

<p style="text-align: right;">5</p> <p>1 What is your occupation, sir?</p> <p>2 A. I am a civil engineer and engineering</p> <p>3 consultant.</p> <p>4 Q. Do you have your own business?</p> <p>5 A. No.</p> <p>6 Q. For whom do you work?</p> <p>7 A. Kleinfelder.</p> <p>8 Q. Where are they located?</p> <p>9 A. Cambridge. 215 First Street, Cambridge.</p> <p>10 Q. And do you have professional licenses?</p> <p>11 A. Yes.</p> <p>12 Q. Could you please identify those?</p> <p>13 A. A professional engineering, structural license.</p> <p>14 Q. And could you tell us your educational</p> <p>15 background beginning with high school.</p> <p>16 A. Rye Neck High School, Maramoneck, New York.</p> <p>17 Then, let's see, Cornell University, bachelor of</p> <p>18 science, and then Cornell University, masters of</p> <p>19 engineering.</p> <p>20 Q. And when did you receive your bachelor of</p> <p>21 science degree from Cornell?</p> <p>22 A. 1978.</p> <p>23 Q. And your masters?</p> <p>24 A. 1979.</p>	<p style="text-align: right;">7</p> <p>1 A. Yes.</p> <p>2 Q. What committees do you serve on today?</p> <p>3 A. I am the chair of the Public Safety Building</p> <p>4 Committee.</p> <p>5 Q. Any other committees?</p> <p>6 A. Yes.</p> <p>7 Q. What other committees?</p> <p>8 A. The Alternative Energy Committee. Let's see.</p> <p>9 Trying to think what else. Yeah. I think</p> <p>10 that's it right now. I resigned my other ones</p> <p>11 recently.</p> <p>12 Q. What are the other ones that you had that you</p> <p>13 resigned?</p> <p>14 A. Local Housing Partnership and the School</p> <p>15 Building Committee.</p> <p>16 Q. And as a selectmen were you ever the selectmen</p> <p>17 designee liaison to the North Hill Advisory</p> <p>18 Committee?</p> <p>19 A. No.</p> <p>20 Q. Did you have any involvement with the North Hill</p> <p>21 Advisory Committee or the North Hill Golf Course</p> <p>22 during your tenure as a selectmen?</p> <p>23 A. No.</p> <p>24 Q. Do you recall a proposal put forth in the late</p>
<p style="text-align: right;">6</p> <p>1 Q. And since 1979, has your primary occupation been</p> <p>2 in the engineering field?</p> <p>3 A. Yes.</p> <p>4 Q. And how long have you lived in Duxbury,</p> <p>5 Massachusetts?</p> <p>6 A. Since December 1992.</p> <p>7 Q. And at some point did you run for political</p> <p>8 office in Duxbury?</p> <p>9 A. Yes.</p> <p>10 Q. What offices did you hold?</p> <p>11 A. First was Planning Board. I think it was 1994.</p> <p>12 Then in March 1997, selectmen.</p> <p>13 Q. And how long did you serve as selectmen?</p> <p>14 A. Until March 2009.</p> <p>15 Q. So some 12 years?</p> <p>16 A. Yes.</p> <p>17 Q. And are those three-year terms?</p> <p>18 A. Yes.</p> <p>19 Q. Have you had any other positions in town</p> <p>20 government in Duxbury?</p> <p>21 A. Yes.</p> <p>22 Q. What are those?</p> <p>23 A. Numerous committees, appointed.</p> <p>24 Q. Do you serve on any committees currently?</p>	<p style="text-align: right;">8</p> <p>1 90's by some of the folks on the North Hill</p> <p>2 Advisory Committee to expand the course to 18</p> <p>3 holes?</p> <p>4 A. Yes.</p> <p>5 Q. And did you participate in the discussions</p> <p>6 regarding that?</p> <p>7 A. Peripherally only.</p> <p>8 Q. What was your view regarding the expansion of</p> <p>9 the course to 18 holes?</p> <p>10 A. I was against it.</p> <p>11 Q. And it never became an eventuality? That --</p> <p>12 A. No.</p> <p>13 Q. -- passed, right?</p> <p>14 Are you -- do you know an individual</p> <p>15 named Michael Doolin?</p> <p>16 A. I do not.</p> <p>17 MR. FOLLANSBEE: I'd ask that be marked</p> <p>18 as the first exhibit.</p> <p>19 (Exhibit No. 1 ID marked.)</p> <p>20 Q. Sir, have you had a chance to take a look at</p> <p>21 Exhibit Number 1?</p> <p>22 A. Yes.</p> <p>23 Q. And you were on the board of selectmen in</p> <p>24 January of 2004?</p>

<p style="text-align: right;">9</p> <p>1 A. Yes.</p> <p>2 Q. Do you remember the issue that Mr. Doolin was</p> <p>3 addressing --</p> <p>4 A. Vaguely.</p> <p>5 Q. -- the board about?</p> <p>6 A. Yes.</p> <p>7 Q. And did you ever -- do you recall meeting with</p> <p>8 Mr. Doolin or any of the other folks from the</p> <p>9 North Hill Advisory Committee about the subject</p> <p>10 matter of this letter?</p> <p>11 A. I don't remember. No.</p> <p>12 Q. Did you ever attend any meetings of the North</p> <p>13 Hill Advisory Committee in the board of</p> <p>14 selectmen room where they kind of aired out the</p> <p>15 issues that he's addressing here?</p> <p>16 A. Just, are you referring to a board of selectmen</p> <p>17 meeting?</p> <p>18 Q. No. I'm referring to a North Hill Advisory</p> <p>19 Committee meeting that took place in the board</p> <p>20 of selectmen Mural Room.</p> <p>21 A. I don't believe so, no.</p> <p>22 Q. Do you recall any board of selectmen meetings</p> <p>23 where the issues that Mr. Doolin is talking</p> <p>24 about in this exhibit were addressed to the</p>	<p style="text-align: right;">11</p> <p>1 Club?</p> <p>2 A. Yes.</p> <p>3 Q. And do you recall an issue being presented to</p> <p>4 town counsel for this review?</p> <p>5 A. No. I don't recall.</p> <p>6 Q. Now, after referring it to Gordon Cushing, did</p> <p>7 you have any more feedback from anybody</p> <p>8 concerning this 18 hole tee time issue?</p> <p>9 A. We may have. I don't recall exactly whether --</p> <p>10 no. I don't recall.</p> <p>11 Q. And did you contact or have any contact yourself</p> <p>12 with anybody from Johnson Golf Management to go</p> <p>13 over these issues?</p> <p>14 A. No.</p> <p>15 Q. Have you ever had any contact yourself with</p> <p>16 anybody --</p> <p>17 A. No.</p> <p>18 Q. -- at Johnson Golf?</p> <p>19 MS. COOK: And just let him get the whole</p> <p>20 question out before you start answering. Okay?</p> <p>21 Thanks.</p> <p>22 Q. With regard to the contract between the town of</p> <p>23 Duxbury and Johnson Golf Management that was in</p> <p>24 effect from 1997 to 2008, did you have any</p>
<p style="text-align: right;">10</p> <p>1 board of selectmen?</p> <p>2 A. Yes.</p> <p>3 Q. And what do you remember about that?</p> <p>4 A. Very vaguely I remember the general issue, and I</p> <p>5 think probably referring it to Gordon would</p> <p>6 be -- in other words, trying to get some more</p> <p>7 information.</p> <p>8 Q. When you say referred to Gordon, you mean Gordon</p> <p>9 Cushing --</p> <p>10 A. Yes.</p> <p>11 Q. -- the recreation director?</p> <p>12 I should have asked this before. Do you</p> <p>13 play golf yourself?</p> <p>14 A. No. Well, no. I don't call it golf.</p> <p>15 MR. KESTEN: You call it walking around</p> <p>16 lawns.</p> <p>17 Q. You calling it walking around and getting</p> <p>18 frustrated?</p> <p>19 A. Yes.</p> <p>20 MR. KESTEN: Looking for balls.</p> <p>21 Q. Were you aware -- did you understand that one of</p> <p>22 the major components of Mr. Doolin's</p> <p>23 dissatisfaction was that he could no longer make</p> <p>24 18 hole tee times at the North Hill Country</p>	<p style="text-align: right;">12</p> <p>1 opportunity to ever review that contract?</p> <p>2 A. No.</p> <p>3 Q. Having received this letter from Mr. Doolin, did</p> <p>4 the board of selectmen take any action at all</p> <p>5 other than referring it to Gordon Cushing?</p> <p>6 A. I don't believe we did, no.</p> <p>7 Q. After -- did you ever make any appointments of</p> <p>8 any individual to the North Hill Advisory</p> <p>9 Committee yourself?</p> <p>10 MR. KESTEN: What do you mean?</p> <p>11 MS. COOK: Objection.</p> <p>12 MR. KESTEN: What do you mean yourself?</p> <p>13 Q. Nominate anyone. Did you nominate anyone to be</p> <p>14 on the North Hill Advisory Committee?</p> <p>15 A. No.</p> <p>16 Q. And am I correct that the individuals who are</p> <p>17 appointed to the North Hill Advisory Committee</p> <p>18 are appointed by a vote of the selectmen?</p> <p>19 A. Yes.</p> <p>20 Q. Do you ever recall appointing Mr. Doolin to the</p> <p>21 North Hill Advisory Committee?</p> <p>22 A. I don't recall, but if he was appointed at the</p> <p>23 time I was on the selectmen, then I would have</p> <p>24 probably voted for him, but I don't recall.</p>

13

1 **Q.** In the, well, if I suggest to you that in
2 January of 2004 when Mr. Doolin wrote the letter
3 that's Exhibit Number 1, sometime between that
4 period and the summer of 2001 Mr. Doolin was
5 appointed to the North Hill Advisory
6 Committee --
7 MS. COOK: Do you mean the summer of
8 2004?
9 MR. FOLLANSBEE: Did I say eight?
10 MS. COOK: 2001.
11 MR. FOLLANSBEE: 2004. I'll go back.
12 I'll withdraw that question and ask a better
13 one.
14 **Q.** Do you remember Mr. Doolin being appointed in
15 2004 to the North Hill Advisory Committee?
16 **A.** **I do not recall, no.**
17 **Q.** Do you think that it's an appropriate course of
18 action, to take someone who is clearly this
19 dissatisfied and appoint him as an oversight
20 person to the company that's running the golf
21 course?
22 MS. COOK: Objection. You can answer.
23 **A.** **I see no problem with it, no, because --**
24 **THE WITNESS: Can I elaborate a little**

14

1 **bit?**
2 MR. KESTEN: You've started.
3 THE WITNESS: Yeah.
4 **Q.** I will allow you to. They may not want you to
5 elaborate, but I would love you to elaborate.
6 **A.** **Very often we would appoint people to committees**
7 **that wanted to get involved and had an interest**
8 **in a topic, so that was a very common thing.**
9 **MR. FOLLANSBEE: I'd ask this be marked**
10 **as the next exhibit.**
11 (Exhibit No. 2 ID marked.)
12 **Q.** Okay. Having had a chance to review Exhibit
13 Number 2, do you remember the RFP process for
14 the North Hill Golf Course that was taking place
15 in 2008?
16 **A.** **Not really, no.**
17 **Q.** Having had a chance to read the letter, does
18 that refresh any memory that you have regarding
19 some of the issues that the North Hill Advisory
20 Committee had regarding the RFP process?
21 **A.** **Yes.**
22 **Q.** What do you believe was the crux of their
23 unhappiness with the existing contract?
24 **A.** **I cannot remember. It really was -- I can't**

15

1 **remember.**
2 **Q.** Do you know what they're referring to in the
3 third paragraph of Page 1 where they refer to
4 the fact that the opinion of town counsel has
5 been that the manager was within their legal
6 right even though it may conflict with the
7 obvious intent as stated in the management
8 agreement? Do you know what they meant by that?
9 **A.** **Well, having looked at this, Exhibit 1, I think**
10 **it's an issue like that, for example.**
11 **Q.** The tee time issue?
12 **A.** **Yeah.**
13 **Q.** And did you understand that -- I mean, you knew
14 it was a 9 hole golf course, obviously. Did you
15 understand that by using 18 holes of tee times,
16 individuals would be depriving somebody else of
17 the opportunity to play there?
18 MS. COOK: Objection.
19 **A.** **Yes.**
20 **Q.** And did you have a position yourself on that
21 issue?
22 **A.** **No.**
23 **Q.** And having referred it to Gordon Cushing, were
24 you satisfied with the way Gordon Cushing had

16

1 resolved or handled the situation?
2 MS. COOK: Objection.
3 **A.** **Yes.**
4 **Q.** So personally, you didn't have a position
5 whether they got 18 hole tee times or not; is
6 that correct?
7 **A.** **Yes.**
8 **Q.** Now, in the summer of 2008, between May and
9 September of 2008, did you personally review any
10 of the RFP documents?
11 **A.** **Can you repeat the dates.**
12 **Q.** Yes. Between May 14th of 2008 and the end of
13 September of 2008, did you review any of the RFP
14 documents pertaining to the North Hill Country
15 Club?
16 **A.** **Yes.**
17 **Q.** Did you suggest any changes to them?
18 **A.** **Yes.**
19 **Q.** Do you remember what changes you had suggested?
20 **A.** **Yes.**
21 **Q.** Could you please elaborate on what changes
22 you --
23 MR. KESTEN: Yes. That a-boy.
24 MS. COOK: Nice work.

MR. KESTEN: All right.

(Discussion off the record.)

A. What was the question?

Q. The question was, what suggestions did you have as far as the RFP process?

A. There was a suggestion to add a practice facility, and I was concerned that it would basically be unbiddable without rock solid performance specifications and pre-permitting and all of that to actually bid it. I was concerned that including that in the bid RFP would not be wise.

Q. Were you familiar with the process that had taken place in the earlier RFP where a new clubhouse was built as part of the procedure?

A. Yes.

Q. And that did include specifications and permitting, didn't it?

A. Yes.

Q. But your thought was that the way the RFP was being structured in 2008, you didn't have that level of specificity that would be required?

A. Yes.

Q. And as a result of that, was it your

recommendation that the RFP go out to bid without including the practice facility?

A. Yes.

Q. And do you recall that the various people involved in the RFP process including Mr. Cushing, yourself and others circulated drafts of the RFP via e-mails?

A. I know I received it. I don't recall anybody else.

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

(Exhibit No. 3 ID marked.)

Q. If I could direct your attention to Exhibit Number 3, and you may be able to make out at the very bottom, these were from the Sullivan deposition and the pages start at 23. If you could go to Page 26.

A. I don't see -- oh. I see that. It's cut off.

Q. And this purports to be an e-mail from you and it is dealing with the practice facility that you just described, correct?

A. Yes.

Q. And is this what you were referring to when you were talking about the specifications issues?

A. Yes.

Q. And as far as the other individuals on the e-mail list, are you familiar with the individuals, Mr. MacDonald, Mr. Madden, Mr. Doolin, Betsy Sullivan, Robert Troy and Gordon Cushing?

A. Partially.

Q. Which ones are you familiar with and which ones are you not familiar with?

A. Well, Cushing, Richard, Madden, Steve Studley and Betsy and Jon, Jon Witten I'm familiar with. Doolin I was not familiar with.

Q. Okay. And were you familiar with Robert Troy as well, rstroy at verizon.net?

A. Yes. Yes.

Q. It was the custom and practice in 2008 to circulate these materials via e-mail, correct?

MS. COOK: Objection.

A. It wasn't necessarily practice, but yes, occasionally we would do it, yes.

Q. That's what happened specifically with regard to the RFP process, correct?

MS. COOK: Objection.

A. Yes.

Q. Other than the RFP process for the North Hill Country Club, during your tenure on the board of selectmen were there any other RFP processes that you were involved with for the town of Duxbury?

A. I can't recall. There may have been, but I can't recall. I'm just trying to think of timing of these things.

Q. As far as you know, did the town of Duxbury hire any consultant to draft an RFP for the town?

A. Not that I recall, no.

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

(Exhibit No. 4 ID marked.)

(Discussion off the record.)

A. Okay.

Q. Aside from reading the minutes that I've just given you, Exhibit Number 4 from August of 2008, did you have any memory of this hearing?

A. No.

Q. Having had a chance to review the minutes from August 25, 2008, do you remember what it was that some of the patrons at the golf course were complaining about?

<p style="text-align: right;">21</p> <p>1 A. Yes.</p> <p>2 Q. Are these minutes consistent with your memory as</p> <p>3 to what the issues were?</p> <p>4 A. Yes.</p> <p>5 Q. Now, with regard to Mr. Doolin who was the</p> <p>6 chairman of the North Hill Advisory Committee,</p> <p>7 and this is on Page 4 of the minutes, second</p> <p>8 paragraph, did you understand at the time what</p> <p>9 he was talking about when he said he'd like to</p> <p>10 see a greater focus on service over price?</p> <p>11 A. Yes.</p> <p>12 Q. What was your understanding of what he was</p> <p>13 looking for?</p> <p>14 A. I think it was relating to the tee times, for</p> <p>15 instance.</p> <p>16 Q. And so, again, the focus for that gentleman was</p> <p>17 that he wanted to be able to get 18 holes worth</p> <p>18 of tee times on weekends and holidays; is that</p> <p>19 it?</p> <p>20 A. Yes.</p> <p>21 Q. Did you have any position on whether or not</p> <p>22 folks should be able to get double tee times on</p> <p>23 weekends and holidays yourself?</p> <p>24 A. No.</p>	<p style="text-align: right;">23</p> <p>1 of the selectmen as well?</p> <p>2 A. Yes.</p> <p>3 Q. And what response, if any, did you have to</p> <p>4 Mr. Doyle?</p> <p>5 A. I don't recall specifically me.</p> <p>6 Q. Did the board of selectmen have a response to</p> <p>7 him collectively?</p> <p>8 A. Yes.</p> <p>9 Q. What was their response?</p> <p>10 A. Work it out between Gordon, Bob Troy and the</p> <p>11 management.</p> <p>12 Q. And were you satisfied that that was done?</p> <p>13 A. Yes.</p> <p>14 Q. Now, did Mr. Doyle ever explain to you how he</p> <p>15 believed that the management company was running</p> <p>16 the club in a manner to discourage play?</p> <p>17 A. I can't remember, no.</p> <p>18 Q. And as far as the next paragraph, the reference</p> <p>19 to North Hill being expensive relative to other</p> <p>20 area clubs, did you ever investigate that issue?</p> <p>21 A. No.</p> <p>22 Q. And I assume as a relative non-golfer you</p> <p>23 weren't aware what the prices were at other area</p> <p>24 clubs?</p>
<p style="text-align: right;">22</p> <p>1 Q. And do you understand how revenue would increase</p> <p>2 if 18 hole tee times were given?</p> <p>3 MS. COOK: Objection.</p> <p>4 A. No.</p> <p>5 Q. In the, let's see. In the fourth paragraph, the</p> <p>6 comments from Mr. Doyle, do you know or did you</p> <p>7 know Mr. Bob Doyle?</p> <p>8 A. Yes.</p> <p>9 Q. And had Mr. Doyle ever discussed with you the</p> <p>10 issues up at North Hill?</p> <p>11 A. Yes.</p> <p>12 Q. What do you remember -- or do you remember what</p> <p>13 Mr. Doyle's issues were?</p> <p>14 A. Essentially what's written there.</p> <p>15 Q. Did he bring those to your attention privately?</p> <p>16 A. Yes.</p> <p>17 Q. Do you remember what he said to you?</p> <p>18 A. He just was not satisfied.</p> <p>19 Q. And did he say why he wasn't satisfied?</p> <p>20 A. Yes.</p> <p>21 Q. What did he say?</p> <p>22 A. Basically, I think his point was that the</p> <p>23 management was not following the contract.</p> <p>24 Q. And had he brought these issues to the attention</p>	<p style="text-align: right;">24</p> <p>1 A. Correct.</p> <p>2 Q. Other than Mr. Doyle's issues with the North</p> <p>3 Hill Country Club, did he bring other issues to</p> <p>4 you and other board of selectmen for other</p> <p>5 issues in town?</p> <p>6 A. Are you referring to Mr. Doyle?</p> <p>7 Q. Mr. Doyle, yes.</p> <p>8 A. Yes.</p> <p>9 Q. Would you characterize Mr. Doyle as a fellow who</p> <p>10 was frequently bringing complaints to the board</p> <p>11 of selectmen?</p> <p>12 A. No.</p> <p>13 Q. How about sporadically bringing complaints to</p> <p>14 the board of selectmen; would you characterize</p> <p>15 him as such?</p> <p>16 A. No.</p> <p>17 Q. What other issues, if any, do you recall that he</p> <p>18 brought to the attention of the board of</p> <p>19 selectmen?</p> <p>20 A. Some roadway issues, some school building</p> <p>21 issues.</p> <p>22 Q. Were you given a copy of the request for</p> <p>23 proposals for the North Hill Country Club that</p> <p>24 was issued by the town of Duxbury in the fall of</p>

1 2008?

2 **A. Can you clarify. After it was issued or before**

3 **it was issued?**

4 **Q.** Did you see it either before it was issued or

5 after it was issued?

6 **A. I saw -- yes.**

7 **Q.** Okay. When do you remember first seeing it?

8 **A. I think probably about that September e-mail,**

9 **September 16th.**

10 **Q.** And if I suggest to you that the bid date on the

11 RFP for the fall of 2008 was October 24th when

12 proposals were due, would you have seen it

13 before October 24th?

14 **A. Yes. I just said --**

15 MR. KESTEN: He just said he saw it in

16 September.

17 MR. FOLLANSBEE: I'd ask that this be

18 marked as the next exhibit.

19 **A. But I just want to make clear that was the**

20 **draft. I don't believe I saw the final.**

21 (Exhibit No. 5 ID marked.)

22 MR. KESTEN: What's the question?

23 MR. FOLLANSBEE: I didn't have a

24 question. I just wanted it to be marked.

1 MR. KESTEN: He said he's never seen it.

2 I didn't know if you wanted him to read the

3 whole thing.

4 MR. FOLLANSBEE: I don't need him to read

5 it.

6 **Q.** In the draft that you reviewed, do you remember

7 seeing an expression called comparable business

8 enterprise in the draft?

9 **A. No.**

10 **Q.** Do you remember that issue ever coming up?

11 **A. No.**

12 **Q.** And do you have any understanding of what is a

13 comparable business enterprise with regard to

14 this RFP?

15 **A. Yes.**

16 **Q.** What is your understanding as to what a

17 comparable business enterprise is?

18 MR. KESTEN: You mean in general?

19 MR. FOLLANSBEE: Let me --

20 MR. KESTEN: In life?

21 **Q.** Why don't you turn to Page 4 of the exhibit, and

22 under the category relevant experience in the

23 second and third line it indicates that they

24 wanted a description of the company background

1 for the operation and maintenance of a golf

2 course or a comparable business enterprise.

3 Do you remember seeing that language in

4 the RFP draft that you reviewed?

5 **A. No. I don't remember.**

6 **Q.** And did you have any discussion with anybody

7 about what that term meant in the context of the

8 operation and maintenance of a golf course or a

9 comparable business enterprise?

10 **A. No.**

11 **Q.** And was there ever a discussion between your

12 board of selectmen and Attorney Troy in which

13 the board of selectmen suggested that language

14 to Attorney Troy?

15 **A. No.**

16 **Q.** And was there ever any discussion with

17 Mr. Cushing and the board of selectmen

18 suggesting that the board of selectmen wanted

19 the expression comparable business enterprise

20 included in the RFP?

21 **A. No.**

22 **Q.** And other than my just calling your attention to

23 it, did you even know that the expression

24 comparable business enterprise was in the RFP?

1 **A. Yes, I have. Yes.**

2 **Q.** And is that from newspaper accounts?

3 **A. Yes.**

4 **Q.** So other than the fact that litigation was

5 commenced and there had been some newspaper

6 accounts, you had no knowledge that the

7 expression comparable business enterprise was in

8 the RFP that had been sent out by Duxbury?

9 **A. Correct.**

10 **Q.** And you certainly didn't discuss it with

11 Attorney Troy or Mr. MacDonald or Mr. Cushing;

12 is that correct?

13 **A. Correct.**

14 **Q.** In the RFP draft that you reviewed, do you have

15 any memory as to whether there was a provision

16 in the proposed contract providing that members

17 would get 18 hole tee times on weekends and

18 holidays?

19 **A. No.**

20 **Q.** Did anyone discuss with you including that

21 language in the RFP?

22 **A. No.**

23 **Q.** In 2008, who was on the board of selectmen with

24 you?

1 **A. Betsy Sullivan, and it would have been Jon**
2 **Witten.**
3 **Q.** And do you know who the chairperson was?
4 **A. What time 2008?**
5 **Q.** In December of 2008.
6 **A. Let's see. December 2008. I believe it would**
7 **have been me.**
8 **Q.** I'm not trying to give you a trick question. I
9 think we have --
10 **A. I'm just trying to recall.**
11 **Q.** We have some minutes of the selectmen indicating
12 -- I'm not sure who the chair was. There are
13 minutes that suggest it was Jon Witten.
14 **MR. KESTEN:** September 8, 2008, Jon
15 Witten.
16 **THE WITNESS:** Could have been.
17 **MR. KESTEN:** Here's the minutes.
18 **THE WITNESS:** Maybe. Yeah.
19 **Q.** If the minutes say that, are you comfortable
20 that the minutes were accurate?
21 **A. Yeah. Yeah. Yes. Oh. Clerk. Yes, it is**
22 **correct, because December 2008, then March 2009**
23 **I would have been clerk, yes.**
24 **Q.** At sometime in December of -- in early December

1 of 2008, were you made aware that a decision had
2 been made by the town manager to reject all the
3 bids at North Hill Country Club?
4 **A. I had heard that, yes.**
5 **Q.** And who did you hear that from?
6 **A. I don't recall from who.**
7 **Q.** As I understand it, Mr. MacDonald, Richard
8 MacDonald is also the chief procurement officer
9 in the town of Duxbury?
10 **MR. KESTEN:** He was at that time.
11 **Q.** In 2008?
12 **A. Yes.**
13 **Q.** So do you recall being informed that Johnson
14 Golf Management had filed litigation against the
15 town in December of 2008?
16 **A. Yes.**
17 **Q.** Do you know who informed you of that?
18 **A. I cannot remember who told me that.**
19 **Q.** Did you have any discussions with Attorney Troy
20 about the fact that litigation had been
21 commenced against the town?
22 **A. I don't recall specifically any discussions.**
23 **Q.** Did you discuss with Attorney Troy or
24 Mr. MacDonald anything regarding the rejection

1 of the bids and the formal complaint that had
2 been filed in the Middlesex Superior Court
3 against the town by Johnson Golf?
4 **A. I can't recall any specific discussions, no.**
5 **MR. FOLLANSBEE: I'd ask this be marked**
6 **as the next exhibit.**
7 (Exhibit No. 6 ID marked.)
8 **Q.** I think the operative part of the minutes that
9 I'd like you to focus on is the second page, the
10 liquor license renewal for Johnson Golf
11 Management.
12 **MR. KESTEN:** He's seen that.
13 **Q.** Do you remember that issue coming up in December
14 of 2008?
15 **A. Yes.**
16 **Q.** And these minutes are from December 22nd of 2008
17 and the complaint in this case had been filed on
18 December 12th of 2008.
19 At the time of this meeting do you
20 believe you would have been informed that the
21 town had been sued by Johnson Golf Management?
22 **A. Yes.**
23 **Q.** Is there any reason that that wasn't mentioned
24 in the minutes of the board of selectmen

1 regarding this liquor license renewal?
2 **MS. COOK:** Objection.
3 **A. I don't know why it would not be there, or if it**
4 **was even discussed.**
5 **Q.** Did Attorney Troy inform you that the plaintiff,
6 Johnson Golf Management, was seeking an
7 injunction against the town awarding a contract
8 to any other entity?
9 **A. He may have. I don't recall specifically.**
10 **Q.** With regard to the December 2008 to January 2009
11 timeframe, do you recall communicating with
12 Attorney Troy yourself regarding the RFP process
13 or the litigation from Johnson Golf?
14 **A. I don't recall any specific discussions or**
15 **communications.**
16 **Q.** Did you -- do you recall ever sending Attorney
17 Troy any letters regarding this issue?
18 **A. No.**
19 **Q.** As far as the decision to have Attorney Troy
20 handle this case, did the board of selectmen
21 ever authorize that?
22 **A. No.**
23 **MR. FOLLANSBEE: It's coming to your**
24 **favorite part of the deposition.**

<p style="text-align: right;">33</p> <p>1 MR. KESTEN: Oh, my God. It's beating a</p> <p>2 dead horse. The Town Manager Act conflicts with</p> <p>3 the bylaws. Okay. Stipulated. Leave the man</p> <p>4 alone.</p> <p>5 Q. Did the board of selectmen consider referring</p> <p>6 this matter to the insurance company for the</p> <p>7 town in 2008?</p> <p>8 A. No.</p> <p>9 Q. And why is that?</p> <p>10 A. It was being handled by town counsel and by town</p> <p>11 manager and no reason to consider that at that</p> <p>12 time.</p> <p>13 Q. Did town counsel or the town manager discuss</p> <p>14 with you --</p> <p>15 A. Can I clarify. I think it was not -- the reason</p> <p>16 probably was that it was not a claim kind of</p> <p>17 thing at that time as opposed to a procedural</p> <p>18 thing, so I think that's why I would not have</p> <p>19 considered it.</p> <p>20 MR. FOLLANSBEE: I'd ask this be marked</p> <p>21 as the next exhibit.</p> <p>22 (Exhibit No. 7 ID marked.)</p> <p>23 Q. On the second page of Exhibit Number 7 under the</p> <p>24 date of January 12, 2009, Attorney Troy</p>	<p style="text-align: right;">35</p> <p>1 MR. KESTEN: Had he nominated him or had</p> <p>2 the board of selectmen ever appointed him?</p> <p>3 MR. FOLLANSBEE: I'll ask two questions.</p> <p>4 Q. Had you ever nominated Mr. Sheehan for any</p> <p>5 position?</p> <p>6 A. I don't recall.</p> <p>7 Q. Did the board of selectmen appoint him to any</p> <p>8 positions in town?</p> <p>9 A. I don't believe so at that time.</p> <p>10 Q. Were you aware that Mr. Sheehan had served on</p> <p>11 the North Hill Advisory Committee?</p> <p>12 A. Not that I can remember, no.</p> <p>13 Q. Did you know Mr. John Geary?</p> <p>14 A. No.</p> <p>15 Q. Did Mr. MacDonald ever explain to you why he had</p> <p>16 rejected the bids the first time?</p> <p>17 A. I don't recall. No. I don't recall.</p> <p>18 Q. Did Attorney Troy ever tell you why the bids had</p> <p>19 been rejected the first time?</p> <p>20 A. I can't remember any specific discussions.</p> <p>21 Q. From your background --</p> <p>22 (Interruption.)</p> <p>23 Q. From your business background, had you ever been</p> <p>24 involved in any public construction matters?</p>
<p style="text-align: right;">34</p> <p>1 indicates that he's reviewing and analyzing</p> <p>2 correspondence from you. Do you have any memory</p> <p>3 as to what that correspondence was about?</p> <p>4 A. No.</p> <p>5 Q. Did you ever -- have you formulated any position</p> <p>6 yourself regarding the RFP process that was</p> <p>7 going out to a new bid in January of 2009?</p> <p>8 MS. COOK: Objection.</p> <p>9 A. No.</p> <p>10 Q. In 2008 did you know any of the other bidders?</p> <p>11 And I'll list them. Did you know Mr. Gunnarson?</p> <p>12 A. No.</p> <p>13 Q. Did you know Mr. Lanzetta?</p> <p>14 A. No.</p> <p>15 Q. Did you know Emmett Sheehan?</p> <p>16 A. Yes.</p> <p>17 Q. Did you know Mr. Daley and Stiles?</p> <p>18 A. No.</p> <p>19 Q. Did you know Mr. Johnson?</p> <p>20 A. I knew of him. Didn't know him personally.</p> <p>21 Q. What did -- how did you know Mr. Sheehan?</p> <p>22 A. From around town.</p> <p>23 Q. And did -- had you appointed him to a committee</p> <p>24 in town?</p>	<p style="text-align: right;">36</p> <p>1 A. Yes.</p> <p>2 Q. And were you somewhat familiar with the public</p> <p>3 construction bidding laws?</p> <p>4 A. Yes.</p> <p>5 Q. And were you familiar at all with Chapter 30B of</p> <p>6 the Massachusetts General Laws, the Uniform</p> <p>7 Procurement Act?</p> <p>8 A. Yes. To some extent.</p> <p>9 Q. And was it at all puzzling to you that what</p> <p>10 seemed like a simple RFP for the North Hill Golf</p> <p>11 Course had resulted in the rejection of all</p> <p>12 bids?</p> <p>13 MS. COOK: Objection.</p> <p>14 A. No. It's not uncommon in public bidding that</p> <p>15 things like that happen.</p> <p>16 Q. But nobody -- did you ever ask anybody why did</p> <p>17 we reject all the bids?</p> <p>18 A. I don't recall.</p> <p>19 Q. Did anybody talk to you about the fact that one</p> <p>20 of the bidders, specifically CALM Golf, had</p> <p>21 submitted a bid in October that included a</p> <p>22 percentage of gross revenues?</p> <p>23 A. No.</p> <p>24 Q. Did anyone ever discuss with you the fact that</p>

37

1 they had consulted the Attorney General's office
2 and the Attorney General's office had advised
3 them to reject the bids?

4 **A. No.**

5 **Q.** Did you ever review, yourself, any of the
6 various proposals from any of the entities that
7 had bid on the North Hill Golf Course?

8 **A. No.**

9 **Q.** Did anybody discuss with you any changes that
10 were being made in the RFP between the time that
11 the bids came in in October of 2008 and January
12 of 2009?

13 **A. No. I don't recall any discussions or reviews.**

14 **Q.** Were you ever provided with a copy of the award
15 letter that Mr. MacDonald signed awarding a
16 contract to CALM Golf?

17 **A. I don't recall. We may have. I don't recall.**

18 **Q.** We'll show it to you and see if you recall it.
19 MR. FOLLANSBEE: We'll have that marked
20 as the next exhibit.
21 (Exhibit No. 8 ID marked.)

22 **Q.** Having taken a chance to look at Exhibit Number
23 8, the letter dated January 15, 2009 awarding a
24 contract, do you recall ever seeing this before?

38

1 **A. I don't recall it, but.**

2 **Q.** Was it discussed with the board of selectmen?

3 **A. Not that I recall.**

4 **Q.** Once the lawsuit had been filed, did you receive
5 regular communication from Attorney Troy
6 updating you on the status of the litigation?

7 MS. COOK: Are you referring to the
8 litigation with Johnson Golf?

9 MR. FOLLANSBEE: Yes.

10 **A. I don't recall any, you know, regular updates.**
11 **We would periodically have updates on all of**
12 **litigation, and it may have been included in**
13 **that. I don't recall any specific, you know,**
14 **regular updates in December 2008.**

15 **Q.** Do you ever recall receiving any settlement
16 proposals from Attorney Troy relative to the
17 litigation between Johnson Golf and the town of
18 Duxbury?

19 **A. Not that I can -- we may have, but I don't**
20 **recall.**

21 MR. FOLLANSBEE: I'd ask that be marked
22 as the next exhibit.
23 (Exhibit No. 9 ID marked.)

24 **A. Okay.**

39

1 **Q.** Having had an opportunity to look at Exhibit
2 Number 9 which is a settlement proposal dated
3 January 16, 2009, does that refresh your memory
4 as to whether or not you've ever seen such a
5 proposal?

6 **A. I don't recall seeing this, no.**

7 **Q.** If you became aware in January of 2009 that the
8 proposal of CALM Golf had material
9 misrepresentations, what would your course of
10 action have been?

11 MS. COOK: Objection.

12 **A. To discuss it with the town manager and the town**
13 **counsel.**

14 **Q.** And would it be a concern to you as a member of
15 the board of selectmen that the town manager had
16 awarded a contract based upon representations
17 from CALM Golf that were not true?

18 MS. COOK: Objection.

19 **A. Yes.**

20 **Q.** And the fact that at least the representation in
21 this letter being that CALM Golf had no assets,
22 would that be of concern to you?

23 **A. Yes.**

24 **Q.** And at any time, and I know it was a short

40

1 period that you were on the board after this,
2 but at any time from January of 2009 up until
3 the time you left the board, did you discuss any
4 of these issues with the town manager or Robert
5 Troy, the fact that CALM had no assets and that
6 they had made misrepresentations?

7 **A. I don't recall, no.**
8 (Exhibit No. 10 ID marked.)

9 **A. Okay.**

10 **Q.** Have you ever -- Exhibit 10 is the memorandum
11 and decision of Judge Smith dated February 2nd
12 of 2009. Have you ever seen this document
13 before today?

14 **A. I don't believe -- I don't recall, no.**

15 **Q.** If you had, as a member of the board of
16 selectmen, received this document in which on
17 Page 6 of the document in the footnote Judge
18 Smith notes that according to the CALM
19 financials it had \$169 in total assets in 2007,
20 would that have been a concern to you?

21 **A. Yes.**

22 **Q.** And did anybody tell you -- well, strike that.
23 When Judge Smith entered his injunction,
24 was that discussed between the board of

<p style="text-align: right;">41</p> <p>1 selectmen and town counsel?</p> <p>2 MS. COOK: Objection.</p> <p>3 A. I don't recall it being discussed.</p> <p>4 MR. FOLLANSBEE: Just, is that just an</p> <p>5 objection or is that a privilege issue?</p> <p>6 MS. COOK: Well, I was objecting while I</p> <p>7 thought about whether it was a privilege issue.</p> <p>8 MR. FOLLANSBEE: Did he answer?</p> <p>9 MR. KESTEN: I think he answered already.</p> <p>10 MS. COOK: Can I have the question read</p> <p>11 back.</p> <p>12 (The question and answer were read back.)</p> <p>13 MS. COOK: Yeah. I think --</p> <p>14 MR. FOLLANSBEE: Well, whether it was</p> <p>15 discussed is a yes or no.</p> <p>16 MS. COOK: Yeah. That's fine. If the</p> <p>17 answer is yes, then it would be a different</p> <p>18 story. Right.</p> <p>19 MR. KESTEN: The answer's no.</p> <p>20 MS. COOK: Right. We can move on.</p> <p>21 MR. FOLLANSBEE: Yeah. If there was --</p> <p>22 MS. COOK: No communication, there's</p> <p>23 nothing privileged.</p> <p>24 MR. FOLLANSBEE: No communication, no</p>	<p style="text-align: right;">43</p> <p>1 decision?</p> <p>2 A. I do not recall seeing this, but.</p> <p>3 Q. Did you ever ask Attorney Troy or Richard</p> <p>4 MacDonald what had happened in court that an</p> <p>5 injunction was issued?</p> <p>6 MS. COOK: I'm going to instruct you not</p> <p>7 to answer on the basis of privilege.</p> <p>8 MR. FOLLANSBEE: I understand that. I'll</p> <p>9 just limit the question to Mr. MacDonald.</p> <p>10 Q. Did you ever ask Mr. MacDonald what had happened</p> <p>11 in court that this injunction was issued?</p> <p>12 A. I can't recall.</p> <p>13 Q. In December of 2009, did Mr. MacDonald discuss</p> <p>14 with you the fact that all the documents</p> <p>15 pertaining to the North Hill RFP process had</p> <p>16 been removed from town hall?</p> <p>17 MR. KESTEN: You mean 2008.</p> <p>18 MR. FOLLANSBEE: 2008. I'm sorry.</p> <p>19 A. No.</p> <p>20 Q. Were you ever made aware that public documents</p> <p>21 involving this bid process had been removed from</p> <p>22 town hall and were being held in Attorney Troy's</p> <p>23 office down at the Cape?</p> <p>24 A. No.</p>
<p style="text-align: right;">42</p> <p>1 privilege.</p> <p>2 MS. COOK: Correct.</p> <p>3 Q. (By Mr. Follansbee) Did Attorney Troy ever tell</p> <p>4 you why Judge Smith made the ruling that he did?</p> <p>5 MS. COOK: Objection. I'm going to</p> <p>6 instruct you not to answer that as privileged.</p> <p>7 MR. FOLLANSBEE: It doesn't --</p> <p>8 MS. COOK: At this point it is still</p> <p>9 privileged.</p> <p>10 Q. Were you made aware that an injunction had been</p> <p>11 issued ordering that Johnson continue to run the</p> <p>12 golf course?</p> <p>13 A. Yes.</p> <p>14 Q. And as a result of that information, did the</p> <p>15 board of selectmen decide to take any particular</p> <p>16 action?</p> <p>17 A. No.</p> <p>18 Q. And if Attorney Troy had delivered a copy of</p> <p>19 Judge Smith's decision to you some nine-pages</p> <p>20 long which is Exhibit Number 10, would you have</p> <p>21 taken the time to read it?</p> <p>22 A. Yes.</p> <p>23 Q. And as you sit here today, you have no memory</p> <p>24 that you were ever provided a copy of that</p>	<p style="text-align: right;">44</p> <p>1 Q. Up until I just asked you about that, did you</p> <p>2 know that had happened?</p> <p>3 MS. COOK: Objection.</p> <p>4 THE WITNESS: What?</p> <p>5 MS. COOK: I objected. You can answer.</p> <p>6 A. No. No.</p> <p>7 Q. Did you ever discuss the Johnson Golf litigation</p> <p>8 with any other individuals in Duxbury other than</p> <p>9 members of the board of selectmen?</p> <p>10 A. I would say no, and including that with if it</p> <p>11 wasn't in a meeting, then we should not have</p> <p>12 been discussing it.</p> <p>13 Q. Did you discuss it with anybody in your choir?</p> <p>14 A. No.</p> <p>15 Q. You're in the choir in a parish down in Duxbury?</p> <p>16 A. Yes.</p> <p>17 Q. Is that Holy Family? Is that the name of the</p> <p>18 church?</p> <p>19 A. Yes.</p> <p>20 Q. Did you tell anybody at choir practice in</p> <p>21 December of 2010 --</p> <p>22 MR. KESTEN: For God's sake.</p> <p>23 Q. -- that we've got Johnson Golf right where we</p> <p>24 want them?</p>

1 **A. No.**
 2 MR. KESTEN: Choir practices.
 3 Discussions are everywhere.
 4 (Discussion off the record.)
 5 **Q.** Was it a concern of yours that members of the
 6 North Hill Advisory Committee in drafting the
 7 RFP were seeking to gain privileges otherwise
 8 not available to the general public?
 9 MS. COOK: Objection.
 10 **A. I was not aware of any particular requests.**
 11 **Q.** I'm specifically -- you weren't aware that they
 12 had put a clause in the contract requiring 18
 13 hole tee times for members?
 14 MS. COOK: Objection.
 15 **A. No. I was not aware.**
 16 **MR. FOLLANSBEE: Okay. If I could take a**
 17 **five-minute break. We might be getting close.**
 18
 19 (Recess taken.)
 20
 21 MR. FOLLANSBEE: I have nothing further.
 22
 23 (The deposition concluded at 11:34 a.m.)
 24

1 CERTIFICATE
 2 Commonwealth of Massachusetts
 3 Essex, ss.
 4
 5 I, Jessica F. Story, Certified Shorthand
 6 Reporter, Registered Professional Reporter and
 7 Notary Public in and for the Commonwealth of
 8 Massachusetts, do hereby certify: that ANDRE
 9 MARTECCHINI, the witness whose deposition is
 10 hereinbefore set forth, was satisfactorily
 11 identified by his Massachusetts driver's
 12 license, then duly sworn by me, and that such
 13 deposition is a true record of the testimony
 14 given by the said witness.
 15 I further certify that I am not a
 16 relative or employee or counsel or attorney for
 17 any of the parties, or a relative or employee of
 18 such counsel or attorney, nor am I financially
 19 or otherwise interested in the outcome of the
 20 action.
 21 IN WITNESS WHEREOF, I have hereunto set
 22 my hand and notarial seal this 16th day of July,
 23 2012.
 24

 Jessica F. Story, CSR, RPR
 My commission expires
 on September 13, 2013

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

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DATE: _____ SIGNATURE: _____

1
 2
 3 CERTIFICATE
 4
 5 I, ANDRE MARTECCHINI, do hereby certify
 6 that I have read the foregoing transcript of my
 7 testimony, and further certify that said
 8 transcript is a true and accurate record of said
 9 testimony.
 10 Signed under the pains and penalties of
 11 perjury this ____ day of _____,
 12 2012.
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 14
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 16 _____
 17 ANDRE MARTECCHINI
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