement?

A. I don't have any specific memory of that.

Q. There was at least some discussion, as I recall, from looking at the minutes of the Board of Selectmen, where one of your colleagues, Mr. Donato, was certainly taking the minority view about what was going on with this litigation.

Is that a fair statement?

MR. KREIGER: Objection.

A. You'd have to refresh my memory with the specific vote of the board.

Q. Well, weren't there occasions where Mr. Donato was actually in confrontations with Mr. Troy regarding this litigation at Board of Selectmen public hearings?

A. Yes.

Q. And how did you view that, as the chairman of the Board of Selectmen, at the time?

MR. KREIGER: Objection.

A. The two disagree.

Q. Did you ever consider the point of view being expressed by Mr. Donato may be more correct than the point of view being expressed by

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Q. And do you recall reading any newspaper accounts concerning the fact that, although Attorney Troy said they hired an outside consultant to draft the RFP, that no such consultant was really hired?

A. I'm aware of that statement.

Q. And at the meeting, the selectmen's hearing in October of 2010, do you recall the issue of this consultant being addressed?

A. Yes.

Q. And do you recall Attorney Troy saying, "The honest answer is town hall had nothing to do with drafting the RFP"?

A. I don't remember the specific words.

Q. If we look at the exhibit, Exhibit No. 3.

A. Which one?

MR. KREIGER: It's Exhibit 3.

Q. Right. It's Exhibit No. 3.

A. Okay.

Q. And if you go to pages 64 and 65.

A. Okay.

Q. Just read the underlined portions to yourself, and then I'll have a few questions about it.

A. Okay.

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Mr. Troy?

A. I was putting my trust in my town counsel.

Q. Now, I'm sure you -- well, I shouldn't say "I'm sure" -- do you recall at the selectmen's hearing that an issue came up about who drafted the RFP?

A. Which hearing?

Q. The hearing before the Board of Selectmen on October 4, 2010.

A. I don't, specifically, recall that.

Q. Do you have any memory of Mr. Donato questioning Mr. Troy and Mr. MacDonald about who drafted the RFP?

A. No.

Q. Have you read any newspaper accounts about that topic recently?

A. I can't be specific.

Q. Do you read the --

A. Duxbury Clipper?

Q. -- the Duxbury Clipper?

A. Yes.

Q. You are often quoted in the Duxbury Clipper; is that correct?

A. I may be.

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MR. KREIGER: Off the record.

(Discussion off the record.)

Q. (BY MR. FOLLANSBEE) Have you had a chance to look at that?

A. Okay. Go ahead.

Q. You've had a chance to look at it?

A. Yes.

Q. And you remember this exchange now that you've had a chance to review the transcript?

A. Yes.

Q. And was it your understanding, at the time, that Attorney Troy was saying no individual in town government had anything to do with drafting this document? It was done 100 percent by a consultant?

A. My understanding --

MR. KREIGER: Objection.

A. -- my understanding is that, whatever Mr. Troy said in this deposition, he probably said.

Q. That isn't a deposition.

A. I mean, sorry, whatever he said in this transcript is what he probably said.

Q. Well, I think that we can all agree that folks like this gentleman, they take the words down

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1 and get them correct.

2 A. That's what I'm saying. I'm assuming this is
3 correct. I'm not disagreeing.

4 Q. But as you were listening to this and reviewing
5 it yourself, is it your understanding that what
6 Troy was saying is no one in Duxbury town
7 government wrote this RFP. It was done 100
8 percent by an outside consultant?

9 MR. KREIGER: Objection.

10 A. Yes.

11 Q. And you came away from the meeting that evening
12 believing that Attorney Troy was telling you the
13 truth and that a consultant had drafted this
14 document; correct?

15 A. Yes.

16 Q. And did anybody ever tell you subsequent to this
17 that that wasn't true?

18 A. Well, my understanding is, at the current time,
19 that --

20 MR. KREIGER: Wait, the question was
21 narrower than that.

22 May I please have the question read
23 back?

24 (Question read.)

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1 shawndahlen@aol.com?

2 A. I couldn't tell you when I switched.

3 Q. Did you have your e-mail forwarded when you
4 switched?

5 A. Yes.

6 MR. FOLLANSBEE: I'd ask that this be
7 marked as the next exhibit.

8 (Exhibit No. 7, For Identification,
9 marked.)

10 (Document handed to the witness.)

11 Q. (BY MR. FOLLANSBEE) Directing your attention to
12 what's been marked as Exhibit No. 7. This was
13 also marked at Mr. Cushing's deposition,
14 coincidentally, as Exhibit No. 7.

15 Do you remember receiving this e-mail on
16 or about October 13, 2010 from Mr. Cushing?

17 A. I don't remember it, but I assume I did.

18 Q. And in it, if you take a look at the second
19 page --

20 A. Number 8?

21 Q. I wasn't going to suggest number 8. I was going
22 to suggest number 4.

23 A. Okay.

24 MR. KREIGER: What's the question?

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1 A. Yes.

2 Q. And who told you that it wasn't true?

3 A. I don't recall the specific person.

4 Q. And when did that transpire, that you became
5 aware or that somebody advised you that that
6 wasn't true?

7 A. More recently.

8 Q. How recent?

9 A. Within the last six months, as a guess.

10 Q. And is it your testimony that, prior to the last
11 six months, you were unaware that the consultant
12 had not drafted that document?

13 A. That is correct.

14 Q. Do you have an e-mail, shawndahlen@aol.com?

15 A. Uh-huh.

16 Q. Is that a yes?

17 A. Yes. Oh, an old e-mail address. I don't get
18 e-mail there any more.

19 Q. Where do you get your e-mail now?

20 A. shawn@dahlenco.com.

21 Q. And for how long have you had that e-mail
22 address?

23 A. A couple of years.

24 Q. And so then in 2010, was your e-mail address

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1 Q. The question is, did you become aware on or
2 about the 13th of October of 2010 from
3 Mr. Cushing that the RFP was actually drafted by
4 a lot of folks in Duxbury town government?

5 A. Yes.

6 Q. So it wasn't something that you just found out
7 about the last six months or so. You knew it
8 shortly after the meeting of October 4, 2010;
9 correct?

10 A. I would make the assumption that, if I received
11 this, I would have known it.

12 Q. And this document is dated some five days
13 before you made the decision to rescind --
14 sorry, not rescind -- to terminate the contract
15 of Johnson Golf due to breach of contract;
16 correct?

17 A. I don't have the decision date of that in front
18 of me.

19 Q. Okay.

20 Now, directing your attention to
21 paragraph No. 8. Paragraph No. 8 indicates that
22 the consultant didn't make any changes or
23 corrections; correct?

24 A. That is correct.

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1 Q. And directing your attention to paragraph 7,
2 it indicated that town counsel was the person
3 who created the language "comparable business
4 entity"?
5 A. That's what the paragraph says.
6 Q. And so that you became aware of that on or about
7 the time of this e-mail; correct?
8 A. If I received it and read it, I would assume
9 so.
10 Q. And if you received an e-mail from Gordon
11 Cushing saying Here is my response to
12 Mr. Donato's request to whom actually wrote the
13 RFP, it would get your attention enough to read
14 it; wouldn't it?
15 A. More than likely.
16 Q. And it had been an issue at the selectmen's
17 hearing a week earlier than this; right?
18 A. What had been an issue?
19 Q. About who wrote the RFP.
20 A. It wasn't an issue to me.
21 Q. But the issue had been addressed, and Mr. Troy
22 had indicated that an outside consultant had
23 done the whole thing; correct?
24 A. Correct. But it had nothing to do with what we
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1 were having the hearing on.
2 Q. And what did you think had something to do with
3 the hearing?
4 A. We were having the hearing on whether there were
5 any inconsistencies in the contract with Johnson
6 Golf and the Town of Duxbury.
7 Q. And you were trying to be fair and impartial;
8 correct?
9 A. Fair and impartial about what?
10 Q. About whatever conclusion you were going to
11 draw, you wanted to hear both sides?
12 A. Yes.
13 Q. And make a fair and impartial decision;
14 correct?
15 A. Correct, correct.
16 Q. In the fall and up until December of 2010, had
17 you discussed with Attorney Troy whether or not
18 there was any evidence shown so far about bad
19 faith on the part of the Town of Duxbury?
20 A. If I did so, it would have been under executive
21 session.
22 MR. KREIGER: Go ahead.
23 Q. And after the summary judgment had been denied
24 and you were meeting with the Inspector
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1 General's office, did anybody on behalf of the
2 town tell the Inspector General that the price
3 proposals had been opened and that one of the
4 evaluators had seen the prices prior to
5 completing his evaluation?
6 A. I have a vague recollection. I have a vague
7 memory of that, yes.
8 Q. And do you know who said that to the Inspector
9 General's office?
10 A. I don't know for a fact, but I would assume that
11 it would be Bob Troy.
12 Q. Why do you assume that?
13 A. Because he was the most knowledgeable of all of
14 us in the room regarding the case.
15 Q. Did he do most of the talking that day on behalf
16 of the town?
17 A. I would presume, yes.
18 Q. Do you have a memory as to who carried the ball
19 for the town that day?
20 A. I would presume, Bob.
21 MR. KREIGER: Well, you were asked if you
22 have a memory of it.
23 A. I don't have a specific memory of it.
24 Q. Do you remember Gordon Cushing saying anything
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1 to the Inspector General that day?
2 A. I'm assuming he did; but I don't remember,
3 specifically, what he told the Attorney
4 General.
5 MR. KESTEN: Inspector General.
6 A. The Inspector General. I'll get it right one of
7 these days. It's a 50/50 chance.
8 MR. FOLLANSBEE: I'd ask that this be
9 marked as the next exhibit.
10 (Exhibit No. 8, For Identification,
11 marked.)
12 (Document handed to the witness.)
13 Q. (BY MR. FOLLANSBEE) Directing your attention
14 to Exhibit No. 8, the second paragraph, where
15 it indicates, according to the town, and then it
16 describes two things.
17 Do you remember who on behalf of the Town
18 of Duxbury gave this information to the
19 Inspector General?
20 A. I do not.
21 Q. Did you?
22 A. Not to my memory.
23 Q. Did anyone at that meeting tell the Inspector
24 General that the town didn't know about the
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insubstantial assets of CALM Golf?

A. I don't recall that kind of detail.

MR. FOLLANSBEE: Off the record.

(Discussion off the record.)

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

(Exhibit No. 9, For Identification, marked.)

(Document handed to the witness.)

Q. (BY MR. FOLLANSBEE) Now, directing your attention to the second page of what's been marked as Exhibit No. 9, it indicates in the footnote that "The town informed this office it did not know that the highest proposal lacked the assets and equipment to perform the contract."

Do you know who made that representation to the Inspector General?

A. No idea.

Q. You knew, by the time that you had the meeting with the Inspector General in December of 2010, you knew that CALM's proposal showed that they had very limited assets and no equipment; correct?

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A. No.

Q. And when you say it seemed simpler, what was simpler about the IFB process?

A. My understanding is, it doesn't have an evaluation process in terms of people looking at it and then making assumptions of the paperwork, that you either meet specific criteria that are outlined in it or you don't. It's a simple --

Q. Did anybody in town government discuss with you what was going to be put into the IFB --

A. No.

Q. -- for running the golf course in 2011?

A. No, no.

Q. Did you review the IFB yourself, at any point?

A. No.

Q. Did anybody talk to you about, We're going to put some language in the IFB to make sure that nobody can sue the town?

A. No.

Q. Did you discuss the North Hill or a possibility of the North Hill Golf Course contract with Emmett Sheehan in the period between January 1, 2011 and the end of February of 2011?

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A. I don't know when I knew any specifics about CALM or with respect to that date.

Q. Well, if I suggested to you that Mr. MacDonald had rejected all of the bids, again, on November 24, 2010, does that comport with your memory as to what information you had, at that time?

MR. KREIGER: Objection.

A. I don't have any memory, specific memory, of the date that he rejected CALM Golf.

Q. Shortly after Exhibits 8 and 9 were received by the town, the town elected to go forward with an IFB; correct?

A. Correct.

Q. And were you aware of that procedure, the IFB procedure?

A. Yes.

Q. And you indicated that you thought it was the preferred way to go rather than an RFP?

MR. KREIGER: Objection.

A. It seemed simpler and less complex.

Q. Do you know whose idea, who in the Town of Duxbury decided to use the IFB process rather than the RFP process in 2011?

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A. You'd have to recreate something for me to look at the dates.

Q. Well, let me ask it more generally.

Did you ever discuss with Emmett Sheehan the possibility of him bidding again on the North Hill Golf Course contract?

A. Bidding again from when?

Q. After 2010.

A. Yes.

Q. And what's your memory of that conversation?

A. My memory of that conversation is, I asked him why he did not submit a bid.

Q. Well, what made you think that he was going to submit a bid?

A. Because my memory had said that he had submitted a bid at one of the previous bids.

Q. And I'll be more direct about the conversation.

Do you remember attending the bid opening in February of 2011?

A. I don't.

Q. Have you attended any bid openings for the North Hill Golf Course contract?

A. I cannot remember attending any. What was the date again, please?

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- 1 Q. Thursday, February 17, 2011 at 2:00 p.m.
 2 A. Thursday, February what?
 3 Q. 17th, 2011 at 2:00 p.m.
 4 MR. KREIGER: Shawn, the question is
 5 just, do you remember?
 6 A. No. Makes that easy.
 7 Q. Have you ever attended a bid opening at the
 8 Office of Inspectional Services at 878 Tremont
 9 Street in Duxbury?
 10 A. Not that I can recall.
 11 Q. Do you recall saying to Mr. Sheehan, "What's the
 12 matter, Emmett? Did you get cold feet?" About
 13 his decision not to submit a bid for the North
 14 Hill Golf Course contract?
 15 A. Not that I can recall.
 16 Q. So is it possible that you did say that?
 17 A. I don't ever remember being at a bid opening.
 18 Q. Other than present counsel, have you ever
 19 discussed the issue of a bid opening and
 20 comments you may or may not have made to
 21 Mr. Sheehan with anybody in the past two
 22 years?
 23 A. Say that again.
 24 Q. Yes.

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- 1 Other than conversations that you've had
 2 with counsel, have you discussed with anyone an
 3 allegation that you made a statement regarding
 4 Emmett Sheehan getting cold feet and not
 5 bidding?
 6 A. Yes.
 7 Q. With whom did you have that discussion?
 8 A. Scott Lambiagase.
 9 Q. And when did you have that conversation with
 10 Scott?
 11 A. After I read somebody else's deposition where
 12 that comment was made in there. I said -- I
 13 called him up to ask him, had I ever gone to a
 14 bid opening? Because I didn't have any memory
 15 of that.
 16 Q. And what did Scott tell you?
 17 A. Scott couldn't remember having a bid opening.
 18 His comment was, "We didn't have any bids to
 19 open;" so he didn't understand why there would
 20 be a bid opening.
 21 Q. The bid opening was scheduled for Thursday,
 22 February 17, 2011 at 2:00 p.m.; correct?
 23 A. I wouldn't know.
 24 MR. FOLLANSBEE: Could I have that marked

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- 1 as the next exhibit, please?
 2 (Exhibit No. 10, For Identification,
 3 marked.)
 4 (Document handed to the witness.)
 5 Q. (BY MR. FOLLANSBEE) Directing your attention
 6 to Exhibit No. 10, which is the IFB for the
 7 North Hill Golf Course and Country Club,
 8 Thursday, February 17th bid opening date.
 9 Have you ever reviewed this document
 10 before?
 11 A. I did, at some point.
 12 Q. And did you become aware that this document
 13 required a bid bond of \$20,000?
 14 MR. KREIGER: Objection.
 15 Was he aware when?
 16 MR. FOLLANSBEE: At any time, has he been
 17 aware of that.
 18 A. If the document requires one, I was aware that
 19 a document required one, at some point in time.
 20 I just don't know if this is the document or
 21 not.
 22 Q. And with regard to the issue of a bid bond, do
 23 you recall discussing that, at any time, or
 24 having a conversation about that, at any time,

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- 1 with Emmett Sheehan?
 2 A. Yes.
 3 Q. And where did that take place?
 4 A. In the Duxbury cemetery.
 5 Q. And what did he tell you about that?
 6 A. I, specifically, was walking in the cemetery
 7 with a couple of cemetery trustees, which he is
 8 one of them, and several other townspeople
 9 reviewing some land swaps that we were preparing
 10 for a town meeting vote. And I said to Emmett,
 11 "I heard you did not submit a bid. How come?"
 12 And he said to me, "Because they required a bid
 13 bond, and I couldn't get one."
 14 MR. FOLLANSBEE: I'd ask that that be
 15 marked as the next exhibit.
 16 (Exhibit No. 11, For Identification,
 17 marked.)
 18 (Document handed to the witness.)
 19 Q. (BY MR. FOLLANSBEE) Do you have Exhibit 11 in
 20 front of you?
 21 A. Yes.
 22 Q. Directing your attention to the second page, if
 23 you could read to yourself paragraph 3.
 24 A. Okay.

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- 1 Q. Is it your testimony that you were not at the
2 bid opening on February 17th?
3 A. I could tell you, I have no recall; and it's
4 also not on my calendar.
5 Q. And as far as the quote attributed to you, "What
6 happened Emmett, did you get cold feet?" Is it
7 your testimony that you never said that to
8 Emmett Sheehan?
9 A. To the best of my knowledge, no, since I don't
10 believe that I was there.
11 Q. And this was signed on March 24, 2011, by
12 Mr. Laramée who is sitting here.
13 Is it possible that you were there and
14 Mr. Laramée is correct?
15 A. Anything is possible.
16 Q. You just don't have a memory of being there; is
17 that it?
18 A. I have no memory, and it's also not on my
19 calendar.
20 Q. While you have your calendar in front of you,
21 does your calendar indicate what day that you
22 had the meeting with the Inspector General's
23 office in the first week of --
24 A. You have to give me a date to shoot for.

DEPOSITION OF SHAWN DAHLEN

- 1 Q. Yes. The first week of December 2010.
2 A. December 6th, 10:00 a.m.
3 Q. And do you know how long that meeting took
4 place?
5 A. I have no idea.
6 Q. Were you there for several hours?
7 A. One hour, two hours max. I don't think it was
8 more than two hours.
9 Q. After the February IFB resulted in no bidders,
10 did anybody discuss with you the concept of
11 getting rid of the bid bond?
12 A. No.
13 Q. Did you have any discussion with anybody about
14 what should be in the next IFB in order to
15 attract some potential bids?
16 A. My memory is, I either asked Bob Troy or
17 Richard if we -- if there was a problem getting
18 a bid bond, therefore, we got no bids, do we
19 need a bid bond to protect the interest of the
20 town? Since a bid bond -- what I was told -- is
21 a bid bond, basically, requires the bidder to
22 perform on the bid. And our problem was that we
23 couldn't get people to bid.
24 Q. And at that point, your memory was that Johnson

DEPOSITION OF SHAWN DAHLEN

- 1 Golf was running the golf course, and they had
2 \$200,000 in security posted for the town;
3 correct?
4 A. The bid bond and security have nothing to do
5 with each other.
6 Q. I understand.
7 I'm just saying, at that time, in
8 February of 2011, Johnson was running the golf
9 course?
10 A. Yes.
11 Q. And they had security of \$200,000; correct?
12 A. I'll take your word for it. I don't remember
13 that.
14 Q. Well, security was certainly a very important
15 issue for you; wasn't it?
16 A. Right.
17 I don't ultimately remember what
18 happened after the Board of Selectmen made its
19 decision as to ultimately did Johnson post a
20 bond.
21 Q. You don't know whether they ever did or
22 didn't?
23 A. Correct. I don't have a specific memory of
24 it.

DEPOSITION OF SHAWN DAHLEN

- 1 Q. Now, you became aware that the second time they
2 did the IFB, they took the bid bond out;
3 correct?
4 A. Correct.
5 Q. And when they did that, they ended up with one
6 bidder; correct?
7 A. That's my understanding.
8 Q. And your understanding is also that the bidder
9 was a newly formed corporation called Pilgrim
10 Golf; correct?
11 A. Correct.
12 Q. And that that was owned by Mr. Emmett Sheehan;
13 correct?
14 A. I'm assuming that he was one of the principals,
15 yes.
16 Q. Well, are you assuming that there are some other
17 principals?
18 A. I don't know. I didn't review his proposal.
19 Q. Did you review his contract?
20 A. No.
21 Q. Did you sign his contract?
22 A. It's possible.
23 Q. You don't have any memory of signing his
24 contract?

DEPOSITION OF SHAWN DAHLEN

1 A. If you show me his contract, I'll tell you
 2 whether I signed it or not.
 3 Q. I'm asking you only if you have a memory.
 4 A. I sign hundreds of documents as a selectman. I
 5 don't recall, specifically, or remember signing
 6 his contract.
 7 Q. Do you remember whether or not he gave you a
 8 bond or security for that contract?
 9 A. I don't know what he arranged with the town
 10 manager.
 11 Q. Do you remember a liquor license hearing for
 12 Pilgrim Golf in the May time frame of 2011?
 13 A. I remember having a liquor license -- I don't
 14 remember what the date was -- a liquor license
 15 hearing. I don't remember what the date was.
 16 Q. Do you remember an issue regarding whether or
 17 not Pilgrim Golf had posted security as part of
 18 the liquor license hearing?
 19 A. With reference to the liquor license, posted
 20 security, or as part of his original contract?
 21 MR. FOLLANSBEE: Well, strike that
 22 question.
 23 Q. Do you remember an issue coming up before the
 24 selectmen about whether or not they should give
 DEPOSITION OF SHAWN DAHLEN

1 a liquor license to Pilgrim if they hadn't
 2 posted the security that was required under
 3 their contract?
 4 A. I remember some discussion that there was some
 5 working out of exactly what the security was and
 6 going to be, and that my best guess is that the
 7 license wouldn't be granted until that was done
 8 and complete.
 9 MR. FOLLANSBEE: Let me make a few
 10 copies. I'll be right back.
 11 (Recess taken.)
 12 MR. FOLLANSBEE: Can you mark that as the
 13 next exhibit, please?
 14 (Exhibit No. 12, For Identification,
 15 marked.)
 16 (Document handed to the witness.)
 17 Q. (BY MR. FOLLANSBEE) Sir, directing your
 18 attention to what's been marked as Exhibit No.
 19 12, the minutes of the Board of Selectmen dated
 20 May 9, 2011.
 21 A. Yes.
 22 Q. Directing your attention to page 3 and the topic
 23 is a Public Hearing, Liquor License Application,
 24 North Hill Country Club.
 DEPOSITION OF SHAWN DAHLEN

1 Now, Pilgrim Golf began running the golf
 2 course in early April of 2011. Do you remember
 3 that?
 4 A. I don't remember what date. But if you say
 5 that that's the date, then it's probably the
 6 date.
 7 Q. And this is some five weeks later, they are in
 8 looking to get their liquor license.
 9 Now, is it your testimony that they had
 10 a bond or they didn't have a bond, at that
 11 point?
 12 A. I would assume, by reading this, that they were
 13 in the process. They had not posted the bond
 14 with the town yet, and they were in the process
 15 of doing so.
 16 Q. And as I recall, a bond was one of the issues
 17 that you were most concerned about; correct?
 18 A. Correct.
 19 Q. Can you explain why they were allowed to sign a
 20 contract and take over the facility without
 21 posting the bond first?
 22 A. I think you'd have to talk to Bob Troy or
 23 Mr. MacDonald about that.
 24 Q. Did they ever discuss it with you prior to this
 DEPOSITION OF SHAWN DAHLEN

1 meeting of May 9th?
 2 A. I can't honestly tell you the date the contract
 3 was signed nor the time when the performance
 4 bond was or some sort of bond or letter of
 5 credit or something that that was ultimately
 6 given to the town.
 7 Q. Have you ever yourself seen any bond or security
 8 by Pilgrim Golf?
 9 A. No.
 10 Q. Has anybody informed you that the security was
 11 provided?
 12 A. I can't imagine it wasn't.
 13 Q. You can't?
 14 A. No, I can't. I'm sure we'll be happy to provide
 15 you a copy at your request.
 16 Q. Not a chance. Because I've requested it, and
 17 you haven't been -- you haven't provided it,
 18 and you certainly haven't happily provided it.
 19 Directing your attention to this meeting
 20 of May 9th, why was it that you were willing to
 21 vote to award a liquor license without the bond
 22 being there?
 23 MR. KREIGER: Objection.
 24 A. I think the recommendation of town counsel, at
 DEPOSITION OF SHAWN DAHLEN

1 the time, was that he was working with the
2 bank, putting together the security, and that
3 he informed us that it would happen imminently;
4 and in the event, as this says, if it wasn't
5 forthcoming, that we could revoke the
6 contract.

7 Q. And was it your memory that the contract had a
8 provision that you could revoke it on ten days
9 notice?

10 A. I don't remember the details.

11 Q. Had you reviewed the proposed contract
12 yourself?

13 A. No.

14 Q. Had anyone brought to your attention the fact
15 that the contract included a provision that
16 would prohibit the proposer -- meaning Pilgrim
17 Golf -- from questioning any decision by the
18 town in court?

19 MR. KREIGER: Objection.

20 A. I've heard something to that effect, but I
21 haven't seen it myself in writing.

22 Q. You indicated that you reviewed the IFB that is
23 Exhibit No. 10.

24 Did you review the proposed contract in
DEPOSITION OF SHAWN DAHLEN

1 that IFB?

2 A. Not to my specific memory.

3 Q. So when you say you reviewed the IFB, you
4 didn't --

5 A. No, no. I'm not sure if I said that I
6 reviewed the IFB. Maybe you can check my
7 statement but.

8 Q. As a contractor yourself, would you sign a
9 contract that included a clause that said, in
10 the event of any dispute, you are not permitted
11 to go to court and contest it?

12 MR. KREIGER: Objection.

13 Q. You can answer that.

14 A. Okay. First of all, most of the jobs I do, I
15 don't sign contracts; and the ones that I do
16 state that the client can terminate at will.

17 Q. And what if the client owes you money, do you
18 waive any rights to go after the balance due?

19 A. Not specifically.

20 Q. Do you know who the individuals were --

21 MR. FOLLANSBEE: Strike that.

22 Q. For Pilgrim Golf, have you ever reviewed their
23 contract with the Town of Duxbury?

24 A. Have I ever reviewed Pilgrim Golf's golf

DEPOSITION OF SHAWN DAHLEN

1 contract with the Town of Duxbury?

2 Q. Yes.

3 A. I don't remember, specifically. I don't know.
4 If we signed it as a Board of Selectman, then I
5 would have read it; and if we hadn't signed it
6 as a Board of Selectmen, I may not have.

7 Q. And was it your understanding that the Board of
8 Selectmen would be signing this contract?

9 A. That's not my understanding. My understanding
10 is town counsel informs us as to what we have to
11 sign as members of the Board of Selectmen.

12 Q. Well, if you take a look at Exhibit No. 10 --

13 A. In fact, you just refreshed my memory.

14 I remember Mr. Donato, now that you say
15 that, brought up -- I'm doing this from
16 recall -- brought up the question about why
17 doesn't the Board of Selectmen have to sign the
18 contract? Because the previous contract was
19 signed by the Board of Selectmen.

20 And I think the answer we got from Bob
21 was, it wasn't required, that it is the town
22 manager under the Town Manager Act that signs
23 contracts.

24 Q. So Bob Troy would know that knowing the Town
DEPOSITION OF SHAWN DAHLEN

1 Manager Act and everything; right?

2 A. I'm assuming so. He is town counsel.

3 Q. So when he reviewed the IFB and the proposed
4 contract, he would have full knowledge that
5 the selectmen wouldn't have to sign it;
6 correct?

7 A. I can't speak to what Bob knew and what Bob
8 didn't know.

9 Q. Well, the IFB that was sent out to prospective
10 bidders, Exhibit No. 10 -- and I call your
11 attention to page 24, under the proposed
12 contract -- doesn't it require the signatures of
13 the Board of Selectmen?

14 A. It would appear so.

15 Q. And wasn't that approved as to form by Attorney
16 Troy?

17 A. I wouldn't know.

18 Q. Well, it indicates "Approved as to form" and has
19 a place for Attorney Troy's signature on page
20 24; doesn't it?

21 A. It does.

22 Q. And it indicates that you would be one of the
23 individuals signing the contract; correct?

24 A. It does.

DEPOSITION OF SHAWN DAHLEN

1 Q. So at least what prospective bidders were told
2 was that the contract would be signed by the
3 Board of Selectmen; correct?

4 A. I would assume so.

5 Q. And so do you --

6 A. Is this the last IFB or was this the one before
7 that?

8 Q. Oh, that's a good point, since there is only
9 about six of them.

10 MR. FOLLANSBEE: Let's mark this as the
11 next exhibit, please.

12 (Exhibit No. 13, For Identification,
13 marked.)

14 Q. (BY MR. FOLLANSBEE) Directing your attention to
15 Exhibit 13, which is the IFB with a return date
16 of Monday March 21, 2011 at noontime.

17 (Document handed to the witness.)

18 Q. At page 27, does that contract indicate that it
19 would be signed by the Board of Selectmen and
20 approved as to form by Attorney Troy?

21 A. Yes.

22 Q. And on that following day, an award of a
23 contract having been made, do you know if you
24 ever signed a contract with Pilgrim Golf?

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1 Q. And as far as your memory, you have no memory of
2 ever signing a contract; correct?

3 A. I don't have any memory of it, but that's not
4 absolute.

5 Q. But you do have a memory that there was some
6 sort of a debate between Attorney Troy and
7 Mr. Donato about why the selectmen didn't sign
8 this contract; correct?

9 A. I do have a memory in the back of my mind to
10 that effect, yes.

11 Q. And do you know what the final result of that
12 dispute was?

13 A. If I had to wager, I would say that we did not,
14 as a board, sign it; otherwise, he wouldn't have
15 had that debate.

16 Q. Okay.

17 MR. FOLLANSBEE: I've got a few more
18 questions. But let me take a five-minute
19 break, and maybe I can cut down on a few of
20 them.

21 (Recess taken.)

22 Q. (BY MR. FOLLANSBEE) Do you recall it being
23 critical to you that the operator of the golf
24 course have a bond?

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1 A. I can't recall.

2 Q. Were you ever asked to sign a contract with
3 Pilgrim Golf?

4 A. I can't recall.

5 Q. Do you remember --

6 A. I'm not trying to play hard to get, but I just
7 don't recall. We sign dozens of documents every
8 single selectmen's meeting.

9 Q. Sir, you're not offending me by saying "I don't
10 recall." I've heard it quite often from the
11 Town of Duxbury.

12 With regard to the contract with Pilgrim
13 Golf, did you ever receive any communication
14 from Attorney Troy with a proposed contract
15 telling you that it needed to be signed by the
16 Board of Selectmen?

17 A. I have no memory of that. But if we do ever
18 receive anything that needs to be signed by the
19 Board of Selectmen, it is included in our
20 packets and submitted by administration, not by
21 Bob Troy to us to sign.

22 Q. Do you ever receive e-mail correspondence from
23 Attorney Troy?

24 A. Yes.

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1 A. Say that again now.

2 Q. Was it critical to you that the operator of the
3 golf course had a bond?

4 A. Yes, or had some sort of performance arrangement
5 that would protect the assets being held by the
6 operator.

7 Q. And do you recall stating to the Duxbury Clipper
8 that it would be irresponsible of the selectmen
9 to ignore the lack of a bond?

10 A. If the Clipper reported that, there is probably
11 a good possibility that it's right.

12 Q. And that would be your position as a selectman;
13 correct?

14 A. Uh-huh.

15 Q. That's yes?

16 A. Yes.

17 Q. Now, did you discuss with anyone when the
18 contract was awarded to Pilgrim Golf that
19 Pilgrim Golf was a fairly new company?

20 A. No.

21 Q. Do you know when Pilgrim Golf was incorporated?

22 A. I believe, it was right away.

23 Q. By "right away," it was within two weeks of when
24 they were given the contract; right?

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<p style="text-align: right;">Page 102</p> <p>1 A. I'm not surprised, yeah.</p> <p>2 Q. And as a selectman in the town, were you</p> <p>3 comfortable with giving a contract to a company</p> <p>4 that had been in existence for two weeks and did</p> <p>5 not provide a bond at the signing of the</p> <p>6 contract?</p> <p>7 A. No. Like I say, I think that a performance</p> <p>8 bond is required or some -- I should say -- some</p> <p>9 sort of surety, I'll reclassify that, as surety</p> <p>10 is required.</p> <p>11 Q. And at least, for the first five or six weeks</p> <p>12 that Pilgrim was there, there was no security</p> <p>13 provided; is that correct?</p> <p>14 A. I don't know that.</p> <p>15 Q. Well, based upon the meeting of May 9th where</p> <p>16 they still didn't have security at their</p> <p>17 liquor license hearing, was it your</p> <p>18 understanding that they had security but weren't</p> <p>19 telling you?</p> <p>20 A. My understanding was that Pilgrim Golf's</p> <p>21 attorney was working with town counsel on</p> <p>22 putting together surety. He had offered all</p> <p>23 sorts of options, and Bob was trying to get his</p> <p>24 hands around which one he wanted to do or to</p> <p style="text-align: center;">DEPOSITION OF SHAWN DAHLEN</p>	<p style="text-align: right;">Page 104</p> <p>1 the by-laws say that the town manager can</p> <p>2 negotiate the contracts for execution by the</p> <p>3 selectmen?</p> <p>4 A. I understand that that's what it says under the</p> <p>5 by-laws. And I also understand that there is a</p> <p>6 potential conflict between the Town Manager Act</p> <p>7 and the town by-laws. We don't sign a contract</p> <p>8 with Staples either as selectmen, but somebody</p> <p>9 does.</p> <p>10 Q. And North Hill Golf Course -- let's be clear --</p> <p>11 is not like buying paper at Staples; is it?</p> <p>12 A. I absolutely agree. But if I go by the letter</p> <p>13 of that sentence that's in the by-law, every</p> <p>14 document would be signed by the Board of</p> <p>15 Selectmen.</p> <p>16 Q. But what we're talking about is a contract to</p> <p>17 operate a multimillion dollar facility owned by</p> <p>18 the Town of Duxbury; correct?</p> <p>19 A. Correct.</p> <p>20 Q. And a multi --</p> <p>21 A. I don't know how many multis.</p> <p>22 MR. KESTEN: What's the point of these</p> <p>23 questions?</p> <p>24 MR. FOLLANSBEE: What's the point of it?</p> <p style="text-align: center;">DEPOSITION OF SHAWN DAHLEN</p>
<p style="text-align: right;">Page 103</p> <p>1 accept.</p> <p>2 Q. And did you think it was responsible of the town</p> <p>3 and the selectmen to have approved a contract</p> <p>4 without the security for Pilgrim Golf?</p> <p>5 MR. KREIGER: Objection.</p> <p>6 A. Well, first of all, the selectmen didn't approve</p> <p>7 the contract. The town manager approved the</p> <p>8 contract.</p> <p>9 Q. And is it your testimony that the selectmen</p> <p>10 never signed that contract?</p> <p>11 A. I've said that before. I said I'm not sure</p> <p>12 whether we signed that contract or not.</p> <p>13 Q. And do you know what individual in Duxbury</p> <p>14 waived the security when the contract was signed</p> <p>15 with Pilgrim?</p> <p>16 MR. KREIGER: Objection.</p> <p>17 A. No, I don't.</p> <p>18 Q. Under your understanding of the town by-laws,</p> <p>19 who would have that authority?</p> <p>20 A. My understanding of the town by-laws is that the</p> <p>21 contracts are signed by the town manager.</p> <p>22 Q. And that's --</p> <p>23 A. You don't have to pull it out.</p> <p>24 Q. Am I misstating it if I suggest to you that</p> <p style="text-align: center;">DEPOSITION OF SHAWN DAHLEN</p>	<p style="text-align: right;">Page 105</p> <p>1 MR. KESTEN: I mean, you're arguing the</p> <p>2 interpretation of statutes. It's not up to him.</p> <p>3 It's not up to you. It's up to a judge at the</p> <p>4 end to see if it's valid.</p> <p>5 MR. FOLLANSBEE: Well, I'm arguing with</p> <p>6 him about the by-laws. But --</p> <p>7 MR. KESTEN: I suggest you move on.</p> <p>8 MR. FOLLANSBEE: If you are suggesting</p> <p>9 that I'm beating a dead horse.</p> <p>10 MR. KESTEN: Yes. The horse has been</p> <p>11 dead for a long time.</p> <p>12 MR. FOLLANSBEE: Hang on just a second.</p> <p>13 (Discussion off the record.)</p> <p>14 MR. FOLLANSBEE: That's it. We're</p> <p>15 concluded. That's fine. Thank you.</p> <p>16 MR. KESTEN: That's it.</p> <p>17 (Whereupon, the deposition was concluded</p> <p>18 at 5:05 p.m.)</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p style="text-align: center;">DEPOSITION OF SHAWN DAHLEN</p>

1 CERTIFICATE

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

8 Dated at ,
9 this day of ,
10 2012.

11
12
13
14
15 SHAWN DAHLEN
SIGNED UNDER THE PENALTIES
OF PERJURY

16
17
18
19
20
21
22
23
24 DEPOSITION OF SHAWN DAHLEN

1 CERTIFICATE

2 Commonwealth of Massachusetts
Middlesex, ss.

3 I, JAMES A. LYONS, Certified Shorthand
4 Reporter, Registered Diplomat Reporter,
5 Certified Realtime Reporter and Notary Public in
6 and for the Commonwealth of Massachusetts, do
7 hereby certify: that SHAWN DAHLEN, the witness
8 whose deposition is hereinbefore set forth, was
9 duly sworn by me, and that such deposition is a
10 true record of the testimony given by the said
11 witness.

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

18 IN WITNESS WHEREOF, I have hereunto set
19 my hand and notarial seal this 20th day of July,
20 2012.

21
22
23 JAMES A. LYONS
CSR No. 117993, RDR, CRR

24 My commission expires
on April 29, 2016

DEPOSITION OF SHAWN DAHLEN
on April 29, 2016