



“When You Talk - We Listen!”



TOWN OF COLLINGWOOD

JUDICIAL INQUIRY

Before:

Associate Chief Justice Frank Marrocco

Held at:

Collingwood Town Hall

Council Chambers

97 Hurontario Street

Collingwood, Ontario

September 30th, 2019

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APPEARANCES

Kate McGrann) Inquiry Counsel
John Mather) Associate Inquiry
) Counsel
(No Counsel)) For Paul Bonwick
George Marron) For Sandra Cooper
Frederick Chenoweth) For Edwin Houghton
William McDowell (np)) For Town of Collingwood
Ryan Breedon)
Andrea Wheeler (np))
Bill Trudell (np)) For BLT Construction
Eric Neubauer)

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1 --- Upon commencing at 10:02 a.m.

2

3 THE HONOURABLE FRANK MARROCCO: Ready
4 when you are, Mr. Chenoweth.

5 MR. FREDERICK CHENOWETH: Thank you,
6 Your Honour.

7

8 DAVE MCNALT, Previously Sworn

9

10 CROSS-EXAMINATION BY MR. FREDERICK CHENOWETH:

11 MR. FREDERICK CHENOWETH: Good Monday
12 morning, Mr. McNalty.

13 MR. DAVE MCNALT: Good morning.

14 MR. FREDERICK CHENOWETH: A couple of
15 questions for you. My name is Chenoweth, Fred
16 Chenoweth, and I represent Mr. Houghton.

17 Could we turn, first of all, to a -- a
18 document that Inquiry counsel referred to, and that
19 would be paragraph 274 of FD 2.

20

21 (BRIEF PAUSE)

22

23 MR. FREDERICK CHENOWETH: And just
24 have a little look at that, if you -- if you would
25 like to read it before we review it.

1 (BRIEF PAUSE)

2

3 MR. DAVE MCNALTY: That was 274?

4 MR. FREDERICK CHENOWETH: Paragraph
5 274, yes.

6 MR. DAVE MCNALTY: Okay.

7 MR. FREDERICK CHENOWETH: Okay. And I
8 think inquiry counsel referred you to that through the
9 course of your evidence-in-chief. And Ed, in an email
10 to you, says:

11 "The last point I should make is
12 that I will be the contact person
13 with Sprung. The deputy mayor made
14 that perfectly clear to me on the
15 weekend."

16 So he's -- he's telling you that --
17 that the deputy mayor made that point with him,
18 correct?

19 MR. DAVE MCNALTY: Yes.

20 MR. FREDERICK CHENOWETH: All right.
21 And I think you told us the other day that -- that you
22 didn't have occasion to discuss this email that Ed
23 sent you with Ed?

24 MR. DAVE MCNALTY: Not that I recall.

25 MR. FREDERICK CHENOWETH: All right.

1 Okay. And it led to some exchanges the between
2 yourself and Brian Gergersen. And if we could turn to
3 Summary Document 2-4, paragraph 24 of that document.
4 And I think I have a document number, which may
5 assist, CJ -- CJI006688.

6

7 (BRIEF PAUSE)

8

9 THE COURT OPERATOR: Eighty-eight or
10 82?

11 MR. FREDERICK CHENOWETH: Eight-two,
12 I'm sorry, 82. Yeah.

13

14 (BRIEF PAUSE)

15

16 MR. FREDERICK CHENOWETH: And you
17 might just take a moment to -- to read that.

18

19 (BRIEF PAUSE)

20

21 MR. DAVE MCNALTY: Is there more?

22 MR. FREDERICK CHENOWETH: No, I think
23 you're -- you're doing fine. I think -- did you get
24 to the right document? It's an email of July 25th at
25 2:07. Let me just -- just go up, so we can just make

1 sure we got the right document.

2

3 (BRIEF PAUSE)

4

5 MR. FREDERICK CHENOWETH: No, it
6 doesn't look like it.

7 THE HONOURABLE FRANK MARROCCO: There's
8 an email --

9 MR. FREDERICK CHENOWETH: Go down a
10 little further. There is right there. This may be
11 it. Go down a little further. I think we're in the
12 wrong email, Mr. Mather?

13 THE HONOURABLE FRANK MARROCCO: That's
14 July 25th at 12:39. Is that the one you want?

15 MR. FREDERICK CHENOWETH: All right.
16 Just -- just one second.

17 MR. JOHN MATHER: If -- if you scroll
18 up, there is a response from Mr. McNalty at 2:07, and
19 he indicates that his response is in the email below.

20 MR. FREDERICK CHENOWETH: All right.

21

22 (BRIEF PAUSE)

23

24 CONTINUED BY MR. FREDERICK CHENOWETH:

25 MR. FREDERICK CHENOWETH: Well, I'm

1 looking at -- maybe the best way to -- to start -- to
2 get this is to look at Summary Document 2-4, paragraph
3 24.

4

5 (BRIEF PAUSE)

6

7 MR. FREDERICK CHENOWETH: I'm sorry,
8 Mr. McNalty, read that paragraph in the Summary
9 Document, if you would, please.

10

11 (BRIEF PAUSE)

12

13 MR. DAVE MCNALTY: Okay.

14 MR. FREDERICK CHENOWETH: All righty.
15 So it looks like on July 25th in this email chain,
16 Brian Gergersen of WGD thanks you, first of all, for a
17 phone call and direction which appears to have taken
18 place on or about July 25th, correct?

19 MR. DAVE MCNALTY: Yes.

20 MR. FREDERICK CHENOWETH: All right.
21 And I take it that Mr. Houghton was not part of that
22 phone call and direction? He wasn't on that phone
23 call with Gergersen?

24 MR. DAVE MCNALTY: Not that I recall,
25 no.

1 MR. FREDERICK CHENOWETH: All right.
2 Thank you. And -- so he didn't -- he didn't give what
3 -- what would Gergersen describes as a direction. He
4 didn't give any direction to Gergersen on that day
5 with respect to any matters, because he wasn't on the
6 phone call, correct?

7 MR. DAVE MCNALTY: Correct. Correct.

8 MR. FREDERICK CHENOWETH: Okay,
9 thanks. And he goes down the are -- arena design
10 concept, et cetera, et cetera, and then he said,
11 "Sprung is not to be contacted at this time."

12 That's obviously something that -- that
13 you told him?

14 MR. DAVE MCNALTY: Yes.

15 MR. FREDERICK CHENOWETH: Not
16 something that -- that Mr. Houghton told him?
17 Obviously, he wasn't in the phone call?

18 MR. DAVE MCNALTY: Correct.

19 MR. FREDERICK CHENOWETH: All right.
20 And he got that from you, and it appears that you
21 appear to have taken from the email that you had with
22 -- with Mr. Houghton on the 24th, you seem to have
23 taken that -- that no one was to contact Sprung
24 obviously and that's why you gave that direction to
25 Gergersen, correct?

1 MR. DAVE MCNALTY: Correct.

2 MR. FREDERICK CHENOWETH: All right.

3 It's -- there's little doubt that you had lots of
4 opportunity to be in contact with Sprung both before
5 and after Mr. Houghton's email of July 24th. You had
6 contact with Sprung prior to that.

7 MR. DAVE MCNALTY: Yes.

8 MR. FREDERICK CHENOWETH: And you had
9 ongoing contact with Sprung after July 24th. You --
10 you would have had contact with them -- I think at my
11 friend, Mr. Mather, brought out through the course of
12 your examination-in-chief, you would have had contact
13 with them on July 27th.

14 And just to assist you with that, I'm
15 going to refer you to paragraph 275 of the Foundation
16 Document.

17

18 (BRIEF PAUSE)

19

20 MR. FREDERICK CHENOWETH: And you can
21 just read that.

22 MR. DAVE MCNALTY: Okay.

23 MR. FREDERICK CHENOWETH: And that
24 talks about a meeting scheduled on Friday the 27th
25 with Sprung, and there were several people invited to

1 that, including a gentleman named Dave McNalty.

2 Correct?

3 MR. DAVE MCNALTY: Yes.

4 MR. FREDERICK CHENOWETH: And I think
5 your evidence with respect to that to Inquiry counsel
6 was that if you were invited you were probably at the
7 meeting.

8 MR. DAVE MCNALTY: Yes. I have no
9 specific recollection, but --

10 MR. FREDERICK CHENOWETH: I -- I --

11 MR. DAVE MCNALTY: -- that's likely
12 the case --

13 MR. FREDERICK CHENOWETH: -- I
14 understand but it's likely, I think you said and I put
15 it no higher than what you said in your evidence-in-
16 chief, that -- that you were likely at the July 27th
17 meeting.

18 MR. DAVE MCNALTY: Correct.

19 MR. FREDERICK CHENOWETH: So you had
20 contact with Sprung on that occasion, along with
21 others in that meeting?

22 MR. DAVE MCNALTY: Yes. I -- if I was
23 at the meeting, I would have had contact with them.

24 MR. FREDERICK CHENOWETH: Yes. And
25 there's -- there's also another meeting, it seems, on

1 -- on August 3rd again after the -- the comments of --
2 of Mr. Houghton in his July 24th email.

3 And in that respect, let's go to
4 paragraph 292 of the Foundation Document.

5

6 (BRIEF PAUSE)

7

8 MR. FREDERICK CHENOWETH: So again
9 you're part of -- of a calendar invitation for another
10 meeting with Sprung, to take place on August 3rd.

11 Am I correct on that?

12 MR. DAVE MCNALTY: Yes.

13 MR. FREDERICK CHENOWETH: And I think
14 you had some memory of that and told us a bit about
15 that meeting in your evidence-in-chief. Correct?

16 MR. DAVE MCNALTY: Yes.

17 MR. FREDERICK CHENOWETH: All right,
18 thank you. So again following the July 24th email
19 that you got from Mr. Houghton, you had at -- at least
20 two (2) meetings with -- with -- with Sprung.

21 MR. DAVE MCNALTY: I attended those
22 meetings.

23 MR. FREDERICK CHENOWETH: Yes, along
24 with other people?

25 MR. DAVE MCNALTY: Yes.

1 MR. FREDERICK CHENOWETH: All right.
2 I'm just harking back to -- and -- and it appears that
3 not only yourself but a number of other people at
4 these meetings were having contact and interaction
5 with Sprung. Correct?

6 MR. DAVE MCNALTY: Yes.

7 MR. FREDERICK CHENOWETH: All right.
8 Just going back again to the July 24th note that you
9 got from Mr. Houghton, and again that's at paragraph
10 274, I'm -- I'm -- I'm trying to -- I'm trying to get
11 to what he might have meant by his statement that I am
12 to be the contact with Sprung.

13 Have another look at that.

14 "I will be the contact person with
15 Sprung."

16 I -- I suggest to you, Mr. McNalty,
17 that if we examine that closely, and given the fact
18 that a number of people, including yourself, had
19 ongoing contact with Sprung, that the meaning of that
20 might have simply been that I am to be the pivot in
21 arranging contact with Sprung. In other words, I'm --
22 I'm to be the direct contact with Sprung.

23 It obviously, because you would have
24 had ongoing contact with Sprung, didn't mean that no
25 one should have any contact with Sprung. Correct?

1 Is that a fair interpretation of what
2 he might have meant in that paragraph, or at least a
3 possible interpretation?

4 I know how you reacted to it. You told
5 Gergersen that -- that he shouldn't have any contact,
6 but I'm just suggesting to you that there's possibly
7 another way of looking at the question that Mr.
8 Houghton in paragraph 274, i.e., if there's going to
9 be contact with Sprung, it should be arranged through
10 me or something of that nature, not that no one should
11 be in contact with Sprung.

12 THE HONOURABLE FRANK MARROCCO: That's
13 -- that's a --

14

15 CONTINUED BY MR. FREDERICK CHENOWETH:

16 MR. FREDERICK CHENOWETH: There's that
17 potential second meaning to what he said. Is that
18 fair?

19 THE HONOURABLE FRANK MARROCCO: That
20 is a rather long question.

21 MR. FREDERICK CHENOWETH: Sorry?

22 THE HONOURABLE FRANK MARROCCO: That
23 is a rather long question.

24 MR. FREDERICK CHENOWETH: All right.
25 That's fine. I am prepared to break it down, if we

1 can.

2 THE HONOURABLE FRANK MARROCCO: Would
3 you mind?

4

5 CONTINUED BY MR. FREDERICK CHENOWETH:

6 MR. FREDERICK CHENOWETH: I -- I -- I
7 think I've -- hopefully you followed some of what I've
8 said.

9 I'm just suggesting to you that the
10 comment by Houghton in paragraph 274 may not be no one
11 should contact Sprung. It may be I'm to be the
12 contact point and arrange the contact with Sprung. Is
13 that fair?

14 MR. DAVE MCNALTY: Okay.

15 MR. FREDERICK CHENOWETH: Well, is --
16 is that -- is that a fair possible interpretation?
17 And I know you may have interpreted it a little
18 differently.

19 Is that a fair possible interpretation?

20 MR. DAVE MCNALTY: Sure.

21 MR. FREDERICK CHENOWETH: Thank you.

22 All right. Now, it may have been that WGD and
23 Gergersen, if they contacted Mr. Houghton, could have
24 spoken to Sprung. That's the point of it all, if --
25 if the second interpretation stands.

1 Is that fair?

2 MR. DAVE MCNALTY: If they had
3 contacted Mr. Houghton, then yes, that's fair.

4 MR. FREDERICK CHENOWETH: Thank you
5 very much.

6 Now if -- we know that there was a --
7 I'm going to another area now.

8 We know that there was a meeting of the
9 EMC and yourself on the morning of the 24th of August.
10 I want to put you into the -- in the 24th of August
11 mode. You recall, you had sent another draft of the
12 staff report, I think at 11:44 -- 11:44:31 on the --
13 on the evening of August 23rd. You'd been up pretty
14 late working on that. And you really did so, I
15 suppose, to prepare that draft for the meeting which
16 was to take place at 8:30 the next morning.

17 MR. DAVE MCNALTY: Yes.

18 MR. FREDERICK CHENOWETH: Would that be
19 a fair assertion?

20 MR. DAVE MCNALTY: Yes.

21 MR. FREDERICK CHENOWETH: Thank you.
22 And -- and you would have discussed, I'm assuming,
23 your draft at that meeting at 8:30.

24 MR. DAVE MCNALTY: I was at the
25 meeting and the draft was discussed, yes.

1 MR. FREDERICK CHENOWETH: And you
2 would have discussed a lot of the contents that
3 occurred in the draft, and let me see if I can assist
4 you in that respect.

5 There appears to have been some further
6 drafting that was done after the 8:30 meeting, and it
7 appears to be after that meeting was over. And I
8 refer you to -- to paragraph 413 of the Foundation
9 Document.

10

11 (BRIEF PAUSE)

12

13 MR. FREDERICK CHENOWETH: Just have a
14 read of that, if you would, please.

15 Just be -- just before we -- just
16 before we -- well, go ahead, read the whole thing,
17 yeah.

18

19 (BRIEF PAUSE)

20

21 MR. DAVE MCNALTY: Okay.

22 MR. FREDERICK CHENOWETH: And that's
23 what is described here as, subject line, "Procurement
24 Section." And this appears to be something that
25 Marjory Leonard drafted at 10:46 on the morning of

1 August 24th, presumably after that meeting took place
2 at 8:30 in the morning.

3 Is that fair? I think the meeting was
4 scheduled to go from 8:30 until -- until 10:00 or
5 something of that nature.

6 MR. DAVE MCNALTY: I believe that's
7 correct.

8 MR. FREDERICK CHENOWETH: All right.
9 So, she obviously drafted it after the meeting?

10 MR. DAVE MCNALTY: I believe so.

11 MR. FREDERICK CHENOWETH: All right.
12 So, I -- the on -- the only reason I -- I bring you to
13 this, Mr. McNalty, there's no -- no magic in it, I'm
14 just suggesting to you that it's likely that the
15 procurement section of the report was discussed in the
16 meeting of -- at 8:30 on the morning of August 24th.

17 And -- and she drafted something up in
18 keeping with the discussions that you had on that
19 morning. She's -- she did it because she's the -- is
20 -- is that fair? Is that a fair assertion?

21 MR. DAVE MCNALTY: That's fair.

22 MR. FREDERICK CHENOWETH: Thank you.
23 And she's the keeper of -- of the procurement policies
24 as the treasurer. And so, she was the person sort of
25 in charge of -- of drafting things that had to do with

1 procurement --

2 MR. DAVE MCNALTY: Yes.

3 MR. FREDERICK CHENOWETH: -- correct?

4 MR. DAVE MCNALTY: Yes.

5 MR. FREDERICK CHENOWETH: Thank you.

6 And as a matter of some interest, you -- you made some
7 comment that and revised it. And I note that from
8 paragraph 415. Let's just take a quick look at 415
9 while we're at it.

10

11 (BRIEF PAUSE)

12

13 MR. DAVE MCNALTY: Okay. And so, this
14 is 11:45 the same morning.

15 MR. FREDERICK CHENOWETH: Yes. It's
16 after she sent out her 1046 -- after Marjory sent out
17 her 1046 procurement section?

18 MR. DAVE MCNALTY: Okay.

19 MR. FREDERICK CHENOWETH: Right. My
20 only point is it -- it looks like Marjory was writing
21 the procurement section in keeping with the
22 discussions of 8:30 that morning. I think you told me
23 that.

24 My only point in looking at 4:15 is
25 that you obviously -- by the time that you drafted

1 your -- your email at -- at 11:45 on that morning had
2 read Marjory's procurement section and chose to make
3 certain amendments to the procurement section,
4 correct?

5 MR. DAVE MCNALTY: It would appear so,
6 yes.

7 MR. FREDERICK CHENOWETH: Thank you.
8 And just to -- just to go back to where I already
9 started out referring to Marjory is that there's no
10 doubt that there was a procurement discussion which
11 she attempted to reflect in her eight -- her 1046
12 procurement section document.

13 No doubt there was a procurement
14 section discussion on the morning of August 24th in
15 the 8:30 meeting. I think we agreed on that, correct?

16 MR. DAVE MCNALTY: Yes.

17 MR. FREDERICK CHENOWETH: Thank you.
18 And Sara Almas appears to have chimed in. And in
19 paragraph 414, she is doing -- and you can read
20 paragraph 414. Why don't you do that before I put a
21 question to you, in fairness?

22

23 (BRIEF PAUSE)

24

25 MR. DAVE MCNALTY: Move down a little.

1

2

(BRIEF PAUSE)

3

4

MR. DAVE MCNALTY: Okay.

5

MR. FREDERICK CHENOWETH: So, again,
6 after the meeting, Marjory is doing recommendation
7 language for the staff report, correct?

8

MR. DAVE MCNALTY: That would be Sara.

9

MR. FREDERICK CHENOWETH: Sara. I'm
10 sorry, I -- I misspoke. Sara Almas is doing
11 recommendation language for the staff report, correct?

12

MR. DAVE MCNALTY: Correct.

13

MR. FREDERICK CHENOWETH: All right.
14 Just as with Marjory's statement above, or Marjory's
15 1046 input above, that confirms to me that there would
16 have been discussions on the morning of the 24th with
17 respect to the recommendation language?

18

MR. DAVE MCNALTY: Yes.

19

MR. FREDERICK CHENOWETH: Thank you.
20 And similarly -- and -- and the reason that Sara Almas
21 is doing this is because she's the treasurer and she
22 drafts --

23

THE HONOURABLE FRANK MARROCCO: I
24 don't -- I don't think she's the treasurer, is she?

25

MR. FREDERICK CHENOWETH: Sorry, I

1 think -- I -- I misspoke again. I seem to do that
2 frequently.

3

4 CONTINUED BY MR. FREDERICK CHENOWETH:

5 MR. FREDERICK CHENOWETH: She's the --
6 she's the clerk. And she seems to dra -- and she
7 appears to draft council recommendation -- council
8 recommendations?

9 MR. DAVE MCNALTY: That's correct.

10 MR. FREDERICK CHENOWETH: All right.
11 So, she's the person that's charged with -- with
12 writing out the recommendation language that you would
13 have discussed at the 8:30 meeting on that day,
14 correct?

15 MR. DAVE MCNALTY: Yes.

16 MR. FREDERICK CHENOWETH: Thank you.
17 And there would have been a third discussion on that
18 morning. You're -- you're now dealing -- it appears
19 you dealt with -- with procurement. It appears you
20 dealt with recommendation language.

21 And I'm going to suggest you dealt with
22 the numbers to go in the report, the numbers to go in
23 the staff report, on that morning of the 24th at 8:30.
24 And in that respect, I'm going to suggest that we've
25 got Marjory in charge of procurement. We've got Sara

1 Almas doing her role as the clerk. And it appears
2 that you're the numbers guy.

3 You had -- an example of that, you had
4 prepared some numbers that were forwarded to Marjory
5 on August 23rd, to Marjory Leonard. And that's at
6 paragraph 395. Could we look briefly at that?

7

8 (BRIEF PAUSE)

9

10 MR. FREDERICK CHENOWETH: And you
11 provided a spreadsheet at that time, I think?

12 MR. DAVE MCNALTY: Yes.

13 MR. FREDERICK CHENOWETH: And we can
14 look very briefly at the spreadsheet if you'd like to,
15 but you may recall -- would you like to see the
16 spreadsheet to go further? Maybe we should have a
17 quick look at it. I think it's -- if I've got it
18 right -- and, actually...

19

20 (BRIEF PAUSE)

21

22 MR. DAVE MCNALTY: This spreadsheet
23 attached to this email?

24 MR. FREDERICK CHENOWETH: Yes, it is.

25 And I believe it's TOC0201565.

1 MR. JOHN MATHER: I don't believe
2 that's the spreadsheet that's attached.

3 MR. FREDERICK CHENOWETH: Okay. All
4 right.

5 THE HONOURABLE FRANK MARROCCO: I
6 don't think it's attached.

7 MR. FREDERICK CHENOWETH: Let me try
8 another one (1). How about TOC0201266?

9 MR. JOHN MATHER: The -- the
10 Foundation Document indicates that the attachment's
11 TOC0203364.

12 MR. FREDERICK CHENOWETH: All right.
13 Let's go to that.

14

15 CONTINUED BY MR. FREDERICK CHENOWETH:

16 MR. FREDERICK CHENOWETH: So, this is
17 the ice and water comparison. You have -- have a look
18 at this document.

19

20 (BRIEF PAUSE)

21

22 MR. FREDERICK CHENOWETH: You've
23 reviewed the document?

24 MR. DAVE MCNALTY: Can you go to the
25 right, please?

1 MR. FREDERICK CHENOWETH: Yes,
2 certainly. Could you move to the right, please,
3 madam?

4

5 (BRIEF PAUSE)

6

7 MR. DAVE MCNALTY: Okay.

8 MR. FREDERICK CHENOWETH: All right.

9 And that was a document that you sent to Marjory in
10 August 23rd. I'm just suggesting to you that that's a
11 document that you -- you prepared, obviously, to send
12 to Marjory, correct?

13 MR. DAVE MCNALTY: I prepared the --
14 the document, yes.

15 MR. FREDERICK CHENOWETH: Right. I'm
16 -- I'm just really suggesting that in the team where
17 you've got Marjory on procurement and Sara on -- on
18 recommendations from council, it appears that on this
19 team you're -- you're the numbers guy.

20 You prepared this thing on the 23rd?

21 MR. DAVE MCNALTY: I -- I put this
22 together to summarize and compare the numbers, yes.

23 MR. FREDERICK CHENOWETH: Thank you.

24 And -- and it appears to be a good job that you've --
25 that you've done there. You had indicated -- if we

1 could look at -- if we could now go to paragraph 629.

2 I -- I'm -- I'm just really suggesting
3 to you, and -- and -- well, anyway, I'll -- I'll come
4 to that in a moment, but let's look at paragraph 629.

5

6 (BRIEF PAUSE)

7

8 MR. DAVE MCNALTY: Okay.

9 MR. FREDERICK CHENOWETH: All righty.

10 And that is an email exchange that you have with --
11 with Sara Almas on that day. And she does an email to
12 the EMC and to Dave McNalty. And she appears to be
13 looking for some documentation, et cetera, to satisfy
14 some questions that had come in from, I believe, Paul
15 Cadieux.

16 You remember that?

17 MR. DAVE MCNALTY: Yes.

18 MR. FREDERICK CHENOWETH: All right.

19 And you wrote back to her on the 13th, 2012, and you
20 sent her a couple of documents. You sent her the
21 building budget that was prepared by WGD with respect
22 to pre-engineered steel arenas. That's one (1) of the
23 building -- one (1) of the documents you sent her?

24 MR. DAVE MCNALTY: I believe so.

25 MR. FREDERICK CHENOWETH: Thank you.

1 And you -- and I take it that that was a document that
2 you took out of your file. I'm assuming you were
3 taking these documents out of a pre-existing file.

4 You obviously didn't prepare that --
5 that building budget of WGD at the time that you sent
6 your email to Sara Almas on the 13th of September, you
7 took it out of an existing file?

8 MR. DAVE MCNALTY: That's correct.

9 MR. FREDERICK CHENOWETH: Thank you.

10 And similarly, you took out a spreadsheet showing the
11 development of the budget numbers provided from WGD to
12 those depicted in the staff report?

13 MR. DAVE MCNALTY: Yes.

14 MR. FREDERICK CHENOWETH: All right.

15 And, again, that was something you took out of your
16 file. You didn't prepare that to answer that email on
17 September 13th, correct?

18 MR. DAVE MCNALTY: Correct.

19 MR. FREDERICK CHENOWETH: Thank you.

20 And I suggest to you that what you took out of your
21 file was a document which I think is TOC0218073. I
22 wish I was better with these numbers, but I'm not
23 always. There we go. I think I got the right one (1)
24 this time.

25 Okay. Have a look at that document.

1 MR. DAVE MCNALTY: Can you move down,
2 please? Okay.

3 MR. FREDERICK CHENOWETH: Go down a
4 little -- a little further, yeah. Okay. It seems to
5 be a two (2) page document?

6 MR. DAVE MCNALTY: Yes.

7 MR. FREDERICK CHENOWETH: All right.
8 So, that's what you sent to Sara Almas on September
9 13, and it was something you took out of your file,
10 correct?

11 MR. DAVE MCNALTY: I believe so.

12 MR. FREDERICK CHENOWETH: Thank you.
13 And it's something that you had prepared long before
14 September 13 and it existed in your file. I'm
15 suggesting to you that -- that we had discussions at
16 8:30 in the morning on the 24th about procurement that
17 led to -- led to Marjory Leonard's document at 10:46.

18 We had discussions about the resolution
19 aspect of the staff report which Sara Almas drafted
20 and put in her document of -- of shortly after 11:00
21 that -- that you commented on.

22 And there's another topic, obviously,
23 of discussion on the morning of -- of the 24th at
24 8:30, at the 8:30 meeting. And that would appear to
25 have been the numbers that you're going to put in the

1 staff report.

2 Is that fair?

3 MR. DAVE MCNALTY: The numbers in the
4 staff report would have been discussed.

5 MR. FREDERICK CHENOWETH: Thank you.
6 And I suggest that -- that to do that, you would have
7 had in your file and brought out the document that's
8 before us now being what's titled, "Developed project
9 cost for the EMC 201201".

10 That would have been in front of you
11 likely. And again, we may not have a clear memory of
12 this, but is it reasonable to suggest to you that
13 those numbers that are in that document were the
14 numbers that were before the gathered group at 8:30 in
15 the morning on the 24th of August?

16 MR. DAVE MCNALTY: I believe so. It
17 may not have been in this particular format --

18 MR. FREDERICK CHENOWETH: Right.

19 MR. DAVE MCNALTY: -- but I believe
20 the numbers were the same.

21 MR. FREDERICK CHENOWETH: All right.
22 And -- and you -- and there would have been a
23 discussion on that morning of the 24th with respect to
24 these numbers?

25 MR. DAVE MCNALTY: I believe so.

1 MR. FREDERICK CHENOWETH: Thank you.
2 Now, I'm -- I'm interested. There was a discussion.
3 We now understand there was a discussion about
4 procurement on that day in the meeting at 8:30.

5 MR. DAVE MCNALTY: I --

6 MR. FREDERICK CHENOWETH: We've agreed
7 on that. My -- my question is: Do you recall any --
8 any discord or -- or acrimony with respect to -- to --
9 related to those discussions on the morning of the
10 24th or do you remember any discord or acrimony with
11 respect to the procurement discussion?

12 MR. DAVE MCNALTY: I don't have any
13 specific recollection of that.

14 MR. FREDERICK CHENOWETH: All right.
15 Thank you. So, from all you can gather and given the
16 fact that -- that Marjory Leonard at 10:46 after the
17 meeting drafted the procurement part that you
18 commented on, would it -- is it -- is it a fair
19 conclusion that there was -- there was harmony amongst
20 your group, or there was a consensus amongst your
21 group, as to what was going to be placed in the staff
22 report with respect to procurement?

23 MR. DAVE MCNALTY: I would agree with
24 consensus.

25 MR. FREDERICK CHENOWETH: Thank you.

1 Very good. Now, again, with respect to the Sara Almas
2 matter, there was a discussion, we've agreed, with
3 respect to the recommendation that would go in the
4 staff report.

5 So, Sara drafted those recommendations
6 at about 11:00 that morning. Do you have -- so, we --
7 we agree that there was discussions with respect to
8 what the recommendations would be.

9 Do you recall there being any acrimony
10 or difficulties with respect to -- amongst the group
11 with respect to what would go into the recommendation
12 section, or is it fair to say that you -- that there
13 was a consensus on that mor -- on that morning with
14 respect to what the recommendations would be?

15 MR. DAVE MCNALTY: I believe there was
16 consensus.

17 MR. FREDERICK CHENOWETH: Thank you
18 very much. The third topic that was discussed on that
19 morning we've agreed is the matter of -- of the
20 numbers to be put in the report.

21 And, obviously, the numbers that are
22 contained in the document that I've put in front of
23 you have a developed project cost on the bottom of
24 them of \$12.3 million with respect to the -- the pre-
25 engineered steel arena, correct?

1 MR. DAVE MCNALTY: Could you go up on
2 the page to that section?

3 MR. FREDERICK CHENOWETH: 12.3 at the
4 bottom of that. And let's -- let's go up a little
5 further so my friend can see all of the -- all of the
6 document.

7

8 (BRIEF PAUSE)

9

10 MR. DAVE MCNALTY: I can't recall why
11 exactly, but if you went down to the total on the
12 bottom of that page --

13 MR. FREDERICK CHENOWETH: Further
14 down?

15 MR. DAVE MCNALTY: -- right there, the
16 12.3 -- this is -- this is the spreadsheet that --
17 that these numbers come from which was here from
18 Friday.

19 MR. FREDERICK CHENOWETH: That was
20 August 23rd.

21 MR. DAVE MCNALTY: Yes.

22 MR. FREDERICK CHENOWETH: Is that the
23 spreadsheet you're referring to?

24 MR. DAVE MCNALTY: Yes.

25 MR. FREDERICK CHENOWETH: Yes?

1 MR. DAVE MCNALTY: And there's a
2 slight difference in the number. This was 11.7 at
3 this point --

4 MR. FREDERICK CHENOWETH: Yes.

5 MR. DAVE MCNALTY: -- and it went to
6 12.3.

7 MR. FREDERICK CHENOWETH: Right.
8 We'll go through how you got --

9 THE HONOURABLE FRANK MARROCCO: Excuse
10 me. The witness is still answering.

11

12 CONTINUED BY MR. FREDERICK CHENOWETH:

13 MR. FREDERICK CHENOWETH: Very good.
14 Content.

15 MR. DAVE MCNALTY: So it --

16 MR. FREDERICK CHENOWETH: Go ahead.

17 MR. DAVE MCNALTY: -- it went to 12.3
18 on this particular version --

19 MR. FREDERICK CHENOWETH: Yes.

20 MR. DAVE MCNALTY: -- and I am unsure
21 at the moment why.

22 MR. FREDERICK CHENOWETH: All right.
23 We'll go through that, and we'll see if we can
24 establish that. But I think we've agreed that the
25 numbers that you sent to Sara Almas on the 13th were

1 out of your file and that these are the numbers that
2 were likely before the meeting at 8:30 on the morning
3 of August 24th. Correct?

4 MR. DAVE MCNALTY: They came out of
5 the same file.

6 MR. FREDERICK CHENOWETH: Thank you.
7 And you would have discussed those numbers on the
8 morning of the 24th.

9 MR. DAVE MCNALTY: In some manner,
10 yes.

11 MR. FREDERICK CHENOWETH: All right.
12 And do you recall any acrimony or difficulty with
13 respect to the numbers that were to be put in the
14 staff report that arose from that meeting, or was
15 there consensus with respect to that as well?

16 MR. DAVE MCNALTY: I don't recall any
17 difficulty.

18 MR. FREDERICK CHENOWETH: All right.
19 And there was consensus on what the numbers would be
20 with respect to what would be in the report?

21 MR. DAVE MCNALTY: I believe so.

22 MR. FREDERICK CHENOWETH: Thank you.
23 And I notice that the 12.3 number -- and in fact a
24 range is given in the report -- the 12.3 number is the
25 suggested cost of the pre-engineered steel building.

1 You actually put a range in interestingly enough. You
2 put a range of 12.3 as the top number, and the range
3 was from 11.2 million.

4 MR. DAVE MCNALTY: I don't believe
5 that my draft had that range in it.

6 MR. FREDERICK CHENOWETH: It does not
7 have that range in it. No question about it.

8 MR. DAVE MCNALTY: Okay.

9 MR. FREDERICK CHENOWETH: And I don't
10 know whether you discussed the range that morning or
11 not, but it appears to have ended up in the report.

12 MR. DAVE MCNALTY: And I -- I don't
13 recall if that was specifically discussed either.

14 MR. FREDERICK CHENOWETH: All right.
15 But no doubt, clearly the numbers that are in the
16 report arose out of the meeting at 8:30 on the morning
17 of the 24th, as did the recommendation section and as
18 did the procurement section. Correct?

19 MR. DAVE MCNALTY: Correct.

20 MR. FREDERICK CHENOWETH: Thank you.
21 Now if we could go to those numbers, and let's see if
22 we can see how they're put together. And in this
23 respect, I'm going to use the document that we have on
24 the screen at the moment, and I'm looking to -- and I
25 think my friend took you through these numbers.

1 By the way, there's -- just before we
2 lose the track of this, it seems to be the case that
3 Mr. Houghton at 12:05 that morning after the meeting
4 and after the procurement section written by Marjory
5 and amended by you and after Sara Almas'
6 recommendation section, again amended by you, you put
7 all that stuff into what became the final report.

8 And it went -- it went out at -- and I
9 think it's 12:05 on that morning. And could we look
10 at the -- I think it's the letter that went with
11 respect -- it went along with that document, and it's
12 TOC024146 (sic).

13

14 (BRIEF PAUSE)

15

16 MR. FREDERICK CHENOWETH: Yes.

17

18 (BRIEF PAUSE)

19

20 MR. FREDERICK CHENOWETH: You think
21 there's another number in there? Okay. Well, I
22 apologize, Your Honour. TOC0204146. That doesn't
23 appear to be it. Okay. Thank you. And just have a
24 look at that.

25

 MR. DAVE MCNALTY: Okay.

1 MR. FREDERICK CHENOWETH: And I note
2 this is an email sent to the gathered troops -- the
3 EMC and yourself -- on the morning of Friday the 24th
4 of August at 12:05 p.m. by Ed Houghton. So he's
5 sending it off to the people who were in the 8:30
6 meeting. Correct?

7 MR. DAVE MCNALTY: Yes.

8 MR. FREDERICK CHENOWETH: And it seems
9 to follow to me that he took the discussions of 8:30
10 on that morning, and he took the procurement section
11 amended by you that Marjory Leonard put forward, and
12 he took the recommendation section that was prepared
13 by Sara Almas and amended by you, and he took the
14 numbers that were discussed in the 8:30 meeting, he
15 put them in the 12:05 amended document -- amended
16 because of the things that he'd received. He sent it
17 back to the people who were in the 8:30 meeting.

18 Does that seem like a fair conclusion?

19 MR. DAVE MCNALTY: Yes.

20 MR. FREDERICK CHENOWETH: Thank you.
21 And he says in his -- in his email to everyone, please
22 take a look and adapt if necessary -- or if needed.
23 I'm sorry:

24 "Please take a look and adapt if
25 needed. Call my cell if you need

1 me."

2 So he was putting what I believe became
3 the final version of the staff report back to the
4 people who had been in the penultimate discussion on
5 the morning of the 24th and saying to them, take a
6 look, and, you know, if there's some changes that need
7 to be made, tell me about them. Here's my cell phone,
8 and I'll make the changes.

9 Does that appear to be a fair
10 conclusion?

11 MR. DAVE MCNALTY: Yes.

12 MR. FREDERICK CHENOWETH: Thank you.
13 All right. And interestingly enough, there doesn't
14 appear to have -- that I'm aware of -- to have been
15 any feedback that came from those on that email with
16 respect to what was set out in what became the final
17 form of the staff report.

18 I take it you're unaware or don't have
19 any memory if there were any comment or feedback on
20 what Mr. Houghton set out that morning?

21 MR. DAVE MCNALTY: I don't recall any.

22 MR. FREDERICK CHENOWETH: Thank you.
23 Thanks very much. In spite of the fact there was an
24 invitation to make any changes that may have been
25 required.

1 So let's go, if we could, please, to
2 the document that we already had up on the screen
3 which -- I hope we got the right number on that. I
4 think it's TOC0218073.

5

6 (BRIEF PAUSE)

7

8 MR. FREDERICK CHENOWETH: All righty.
9 And let's get as much of it on the screen as we can.
10 Just move it up ever so slightly. Thank you.
11 That's -- just bring it down some a little bit so we
12 get the title of the document in if we could, please.
13 Thank you.

14 So these are the developed project
15 costs, and you tell us those numbers were at the
16 meeting on 8:30 in the morning of the 24th and that
17 there didn't appear to be any acrimony, and there
18 appeared to be some consensus with respect to those.

19 And the numbers that appear to have
20 been there were a pre-engineered steel building of
21 7,632,124. Are you at all familiar with that number?
22 It appears to have been a number that came out of a --
23 out of a -- the WGD report of -- dated August of 2013
24 that -- or, sorry, 2012 that got to the Town about
25 August 16th. I'll -- I'll refer to it, if you like.

1 But do you remember -- I think you told my friend the
2 other day that this was a number that came out of the
3 WGD report. Do you recall that?

4 MR. DAVE MCNALTY: Yes.

5 MR. FREDERICK CHENOWETH: I'm sorry.
6 I didn't hear your answer.

7 MR. DAVE MCNALTY: Yes.

8 MR. FREDERICK CHENOWETH: Yes?

9 MR. DAVE MCNALTY: Yes.

10 MR. FREDERICK CHENOWETH: Thank you.

11 Okay, so we know where that number's from, from WGD.
12 And the -- I think my friend's taken us through this,
13 so I'll hopefully do this relatively promptly, but
14 there was a -- a greem -- green roof.

15 There was recommended upgrades that are
16 set out in this calculation, and those recommended
17 upgrades, I take it, were for the purpose of doing an
18 apples-to-apples comparison. Is that fair? You need
19 to do an apples-to-apples comparison --

20 THE HONOURABLE FRANK MARROCCO: Well,
21 I mean, what's -- the question was, Was it fair? Now,
22 are you asking another question?

23 MR. FREDERICK CHENOWETH: No, I'm
24 trying to assist the witness further, Your Honour. If
25 he has some trouble with that, I'm going to put -- I

1 will put another proposition to him.

2 THE HONOURABLE FRANK MARROCCO: He
3 hasn't answered.

4 MR. FREDERICK CHENOWETH: I know he
5 hasn't answered, so I was -- I was expanding the
6 question in an effort to be of assistance to the
7 witness. May I do that, Your Honour?

8 THE HONOURABLE FRANK MARROCCO: Yes.

9 MR. FREDERICK CHENOWETH: Thank you.

10

11 CONTINUED BY MR. FREDERICK CHENOWETH:

12 MR. FREDERICK CHENOWETH: As I
13 understand it, these numbers arose as a result of the
14 fact that the Sprung building, or the fabric building
15 that you were looking at, was already LEED's
16 equivalent. I -- you told -- you told my friend about
17 this in the examination the other day. That Sprung
18 building was already LEED's equivalent --

19 MR. DAVE MCNALTY: LEED --

20 MR. FREDERICK CHENOWETH: -- correct?

21 MR. DAVE MCNALTY: LEED Silver

22 MR. FREDERICK CHENOWETH: LEED Silver
23 equivalent.

24 MR. DAVE MCNALTY: Yes.

25 MR. FREDERICK CHENOWETH: Yes. Not

1 certified, but equivalent.

2 MR. DAVE MCNALTY: Correct.

3 MR. FREDERICK CHENOWETH: Because it
4 took more dough to get it certified, right?

5 MR. DAVE MCNALTY: Correct.

6 MR. FREDERICK CHENOWETH: All right.

7 And the way to make a comparison between those two
8 buildings, between the Sprung building and the -- the
9 pre-engineered building, was to -- to do a fair
10 apples-to-apples comparison, you had to bring the pre-
11 engineered building up to a LEED's Silver equivalent,
12 correct?

13 MR. DAVE MCNALTY: That was the idea.

14 MR. FREDERICK CHENOWETH: Thank you.

15 And I think, as I recall, that you told my friend that
16 the numbers here -- the green roof, the subfloor
17 heating, the radiant floor heating, et cetera, et
18 cetera -- where -- these are matters that were
19 recommenced by WGD if we wanted to build -- bring --
20 bring up the steel building to a -- to a LEED's Silver
21 equivalency -- not certification, but equivalency.
22 Correct?

23 MR. DAVE MCNALTY: Correct.

24 MR. FREDERICK CHENOWETH: Thank you.

25 So that you got those numbers out of a WGD report, you

1 told my friend, on Friday, correct?

2 MR. DAVE MCNALTY: Yes.

3 MR. FREDERICK CHENOWETH: Thank you.

4 And you then -- and if we could maybe bring it up as
5 we -- as we're going through this. Could you scroll
6 up, please, so I can see -- so my friend can see the
7 rest of the document -- so the witness can see the
8 rest of the document. Okay, so maybe scroll up just a
9 little bit more than that. Thank you.

10 And you -- you took the contingencies
11 off at that juncture, which I take -- I take it had
12 been in the seven six number that was at the top of
13 the page that we got from WGD. You took those
14 contingencies off for a total of 775,967.

15 Have I got that right?

16 MR. DAVE MCNALTY: Yes.

17 MR. FREDERICK CHENOWETH: Thank you.

18 And as a matter of interest, you put in some other
19 contingencies, and my friend took you through that the
20 other day, and you put those back in at the bottom.

21 So you took out the 5 percent
22 contingencies for both design and construction
23 contingencies, and it appears you put in a 10 percent
24 contingency, and that's set out at the bottom of the
25 page. Correct?

1 MR. DAVE MCNALTY: Yes.

2 MR. FREDERICK CHENOWETH: It's --
3 again, these appear to have been the numbers that were
4 discussed in the meeting of 8:30 on that morning, and
5 do I take it that -- that there would have been a
6 discussion about -- about the contingencies that you -
7 - that you placed in here in that meeting at 8:30?

8 MR. DAVE MCNALTY: I don't recall any
9 specific discussion regarding that. There could have
10 been.

11 MR. FREDERICK CHENOWETH: Thank you.
12 And I'm just interested in those contingencies. I --
13 I'm just looking at the -- the -- did you have
14 occasion to -- in making a judgment about those
15 contingencies, did you have occasion to look at the
16 Steering Committee report?

17 Because I note they use larger
18 contingencies. They use a design contingency of 10
19 percent and a construction contingency of 20 percent,
20 and you didn't use numbers equivalent to theirs. You
21 used something less.

22 Did you have occasion to look at that
23 Steering Committee report when concluding that these -
24 - that the 10 percent contingency was the appropriate
25 contingency?

1 MR. DAVE MCNALTY: The numbers from
2 the Steering Committee report were in the same
3 spreadsheet, and so yes, I was aware of the
4 contingencies.

5 MR. FREDERICK CHENOWETH: All right.
6 And -- and fair to say that they used a 10 percent
7 contingency for design fee and a 20 percent
8 contingency for construction matters, correct?

9 MR. DAVE MCNALTY: That sounds
10 correct.

11 MR. FREDERICK CHENOWETH: Do you want
12 -- should we look at it and see? We can do that if
13 you like. It's -- I believe it's TOC0124036.

14

15 (BRIEF PAUSE)

16

17 MR. FREDERICK CHENOWETH: If we can go
18 to page -- it's either page 37 on the hard copy and/or
19 38 in the...

20

21 (BRIEF PAUSE)

22

23 MR. FREDERICK CHENOWETH: All
24 right. I -- I see we've got a contingency there of --
25 of 20 percent. That's at page 38 of the document.

1 Is that accurate?

2 MR. DAVE MCNALTY: Yes.

3 MR. FREDERICK CHENOWETH: All right.

4 And I'm just trying to -- let's -- let's scroll up
5 that document a little bit. No, I'm sorry, scroll
6 down, I guess I meant.

7 So they appear, going back to the 20
8 percent -- if you could scroll up, please. They use a
9 project contingency of 20 percent, so they appear to
10 have used 20 percent on both design and construction
11 contingencies. Is that fair, or have I got that
12 wrong?

13 MR. DAVE MCNALTY: I've -- I don't
14 know how they broke it down at this point in time.

15 MR. FREDERICK CHENOWETH: Right.
16 Okay.

17 MR. DAVE MCNALTY: But they had an
18 overall contingency of 20 percent.

19 MR. FREDERICK CHENOWETH: All right.
20 And -- and you were aware of that contingency when you
21 made your judgement on the contingencies to be used
22 with respect to the pre-engineered steel building that
23 went into your numbers that were at the 8:30 meeting,
24 correct?

25 MR. DAVE MCNALTY: Yes.

1 MR. FREDERICK CHENOWETH: Thank you.

2 And you'd taken out the 5 percent contingency and you
3 used a 10 percent contingency, which was lower than
4 the 20 percent contingency used by the Steering
5 Committee in its analysis, and that was the
6 contingency number you decided to go with. Fair?

7 MR. DAVE MCNALTY: Ten percent.

8 MR. FREDERICK CHENOWETH: Yes.

9 MR. DAVE MCNALTY: Yes.

10 MR. FREDERICK CHENOWETH: Thank you.

11 And you were comfortable that that was the right
12 number to be used as a contingency when attempting to
13 compare apples to apples being a pre-engineered steel
14 building and the pre-fabricated Sprung building.
15 Correct?

16 MR. DAVE MCNALTY: It would be a
17 typical contingency percentage that we would use on an
18 estimate like that for a traditional construction
19 style.

20 MR. FREDERICK CHENOWETH: All right.
21 Thank you. And thank you very much. So you felt
22 that -- just the point I really wanted to make is that
23 you felt it was appropriate. Right?

24 MR. DAVE MCNALTY: Yes.

25 MR. FREDERICK CHENOWETH: Thank you.

1 And I notice there's other numbers. Obviously the
2 second floor mezzanine was in there. That was
3 something that was in --

4 THE HONOURABLE FRANK MARROCCO: Why
5 don't we go back to the other document first because
6 that's where you're referring to. Right?

7

8 CONTINUED BY MR. FREDERICK CHENOWETH:

9 MR. FREDERICK CHENOWETH: That's a
10 useful thing to do, Your Honour. Thank you very much.
11 And again, that was TOC0218073.

12

13 (BRIEF PAUSE)

14

15 MR. FREDERICK CHENOWETH: Okay. So
16 scroll up on that a little bit. We were just
17 really -- scroll up more. Scroll up more. Thank you.

18 We -- I've just been really trying to
19 understand what you were doing with the contingencies,
20 and I think we've been through that. You took out the
21 5 percent contingency, and you put in a 10 percent
22 contingency which you felt was the right contingency
23 as of that time. I've got that right, correct?

24 MR. DAVE MCNALTY: I took out two
25 5 percent contingencies --

1 MR. FREDERICK CHENOWETH: Yes.

2 MR. DAVE MCNALTY: -- to get back to
3 the -- to the hard costs and remove the soft costs --

4 MR. FREDERICK CHENOWETH: Yes.

5 MR. DAVE MCNALTY: -- and then at the
6 end of the calculation added a single 10 percent
7 contingency.

8 MR. FREDERICK CHENOWETH: Well, you
9 appear to have added two (2) contingencies which are
10 10 percent design contingency and 10 percent
11 construction contingency? Is that fair?

12 MR. DAVE MCNALTY: No. The first
13 one -- because the WGD budget did not include design
14 fees -- and it did not include design fees, permits
15 and there was some other exclusions.

16 MR. FREDERICK CHENOWETH: Yes.

17 MR. DAVE MCNALTY: That first
18 10 percent was to account for that.

19 MR. FREDERICK CHENOWETH: Yes.

20 MR. DAVE MCNALTY: And then the -- the
21 line labeled "contingency" was the contingency.

22 MR. FREDERICK CHENOWETH: Very good.
23 I appreciate that correction. I notice that -- just
24 to flush out the rest of the calculations used on the
25 morning of the 24th -- obviously the second floor

1 mezzanine lounge had to be included because we had, I
2 think, a 10 million seven number or a 10 million four
3 number we had worked with which obviously wasn't
4 including the mezzanine.

5 So you put in the mezzanine. Right?

6 MR. DAVE MCNALTY: Yes.

7 MR. FREDERICK CHENOWETH: All right.

8 And that was your calculation. I think My Friend took
9 you through that. That was your calculation with
10 respect to the cost of the second floor mezzanine that
11 was already in the Sprung calculation. Right?

12 MR. DAVE MCNALTY: For the most part,
13 yes.

14 MR. FREDERICK CHENOWETH: Thank you
15 very much. And interestingly enough -- and this is
16 kind of interesting, you didn't have a number there
17 for insulation.

18 MR. DAVE MCNALTY: Correct.

19 MR. FREDERICK CHENOWETH: And I think
20 your thought was that in order to do an equivalency,
21 Sprung was at R-30 throughout the walls and roof
22 throughout the dome, and you had to put in some more
23 insulation to get -- to get the pre-eng up to the
24 Sprung standard. Right?

25 MR. DAVE MCNALTY: To get up to the

1 same 'R' value that would be required, yes.

2 MR. FREDERICK CHENOWETH: Right. And
3 that number isn't in there, and if it had of been
4 there, it would have made it more than 12.3.

5 Is that fair?

6 MR. DAVE MCNALTY: Yes.

7 MR. FREDERICK CHENOWETH: All right.
8 Thank you. And you had site and park development
9 figure of a million one sixty-four. Correct?

10 MR. DAVE MCNALTY: Yes.

11 MR. FREDERICK CHENOWETH: And that was
12 a number that came from WGD.

13 MR. DAVE MCNALTY: I believe so.

14 MR. FREDERICK CHENOWETH: Thank you.
15 And if we could look for just a brief moment at the --
16 so you put in the -- you put in the number that was
17 used by WGD -- the one one six four?

18 MR. DAVE MCNALTY: Yes.

19 MR. FREDERICK CHENOWETH: Thank you.
20 And that was an appropriate thing to put in in this
21 circumstance to bring it up to a comparable situation?

22 MR. DAVE MCNALTY: I believe so.

23 MR. FREDERICK CHENOWETH: Thank you.
24 And you added all those numbers up, and the number you
25 got was 12 million 300 hundred thousand and two

1 twenty-five. Correct?

2 MR. DAVE MCNALTY: That's the total
3 number here, yes.

4 MR. FREDERICK CHENOWETH: Thank you.
5 And that's the number that was in the -- so that's the
6 number that would have been before the group on the
7 morning of the 24th at 8:30. Correct? I think you
8 told us that's -- that was before the group had met on
9 that morning?

10 THE HONOURABLE FRANK MARROCCO: Can
11 you just let him answer?

12 MR. DAVE MCNALTY: I -- I'm looking at
13 the August 23rd spreadsheet.

14

15 CONTINUED BY MR. FREDERICK CHENOWETH:

16 MR. FREDERICK CHENOWETH: Right.

17 MR. DAVE MCNALTY: And the number
18 there was eleven seven forty-one.

19 MR. FREDERICK CHENOWETH: Right.

20 MR. DAVE MCNALTY: And so between
21 August 23rd and the time that these costs were
22 summarized, the -- it appears to me like the design
23 fees are -- and miscellaneous went from 5 percent to
24 10 percent. And that's, I believe, the difference
25 between the 11.7 million and the 12.3 million.

1 MR. FREDERICK CHENOWETH: Mr. McNalty,
2 that's helpful. Thank you. In any event, no doubt
3 that the 12.3 number was a number, and you've
4 explained -- we've gone through how we got to it. And
5 you've explained the difference between the -- between
6 August 23rd and that number.

7 That was a number that went before the
8 group on the morning at 8:30 and ended up in the
9 report that was put out by the group. Correct?

10 MR. DAVE MCNALTY: I agree that that's
11 the number. This particular document was prepared
12 from the spreadsheet --

13 MR. FREDERICK CHENOWETH: I
14 understand.

15 MR. DAVE MCNALTY: -- at the point in
16 time when we were putting information together to
17 answer Mr. Cadieux's questions.

18 MR. FREDERICK CHENOWETH: Okay.

19 MR. DAVE MCNALTY: And so although all
20 the numbers are the same, this document that's on the
21 screen would not have been on -- in our hand on the
22 morning of August 24th.

23 MR. FREDERICK CHENOWETH: Got it.
24 But --

25 MR. DAVE MCNALTY: This spreadsheet

1 would have been.

2 MR. FREDERICK CHENOWETH: And the
3 numbers that are in the document you sent to Cadieux
4 would have been the numbers that would have been
5 discussed on the morning of the 24th with your
6 group -- correct --

7 MR. DAVE MCNALTY: Yes. I -- I'd
8 agree with that.

9 MR. FREDERICK CHENOWETH: -- to come
10 to the number 12.3. Correct?

11 MR. DAVE MCNALTY: Yes, I'd agree with
12 that.

13 MR. FREDERICK CHENOWETH: Thank you.
14 And that's the number that showed up in the report
15 that came out after you meeting of August 24th at 8:30
16 and after the matters that were put forward by Marjory
17 and Sara Almas and others.

18 And if we could just turn to that for a
19 moment, that document appears to be TOC020414.

20

21 (BRIEF PAUSE)

22

23 MR. FREDERICK CHENOWETH: One four
24 seven. I'm sorry, I left a number off.

25

1 (BRIEF PAUSE)

2

3 MR. FREDERICK CHENOWETH: Go to page 4
4 of that, if you could, please.

5

6 (BRIEF PAUSE)

7

8 MR. FREDERICK CHENOWETH: All right.
9 And go down to the fourth paragraph on page 4. Here
10 we are. The cost estimate for the supply and
11 construction of the base insulated architectural
12 membrane is seven three nine two (7,392).

13 And, as I understand it, that was a
14 number that came from Sprung?

15 MR. DAVE MCNALTY: I believe so.

16 MR. FREDERICK CHENOWETH: Thank you.
17 As compared to -- and there's our 12.3 number. So, it
18 obviously came out of those discussions and your
19 analysis that you did with your August 23rd document
20 on the morning of the 24th, and that 12.3 document
21 we've talked about is there.

22 And it could have been higher had you
23 had the -- the cost of the insulation in, correct?

24 MR. DAVE MCNALTY: Yes.

25 MR. FREDERICK CHENOWETH: Thank you.

1 But, in any event, in order to ensure that there was
2 some fairness in the -- in the comparison, you put
3 down a range, it seems.

4 And the range appeared to be 11.1
5 million to 12.3 million, so you used a number that was
6 less than the number that was calculated and before
7 EMC, et cetera, on the morning of the 24th, correct?

8 MR. DAVE MCNALTY: There was a range
9 there. I did not put that range in the staff report.

10 MR. FREDERICK CHENOWETH: All right.

11 Okay. Would you -- do you --

12 MR. DAVE MCNALTY: But --

13 MR. FREDERICK CHENOWETH: I -- I -- my
14 -- my simp -- that's --

15 THE HONOURABLE FRANK MARROCCO: Can --

16 can the --

17 MR. FREDERICK CHENOWETH: Yes, Your
18 Honour.

19 THE HONOURABLE FRANK MARROCCO: --

20 witness just --

21 MR. FREDERICK CHENOWETH: No -- no --

22 THE HONOURABLE FRANK MARROCCO: --

23 complete his answer?

24 MR. FREDERICK CHENOWETH: No -- no

25 doubt, Your Honour. I'm quite prepared to allow the

1 witness to complete his answer.

2 THE HONOURABLE FRANK MARROCCO: No,
3 no, I want to hear the answer.

4 MR. FREDERICK CHENOWETH: I agree.
5 Let's have the answer.

6 MR. DAVE MCNALTY: I just -- was just
7 clarifying that that range of numbers wasn't in my
8 draft of the staff report.

9

10 CONTINUED BY MR. FREDERICK CHENOWETH:

11 MR. FREDERICK CHENOWETH: Wasn't in
12 your earlier draft --

13 MR. DAVE MCNALTY: Correct.

14 MR. FREDERICK CHENOWETH: -- which you
15 had sent out on the evening of the 23rd at 11:44?

16 MR. DAVE MCNALTY: Correct.

17 MR. FREDERICK CHENOWETH: Right. And
18 it showed up in the staff report that Mr. Houghton
19 sent out at 12:05. And -- and I put it you that it --
20 and -- that, at the very least, the 12.3 ended up
21 there. And we'll come back to the 11.1.

22 The 12.3 ended up as a result of the
23 numbers that were discussed in the meeting at 8:30
24 that morning. I think we've agreed on that, correct?

25 MR. DAVE MCNALTY: I'd agree with

1 that.

2 MR. FREDERICK CHENOWETH: Thank you.
3 And maybe you can -- maybe you can just assist us a
4 little bit. I don't know the answer to this. The
5 11.1, the idea of using a range and putting a number
6 that was a million two lower than your calculations on
7 that morning, was that -- can you tell me whether that
8 was discussed on the morning of -- in that meeting at
9 8:30 on that morning, or -- or do you know?

10 Maybe you don't know. I don't know.

11 MR. DAVE MCNALTY: I do not recollect
12 any discussion on that.

13 MR. FREDERICK CHENOWETH: Thank you.
14 On using a range and a lower, correct? Is that what
15 you mean?

16 MR. DAVE MCNALTY: Correct.

17 MR. FREDERICK CHENOWETH: Thank you.
18 All right. I don't know when you wish to take a
19 break, Your Honour. I'm moving to other areas. I --
20 I don't know what time you usually take a break.

21 THE HONOURABLE FRANK MARROCCO: I take
22 it around now. Approximately how much longer?

23 MR. FREDERICK CHENOWETH: I'll be a
24 while, and I don't know. I'm going to -- I'm going to
25 say potentially an hour, but that's vague.

1 THE HONOURABLE FRANK MARROCCO: All
2 right. Just before we do that, can you just go back
3 to 0218073? I just want to get clarification of
4 something.

5

6 (BRIEF PAUSE)

7

8 THE HONOURABLE FRANK MARROCCO: Can
9 you just go down? Scroll down.

10 MR. FREDERICK CHENOWETH: Yes.

11 THE HONOURABLE FRANK MARROCCO: Mr.
12 McNalty, the site and park development costs at that
13 number, I thought that they were common to both. I
14 appreciate that there may have been different ways of
15 developing the site. I -- I followed that aspect of
16 it, I think.

17 But I think what I'm asking is that, in
18 -- in terms of the WGD estimates, that number was
19 common to both. Am I correct in that, common to both
20 the pre-engineered steel building and the Sprung
21 building?

22 MR. DAVE MCNALTLY: That number from
23 the WGD estimate was used in the comparison, even the
24 comparison of August 23rd between the pre-eng building
25 and the fabric membrane building, so that it was an

1 even comparison.

2 THE HONOURABLE FRANK MARROCCO: It --
3 it was a cost, I thought -- and I'm just asking you to
4 help me with this. I thought it was the site
5 development cost and that it was common to -- it was a
6 cost that was associated with both designs in -- in
7 the -- in the way that WGD prepared their report?

8 MR. DAVE MCNALT: In the way that WGD
9 prepared their report? Yes, that's correct.

10 THE HONOURABLE FRANK MARROCCO: So --
11 so then, what I'm having difficulty with is why it
12 would be added to the cost of -- of the prefabricated
13 steel building.

14 MR. FREDERICK CHENOWETH: Can I
15 attempt to assist, Your Honour?

16 THE HONOURABLE FRANK MARROCCO: No. I
17 want to ask the witness a question. Thanks. I just
18 want to understand. I'm having trouble understanding
19 why it would be added to this cost.

20

21 (BRIEF PAUSE)

22

23 MR. DAVE MCNALT: I -- I think that
24 came directly out of WGD's estimate. And if I recall
25 the estimate, site and park development costs were

1 broken out separately and would be applicable to
2 either building.

3 And then the pre-eng steel building was
4 set out as one (1) price and the fabric building set
5 out as another price and that this would be additive
6 to either one (1) of them.

7 THE HONOURABLE FRANK MARROCCO:
8 Correct. And so, that's -- that -- that was the
9 understanding I had. And so, then I'm -- I'm trying
10 to understand why it would be added again here be --
11 because you have to add it to both.

12 It's not included in the cost of either
13 one (1), it's an additional cost, and this is the
14 number they put on it. And so, I'm having trouble
15 understanding why it's added back in here.

16 MR. DAVE MCNALTY: So, if you -- if we
17 went to the -- the top number on that page --

18 THE HONOURABLE FRANK MARROCCO: Yes.

19 MR. DAVE MCNALTY: -- that number does
20 not include the site costs.

21 THE HONOURABLE FRANK MARROCCO: Correct.

22 MR. DAVE MCNALTY: And so if this was
23 answering the question how did the estimate get from
24 7.6 million to 12.3 million, that's part of how the
25 estimate -- these are the numbers.

1 THE HONOURABLE FRANK MARROCCO: But it
2 would have nothing to do with LEED Silver
3 certification or anything like that. It's just site
4 preparation costs, and it's common to both types of
5 design -- both types of structures.

6 Have I got that right?

7 MR. DAVE MCNALTY: Yes.

8 THE HONOURABLE FRANK MARROCCO: Okay.

9 MR. DAVE MCNALTY: Now later on,
10 the -- those costs were reduced in regards to the
11 Sprung construction and --

12 THE HONOURABLE FRANK MARROCCO: To
13 500,000 or something. I think that was number.

14 MR. DAVE MCNALTY: -- and the
15 different approach that was going to be taken to doing
16 it in that case.

17 THE HONOURABLE FRANK MARROCCO: Right.
18 And the second question is: If you go down to the
19 contingencies, you see that the design fees is a
20 million and sixteen, and that's that contingency. And
21 then the other contingency's a million one. Is that an
22 error?

23 In other words, have they -- shouldn't
24 it be that if -- if it's both 10 percent, shouldn't it
25 be the same?

1 MR. DAVE MCNALTY: I believe the
2 second contingency includes the total of the -- that
3 includes the design fees. So --

4 THE HONOURABLE FRANK MARROCCO: The
5 second contingency is calculated as 10 percent of the
6 contingency that was allowed for the design fees?

7 MR. DAVE MCNALTY: The -- the line
8 above the design fees is not a contingency. It's
9 consulting costs --

10 THE HONOURABLE FRANK MARROCCO: Okay.

11 MR. DAVE MCNALTY: -- permits.

12 THE HONOURABLE FRANK MARROCCO: And
13 then the contingencies apply to the total.

14 MR. DAVE MCNALTY: To the total of the
15 construction cost plus the design fees permits and so
16 on.

17 THE HONOURABLE FRANK MARROCCO: Okay.
18 Thank you for that clarification.

19 You know, we'll take the morning break
20 now.

21

22 --- Upon recessing at 11:22 a.m.

23 --- Upon resuming at 11:36 a.m.

24

25 CONTINUED BY MR. FRED CHENOWETH:

1 MR. FREDERICK CHENOWETH: Thank you,
2 Your Honour. I wonder if we could just go back and
3 deal with some of the questions that you were kind
4 enough to ask of the witness, and I wonder if we might
5 pull up TOC0201266.

6

7 (BRIEF PAUSE)

8

9 MR. FREDERICK CHENOWETH: And could we
10 go to page 10 of that document?

11

12 (BRIEF PAUSE)

13

14 MR. FREDERICK CHENOWETH: Go down a
15 little further, please. Thank you. That chart, thank
16 you. Projected cost. I -- I'm just trying to get to
17 the bottom of -- of this business about the site cost,
18 and it may be that the chart found on page 10 is of
19 some assistance in that respect.

20 And you mentioned that -- I'm looking
21 at the first five items on that page: site demolition,
22 cut and patch, site excavation, building backfill, and
23 electrical site services. And then after that, you
24 have mechanical site services, actual paving, concrete
25 curbs, concrete sidewalks, et cetera.

1 I -- I had a sense -- and you can
2 assist me with this, if you can, Mr. McNalty -- the
3 last number of items, I take it that they are pure
4 site services, and the items above them are, to some
5 extent, construction costs.

6 Is that a fair look at them?

7 MR. DAVE MCNALT: I can see a -- a
8 differentiation between the first part of the list and
9 the second part of the list.

10 MR. FREDERICK CHENOWETH: Right.

11 MR. DAVE MCNALT: The second part of
12 the list, probably starting at asphalt paving, would
13 be more pure construction costs --

14 MR. FREDERICK CHENOWETH: Site costs.

15 MR. DAVE MCNALT: Site construction
16 costs.

17 MR. FREDERICK CHENOWETH: Right, and
18 the above are -- are construction costs?

19 MR. DAVE MCNALT: More related to the
20 construction of the building.

21 MR. FREDERICK CHENOWETH: Thank you.

22 MR. DAVE MCNALT: Yes.

23 MR. FREDERICK CHENOWETH: And as a
24 matter of interest, the -- we'll just take one
25 example. Site excavation -- was that something that

1 was included in the Sprung price that you received
2 from Sprung?

3 MR. DAVE MCNALTY: No.

4 MR. FREDERICK CHENOWETH: All right.
5 Were any of the costs there included in the Sprung
6 numbers?

7 MR. DAVE MCNALTY: So --

8 MR. FREDERICK CHENOWETH: Site
9 demolition, cut and pa -- cut and patch, site
10 excavation.

11 MR. DAVE MCNALTY: The -- there would
12 be some component of a couple of those that I would
13 think would have been in the Sprung estimate, for
14 example, site excavation and building backfill --

15 MR. FREDERICK CHENOWETH: Right.

16 MR. DAVE MCNALTY: -- recognizing that
17 the Sprung estimate would have included excavation and
18 backfilling for the building itself.

19 MR. FREDERICK CHENOWETH: Right. In -
20 - in fact, it included excavation out to 10 feet out,
21 didn't it?

22 MR. DAVE MCNALTY: I believe that was
23 the number.

24 MR. FREDERICK CHENOWETH: All right.
25 And -- so I'm assuming numbers such as building

1 backfill would be included in the Sprung number?
2 Because they backfilled right up to the building 10
3 feet.

4 MR. DAVE MCNALTY: I believe so.

5 MR. FREDERICK CHENOWETH: Thank you.
6 And the actual site excavation, obviously, they were
7 going to excavate the site under their dome and, in
8 fact, out to 10 feet, correct?

9 MR. DAVE MCNALTY: Yes.

10 MR. FREDERICK CHENOWETH: Thank you.
11 And the site demolition would -- would be the same.
12 That would be something that Sprung would be doing to
13 -- to get the site ready to put on their -- their
14 bubble, correct?

15 MR. DAVE MCNALTY: I -- I believe site
16 demolition was with respect to a -- a couple of
17 specific items, one being the removal of the ball
18 diamond and the second being the removal of the horse
19 barn that was at the south side of the site.

20 MR. FREDERICK CHENOWETH: Outside the
21 site?

22 MR. DAVE MCNALTY: At the south side
23 of the site.

24 MR. FREDERICK CHENOWETH: That's
25 something that -- that Sprung would be doing in their

1 construction in order to move this task forward?

2 MR. DAVE MCNALTY: I -- I don't
3 believe so.

4 MR. FREDERICK CHENOWETH: All right.
5 The point is that a number of these costs that we've
6 just been reviewing would have been included in the
7 Sprung price, correct?

8 MR. DAVE MCNALTY: Some of them would
9 be, yes.

10 MR. FREDERICK CHENOWETH: Thank you.
11 And therefore, the ones that -- that were included,
12 and they -- and they were not included in the price
13 for the pre-engineered building, correct?

14 MR. DAVE MCNALTY: Correct. They were
15 in this -- in this sum.

16 MR. FREDERICK CHENOWETH: I'm sorry?

17 MR. DAVE MCNALTY: They were in this
18 \$1.1 million sum.

19 MR. FREDERICK CHENOWETH: Right.

20 MR. DAVE MCNALTY: Yes.

21 MR. FREDERICK CHENOWETH: And -- but
22 they weren't all going to be in the Sprung cost
23 because some of them were -- were includ -- they
24 weren't going to be added to the Sprung cost because
25 some of them were included in the Sprung price,

1 correct? We've agreed on that.

2 MR. DAVE MCNALTY: In some cases, yes.

3 MR. FREDERICK CHENOWETH: Thank you.

4 So that the -- the items that needed to be done in
5 terms of -- in terms of the steel pre-engineered
6 structure, where more than what had to be done -- not
7 more than what had to be done, but if you were going
8 to compare the two, you had to -- you'd have to take
9 out the -- the ones that were already included in the
10 Sprung price into your Sprung number.

11 MR. DAVE MCNALTY: Yes, that's fair.

12 MR. FREDERICK CHENOWETH: Thank you.

13 Now you, at some juncture, came to the conclusion that
14 the -- but -- but when it came to -- just -- just to -
15 - to rephrase that question -- but when it came to the
16 pre-eng building, they all were required to be
17 included because they weren't in -- because in Sprung,
18 they were in the price, in the pre-engineered
19 building, they weren't.

20 Have I got that correct?

21 MR. DAVE MCNALTY: Yes.

22 MR. FREDERICK CHENOWETH: Thank you.

23 And that's why the pre-engineering building was at
24 one-one-six-four (1164), or for what they describe
25 here as the site costs?

1 MR. DAVE MCNALTY: Yes.

2 MR. FREDERICK CHENOWETH: Thank you.

3 You came to the conclusion that at some juncture, that
4 with respect to the Sprung building, you had hoped to
5 do the site costs on that building for less, and I
6 think you -- your figure that you eventually came to
7 was five hundred thousand dollars (\$500,000), correct?

8 MR. DAVE MCNALTY: I wouldn't say that
9 I came to that myself, but that's where we ended up.

10 MR. FREDERICK CHENOWETH: That's where
11 you ended up?

12 MR. DAVE MCNALTY: Yes.

13 MR. FREDERICK CHENOWETH: All right.
14 And -- and -- okay, that's where you ended up, and --
15 and that would have been a function of, I take it,
16 some sort of reduced 1 million one-six-four (164),
17 presumably? Obviously, five hundred (500) is less
18 than 1 million one six four.

19 So you take the one-one-six-four and
20 you take certain things out of it?

21 MR. DAVE MCNALTY: That would be one
22 (1) way to get there.

23 MR. FREDERICK CHENOWETH: All right.

24 MR. DAVE MCNALTY: I believe what we
25 had done, as I think I mentioned the other day, as we

1 had done our own estimates in conjunction with the
2 engineering department --

3 MR. FREDERICK CHENOWETH: Yes.

4 MR. DAVE MCNALTY: -- based on their
5 experience, to come up with a number that we felt
6 that the site works could -- could be completed for on
7 the basis of using some in-house resources.

8 MR. FREDERICK CHENOWETH: Thank you.
9 And you came up with a number of five hundred thousand
10 (500,000), as I recall?

11 MR. DAVE MCNALTY: There was a number
12 that was somewhat higher than that, but lower than 1.1
13 million --

14 MR. FREDERICK CHENOWETH: Got it.

15 MR. DAVE MCNALTY: -- and we agreed to
16 settle on the five hundred thousand dollar (\$500,000)
17 number.

18 MR. FREDERICK CHENOWETH: The -- that
19 was for the Sprung building, the five hundred thousand
20 (500,000)?

21 MR. DAVE MCNALTY: For -- for the
22 arena, yes.

23 MR. FREDERICK CHENOWETH: Thank you.
24 And if you were going to compare that to -- to a cost
25 for the pre-engineered building, have to add back in

1 the portions of the one point one-six-four (1.164)
2 that weren't included in the Sprung number?

3 MR. DAVE MCNALTY: Yes, if I
4 understood that correctly, the -- that weren't
5 included in the Sprung -- or that were included in the
6 Sprung --

7 MR. FREDERICK CHENOWETH: The -- that
8 -- were included in the Sprung number --

9 MR. DAVE MCNALTY: Yes. The --

10 MR. FREDERICK CHENOWETH: -- you have
11 to add those back to the number that you were using
12 for the pre-engineered steel building?

13 MR. DAVE MCNALTY: And bearing in mind
14 that this \$1.164 million number was also on the basis
15 of the design/engineer/contract/construct type of
16 process, as opposed to taking the site works part of
17 the project on as -- and doing it as much as possible
18 with in-house resources.

19 MR. FREDERICK CHENOWETH: All right.
20 Thank you. So if you were going to -- you -- you say
21 that you used the concept of -- of using in-house
22 people, and that had the potential to lower the one
23 point one-six-four (1.164) number?

24 MR. DAVE MCNALTY: Yes.

25 MR. FREDERICK CHENOWETH: All right.

1 And I just simply put to you that couldn't lower the
2 number -- or you -- you -- the Sprung number, I think
3 you got down to five hundred thousand (500,000), but
4 the number for the steel building couldn't come down
5 quite that far, because a number of the items that
6 were included in the Sprung price were not included in
7 the pre-eng price, and would have to be part of the --
8 of the calculation?

9 MR. DAVE MCNALTY: Yes.

10 MR. FREDERICK CHENOWETH: Thank you.

11 Thank you very much.

12

13 (BRIEF PAUSE)

14

15 MR. FREDERICK CHENOWETH: And there
16 was a margin which reduced this price by the -- the
17 twelve-three (123) price, by one point two (1.2), in
18 any event, correct?

19 MR. DAVE MCNALTY: That was the
20 numbers that was in the report.

21 MR. FREDERICK CHENOWETH: Thank you.

22

23 (BRIEF PAUSE)

24

25 MR. FREDERICK CHENOWETH: My Friend

1 asked you some questions the other day with respect to
2 a phrase that was in the final report. And if we
3 could turn to...

4

5 (BRIEF PAUSE)

6

7 MR. FREDERICK CHENOWETH: ...that
8 final report. And I'm just looking for it amongst my
9 -- my papers now, Your Honour.

10

11 (BRIEF PAUSE)

12

13 MR. FREDERICK CHENOWETH: All right.
14 One (1) second -- I pull it up. Thank you. Yes, that
15 document is at TOC0204147.

16

17 (BRIEF PAUSE)

18

19 MR. FREDERICK CHENOWETH: And if we
20 could turn to page 4 of that document. And I'm
21 looking at the fourth paragraph down, if you could
22 scroll up ever so slightly, please.

23

24 (BRIEF PAUSE)

25

1 MR. FREDERICK CHENOWETH: The
2 paragraph with the estimated cost for the supply. And
3 in particular, I'm looking at a phrase, the sentence
4 on the last -- the last sentence in that paragraph,
5 beginning with:

6 "The cost of the second floor
7 improvement within the architectural
8 membrane arena."

9 Just review that, if you would.

10

11 (BRIEF PAUSE)

12

13 MR. DAVE MCNALTY: Okay.

14 MR. FREDERICK CHENOWETH: That was
15 obviously in what became the final report, and there
16 was a view you expressed the other day that -- that
17 could be confusing to a reader, or had the potential
18 to be confusing to a reader?

19 MR. DAVE MCNALTY: Yes.

20 MR. FREDERICK CHENOWETH: Thank you.
21 And I was just wondering how it managed to get there,
22 and I think it's worth the reviewing some of the
23 earlier reports to -- to see how it got there.

24 If we look at your last report, which
25 is August 23rd at 11:44, and that is...

1 (BRIEF PAUSE)

2

3 MR. FREDERICK CHENOWETH: That we
4 could pull up at tip -- at TOC0203890.

5

6 (BRIEF PAUSE)

7

8 MR. FREDERICK CHENOWETH: And if we
9 look at page 4 of that report, and this is the report
10 that you sent out at 11:44 on August 23rd.

11

12 (BRIEF PAUSE)

13

14 MR. FREDERICK CHENOWETH: Thank you.
15 Then the report itself is nine one, ending in nine
16 one. Thank you.

17

18 (BRIEF PAUSE)

19

20 CONTINUED BY MR. FREDERICK CHENOWETH:

21 MR. FREDERICK CHENOWETH: I see in the
22 -- what appears to be the second paragraph down in
23 this report, and this is one prepared by you on the
24 evening of the 23rd, it talks about the estimated
25 cost, et cetera, et cetera, and you've got a number of

1 -- of ten five nine two in that report.

2 And that, I take it, is the -- the cost
3 of the pre-engineered building before you put in the
4 mezzanine cost of 995?

5

6 (BRIEF PAUSE)

7

8 MR. DAVE MCNALTY: If the math works
9 out that way...

10

11 (BRIEF PAUSE)

12

13 MR. DAVE MCNALTY: That might -- that
14 might be the case if the math works out that way.

15 MR. FREDERICK CHENOWETH: Okay. So it
16 was appropriate to have that phrase in the report that
17 you authored late on the 23rd, the last phrase:

18 "The cost of the second floor
19 improvement with -- within the
20 fabric arena is included in the
21 above."

22 Well, actually it's not included, so
23 that -- but -- but it -- it's -- it's -- it's -- it's
24 appropriate to have it in there because when talking
25 about the pre-engineered building, you'd have to add

1 in another million dollars, or 995, to that number
2 that you described for the pre-engineered building to
3 get the comparable number. Correct?

4 MR. DAVE MCNALTY: I believe that's
5 the case.

6 MR. FREDERICK CHENOWETH: Thank you.
7 And that phrase continues to exist in the document
8 that was circulated at 12:05 on the 24th.

9 Let's just turn to that for a moment,
10 if we might, very quickly. And again I that...

11 I apologize, Your Honour. I'll come --
12 I'll get the document shortly.

13

14 (BRIEF PAUSE)

15

16 MR. FREDERICK CHENOWETH: I'm looking
17 for the document number for the 12:05 document, and
18 it's document number TOC0204147.

19

20 (BRIEF PAUSE)

21

22 MR. FREDERICK CHENOWETH: And return
23 to page 4 of that document. And again, if we look at
24 the paragraph, which is the fourth paragraph on that
25 page beginning with the -- the phrase:

1 "The estimated cost for the supply."

2 And go down to the bottom.

3 "The cost of the second floor
4 improvement within the architectural
5 membrane arena is included in the
6 above estimate, whereas a similar
7 addition to the pre-eng building
8 would add up to a million -- would
9 add another million dollars to the
10 investment."

11 We went through how we got to the
12 number twelve three and obviously the twelve three
13 number includes the cost of the second floor
14 mezzanine. Correct?

15 MR. DAVE MCNALTY: Yes.

16 MR. FREDERICK CHENOWETH: And so that
17 it would appear that the -- the sentence, which was in
18 your report on the evening of the 23rd, because the
19 steel price didn't include the mezzanine, should have
20 come out of -- of the document when it was redone at
21 12:05 on that day because the twelve three number does
22 include the cost of the second floor mezzanine.
23 Correct?

24 MR. DAVE MCNALTY: Yes.

25 MR. FREDERICK CHENOWETH: That would

1 appear to be in -- done by inadvertence, that it was
2 left in there?

3 MR. DAVE MCNALTY: I suppose.

4 MR. FREDERICK CHENOWETH: Thank you.
5 With respect to the phrase "department heads," there
6 was some issues with respect to that on the -- on the
7 last occasion.

8 I wonder if we could look again at --
9 we were looking already at the report of 12:05 on the
10 24th, and again that document appears to have the
11 phrase in it at page 6. Turn to page 6, if we could,
12 please.

13 It has the phrase "Department Head
14 Review." This report was reviewed by the Executive
15 Management -- Management Committee, Director of Parks,
16 Recreation and Culture, and the Manager of Fleet,
17 Facilities and Purchasing, August 21, and circulated
18 to department heads for -- for comment on August 23rd.

19 This is in a -- a report which is
20 prepared again at 12:05 on the 24th.

21 I take it it would have been common
22 knowledge at that point that this report was not
23 circulated to department heads on the 23rd because it
24 wasn't ready until the 24th. Correct?

25 MR. DAVE MCNALTY: If there was a

1 report circulated, it may have been an early draft of
2 the report, but certainly not this one.

3 MR. FREDERICK CHENOWETH: Certainly
4 not this one. I notice that that phrasing, and I can
5 go through it if -- if the Commission likes, but I
6 notice that that paragraph is included in earlier
7 reports. It's included in the report that you did on
8 the night of the 23rd, which is report number
9 TOC0203890. And I'll try and do this quickly, Your
10 Honour.

11 THE HONOURABLE FRANK MARROCCO: Thank
12 you.

13

14 (BRIEF PAUSE)

15

16 CONTINUED BY MR. FREDERICK CHENOWETH:

17 MR. FREDERICK CHENOWETH: All right.
18 Then the report itself is -- ends in 891, one (1) more
19 number up.

20

21 (BRIEF PAUSE)

22

23 MR. FREDERICK CHENOWETH: And, again,
24 if we go to...

25

1 (BRIEF PAUSE)

2

3 MR. FREDERICK CHENOWETH: What I
4 believe is a six (6) page -- six -- sixth page of that
5 report.

6

7 (BRIEF PAUSE)

8

9 MR. FREDERICK CHENOWETH: Actually,
10 it's the fifth page of that report. There it is.
11 That's it, 4 -- paragraph 4. It's in your report at
12 that time, as well, this is done at the -- at the end
13 of August -- or at the end of the day on August 23rd,
14 your report is. It was done at 11:44, I recall?

15 MR. DAVE MCNALTY: So --

16 MR. FREDERICK CHENOWETH: That -- I'm
17 -- I'm just --

18 THE HONOURABLE FRANK MARROCCO: Can --
19 he's -- the witness is about to answer.

20 MR. FREDERICK CHENOWETH: Thank you.

21

22 CONTINUED BY MR. FREDERICK CHENOWETH:

23 MR. FREDERICK CHENOWETH: Go ahead.

24 MR. DAVE MCNALTY: So, this section of
25 the report, when you generate a new report, you pull

1 up a previous template. And as -- as the report
2 develops and as it gets circulated, you adjust that
3 section to reflect what's happened.

4 I think it's showing that that section
5 of the report is highlighted. And so, perhaps the
6 intention at this point in time was that that needed
7 to be looked at and updated.

8 MR. FREDERICK CHENOWETH: So, you were
9 -- it -- it appears to be a boilerplate section really
10 to some extent that -- that continues through one (1)
11 of Marjory's earlier reports and your report of 11:44
12 on the 23rd and appears to continue into the report of
13 the 24th at 12:05 that was done by Mr. Houghton.

14 It -- it seems pretty clear that that
15 boiler plate should have been adjusted because it's
16 fairly obvious that the final report wasn't given to
17 department heads on the 23rd, and that should have
18 been adjusted, correct?

19 MR. DAVE MCNALTY: I believe so.

20 MR. FREDERICK CHENOWETH: And it
21 appears that, because it's boilerplate, by
22 inadvertence, it wasn't adjusted.

23 Is that a fair conclusion?

24 MR. DAVE MCNALTY: Yes.

25 MR. FREDERICK CHENOWETH: Thank you.

1 (BRIEF PAUSE)

2

3 MR. FREDERICK CHENOWETH: I'm looking
4 again at the final report of...

5

6 (BRIEF PAUSE)

7

8 MR. FREDERICK CHENOWETH: Of 12:05 on
9 the Friday. And I note at -- again at page 4 -- and
10 that report, by the way, so we can pull it up, is
11 TOC0204147.

12

13 (BRIEF PAUSE)

14

15 MR. FREDERICK CHENOWETH: And I see
16 the phrase -- and by the way, I -- I notice that the
17 12:05 report, when we're dealing with the -- the
18 boilerplate with respect to department heads, was
19 circulated after 12:05 to -- to the EMC and to
20 yourself.

21 So, you would have had an opportunity
22 to read that 12:05 report. And, you know, there was
23 an opportunity for you to make an adjustment. And I
24 take it you didn't happen to pick upon the -- the
25 boilerplate that had put -- that had been put in with

1 respect to department heads that should have been
2 taken out. You didn't pick up on that?

3 MR. DAVE MCNALTY: No, I did not.

4 MR. FREDERICK CHENOWETH: Thank you.

5 I notice on this page 4 of the -- of the final report
6 that we're looking at it said in paragraph 4 after the
7 numbers eleven one and twelve three it says, in
8 brackets, (Estimates provided by WGD.)

9 And we had a discussion about the
10 numbers that would have been in front of the parties
11 on the morning of the 24th at 8:30. And we went
12 through a document that you had forwarded to Sara
13 Almas on the 20 -- on September 13th.

14 And just looking at that document -- we
15 -- we've gone through it. And you could maybe put it
16 back up again on the -- on the screen if we could,
17 please. And that was TOC0218073.

18

19 (BRIEF PAUSE)

20

21 MR. FREDERICK CHENOWETH: And I think
22 -- I'm just wondering about the veracity of the phrase
23 arising from the estimates by WGD that was in the
24 final report in that paragraph 4 I've just referred
25 you to.

1 Fair to say that virtually all of these
2 estimates did come WGD. I think we reviewed the fact
3 that the -- the number seven million six thirty-two
4 (7,632,00) was a number from WGD, correct?

5 MR. DAVE MCNALTY: Yes.

6 MR. FREDERICK CHENOWETH: The numbers
7 for the recommended upgrade were numbers that came
8 from WGD?

9 MR. DAVE MCNALTY: Yes.

10 MR. FREDERICK CHENOWETH: Going
11 further down in the document, the site and park
12 development numbers were numbers that were given by
13 WGD?

14 MR. DAVE MCNALTY: Yes.

15 MR. FREDERICK CHENOWETH: The
16 exception to that would be contingency numbers that
17 you used, 10 percent design contingency, and then an
18 overall contingency of 10 percent, and the 995 were
19 your numbers, correct?

20 MR. DAVE MCNALTY: The 995 was a
21 number that I developed from various estimates. As I
22 mentioned, the -- the number that shows in my
23 spreadsheet on August 23rd was 5 percent for design
24 fees.

25 MR. FREDERICK CHENOWETH: Right. I'm

1 just really looking at the -- at the estimated by WGD.

2 In the main, that's an accurate statement?

3 MR. DAVE MCNALTY: For the most part.

4 MR. FREDERICK CHENOWETH: Thank you.

5

6 (BRIEF PAUSE)

7

8 MR. FREDERICK CHENOWETH: Now, I'm

9 interested in the price comparison chart and the fact
10 that it had been taken out of the -- the staff report.

11 And, in particular, I want to look at -- at the report
12 that was prepared by Marjory Leonard, which is the
13 fifth report.

14 And, Your Honour, that's document
15 TOC0203550. That again may be the -- the letter. And
16 add a -- add a 1 at the end of that, make it 51, and
17 well get to the report.

18

19 (BRIEF PAUSE)

20

21 MR. FREDERICK CHENOWETH: And if we
22 could look at...

23

24 (BRIEF PAUSE)

25

1 MR. FREDERICK CHENOWETH: Page 7 of
2 that report.

3

4 (BRIEF PAUSE)

5

6 MR. FREDERICK CHENOWETH: Scroll up
7 slightly, if you would, please. Thank you. And I
8 notice that in Marjory's document which was circulated
9 on the 23rd at about 12 noon -- I notice that the
10 comparison chart was in there.

11 MR. DAVE MCNALTY: Yes.

12 MR. FREDERICK CHENOWETH: And I note
13 that the comparison chart is not in your document that
14 was circulated at 11:44 that evening, and that is
15 TOC0203891.

16 THE HONOURABLE FRANK MARROCCO: Just
17 before you leave that, it says in there that track
18 changes are -- that document..."tracked changes.
19 These items are already visible in the viewer."

20 Was the practice that as each person
21 contributed to the document, their changes were
22 tracked in the document?

23 MR. DAVE MCNALTY: Generally speaking,
24 yes. That would be the practice.

25 THE HONOURABLE FRANK MARROCCO: So the

1 documents -- the composition of all of the people --
2 changes and contributions they made are visible in the
3 track changes. Should be.

4 MR. DAVE MCNALTY: Should be, yes.

5

6 CONTINUED BY MR. FREDERICK CHENOWETH:

7 MR. FREDERICK CHENOWETH: So that
8 change was -- the comparison chart was in
9 Marjory Leonard's report on the 23rd, but it wasn't in
10 your's of 11:44 that evening. And I think -- again
11 we've pulled it up, and it's obvious that it wasn't
12 there.

13 And I'm looking at -- throughout the
14 report -- and let's just quickly go through the
15 report. It wasn't in your report at 11:44. Correct?

16 MR. DAVE MCNALTY: That's my
17 recollection.

18 MR. FREDERICK CHENOWETH: All right.
19 Thank you. And obviously, it was taken out.

20 And I'm just -- I'm interested as to
21 how it came to be out. You indicated that at some
22 time, there may have been a discussion about whether
23 or not you leave it out or take it in -- or put it in.
24 You said that in your evidence-in-chief.

25 MR. DAVE MCNALTY: Yes.

1 MR. FREDERICK CHENOWETH: Thank you.

2 And you, I think, indicated that it was your
3 preference that the comparison chart would be in.

4 You took that position because you felt
5 that the more information available to Council, the
6 better things were?

7 MR. DAVE MCNALTY: If that's what I
8 indicated.

9 MR. FREDERICK CHENOWETH: Well, I'm
10 wondering if there's -- if there's another view and
11 whether or not you put in the chart or don't put in
12 the chart is a question of style and approach.

13 In other words, there may be some
14 people who are of the view that a chart might be
15 confusing to Council, and you'd be better off to
16 simply put in the numbers such as what was eventually
17 in there -- the 11 to 12.3 -- as opposed to putting in
18 a chart.

19 Was that a debate that occurred from
20 time to time between these staff reports?

21 MR. DAVE MCNALTY: That could be the
22 case. I don't have a recollection of that in this
23 instance.

24 MR. FREDERICK CHENOWETH: But would it
25 be fair to say that whether or not you put in the

1 chart or don't put in the chart and just put the
2 bottom line numbers could be a question of style as
3 opposed to any other matters?

4 MR. DAVE MCNALTY: That's possible.

5 MR. FREDERICK CHENOWETH: Thank you.

6 Now, Mr. McNalty, you indicated at one (1) juncture in
7 your evidence in-chief that more investigative time --
8 in other words, more time to prepare the report -- is
9 always a good thing.

10 MR. DAVE MCNALTY: Yes.

11 MR. FREDERICK CHENOWETH: Thank you.

12 And you had felt on this occasion that -- had you felt
13 that the time was short between July 16th and
14 August 27th to prepare your reports?

15 MR. DAVE MCNALTY: I think it was a
16 short time frame to do the investigation and then
17 prepare reports.

18 MR. FREDERICK CHENOWETH: All right.
19 You didn't personally make a request for longer
20 periods of time?

21 MR. DAVE MCNALTY: No.

22 MR. FREDERICK CHENOWETH: And you're
23 not aware that anyone else did?

24 MR. DAVE MCNALTY: Not that I'm aware
25 of.

1 MR. FREDERICK CHENOWETH: All right.
2 Is that, in fact, in part a function of a general
3 understanding you had that Council was anxious to move
4 ahead with this -- with this matter promptly and in an
5 efficient way?

6 MR. DAVE MCNALTY: I suppose that
7 would be the basis for them setting an aggressive
8 target date.

9 MR. FREDERICK CHENOWETH: All right.
10 And you knew something of that because you'd been at
11 the -- at the meeting at the library on June 11th when
12 this matter was discussed and when Mr. Rick Lloyd was
13 handing out Sprung pamphlets? You would have been at
14 that meeting?

15 MR. DAVE MCNALTY: Yes.

16 MR. FREDERICK CHENOWETH: You were at
17 the meeting of July 16th when you were given direction
18 by Council as to how to proceed?

19 MR. DAVE MCNALTY: I'm not positive if
20 I was at the meeting, but I knew the outcome.

21 MR. FREDERICK CHENOWETH: All right.
22 And you would have been aware that the councillors at
23 those meetings expressed a wish to move this matter
24 along expeditiously.

25 MR. DAVE MCNALTY: That's reasonable.

1 MR. FREDERICK CHENOWETH: Thank you.
2 And I take it that -- you already expressed this in
3 your evidence-in-chief that you felt it was the job of
4 staff to do as Council had directed. That was their
5 view of matters. Either report was to be done by the
6 27th. You were going to do your best to comply with
7 that.

8 MR. DAVE MCNALTY: Yes.

9 MR. FREDERICK CHENOWETH: And I take
10 it that that put some pressure on staff to achieve
11 that date of the 27th to put the staff report before
12 Council?

13 MR. DAVE MCNALTY: Yes.

14 MR. FREDERICK CHENOWETH: And that
15 would have been pressure that all of staff felt?

16 MR. DAVE MCNALTY: Well --

17 THE HONOURABLE FRANK MARROCCO: I
18 don't know how he could -- he can tell you whether he
19 felt pressure but how other people felt pressure or
20 not -- maybe they expressed it.

21 MR. FREDERICK CHENOWETH: I don't
22 know. You know, I --

23 THE HONOURABLE FRANK MARROCCO: But
24 really --

25 MR. FREDERICK CHENOWETH: -- you were

1 in a number of --

2 THE HONOURABLE FRANK MARROCCO: -- it
3 does not help. I mean, it doesn't really matter. He
4 felt pressure. Others have testified they felt it was
5 a short period of time.

6

7 CONTINUED BY MR. FREDERICK CHENOWETH:

8 MR. FREDERICK CHENOWETH: Okay. Very
9 good. I'll move along then. And you were in contact
10 with Mr. Houghton through this period of time.

11 Did you have a sense or would you know
12 whether he was also feeling the pressure of this short
13 period of time?

14 MR. DAVE MCNALTY: My sense would be
15 that anyone involved in this process was working to
16 achieve that timeline, and it was an aggressive
17 timeline.

18 MR. FREDERICK CHENOWETH: Very good.
19 And that would include Mr. Houghton in that answer, I
20 take it.

21 MR. DAVE MCNALTY: I expect so.

22 MR. FREDERICK CHENOWETH: Thank you.
23 Marta Proctor indicated that Mr. Lloyd was the
24 champion on the ice and water project and that he
25 wanted it solved in a timely way.

1 Would your observations of what was
2 taking place during this period of time from June 11th
3 to August 27th be consistent with Marta Proctor's view
4 that Rick Lloyd was the champion of this thing and
5 moving it ahead?

6 MR. DAVE MCNALTY: I think the deputy
7 mayor was -- was wanting to move it ahead. Yes.

8 MR. FREDERICK CHENOWETH: All right.
9 She described him as the champion of the project.
10 Would that -- of the ice and water project -- would
11 you -- is that a fair description?

12 MR. DAVE MCNALTY: I'm not -- I'm not
13 sure that I can comment on that directly because I was
14 seldom -- seldom involved in any discussion with the
15 deputy mayor or when such discussions might be
16 happening. So I could see that he was interesting --
17 interested in moving it forward. I don't know that I
18 can go so far as to say he was championing it.

19 MR. FREDERICK CHENOWETH: Very good,
20 thank you. The Mayor had a meeting it appears with
21 Sprung on July 11th and I think you were at that mee -
22 - at that meeting as well. Could we go to paragraph
23 201 of the Foundation documents, please.

24

25 (BRIEF PAUSE)

1 MR. FREDERICK CHENOWETH: Would you
2 just read that paragraph.

3

4 (BRIEF PAUSE)

5

6 MR. DAVE MCNALTY: Okay.

7 MR. FREDERICK CHENOWETH: So it
8 appears there was a meeting set up for July 11th, to
9 which you were invited and, I take, attended, and the
10 Mayor was invited and attended.

11 Is that your memory of what occurred on
12 July 11th?

13 MR. DAVE MCNALTY: I believe so.

14 MR. FREDERICK CHENOWETH: Thank you.
15 And that meeting with -- the Mayor was at on that day,
16 as I understand it, you had not yet received direction
17 of Council, as you received on July 16th, as to what
18 your specific investigation might be.

19 That happened after the meeting that
20 the Mayor was at on July 11th, correct?

21 MR. DAVE MCNALTY: Yes.

22 MR. FREDERICK CHENOWETH: So I take it
23 that this meeting would have still have been in the
24 investigative stage of your activities at that time,
25 you having been at this meeting?

1 MR. DAVE MCNALTY: Yes, I think it was
2 in that stage.

3 MR. FREDERICK CHENOWETH: Thank you.
4 And it was before th first draft of the staff report,
5 which was authored by Marjory on August 18th, correct?

6 MR. DAVE MCNALTY: I'm not sure when
7 she started to write the staff report, but it was
8 before there was a -- a draft of the staff report.

9 MR. FREDERICK CHENOWETH: So that
10 there's -- you gave us an analysis the other day of --
11 of -- it would have been okay for people to attend
12 meetings in the investigative proce -- process with
13 people like Sprung. Is that fair?

14 MR. DAVE MCNALTY: It's -- it would be
15 justified in this case to learn of the product.

16 MR. FREDERICK CHENOWETH: Thank you.
17 Can you tell me, Mr. McNalty -- can you outline for me
18 the elements of -- of the fabric roof you were looking
19 at, i.e., the Sprung product, that led you to -- that
20 led the -- in fact, the Committee and you, as part of
21 that Committee, to make a recommendation of the fabric
22 roof -- the Sprung fabric roof -- in the final report
23 of July 24th.

24 What are the -- what are the elements
25 that you saw in Sprung that made it the choice for you

1 with respect to the final report that was put to
2 Council?

3 MR. DAVE MCNALTY: I'm -- I'm not
4 sure that it ever became the choice for me in
5 absolution, but I could see the benefits of the
6 building, being the air-tightness, the insulating
7 value, the moisture-resistant insulation, and the
8 ability of the -- particularly, the interior liner to
9 be microbial resistant.

10 MR. FREDERICK CHENOWETH: And I take
11 it you spent some time looking for other suppliers
12 that might be able to produce a building of that
13 standard?

14 MR. DAVE MCNALTY: Yes.

15 MR. FREDERICK CHENOWETH: And were you
16 able to find any others?

17 MR. DAVE MCNALTY: No.

18 MR. FREDERICK CHENOWETH: I understand
19 that you were advised that the Sprung roof had had no
20 collapses?

21 MR. DAVE MCNALTY: Pardon?

22 MR. FREDERICK CHENOWETH: I understand
23 that you were advised that the Sprung roof had not
24 collapsed, where others had.

25 MR. DAVE MCNALTY: I believe that was

1 something that Sprung said in their presentation.

2 MR. FREDERICK CHENOWETH: And was that
3 a factor in your thinking with respect to a final
4 recommendation?

5 MR. DAVE MCNALTY: Not really.

6 MR. FREDERICK CHENOWETH: Okay.

7 MR. DAVE MCNALTY: I -- what I mean by
8 that is that I would hope that we would not build any
9 structure that would collapse.

10 THE HONOURABLE FRANK MARROCCO: I -- I
11 was going to say, I'm sure you didn't want to build a
12 building that would fall down, but that's not the
13 purport of your question.

14

15 CONTINUED BY MR. FREDERICK CHENOWETH:

16 MR. FREDERICK CHENOWETH: All right.
17 But you were, in any event, being advised by Sprung,
18 at least, that none of their buildings had collapsed.

19 MR. DAVE MCNALTY: And that -- and
20 that -- yes, and I believe that they cited examples of
21 other buildings that had collapsed, if I recall
22 correctly.

23 MR. FREDERICK CHENOWETH: And -- in
24 that you didn't want a collapsed building, that would
25 have been something that was in your mind when you

1 were considering your fabric buildings.

2 MR. DAVE MCNALTY: With any building.

3 MR. FREDERICK CHENOWETH: Thank you.

4 THE HONOURABLE FRANK MARROCCO: They -
5 - they -- they told you that there were fabric
6 structures that had collapsed?

7 MR. DAVE MCNALTY: I -- I believe
8 there was -- there was discussion in their early
9 presentation that suggested that or cited an example
10 of a fabric building that had collapsed. My sense
11 wasn't that it was a similar building, but perhaps
12 like an agricultural-style fabric building.

13

14 CONTINUED BY MR. FREDERICK CHENOWETH:

15 MR. FREDERICK CHENOWETH: One moment,
16 Your Honour, if you would, please.

17

18 (BRIEF PAUSE)

19

20 MR. FREDERICK CHENOWETH: You made
21 some comment in your evidence in-chief that -- and
22 let's look at paragraph 413, I think it is, of the
23 Foundation Document number 2, if we could, please.

24

25 (BRIEF PAUSE)

1 MR. FREDERICK CHENOWETH: I think we
2 reviewed earlier that you would have received -- and
3 again, look at 413, if you would.

4 MR. DAVE MCNALTY: Okay.

5 MR. FREDERICK CHENOWETH: And we
6 reviewed the fact that you received that email from
7 Marjory Leonard, and in paragraph 415, if you'd switch
8 over to that just for a moment, please.

9 You made some amendments to -- to the
10 procurement section that had been outlined by Ms.
11 Leonard at 10:46 that morning, correct?

12 MR. DAVE MCNALTY: Apparently. I -- I
13 haven't digested what was change, but, yes, apparently
14 I made some changes.

15 MR. FREDERICK CHENOWETH: Thank you.
16 You had made some comment in your evidence in-chief
17 with respect to her assertion that elements of
18 competition was included in gathering of the
19 estimates.

20 I'm looking at paragraph 413 now if I
21 could.

22

23 (BRIEF PAUSE)

24

25 MR. FREDERICK CHENOWETH: I'm looking

1 at the second paragraph:

2 "Elements of competition was
3 included in the gathering of the
4 estimates, the manufacturer of the
5 architectural membrane."

6 Et cetera. Look at that paragraph.

7 MR. DAVE MCNALTY: Yes.

8 MR. FREDERICK CHENOWETH: And you
9 indicated that -- that you weren't certain that Ms.
10 Leonard had it right when she wrote that paragraph
11 which suggested a competition?

12 MR. DAVE MCNALTY: Correct.

13 MR. FREDERICK CHENOWETH: Looking
14 again at paragraph 415, it would appear that you
15 didn't choose to correct that section when you made
16 your amendments to Marjory Leonard's procurement
17 section at 11:45 on that day?

18 THE HONOURABLE FRANK MARROCCO: Well,
19 are these amendments or just Mr. McNalty's suggestions
20 to -- to the group?

21 MR. FREDERICK CHENOWETH: I'll
22 rephrase my question then.

23

24 CONTINUED BY MR. FREDERICK CHENOWETH:

25 MR. FREDERICK CHENOWETH: You didn't

1 choose to change the -- Marjory Leonard's comments
2 about competition when you made your suggestions to
3 the group at 4:45 on that day.

4 Is that correct?

5 MR. DAVE MCNALTY: At 11:45?

6 MR. FREDERICK CHENOWETH: 11:45, yes.

7 MR. DAVE MCNALTY: I didn't --
8 apparently, I didn't address that in my suggested
9 modifications. I think you can appreciate that I
10 didn't get much sleep the night before.

11 And by this point in time, I wasn't
12 reviewing things very well.

13 MR. FREDERICK CHENOWETH: Good. Those
14 are all the questions I have of this witness. Thank
15 you very much, Your Honour.

16 THE HONOURABLE FRANK MARROCCO: Mr.
17 Marron...?

18 MR. GEORGE MARRON: No questions.

19 THE HONOURABLE FRANK MARROCCO: Mr.
20 Neubauer...?

21 MR. ERIC NEUBAUER: No questions.

22 THE HONOURABLE FRANK MARROCCO: Thank
23 you. Mr. Bonwick...?

24 Well, while -- while you're coming up,
25 I -- I just wanted -- Mr. McNalty, I just wanted to

1 understand that these reports were prepared by the
2 group. They were circu -- re -- revisions were
3 circulated. People make suggestions. And then
4 there's a decision made about what goes in and what
5 goes out.

6 Was that the process to these staff
7 reports?

8 MR. DAVE MCNALTY: I think there --
9 there would al -- always be sort of the -- the deemed
10 owner of the report.

11 THE HONOURABLE FRANK MARROCCO: Who's
12 the deemed owner?

13 MR. DAVE MCNALTY: Well, by this -- it
14 may have evolved over the -- over the course of this.
15 I mean, it started out to be the treasurer. And then
16 I made significant edits to it.

17 By the time we were on August 24th, I
18 think it was the CAO and the EMC that were more
19 judging what -- what the final report would say.

20 THE HONOURABLE FRANK MARROCCO: Thank
21 you. So, Mr. Bonwick...?

22 MR. PAUL BONWICK: Your Honour, I'm
23 wondering if we can take two (2) minutes.

24 THE HONOURABLE FRANK MARROCCO: Five
25 (5) minutes. We'll take five (5) minutes.

1 --- Upon recessing at 12:39 p.m.

2 --- Upon resuming at 12:46 p.m.

3

4 THE HONOURABLE FRANK MARROCCO: Mr.
5 Bonwick...?

6 MR. PAUL BONWICK: Thank you, Your
7 Honour.

8

9 CROSS-EXAMINATION BY MR. PAUL BONWICK:

10 MR. PAUL BONWICK: Mr. McNalty, my
11 name is Paul Bonwick and I'm a participant at the
12 Hearing. First of all, thanks very much for making
13 time available over the last -- the last couple of
14 days.

15 I -- I suggest with most of the
16 witnesses, it's not easy remembering back all these
17 years ago, and so if I have any questions that are
18 unclear, please don't hesitate to try to get me
19 pointed in the right direction.

20 And if I have information that I can
21 reference that might help trigger your memory, I'll --
22 I'll happily show that.

23 Can you tell me, and I think you may
24 have mentioned this at the start, when did you start
25 with the Town of Collingwood your employment?

1 MR. DAVE MCNALTY: February 2009.

2

3 (BRIEF PAUSE)

4

5 MR. PAUL BONWICK: We've heard an
6 abundance of testimony and some evidence submitted
7 that councils, Collingwood councils, over the past
8 fifteen (15) or twenty (20) years leading up to this
9 exercise had wrestled with the concept of either
10 refurbishing existing recreational facilities or
11 delivering new multi-use facilities and various
12 incarnations and at various points in time.

13 Were you aware of that?

14 MR. DAVE MCNALTY: A general
15 awareness.

16 MR. PAUL BONWICK: Were you aware, or
17 was it your feeling, that there was a general sense in
18 the community for a number of years of residents
19 wanting a second arena and an enhanced aquatics
20 facility of some type?

21 MR. DAVE MCNALTY: Particularly an
22 arena. I wasn't too knowledgeable about the wants or
23 needs for swimming pools at the time.

24 MR. PAUL BONWICK: Okay. Thank you.
25 I'm wondering if I could bring up CJI0011234. I

1 believe it's the transcript from Collingwood council
2 as of July the 16th, 2012.

3 If we could scroll down to page 22, the
4 fifth paragraph, please.

5

6 (BRIEF PAUSE)

7

8 MR. PAUL BONWICK: Down further,
9 please. Okay. Right there. Thank you. Mr. McNalty,
10 the transcript is from the July 16th, 2012 meeting.
11 And while I appreciate that you don't recall all the
12 details of that meeting, it's my understanding, based
13 on the evidence in-chief on Friday, that you were in
14 attendance at it. Can you confirm that?

15 MR. DAVE MCNALTY: Is this the Council
16 meeting with the selection of the two recommendations?

17 MR. PAUL BONWICK: Correct. Yes.
18 There was a resolution passed that evening.

19 MR. DAVE MCNALTY: That included those
20 two recommendations?

21 MR. PAUL BONWICK: I believe so. I
22 could bring up the --

23 MR. DAVE MCNALTY: I -- I believe I
24 was there.

25 MR. PAUL BONWICK: Okay. What I'd

1 like to do for the benefit of yourself and others is
2 start to read -- or on the paragraph 5, you'll see
3 Deputy Mayor Lloyd's comments. It starts with "you
4 know as the budget chair"? Do you want me to read
5 that, Your Honour, or -- into the record, or am I able
6 to?

7 THE HONOURABLE FRANK MARROCCO: No. I
8 think he -- the witness can read it.

9

10 CONTINUED BY MR. PAUL BONWICK:

11 MR. PAUL BONWICK: Okay. Mr. McNalty,
12 just give direction when you want to scan further
13 down, and we'll continue.

14 THE HONOURABLE FRANK MARROCCO: Did
15 you want him to read the -- all of the remarks or --

16 MR. PAUL BONWICK: The rest of it's
17 kind of fluffy, not to make light of Mr. -- or the
18 deputy mayor's comments. It really gets into the meat
19 of it here at the fifth paragraph.

20 MR. DAVE MCNALTLY: And did I
21 understand correctly that this is the deputy mayor's
22 comments?

23

24 CONTINUED BY MR. PAUL BONWICK:

25 MR. PAUL BONWICK: These are the

1 transcripts from that Council meeting. So yes, they
2 are the deputy mayor's comments. And so if you --

3 MR. DAVE MCNALTY: Go down a bit,
4 please.

5

6 (BRIEF PAUSE)

7

8 THE HONOURABLE FRANK MARROCCO: Just
9 tell them when to go down.

10 MR. DAVE MCNALTY: Down further.

11

12 (BRIEF PAUSE)

13

14 MR. DAVE MCNALTY: Down further,
15 please.

16

17 (BRIEF PAUSE)

18

19 MR. DAVE MCNALTY: Down further.

20

21 (BRIEF PAUSE)

22

23 MR. DAVE MCNALTY: Keep going.

24

25 (BRIEF PAUSE)

1 CONTINUED BY MR. PAUL BONWICK:

2 MR. PAUL BONWICK: If I could -- I'm
3 sorry. When you're done. Are you finished that part?

4 MR. DAVE MCNALTY: Yes.

5 MR. PAUL BONWICK: Okay. If I could
6 go down to Councillor Chadwick's comments, please.
7 That's -- scroll down a little bit, please. Let's
8 see -- are we on Councillor Chadwick there? Sorry?

9

10 (BRIEF PAUSE)

11

12 MR. PAUL BONWICK: You're welcome to
13 read them -- one after the other. I can highlight
14 certain parts within it. It's your choice entirely.

15 THE HONOURABLE FRANK MARROCCO: Why
16 don't you point Mr. McNalty to the portions of it that
17 you think are germane in terms of the questions you
18 want to ask, and then we'll see -- and if you need to
19 read more of it, Mr. McNalty, just say so, and we'll
20 go ahead and read.

21 MR. DAVE MCNALTY: Okay.

22

23 CONTINUED BY MR. PAUL BONWICK:

24 MR. PAUL BONWICK: You've had the
25 opportunity to review Deputy Mayor Lloyd's comments.

1 Just pulling out a couple of excerpts from
2 Councillor Chadwick you can see:

3 "We all agree -- we all also agree
4 that a 35 million is just too big a
5 pill to swallow at this point. So
6 the question is: What can we do
7 now?"

8 Councillor Chadwick went on about
9 speaking to alternatives that would mesh with future
10 plans. Councillor Chadwick went on to conclude with:

11 "I also support deputy mayor's
12 request to have a staff report so we
13 can look at some alternatives so
14 maybe we can actually have something
15 in the very near future."

16 Councillor West expressed a strong
17 sense of urgency. He referred to having to run his
18 boys back and forth to Feversham in the wintertime,
19 and that he had been involved in minor hockey for many
20 years, and certainly appreciated that it was long
21 overdue and required Council to act and deliver. I
22 think his last statement was we've got to do something
23 about that.

24 Councillor Edwards referred to his
25 experience with his kids in minor hockey and his

1 active participation in minor hockey over many years.
2 I think he said that this has been 20 years later that
3 he's been following the issue, and there's still
4 not -- and they're still going out of town. He's
5 referring to kids. In short, he's identifying this as
6 a significant priority in terms of trying to move it
7 forward.

8 Councillor Cunningham, the former fire
9 chief -- again a similar situation -- have been coming
10 to Council since 1997 when he studies -- he refers to
11 studies over the last 15 years. The short answer
12 always comes down to money. Let's call a spade a
13 spade. We're in the ditch for 50 million, and this
14 vision is going to cost us 35 million. I rather doubt
15 we could afford the 35 million.

16 And he goes on to close out with an
17 enclosed pool, and you will -- I think that's what he
18 means. It's a -- he's effectively expressing support
19 for an arena and ice pad to get the deal done.

20 Councillor Kevin Lloyd:

21 "We know we need another ice
22 surface. We know we need some
23 facilities for swimming. Let's get
24 alternative costs and look at them.
25 So let's get on it with it, please.

1 I agree with the deputy mayor.

2 Let's get some alterative costings

3 done. Let's make some decisions.

4 And let's make this happen."

5 So I go through the transcripts of the
6 various councillors on July the 16th. Would it be
7 fair to say that you could not walk away with any
8 other sense than they wanted something to happen in
9 terms of water and ice, and they wanted it to happen
10 fairly quickly?

11 MR. DAVE MCNALTY: That's correct.

12 MR. PAUL BONWICK: Mr. McNalty, you
13 would have been on staff during the 2010 election. Do
14 you recall that the evidence has demonstrated in
15 part 1 that a large part of that election was
16 predicated on the finances of the community? I can
17 give you a bit more detail if you'd like or...

18 MR. DAVE MCNALTY: Yes. That was a
19 concern at the time.

20 MR. PAUL BONWICK: There was
21 significant debate and positioning in terms of
22 platforms related to the many hundreds of thousands of
23 dollars that were being spent annually on lawyers and
24 consultants as part of a new Council's desire to bring
25 in some fiscal restraint to take a more financially

1 conservative approach to the budget? Do you recall
2 that?

3 MR. DAVE MCNALTY: I'm not -- I'm not
4 sure that I can comment on that aspect of their -- of
5 their campaigns.

6 MR. PAUL BONWICK: Simply state then
7 that you do recall that finance was a major
8 consideration without going into any greater detail
9 than that.

10 MR. DAVE MCNALTY: Yes.

11 MR. PAUL BONWICK: Fair. Were you
12 aware that -- did you have an opportunity to attend
13 the mayor's inauguration -- the mayor and Council
14 inauguration at the Collingwood Legion?

15 MR. DAVE MCNALTY: I don't believe so.

16 MR. PAUL BONWICK: Okay. Were you
17 aware of the fact that Mayor and Council had delivered
18 a message to department heads specific to fiscal
19 constraint re-examining how they were delivering
20 services in a more cost-effective manner?

21 And were you aware that the new Council
22 delivered that mandate to department heads shortly
23 after being elected or after the inauguration?

24 MR. DAVE MCNALTY: I'm not
25 particularly aware of that, but I know at that period

1 in time, there was -- I guess that message was being
2 spread throughout the organization.

3 MR. PAUL BONWICK: Thank you. And
4 during that same period of time -- well, the election
5 was in 2010, and in fairness, we can all agree they
6 really don't get moving forward until 2011. I think
7 the election's in November. I think the inauguration
8 is January of 2011 or somewhere in abouts there.
9 There -- there's like a two month court of transition
10 period there. You're familiar with that?

11 MR. DAVE MCNALTY: Yes.

12 MR. PAUL BONWICK: And so really,
13 Council kind of hit the ground running in 2011. I
14 think that's a more reasonable statement.

15 Would you agree?

16 MR. DAVE MCNALTY: Yes. There's a --
17 there's a period of time when nothing does happen nor
18 can anything happen.

19 MR. PAUL BONWICK: Sometimes long
20 periods of time.

21 MR. DAVE MCNALTY: Yeah.

22 MR. PAUL BONWICK: Would you be aware
23 that during this same time in 2011 -- that a Steering
24 Committee was in the process of investigating,
25 cooperation with PRC, a multi-use facility?

1 MR. DAVE MCNALTY: I was aware of it
2 because I assisted in the development of some
3 documents for that process.

4 MR. PAUL BONWICK: And so then you'll
5 be aware, of course, that the recommendation concluded
6 that approximately \$35 million plus was required in
7 order to achieve the desired plan?

8 MR. DAVE MCNALTY: I saw their final
9 report, and it showed that.

10 MR. PAUL BONWICK: So based on what
11 we've just reviewed -- the new Council, financial
12 constraint, the messaging that you recall circulating
13 throughout staff -- can you understand, or do -- can
14 you understand or appreciate why Council may want to
15 move in a direction in an expeditious manner to
16 deliver something less than that \$35 million solution,
17 more specifically, a new arena and ice surface?

18 MR. DAVE MCNALTY: I can understand
19 that they had that desire to deliver facilities at a
20 lower cost.

21 MR. PAUL BONWICK: Okay. I'd like
22 just quickly to touch on the environment of the day.

23 Would you describe your working
24 relationship with the various other folks that were
25 involved in this process -- and I'm thinking Ms.

1 Almas, Ms. Leonard, Mr. Houghton, Mr Irwin. Would you
2 describe that environment as collegial and
3 professional?

4 MR. DAVE MCNALTY: Yes.

5 MR. PAUL BONWICK: Was there ever a
6 point at which you found any of your meetings became
7 heated or people expressing anything other than a
8 professional or a collegial approach towards each
9 other?

10 MR. DAVE MCNALTY: Not that I recall.

11 MR. PAUL BONWICK: So then it would be
12 reasonable to state, within that sort of collegial
13 environment -- and I've seen some of the comments and
14 revisions you've made -- it was fair to say that it
15 was rather open in terms of your ability to share
16 information back and forth or to comment on each
17 other's work?

18 MR. DAVE MCNALTY: Yes, and -- and
19 when I say -- I didn't say it, but my thought with
20 regards to "collegial" is that not everything in the
21 meeting was total agreement. There would be
22 discussion.

23 MR. PAUL BONWICK: I would hope so. I
24 mean, you're all independent thinkers, and I would
25 agree it's just -- I'm trying to get to the point of

1 it was a collegial environment, not an environment
2 where everybody put their hand up because one (1)
3 person did. There's going to be difference of
4 opinion, but I think you answered my question, and
5 thank you for that.

6 I -- I did want to clear up a little
7 matter, and I apologize if you were asked by counsel
8 for the Inquiry. I couldn't find it in the
9 transcript. But prior to receiving this -- prior to
10 June 2000 -- or, sorry, prior to 2012, 2011, did you
11 ever have any working or personal or professional
12 relationships with representatives of Sprung?

13 MR. DAVE MCNALTY: No.

14 MR. PAUL BONWICK: Did you ever have
15 any personal, professional, working relationships with
16 representatives or owners, staff, from BLT?

17 MR. DAVE MCNALTY: No.

18 MR. PAUL BONWICK: So I think it would
19 -- just for the record to confirm, you really had no
20 biases going into this in terms of previous experience
21 with either one of these companies?

22 MR. DAVE MCNALTY: No, I didn't.

23 MR. PAUL BONWICK: I'd like to spend a
24 bit of time on your investigation and the counsel for
25 the Inquiry's questions related to your investigation

1 of Sprung and other membrane structures, if I may.

2 And if I could bring up CJI0011254, please.

3

4

(BRIEF PAUSE)

5

6

MR. PAUL BONWICK: Please take a

7 minute and review that. I assume you're familiar with

8 the word "patent," but for the sake of everybody being

9 on the same page, I thought I would take a dictionary

10 definition and bring it up on the screen so that we're

11 all either in agreement or can share disagreement.

12

Would you agree that's your

13 interpretation of the definition of "patent"?

14

MR. DAVE MCNALTY: Sounds correct.

15

MR. PAUL BONWICK: Could you bring up

16 CJI0011253, please. When the cross-ex -- or, sorry,

17 when you were providing evidence in-chief on Friday, I

18 took the time to do some googling myself, and if we

19 could go down to the bottom of the -- just, you can

20 scroll down.

21

I'm not going to, Mr. McNalty, read all

22 these, but if you go down through. Keep just going

23 down. One, two, three, four -- I counted four (4)

24 separate patents as it relates to the Sprung

25 technology. In a nutshell, basically, companies are

1 patenting their technology so that others cannot copy
2 it. Is that a fair statement from your mind?

3 MR. DAVE MCNALTY: Yes.

4 MR. PAUL BONWICK: And so I also took
5 the liberty of googling when you were commenting about
6 the -- using the search engine throughout that day. I
7 was a little confused in terms of a question related
8 to how many times, but more specifically to the fact
9 that if I understood you properly, you were,
10 throughout the day, trying to come up with different
11 word mixes, put them in, and see what come out -- up
12 in the terms of any competitors. Is that fair?

13 MR. DAVE MCNALTY: More or less.

14 MR. PAUL BONWICK: So I was doing the
15 same thing while you were providing evidence in-chief,
16 and I was ranging, with two-word and three-word
17 searches that were specifically relevant to what we're
18 doing, somewhere in the neighbourhood of 1.9 to 1.8
19 million inquiries every time you do it.

20 The reason I cite that as an example is
21 to suggest, and ask you, if you can't find a business
22 that offers comparable technology on the Internet,
23 would you believe it to exist?

24 MR. DAVE MCNALTY: Within -- within
25 the context of the same country, the same continent,

1 the same language, I -- I would come to that
2 conclusion.

3 MR. PAUL BONWICK: Fair enough. It's
4 interesting, when you do it today, which I -- or on
5 Friday, there was actually two (2) companies that
6 delivered the kind of technology, and I still don't
7 know that it's identical -- the kind of technology in
8 2019. One is located in North America, to your point
9 in terms of language and search, and the other one is
10 located in Britain, and even in 2019, that was all I
11 could -- could find.

12 There was some discussion. My friend,
13 Mr. Chenoweth, touched on it. And counsel for the
14 Inquiry asked you some questions about the meeting
15 that took place with Sprung and whether you felt it
16 was appropriate for the mayor or the deputy mayor to
17 attend.

18 I think it was the mayor, but it was
19 handwritten notes. If I understood your answer
20 properly, you didn't think it was your place to
21 comment either way on whether they should or shouldn't
22 be there but that it wasn't normal I think is maybe
23 would I took.

24 Is that a fair understanding of your
25 response?

1 MR. DAVE MCNALTY: Wasn't normal would
2 be accurate.

3 MR. PAUL BONWICK: Okay. Are you
4 familiar with the Association of Ontario
5 Municipalities, or AMO I think they refer to themself
6 as?

7 MR. DAVE MCNALTY: Yes.

8 MR. PAUL BONWICK: You would agree
9 that it's a representative body of municipalities all
10 across Ontario?

11 MR. DAVE MCNALTY: Yes.

12 MR. PAUL BONWICK: Are you aware of
13 the fact that they hold at least an annual conference,
14 and I believe they hold two (2) conferences every
15 year? You're aware they provide a form for elected
16 officials and senior staff to come together?

17 MR. DAVE MCNALTY: Yes.

18 MR. PAUL BONWICK: Are you aware of
19 the fact that the Federation of Canadian
20 Municipalities -- are you familiar with the Federation
21 of Canadian Municipalities? FCM I believe they refer
22 to themselves as.

23 MR. DAVE MCNALTY: Yes.

24 MR. PAUL BONWICK: Representative body
25 of municipalities all across Canada?

1 MR. DAVE MCNALTY: Yes.

2 MR. PAUL BONWICK: You'll be aware of
3 the fact then that they hold at least one (1)
4 conference per year where they invite representatives
5 from councils all across Canada as well as senior
6 staff to engage, participate, discuss issues?

7 MR. DAVE MCNALTY: Yes.

8 MR. PAUL BONWICK: Are you aware of
9 the fact that AMO -- oh, sorry, I wanted to go to one
10 (1) other one.

11 Are you familiar with the Good Roads
12 convention that's hosted at the Royal York each year?

13 MR. DAVE MCNALTY: Yes.

14 MR. PAUL BONWICK: You'll be aware
15 then of the fact that the Good Roads convention
16 provides opportunities for elected officials from the
17 Provincial and Federal Government to meet with their
18 municipal and county counterparts?

19 MR. DAVE MCNALTY: I ima -- I expect
20 that to be the case. I don't know it, yeah.

21 MR. PAUL BONWICK: In the -- in the
22 first two (2), the Ontario -- the Association of
23 Municipalities of Ontario and the Feder -- Federation
24 of Canadian Municipalities, are you aware of the fact
25 that they actually solicit vendors?

1 Are you aware of the fact that they
2 actually provide space for companies that are
3 interested in doing business with municipalities, to
4 set up booths and present their services or their
5 products?

6 MR. DAVE MCNALTY: I've -- I've never
7 been there, but I would understand that to be the
8 case.

9 MR. PAUL BONWICK: And so, following
10 your understanding of that being the case, this would
11 be an opportunity either through seminar or one (1) on
12 one (1) for elected officials to learn about new
13 technologies, new products, things that might enhance
14 the services that they provide to their constituents
15 back home.

16 Is that fair?

17 MR. DAVE MCNALTY: Yes.

18 MR. PAUL BONWICK: Would you think it
19 incumbent upon an elected official if they're
20 attending these conferences to explore these new
21 technologies, these new services for the benefit of
22 their constituents?

23 MR. DAVE MCNALTY: To a point.

24 MR. PAUL BONWICK: When we go to Good
25 Roads, are you aware of the fact that during the Good

1 Roads conference, I think it's a three (3) or four (4)
2 day conference, I can't recall, it's been '90 since I
3 was there, but that there are typically hospitality
4 suites coordinated, seminars coordinated by
5 engineering firms, planning firms, law firms, to some
6 degree, where they invite elected officials and senior
7 staff to learn more about their companies in a more
8 casual or social environment?

9 MR. DAVE MCNALTY: I understand that -
10 - I understand that to some extent.

11 MR. PAUL BONWICK: And so, having an
12 elected official attend a information session for new
13 technology, and we -- a patented technology, from
14 their perspective, would make reasonable sense just to
15 learn and understand more about it.

16 Was that -- is that a fair statement?

17 MR. DAVE MCNALTY: Yes.

18 MR. PAUL BONWICK: You were asked
19 questions about was it typical or a common occurrence
20 for the CAO to assume point of contact or
21 coordination. And if -- on Friday. And if I
22 understood your answer, it was that's not typical.
23 Typically, the department head would assume that role.

24 Is that a fair understanding of, in a
25 nutshell, what you said?

1 MR. DAVE MCNALTY: I believe so.

2

3 (BRIEF PAUSE)

4

5 MR. PAUL BONWICK: I think we can all
6 agree, or would you concur, that council was treating
7 this multimillion dollar expenditure as one (1) of
8 their, if not, their top priority?

9 MR. DAVE MCNALTY: It was a priority.
10 I can't say if it was a top priority, but it was a
11 priority.

12 MR. PAUL BONWICK: Okay. Fair enough.
13 Recognizing that it was a priority, they had attached
14 a sense of urgency or a pretty tight time line to
15 staff in terms of turning around reports and doing
16 analysis and things of that regard.

17 Is it your experience -- is it a common
18 occurrence of typical for the department head
19 responsible for the oversight of these facilities, or
20 potential facilities, to be away three (3) out of five
21 (5) of the weeks that you're tasked with this job?

22 Would that be a typical or a common
23 occurrence, for a department head to take -- or be
24 away for three (3) out of five (5) weeks during the
25 time you dealt with council's priority?

1 MR. DAVE MCNALTY: It wouldn't be
2 typical.

3 MR. PAUL BONWICK: I think we can all
4 agree that it's not a common occurrence or typical,
5 although it had happened in the past, that it's not a
6 typical or common occurrence for council to entertain
7 spending several millions of dollars on a recreational
8 facility.

9 That's not a common thing that happens
10 year in, year out. Would -- could you agree with
11 that?

12 MR. DAVE MCNALTY: Yes.

13 MR. PAUL BONWICK: And so, reflecting
14 on the fact that the department head is away three (3)
15 out of those five (5) weeks, reflecting on the fact
16 that it is a council priority and reflecting on the
17 fact that this is not an issue that's dealt with on a
18 regular basis, does it not there -- then make sense
19 that the mayor would, in fact, task or -- or mayor and
20 council would, in fact, that the CAO to be the point
21 of contact and the lead on a matter of this
22 significance?

23

24

(BRIEF PAUSE)

25

1 MR. DAVE MCNALTY: I suppose that's
2 reasonable if that was the question.

3 MR. PAUL BONWICK: Yep. Thank you. I
4 wanted to take a couple of minutes and just talk about
5 these vandal proof walls. And I -- I tried to --

6 THE HONOURABLE FRANK MARROCCO: I was
7 thinking of taking lunch. But if you're going to be a
8 short -- relatively short period of time and you'd
9 prefer to finish, I'll wait.

10 MR. PAUL BONWICK: I'm just moving on
11 to a new section, so we could take lunch.

12 THE HONOURABLE FRANK MARROCCO: Well,
13 is two -- two o'clock -- that gives everybody forty-
14 five (45) minutes. Is that -- is that too short?

15 MR. PAUL BONWICK: I can -- yeah.
16 I'll do whatever you ask me. I've got to drive across
17 town --

18 THE HONOURABLE FRANK MARROCCO: I wish
19 -- I wish --

20 MR. PAUL BONWICK: -- for my mom's for
21 lunch.

22 THE HONOURABLE FRANK MARROCCO: I -- I
23 wish more people would take that attitude, Mr.
24 Bonwick, but -- sorry, that causes --

25 MR. PAUL BONWICK: No, no. I can get

1 over and back in time, absolutely.

2 THE HONOURABLE FRANK MARROCCO: Two
3 o'clock then.

4 MR. PAUL BONWICK: Thank you.

5

6 --- Upon recessing at 1:19 p.m.

7 --- Upon resuming at 2:01 p.m.

8

9 THE HONOURABLE FRANK MARROCCO: Mr.
10 Bonwick...?

11 MR. PAUL BONWICK: Thank you, Your
12 Honour.

13

14 CONTINUED BY MR. PAUL BONWICK:

15 MR. PAUL BONWICK: I'll start where
16 where I left off, Mr. McNalty.

17 Ms. McGrann, I'm wondering -- I -- I
18 don't have the file number for the history of the
19 document, so I -- your staff was kind enough to copy
20 some of them for me. I'm just wondering if perhaps
21 the judge could get a copy of it.

22 THE HONOURABLE FRANK MARROCCO: I --
23 is this the document titled 'history'?

24 MR. PAUL BONWICK: Yes, thank you.

25 THE HONOURABLE FRANK MARROCCO: I have

1 one, thank you.

2 MR. PAUL BONWICK: Great. Thank you.

3

4 CONTINUED BY MR. PAUL BONWICK:

5 MR. PAUL BONWICK: Mr. McNalty, again,
6 on Friday, when I was paying very close attention to
7 what you were saying, but taking a few moments out
8 here and there to do little bit of Google searching.
9 I've found this background -- or -- on Sprung --
10 unfortunately, the Sprung part is missing from the top
11 of the page. I took the liberty of asking to have a
12 photocopy done just in case staff were not able to get
13 it downloaded in time. But of course, as always,
14 they're very efficient and got it done. Thank you.
15 But this is really just a paper copy of what's already
16 been entered into the Court book. I meant to show
17 this to you a short while ago.

18 Are you aware of the fact that Sprung
19 is a -- a Canadian -- a proud Canadian company located
20 out West?

21 MR. DAVE MCNALTLY: I understood that
22 at the time.

23 MR. PAUL BONWICK: Were you aware of
24 the fact that the company's origins -- or the company
25 started in -- at 19 -- sorry, 1887, through your

1 research?

2 MR. DAVE MCNALTY: I don't remember
3 that, but if that's the case, that's fine.

4 MR. PAUL BONWICK: Okay. Where I'm
5 going with this is just the sense of history expertise
6 that Sprung brings the table in terms of any of the
7 clients or purchasers that they're servicing.

8 I draw your attention down to the third
9 point -- or the third bullet on the first page. It
10 states:

11 "Currently, Sprung structures are
12 used in hundreds of different
13 applications in over one hundred
14 (100) countries for some of the
15 world's leading organizations."

16 You can see that, sir?

17 MR. JOHN MATHER: Your Honour, I
18 wonder if we should pull the document up on the screen
19 as well, so it can be part of the --

20 THE HONOURABLE FRANK MARROCCO: Yes.

21 MR. JOHN MATHER: -- broadcast
22 CJI11255?

23

24 CONTINUED BY MR. PAUL BONWICK:

25 MR. PAUL BONWICK: Thank you for that.

1 (BRIEF PAUSE)

2

3 MR. PAUL BONWICK: Scroll down just a
4 little wee bit, a little further. That's a good spot
5 right there. So basically, I just read the third
6 point off to Mr. McNalty. And then the fifth point
7 is, they have over twelve thousand (12,000) structures
8 in use at this time.

9 And as I mentioned, they're celebrating
10 a hundred and thirty (130) years of being in business,
11 and so I think if you would agree with me, they must
12 be doing something right with over -- with over twelve
13 thousand (12,000) structures in one hundred (100)
14 countries operating over a hundred and thirty (130)
15 years.

16 Would you agree with me on that point?

17 THE HONOURABLE FRANK MARROCCO: Well,
18 I -- I don't -- somebody -- isn't somebody from Sprung
19 you -- you're free to ask him whether he agrees or not
20 --

21 MR. PAUL BONWICK: Thank you.

22 THE HONOURABLE FRANK MARROCCO: -- but
23 -- but it -- it'll -- if there's someone from Sprung
24 testifying that -- they might have more direct
25 knowledge of the history of the company.

1 I appreciate that this is their
2 representation to the world at large, that -- that
3 these are their circumstances.

4 MR. PAUL BONWICK: Agreed entirely,
5 Your Honour, and I'm sure that the representatives of
6 Sprung will be happy to sing their own praises.

7 Where I'm -- where I'm coming from is
8 simply demonstrating to Inquiry, to yourself, and
9 seeing if the witness concurs with the history. I
10 think it establishes a -- a level of confidence in
11 terms of Council and others as it related to the
12 acquisition.

13 THE HONOURABLE FRANK MARROCCO: Or if
14 he uncovered it in the course of his research.

15 MR. PAUL BONWICK: Thank you.

16

17 CONTINUED BY MR. PAUL BONWICK:

18 MR. PAUL BONWICK: So I will move on
19 simply by suggesting, with twelve thousand (12,000)
20 structures in a hundred countries, operating for a
21 hundred and thirty (130) years, they -- would you
22 agree with me that they appear to represent a true
23 Canadian success story?

24 MR. DAVE MCNALTY: Yes, and I'm
25 assuming that this is current information, not 2012

1 information.

2 MR. PAUL BONWICK: Cor -- yes, that
3 would have been a hundred and twenty-seven (127)
4 years, and perhaps a few less structures.

5 MR. DAVE MCNALTY: And so -- but I do
6 recall seeing similar representation at the time.

7 MR. PAUL BONWICK: Thank you. And
8 that's really where I was taking the questions, is
9 just in terms of when you look at the site, it -- it's
10 hard not to get a level of confidence for a company
11 that's been around that long, that's accomplished so
12 much.

13 I would like to, however, move on to
14 the matter specific to the vandal proof walls, if I
15 may, and there was some questions related -- related
16 to that on Friday from counsel for the Inquiry.
17 Without -- and we can bring it up if you wish to, but
18 if my memory serves me correctly, the -- the aluminum
19 paneled walls, if I'm describing them properly, were
20 bud -- were budgeted somewhere around two hundred
21 thousand dollars (\$200,000).

22 Is that roughly an accurate number or
23 do you recall?

24

25

(BRIEF PAUSE)

1 MR. DAVE MCNALTY: I -- I don't think
2 I can recall what the budget number for that was.

3 MR. PAUL BONWICK: Would you -- and I
4 apologize. I don't have the budget in front of me,
5 but for the purpose of my line of questioning, we'll
6 simply take it that it was very expensive to have the
7 vandal proof walls put in place versus the standard
8 format that was used?

9 Is that fair?

10 MR. DAVE MCNALTY: It was an expensive
11 option.

12 MR. PAUL BONWICK: Thank you. Were
13 you aware of the fact that somewhere in the
14 neighbourhood of approximately 5 percent of Sprung
15 buildings globally actually use these types of vandal
16 proof walls?

17 MR. DAVE MCNALTY: I'm not aware of
18 that.

19 MR. PAUL BONWICK: Okay. You will be
20 aware of the fact that the municipality carries
21 blanket insurance policies on all their buildings?

22 MR. DAVE MCNALTY: Yes.

23 MR. PAUL BONWICK: Are you familiar
24 with what the deductible is for one (1) of those
25 insurance policies, or for the insurance policy,

1 should there be a break-in?

2 MR. DAVE MCNALTY: No. I could not
3 quote you a number. It'll be a -- a significant
4 number as a deductible.

5 MR. PAUL BONWICK: Five thousand
6 (5,000), quite likely?

7 MR. DAVE MCNALTY: Or more.

8 MR. PAUL BONWICK: Or more, right. An
9 old thing my dad used to say, locks keep out the
10 honest people.

11 But to the point at hand, can you
12 recall, as the facilities manager, how many times over
13 the course of the last five (5) years since you're
14 taken possession of the building that there has been
15 an incident of a break-in, of vandalism, at the
16 aquatics facility or the arena?

17 MR. DAVE MCNALTY: To my recollection,
18 there was a time -- the time during construction when
19 the pool was broken into.

20 There have been some other incidents
21 that didn't result in a break-in but resulted to
22 damage to the exterior membrane, and one in particular
23 that comes to mind is that what I -- what we assumed
24 were youth were climbing on the structures,
25 particularly on the arena structure. Those -- those

1 are the ones that come to mind right now.

2 MR. PAUL BONWICK: Thank you. Do you
3 have any idea on the cost associated with any of that
4 damage that was done?

5 MR. DAVE MCNALTY: I did not look
6 after the repair in any of those instances, so I don't
7 have those numbers in my head. I could -- I could
8 research them if I needed to but I don't know what
9 they are.

10 MR. PAUL BONWICK: Fair enough. It
11 would be safe to assume that if it was greater than
12 the deductible, any sort of substantive way, that the
13 insurance -- that the municipality would have chosen
14 to use the insurance policy versus paying money out of
15 their own pocket.

16 MR. DAVE MCNALTY: Yes.

17 MR. PAUL BONWICK: Okay. Are you
18 aware of the fact -- and again this comes from Google,
19 but in terms of vandalism and break-ins in the Town of
20 Collingwood, based on what I could find over the
21 course of the last five (5) years on Google, the
22 number one (1) location for vandalism and break-ins
23 was the high school and the second were car
24 dealerships.

25 Were you aware of that?

1 MR. DAVE MCNALTY: No.

2 MR. PAUL BONWICK: Okay. But you are
3 aware of course that they're both bricks and mortar
4 buildings?

5 MR. DAVE MCNALTY: Yes.

6 MR. PAUL BONWICK: I was trying to do
7 a calculation for purpose of our discussion, if the
8 vandal proof walls were somewhere between 180 to
9 \$200,000, there would have had to have been a
10 significant number of claims before you would ever get
11 to a point where you could justify that level of
12 expense.

13 Is that a fair statement?

14 MR. DAVE MCNALTY: That's fair.

15 MR. PAUL BONWICK: And so by virtue of
16 the fact that there hasn't been, is it fair to draw a
17 conclusion that the right decision was made in not
18 spending a couple of hundred thousand dollars of
19 taxpayers' money to avoid a problem that really hasn't
20 resulted in anywhere near those kinds of costs?

21 MR. DAVE MCNALTY: I'm not sure that I
22 can judge that. It wasn't my decision to make, and in
23 retrospect it seems to be the case.

24 MR. PAUL BONWICK: Thank you. So if I
25 understood you correctly, you would agree that the

1 municipality at the end of the day, granted it was not
2 your decision, but the municipality at the end of the
3 day has saved substantially by not spending on the
4 walls based on the occurrences and cost.

5 That's what I understood you to say
6 or...

7 MR. DAVE MCNALTY: That's fair.

8 MR. PAUL BONWICK: Thank you. I'd
9 like to spend a little bit of time on fixed-price
10 contract versus general contracts. So I would -- if -
11 - if Council awarded a fixed-price contract,
12 hypothetically, let's call it \$5 million, contract's
13 awarded, signed. You're the Facilities Manager.
14 You're dealing with ABC Contracting who's got to put
15 up the building and do everything for the \$5 million.

16 Would you typically -- once that
17 contract is awarded, would you typically get involved
18 with the project manager on their side to discuss line
19 items that went into the cost of that \$5 million?

20 For example, would you ask them if they
21 bid \$5 million to supply works, building and that
22 contract was awarded, how much -- what portion of that
23 was concrete or what portion was steel or what portion
24 was doors?

25 MR. DAVE MCNALTY: I suppose I would

1 be less concerned about knowing the numbers that they
2 put into their estimate, to their -- into their price,
3 as I would be to know what the deliverables were and
4 whether I was receiving the deliverables that were
5 intended.

6 MR. PAUL BONWICK: Fair enough. So
7 really, if I understand that properly, you'd just
8 effectively make sure that they're delivering on the
9 contract and the items contained in the contract and
10 the quality of the items that are contained in the
11 contract. That's -- that's your -- and on budget.
12 That would be your focus.

13 MR. DAVE MCNALTY: I believe so.

14 MR. PAUL BONWICK: Would you speak to
15 them about how much they might spend on engineering
16 consultants or how much they might spend on planning
17 consultants or consultants generally speaking, as part
18 of that \$5 million contract that was awarded?

19 MR. DAVE MCNALTY: Not unless there
20 was going to be a change to the contract for some
21 reason, then I might have an interest in that. But if
22 the project was being delivered as -- as specified,
23 then, as I said, I'd be more interested in the
24 deliverables than how they got there.

25 MR. PAUL BONWICK: In fact, building

1 on that answer, contracting for them to supply the
2 product that they've identified for the \$5 million as
3 long as they're operating within the terms of that
4 contract and delivering the product that they identify
5 within that product, it's really not in your mandate
6 nor your position to be asking how they broke that
7 down, what their profit margins were, how much they
8 spent on consultants, what they spent on interior
9 product.

10 You -- it just kind of would be
11 inappropriate for you to even go there, wouldn't it?

12 MR. DAVE MCNALTY: On the -- I guess
13 we're talking about XYZ Company.

14 The one (1) aspect that I can sort of
15 think of with regard to that is that if I had insight
16 into what their estimate was, then I could rationalize
17 that their estimate was consistent with what my
18 interpretation of the deliverables are.

19 MR. PAUL BONWICK: Okay.

20 MR. DAVE MCNALTY: So, for instance,
21 if they had \$10 in -- out of the 5 million for
22 painting, I would know that's not right, and so that
23 might lead to further discussion about that to make
24 sure that I was getting a full paint job.

25 MR. PAUL BONWICK: Fair enough. But

1 you could understand it now -- I'll close out on this
2 particular point. You typically would not engage, or
3 should you, in terms of asking them what portion of
4 their overall bid was specific to engineering,
5 planning, consulting, those types of what I'll refer
6 to as soft services?

7 MR. DAVE MCNALTY: That would be their
8 business.

9 MR. PAUL BONWICK: Thank you. In
10 terms of RFPs, you've dealt with those in the past,
11 either in hybrid form or otherwise, if I understood
12 you properly, from your time with Nacan and
13 subsequently with Collingwood Ethanol and then the
14 Municipality. Is that fair?

15 MR. DAVE MCNALTY: I participated -- I
16 lost the first part of your question there.

17 MR. PAUL BONWICK: In your experience
18 with Nacan, with Collingwood Ethanol, and the Town of
19 Collingwood, you've had experience with RFPs as well
20 as hybrids of RFPs in terms of securing work for
21 buildings. Correct?

22 MR. DAVE MCNALTY: yes.

23 MR. PAUL BONWICK: Are you familiar in
24 the construction industry a somewhat common practice
25 where some companies strive to secure or to deliver

1 the lowest possible bid meeting the minimum eligible
2 criteria with the intent that as changes come through,
3 that's where the profit will lie with them?

4 Are you familiar with that kind of
5 standard construction practice in some instances?

6 MR. DAVE MCNALTY: In some instances,
7 that happens, yes.

8 MR. PAUL BONWICK: A little humour for
9 twenty (20) seconds. I was going down the intercostal
10 with friends one time, and I seen a 85-foot yacht. It
11 had a 24-foot runabout on the back of it, and the
12 runabout was called The Contract, and the yacht was
13 called Extras to kind of paint the picture that it is
14 a common practice within the construction industry
15 with some companies to try to come in as low as they
16 possibly can in order to secure the contract. And
17 you've agreed with that.

18 I was trying to follow the line of
19 questioning with regards to budgets and, more
20 specifically, contingencies, and I have some
21 experience of that myself. If your -- if I understood
22 properly, WD -- WGD in consultation with yourself came
23 with a budget for a -- for lack of a better
24 description, I'll call it a bricks and mortar
25 standardized structure for the building. Correct?

1 MR. DAVE MCNALTY: Yes.

2 MR. PAUL BONWICK: And so we've spent
3 some time discussing what the contingencies should or
4 shouldn't be in that particular scenario and whether
5 they're 10 percent or whether they're 15 percent.

6 Standard industry practice would be to have a
7 contingency on there because you're effectively
8 overseeing the project. Is that a fair statement?

9 MR. DAVE MCNALTY: Yes.

10 MR. PAUL BONWICK: Whereas when you're
11 purchasing a -- when you're purchasing a turnkey
12 operation, as long as they deliver to the terms of the
13 agreement and exactly to the terms of the agreement
14 which they're legally obligated to.

15 Would you agree with that?

16 MR. DAVE MCNALTY: Yes.

17 MR. PAUL BONWICK: So then would you
18 also agree that they're taking on the responsibility
19 of the architect, the engineer, the plumber, the
20 electrician; that is all their responsibility.

21 Correct?

22 MR. DAVE MCNALTY: In the design build
23 scenario, yes.

24 MR. PAUL BONWICK: Right. And so
25 hypothetically if a wall needed to be moved as they

1 quite often do in a construction scenario, that's
2 really their responsibility to deal with that because
3 their dealings are holistically with the architect,
4 the engineer, the electrician. It's all -- that's
5 their responsibility to get it right, not your's.

6 MR. DAVE MCNALTY: Yes. On -- yes.

7 MR. PAUL BONWICK: On a design build
8 turnkey operation. And so this being the standard
9 construction practice, one would assume that they have
10 a contingency in their operation because they're
11 responsible for that -- all of that, not the customer.
12 Correct?

13 MR. DAVE MCNALTY: I assume that they
14 would have something built into their budget for that.

15 MR. PAUL BONWICK: Right. And so if
16 they are -- as no fault of the municipality's if they
17 have incorrectly located a wall or done some type of
18 design flaw, they don't get to come to the
19 municipality and ask for money out of a contingency.
20 That's got to come out of their contingency. That's
21 their responsibility. Correct?

22 MR. DAVE MCNALTY: As long as the
23 issue was their issue and not the request of someone
24 else, yes.

25 MR. PAUL BONWICK: Agree on a change

1 order. I'm strictly speaking to contingencies as they
2 relate to a contingency in terms of what's supposed to
3 happen on the construction site. And I think we've
4 agreed that that's their responsibility.

5 MR. DAVE MCNALTY: Yes.

6 MR. PAUL BONWICK: I was trying to
7 understand when I was looking at the documents over
8 the weekend and prior to that the role WDG (sic)
9 provided to the municipality, and it seemed -- it
10 appeared to have at least two (2) potential roles as
11 consultants. And could you first of all tell me what
12 is WGD?

13 MR. DAVE MCNALTY: An architectural
14 consulting firm.

15 MR. PAUL BONWICK: Thank you. And so
16 my understanding in the first part, WDG (sic) worked
17 with the Steering Committee or participants supporting
18 the Steering Committee to assist in developing a
19 budget and design for the \$35 million solution.

20 Is that correct?

21 MR. DAVE MCNALTY: Yes. Along with
22 some assessment of existing amenities.

23 MR. PAUL BONWICK: Fair. Could we
24 bring up EHH0000014?

25

1 (BRIEF PAUSE)

2

3 MR. PAUL BONWICK: If you could scan
4 up a little wee bit, please, so Mr. McNalty can read
5 the full email.

6 I can appreciate that you're not a
7 recipient on this email chain. It is for the
8 Executive Management Committee. It's from
9 Mr. Houghton, and I believe this email is -- if I
10 follow, the final proposal that was submitted to
11 Council is extracting numbers from the final proposal
12 and sharing that with the Executive Management
13 Committee. That's my guess.

14 But more specifically what I'd like to
15 do is go to line number 2. The permit fees -- permit
16 and design fees are stated in the report to be
17 2.5 million. Do you see that number?

18 MR. DAVE MCNALTLY: Yes.

19 MR. PAUL BONWICK: The contract
20 administration fees are estimated at 1.9 million. Do
21 you see that number?

22 MR. DAVE MCNALTLY: Yes.

23 MR. PAUL BONWICK: Collectively
24 \$4.4 million in design and contract administration
25 fees. Correct? Roughly.

1 MR. DAVE MCNALTY: Yes.

2 MR. PAUL BONWICK: So had Council
3 agreed to move forward with the \$35 million solution,
4 is it reasonable to assume that WDG (sic) would be
5 responsible for taking on the role of design and
6 contract administration?

7 MR. DAVE MCNALTY: There would be a
8 series of some consultants.

9 MR. PAUL BONWICK: Right.

10 MR. DAVE MCNALTY: And so if you
11 took -- I believe what this is saying is that if you
12 took all of those subconsultants -- the engineers, the
13 architects, the soils engineers, the structural
14 engineers -- put all of those together that that would
15 be what that total would represent.

16 MR. PAUL BONWICK: 4.4 million. The
17 design fees -- I was, again, doing some Google
18 searching on that and average design fees as a
19 percentage of a contract this size, contract
20 administration that seems in keeping with industry
21 norms.

22 But again my question was more specific
23 to WDG (sic). WDG (sic) -- yes -- WDG (sic) would in
24 a very significant way be part of this \$4.4 million
25 fee should Council decide to go down that path.

1 Correct?

2 MR. DAVE MCNALTY: It is WGD.

3 MR. PAUL BONWICK: Thank you. My
4 apologies to WGD.

5 MR. DAVE MCNALTY: 4.4 million on a
6 35 million project --

7 MR. PAUL BONWICK: Yeah.

8 MR. DAVE MCNALTY: -- would be much
9 more than WGD themselves would take out of the
10 project.

11 MR. PAUL BONWICK: Mr. McNalty, I do
12 understand that. I'm not suggesting that they get to
13 go home with 4.4 million and put it in their bank
14 account.

15 What I'm suggesting is that WGD would
16 have a significant role to play in providing services
17 as part of that 4.4 million. Is that correct?

18 MR. DAVE MCNALTY: Yes. They would
19 organize many of those services.

20 MR. PAUL BONWICK: Fair enough. And
21 that answered that question. And so WD -- WGD --I'm
22 never going to get that right -- WGD, by your own
23 admission, by what we've seen here, would have a very
24 significant role to play in terms of delivering the
25 \$35 million plus solution, had Council chose to do it.

1 And so that leads me to the second part
2 of the work that WGB (sic) was performing. So \$35
3 million solution. They're going to take a significant
4 role in terms of project administration and design --
5 contract administration and design, and then we're
6 asking them to help you put together an alternate
7 scenario whereby the cost is arguably half or less of
8 what's being prescribed here.

9 Is it not sort of a competitive
10 element, if I was in their shoes and I've got a \$35
11 million solution that I'd been working on; I've got
12 the opportunity to, in part, bill for \$4.5 million
13 worth of fees; and then in the same breath, you're
14 asking me to give you some level of assessment as it
15 relates to a concept that they really don't have much
16 to do with, won't have much to do with because it's
17 turnkey -- do you not see a competitive -- or
18 potential conflict as it relates to giving advice or
19 input on a turnkey operation that's less than half the
20 price where they'd really play no role, versus a \$35
21 million solution where they would play a significant
22 role?

23 MR. DAVE MCNALTY: In the second
24 scenario, they would be, certainly, receiving less
25 fees for their work; however, I would -- I would hope

1 that a reputable consultant that the Town would hire
2 to do that work would provide solid information on
3 either -- on either approach.

4 MR. PAUL BONWICK: I would hope so
5 too. To try to wrap it up, Council really had -- as
6 this -- this initiative advanced, Council really had
7 two (2) options on their plate. A lot of work -- a
8 lot of good work had been done through the members of
9 the Steering Committee and the consultants and other
10 participants to research, identify, and attach a cost
11 to a \$35 million facility.

12 There's one (1) scenario, correct?

13 MR. DAVE MCNALTY: Yes.

14 MR. PAUL BONWICK: And then in a much
15 shorter time frame, a lot of good work was done by
16 people like yourself, Ms. Almas, Ms. Leonard, Mr.
17 Houghton, Mr. Irwin, just to name a few, in terms of
18 presenting an alternate solution that Council had
19 directed you towards. Is that fair?

20 MR. DAVE MCNALTY: Yes.

21 MR. PAUL BONWICK: And so what they,
22 Council, effectively had was a \$35 million proposal,
23 and they -- and I'm not sure what the exact number is
24 on the second one. Do you recall?

25 MR. DAVE MCNALTY: Call it 12.

1 MR. PAUL BONWICK: So there was
2 approximately a \$12 million -- that's the number I've
3 got down here, by the way -- a \$12 million solution on
4 the other hand.

5 Would you agree that a \$35 million
6 investment in the community would have -- would have
7 very significant economic impact for some of the
8 parties that are involved?

9 MR. DAVE MCNALTY: I'm sorry. I'm not
10 understanding what parties you're talking about.

11 MR. PAUL BONWICK: Okay. Companies
12 that are involved, subsequent to -- or had Council
13 decided to approve a \$35 million plus multi-use
14 facility at Central Park, had they done that,
15 companies working on that \$35 million multi-use
16 facility -- is it fair to say they would have had
17 significant financial interest or benefit as a result
18 of that?

19 MR. DAVE MCNALTY: Yes, they would
20 have had a financial interest.

21 MR. PAUL BONWICK: And in some cases,
22 very significant, based on the fact that it's 35
23 million. Is that fair?

24 MR. DAVE MCNALTY: That's fair.

25 MR. PAUL BONWICK: If I could call up

1 email CJI0006030.

2

3

(BRIEF PAUSE)

4

5 MR. PAUL BONWICK: Go down to the
6 bottom of the page, please. I think there's one email
7 underneath it, right -- oh, sorry. I was really
8 looking for the date. So on September the 27th, 2011,
9 and I should back up just a little bit before that.
10 You've seen the final proposal. You're aware of the
11 fact that Armesco (sic) was interested in playing a
12 significant role should Council decide to move forward
13 with a \$35 million solution?

14 MR. DAVE MCNALT: I know that there
15 was a presentation by Ameresco where they were -- they
16 wanted to be part of that and perhaps part of funding,
17 even, if I recall correctly. I didn't see their
18 presentation and don't know the details of it.

19 MR. PAUL BONWICK: Thank you, and I
20 wasn't going to take you down into the detail but
21 rather just ask the question.

22 You were aware of the fact that Armesco
23 (sic) was wanting to play a very significant role
24 should Council decide to move forward with a \$35
25 million solution?

1 MR. DAVE MCNALTY: They made that
2 presentation, yes.

3 MR. PAUL BONWICK: Thank you. And
4 you'll be aware of the fact, of course, that Greenland
5 Engineering was part of the, if I can call it,
6 partnership group or part of the presentation with
7 Armesco (sic)? I assume you've seen them in the
8 presentation materials --

9 MR. DAVE MCNALTY: I don't believe I
10 have seen the presentation materials from Ameresco.
11 I'm not sure if at the time, I was aware of
12 Greenland's interest, but I became aware at some
13 point.

14 MR. PAUL BONWICK: We've heard
15 evidence from Ms. Proctor that the two (2) co-chairs
16 and the Steering Committee members were very
17 passionate about delivering on the hard work that they
18 have -- had conducted specific to delivering a \$35
19 million facility. Would you agree with that?

20 MR. DAVE MCNALTY: I recollect that,
21 yes.

22 MR. PAUL BONWICK: And so do you
23 recall, at any time, and if I could -- are you aware
24 of the fact that Mr. Mark Palmer is the president of
25 Greenland Engineering?

1 MR. DAVE MCNALTY: Yes.

2 MR. PAUL BONWICK: Could you please
3 bring up CJI0006038.

4

5 (BRIEF PAUSE)

6

7 MR. PAUL BONWICK: This is a email
8 from Mr. Palmer to Mr. Brian Saunderson, co-chair of
9 the Steering Committee. It speaks about the
10 Amerescso/Greenland team, active discussions with the
11 municipality. I'm not sure what that means exactly.
12 If we go down a little further, unless you want to
13 read it all, the last sentence states, in 2012:

14 "However, you can count on
15 Ameresco and Greenland to share its
16 story if via an independent inquiry
17 or similar process."

18 Were you aware of the fact that
19 Greenland or Mr. Saunderson were having discussions as
20 long ago as seven (7) years about going through a
21 judicial inquiry or an independent inquiry as a result
22 of the decision Council made?

23 MR. DAVE MCNALTY: No.

24 MR. PAUL BONWICK: Could you scroll
25 down a little further. Then -- you're not a recipient

1 of this, so you would have no idea. The last sentence
2 in the personal section it says:

3 "I will leave a copy of my comments
4 about the signed agreement at your
5 front -- at the front office for
6 you."

7 You're not familiar with what agreement
8 Mr. Palmer is speaking about to Mr. Saunderson?

9 MR. DAVE MCNALTY: No, I'm not.

10 MR. PAUL BONWICK: Are you aware of
11 whether or not any of the members on the steering
12 committee made an inquiry or were you made aware of
13 any inquiries made regarding potential conflicts of
14 interest by communicating directly with potential
15 service providers?

16 MR. DAVE MCNALTY: No.

17 MR. PAUL BONWICK: Thank you. So, to
18 go back, and with my -- I'll conclude with this.
19 Collingwood council had had -- Collingwood councils
20 had consecutively consistently and unsuccessfully
21 tried to address recreational needs in the community
22 for arguably twenty (20) years.

23 Collingwood council had clearly stated
24 in the 2010 election and followup after that that
25 finances were a major consideration. Collingwood

1 council had two (2) options available to them, a \$35
2 million facility, or a multi-use facility, and a
3 approximately \$12 million facility.

4 Based on reviewing it in that context,
5 can you appreciate then why council on an eight (8)
6 out of nine (9) vote chose to move expeditiously and
7 with the lowest cost contract?

8

9 (BRIEF PAUSE)

10

11 MR. DAVE MCNALTY: I -- I can
12 appreciate that that happened. But I think you have
13 to ask them that.

14 MR. PAUL BONWICK: And I appreciate
15 that. Maybe we'll get an opportunity to do that. I
16 was interested in your opinion on -- based on the
17 history as you've seen it and commented on it, that
18 that direction made sense from your perspective.

19 MR. DAVE MCNALTY: The directions seem
20 to fit with their mandate.

21 MR. PAUL BONWICK: Thank you, Your
22 Honour. That ends my questions.

23 THE HONOURABLE FRANK MARROCCO: Thank
24 you. Mr. Breedon...?

25

1 (BRIEF PAUSE)

2

3 CROSS-EXAMINATION BY MR. RYAN BREEDON:

4 MR. RYAN BREEDON: Mr. McNalty, am I
5 correct that BLT did not post a construction bond for
6 this project?

7 MR. DAVE MCNALTY: I believe that's
8 the case.

9 MR. RYAN BREEDON: Do you know why
10 that's the case?

11 MR. DAVE MCNALTY: That would have
12 been part of the price negotiation.

13 MR. RYAN BREEDON: Okay. Were you
14 involved in any discussions with BLT or -- or one (1)
15 of its representatives about a construction bond?

16 MR. DAVE MCNALTY: No.

17 MR. RYAN BREEDON: Were you involved
18 in any discussions internally at the Town about a
19 construction bond?

20 MR. DAVE MCNALTY: Not that I recall.

21 MR. RYAN BREEDON: Wou -- would it not
22 have been a typical thing to have a construction bond
23 in a project of this size?

24 MR. DAVE MCNALTY: Yes, it -- yes, it
25 would be typical to have some financial surety,

1 whether it be a bond or some other form of financial
2 surety, so that the -- the project could be completed
3 if -- if the prime contractor failed to do so.

4 MR. RYAN BREEDON: And what other form
5 of financial surety are you talking about?

6 MR. DAVE MCNALTY: Well, I mean, a
7 bond could take different forms. I mean, it's
8 essentially an insurance policy; there is a cost to
9 it.

10 Aside from that, the -- the payment
11 terms could be arranged so that you have -- you
12 haven't paid for what you haven't got.

13 MR. RYAN BREEDON: Okay. And that --
14 that's not the case in this contract?

15 MR. DAVE MCNALTY: Correct.

16 MR. RYAN BREEDON: The payment terms
17 are not structured in that way. We've dir -- we've
18 seen that already. Was there any sort of financial
19 security built into this contract?

20 MR. DAVE MCNALTY: It's been a long
21 time since I've seen the contract, but I don't recall
22 anything.

23 MR. RYAN BREEDON: And so, who made
24 that decision on behalf of the Town that the Town was
25 not going to require a construction bond or some other

1 satisfactory financial security?

2 MR. DAVE MCNALTY: I -- I don't know
3 who made the decision. I wasn't at the table.

4

5 (BRIEF PAUSE)

6

7 MR. RYAN BREEDON: Maybe another way
8 of asking it, or -- or to -- to -- who would you
9 expect to have raised that on behalf of the Town?

10

11 (BRIEF PAUSE)

12

13 MR. DAVE MCNALTY: Well, whoever was
14 negotiating the contract terms, which, at the time, I
15 believe to be Mr. Houghton.

16 MR. RYAN BREEDON: Okay. And we
17 haven't yet heard from Mr. Houghton, but based on the
18 tenor of Mr. Chenoweth's questions, I expect he is
19 going to say that he was relying on the input from
20 staff or something like that.

21 Who would you expect from the staff
22 side to have raised this with Mr. Houghton, if anyone,
23 or would you expect that Mr. Houghton would deal with
24 the construction bond issue himself?

25 MR. DAVE MCNALTY: I would -- I would

1 expect that Mr. Houghton, with his considerable
2 experience in major projects, would have been able to
3 address that himself.

4 MR. RYAN BREEDON: All right. And I
5 take it even sitting here today you don't know why
6 there was no construction bond or other security
7 negotiated as part of this project?

8 MR. DAVE MCNALTY: I don't know why.
9 It doesn't surprise me that on a design build project
10 there -- there may not be something specific as a
11 construction bond. But I would still just expect
12 there to be a protection build into the contract.

13 MR. RYAN BREEDON: Why does the fact
14 that it's a design build project have any bearing on
15 whether there would be a construction bond or
16 equivalent security?

17 MR. DAVE MCNALTY: Because it's a --
18 maybe because it's a different style of a negotiation.
19 I would expect that either a construction bond or a
20 favourable payment schedule would be in place in a
21 design build project.

22 MR. RYAN BREEDON: Right. I don't --
23 I don't want to interrupt you. Are...

24

25

(BRIEF PAUSE)

1 MR. DAVE MCNALTY: In -- in a more
2 traditional construction project with architects,
3 engineers and so on, the payment schedule is more
4 structured in terms of the amount of work that's been
5 performed. And so, that's often where the -- where
6 the performance bond comes into play.

7 So, the performance bond to me would be
8 very regular in that traditional style project and in
9 the design build project it could be a performance
10 bond, it could be a favourable payment schedule,
11 perhaps could be other things.

12 But I could see that there is the
13 opportunity for differences between the two (2)
14 structures.

15 MR. RYAN BREEDON: But the -- the goal
16 or the object of the performance bond -- if we take
17 the conventional case, the object of the performance
18 bond is to ensure that the project is completed within
19 the cost that has been agreed upon, correct?

20 MR. DAVE MCNALTY: Yes.

21 MR. RYAN BREEDON: All right. And
22 I'll suggest to you that that same consideration
23 applies in the design build context as well.

24 MR. DAVE MCNALTY: I agree.

25 MR. RYAN BREEDON: All right. And all

1 right. Well, let's move on.

2 So I want to turn now to the costing of
3 the pool just so we can get you finished today. Can
4 we take a look at that spreadsheet, please? It's
5 TOC0203364.

6

7 (BRIEF PAUSE)

8

9 MR. RYAN BREEDON: Okay. So this is
10 the spreadsheet that you have looked at now many
11 times. And my understanding is that this is the final
12 version of your spreadsheet. I think you've even got
13 the hard copy of it.

14 MR. DAVE MCNALTY: Is it dated
15 August 23rd on the top right?

16 MR. RYAN BREEDON: It should be if we
17 can -- all right. You see up right at the -- okay.

18 And you've testified that you prepared
19 this, sir?

20 MR. DAVE MCNALTY: Yes.

21 MR. RYAN BREEDON: And the purpose was
22 to set out the costing of the different options that
23 were being considered.

24 MR. DAVE MCNALTY: Yes, in a
25 comparable format.

1 MR. RYAN BREEDON: Right. And if we
2 look down at cell H20 -- oh, I've got the wrong cell
3 maybe. Just keep going down, please. Keep going.
4 All right. Sorry. There: H40.

5 This is the section dealing with the
6 pool structure. You can see that?

7 MR. DAVE MCNALTY: Yes.

8 MR. RYAN BREEDON: All right. And
9 what you did in this was first you took that number
10 that's at cell I40 -- \$3,734,113. Do you see that?

11 MR. DAVE MCNALTY: Yes.

12 MR. RYAN BREEDON: That number is a
13 number which you took from the BLT budget?

14 MR. DAVE MCNALTY: I believe so.

15 MR. RYAN BREEDON: Okay. And I'll
16 show it to you in a minute just to satisfy yourself.
17 But before we do that since we've got this one up --
18 and then to that number, you added \$400,000 for site
19 work. You see that?

20 MR. DAVE MCNALTY: Yes.

21 MR. RYAN BREEDON: Then that was your
22 estimate of the cost of the site work associated with
23 the pool?

24 MR. DAVE MCNALTY: Yes.

25 MR. RYAN BREEDON: And you also added

1 \$50,000 for design fees and permits?

2 MR. DAVE MCNALTY: Yes.

3 MR. RYAN BREEDON: And I take it you
4 did that because you expected that there would be some
5 costs associated with design fees and permits in
6 connection with the pool structure?

7 MR. DAVE MCNALTY: Yes.

8 MR. RYAN BREEDON: And then you added
9 a 5 percent contingency. You see that?

10 MR. DAVE MCNALTY: Yes.

11 MR. RYAN BREEDON: And I think you've
12 told us that a contingency would be absolutely
13 standard in any sort of construction project for a
14 municipality.

15 MR. DAVE MCNALTY: Yes.

16 MR. RYAN BREEDON: And then if we can
17 look at TOC0202991.

18

19 (BRIEF PAUSE)

20

21 MR. RYAN BREEDON: This is the
22 version -- the most recent version of the BLT budget
23 for the pool that you had, and, I mean, you've looked
24 at all these before. If we scroll down to page 6 and
25 down a bit lower, please. Okay. Just stop there.

1 So you'll see that what BLT had done is
2 they set out a budget for the various items that would
3 go into the pool, and then they -- on this page have a
4 section that is called options and mezzanine.

5 You see that?

6 MR. DAVE MCNALTY: Yes.

7 MR. RYAN BREEDON: Okay. And then
8 there are a number of items listed below that. And
9 then if you look at the bottom, you'll see that there
10 is a grand total for all -- the very last line -- and
11 that's the \$3,734,000 figure we saw on the other
12 spreadsheet?

13 MR. DAVE MCNALTY: Yes.

14 MR. RYAN BREEDON: Okay. And then
15 also they have a total less options and mezzanine
16 right above that, and that's \$3,225,660. You see
17 that?

18 MR. DAVE MCNALTY: Yes.

19 MR. RYAN BREEDON: Okay. So --

20 MR. FREDERICK CHENOWETH: I'm not
21 following my friend. Re-refer to that number?

22 MR. RYAN BREEDON: Yeah. It's the --
23 look in the very bottom right corner, Mr. Chenoweth --
24 the second from the bottom: \$3,225,660.

25 MR. FREDERICK CHENOWETH: Thanks,

1 Mr. Breedon.

2

3 CONTINUED BY MR. RYAN BREEDON:

4 MR. RYAN BREEDON: So what it appears
5 that you have done, Mr. McNalty, is that when you were
6 preparing your spreadsheet that we looked at a moment
7 ago, you took the grand total as being the figure for
8 the pool. Right?

9 MR. DAVE MCNALTLY: It appears so by
10 the number.

11 MR. RYAN BREEDON: Okay. And this
12 grand total was contemplating also a construction of a
13 mezzanine in the pool structure. Right? That appears
14 to be what's in here?

15 MR. DAVE MCNALTLY: Looking at some of
16 those detailed -- some of the line items, I would
17 agree.

18 MR. RYAN BREEDON: Yeah. Okay. Now,
19 the staff report -- if we go to that, please. It's
20 the CJI6146.

21

22 (BRIEF PAUSE)

23

24 MR. RYAN BREEDON: And to the third
25 page. All right. So you'll see this section deals

1 with the cost of the pool, and I know you're now very
2 familiar with this staff report.

3 You'll see in the second -- pardon
4 me -- in the third paragraph on this page, it says the
5 cost of the insulated architectural membrane structure
6 to cover the existing outdoor pool, et cetera,
7 et cetera, is estimate to be \$3,225,000.

8 You see that?

9 MR. DAVE MCNALTY: Yes.

10 MR. RYAN BREEDON: And then there was
11 also a suggestion that there should be an allowance of
12 an additional \$200,000 for essentially site works.

13 MR. DAVE MCNALTY: Yes.

14 MR. RYAN BREEDON: All right. So what
15 the -- whoever ultimately finalized these numbers for
16 the report, what they did is they took the BLT number
17 without any of the options that we just looked at.
18 Correct?

19 MR. DAVE MCNALTY: Yes.

20 MR. RYAN BREEDON: Okay. And they did
21 not include any amount for design or permit fees?

22 MR. DAVE MCNALTY: Correct.

23 MR. RYAN BREEDON: Why is that?

24 MR. DAVE MCNALTY: Unless they were
25 added into that \$3.225 million number. But there

1 would be no reason that I can think of now to not
2 include them.

3 MR. RYAN BREEDON: All right. And it
4 also, as you have testified, doesn't include any sort
5 of contingency.

6 MR. DAVE MCNALTY: Correct.

7 MR. RYAN BREEDON: And do you know why
8 that is?

9 MR. DAVE MCNALTY: I think on the
10 basis that it was proposed to be a design build
11 project with the -- that was specified up front that
12 there would be no need for a contingency.

13 MR. RYAN BREEDON: Now, the -- after
14 the Council approved this proposal, the contract was
15 signed a few days later.

16 MR. DAVE MCNALTY: Yes.

17 MR. RYAN BREEDON: Yes. And the
18 amount for the pool portion was actually
19 \$3,264,263.92. Are you aware of that?

20 MR. DAVE MCNALTY: If that's the
21 amount that was appended to the contract, then I would
22 agree.

23 MR. RYAN BREEDON: All right. And do
24 you know -- and it appears to me -- and we can go
25 through this is you'd like, but the documents speak

1 for themselves. It appears that what happens is some
2 of the options were ultimately included in the final
3 contract?

4 MR. DAVE MCNALTY: That would make
5 sense to me.

6 MR. RYAN BREEDON: Right. And do you
7 know, did Council ever approve this higher price, the
8 two -- the three million two hundred and sixty-four
9 thousand (3,264,000)?

10

11 (BRIEF PAUSE)

12

13 MR. DAVE MCNALTY: Not that I'm aware
14 of or that I can recollect.

15 MR. RYAN BREEDON: Right. And -- and
16 do -- do you know why that is, why nobody went back to
17 council and said, well, you've approved a \$3.225
18 million project but, in fact, we want to buy a \$3.264
19 million project?

20 MR. DAVE MCNALTY: I think that that
21 difference in the cost would have been seen as being
22 within staff's ability to reconcile. It's a very
23 small percentage of the total.

24 MR. RYAN BREEDON: All right. And --
25 all right. Thank you. Let's then look at the arena.

1 If we go back to TOC0203364, please.

2

3

(BRIEF PAUSE)

4

5 MR. RYAN BREEDON: All right. If you
6 scroll over to the right, we'll see the section that
7 deals with the insulated fabric membrane structure.
8 You've got that, sir?

9

MR. DAVE MCNALTY: Yes.

10

MR. RYAN BREEDON: All right. And
11 this one (1) -- could I ask the court operator to
12 actually highlight cell I3, please? It's the one (1)
13 with the figure on it. Okay.

14

So, you'll see in the equation bar
15 towards the top of the screen how that figure is
16 calculated?

17

MR. DAVE MCNALTY: Yes.

18

MR. RYAN BREEDON: Okay. And what it
19 is, it appears to me, is, first of all, the figure in
20 BLT's budget without options. That's the seven
21 million three hundred and ninety-two thousand zero
22 forty-seven (7,392,047) figure. You see that?

23

MR. DAVE MCNALTY: Yes.

24

MR. RYAN BREEDON: And then it appears
25 that you or whoever finalized this took that figure,

1 and then added in some of BLT's options. Is that
2 correct?

3 MR. DAVE MCNALTY: Yes.

4 MR. RYAN BREEDON: And the -- just
5 to... There's no easy way of doing this. Just to
6 give you an example, so the -- the first one (1) you
7 see is nineteen seventeen (1,917)?

8 MR. DAVE MCNALTY: Yes.

9 MR. RYAN BREEDON: All right. And if
10 we can then turn up --

11 MR. FREDERICK CHENOWETH: I'm sorry,
12 Your Honour, I'm behind as usual. The nineteen
13 seventeen (1,917) is where?

14 MR. RYAN BREEDON: So, we're looking
15 in the equation bar right where the court reporter
16 (sic) has his arrow. In the equation bar you see it
17 says,

18 "Equals seven three nine two zero
19 four seven (7,392,047) at point six
20 two (.62) plus nineteen seventeen
21 (1,917)."

22 THE HONOURABLE FRANK MARROCCO: It's
23 to -- excuse me, Mr. Breedon. It's to the left there,
24 Mr. Chenoweth. Do you see the arrow?

25 MR. FREDERICK CHENOWETH: I -- I have

1 -- I'm now -- I now see it with the arrow there and
2 I'm now following. Thank you.

3 MR. RYAN BREEDON: Okay. Thanks

4

5 CONTINUED BY MR. RYAN BREEDON:

6 MR. RYAN BREEDON: All right. If we
7 look at TOC0202990, please.

8

9 (BRIEF PAUSE)

10

11 MR. RYAN BREEDON: Page 4. So, this
12 is the BLT budget for the arena. And scroll down,
13 please. All right, stop there.

14 So, the very first item under,
15 "Options," you'll see it's two (2) compartment sinks,
16 and the total cost is nineteen seventeen (1,917)?

17 MR. DAVE MCNALTY: Yes.

18 MR. RYAN BREEDON: And what -- what
19 I'll suggest to you is that, when you prepared this
20 spreadsheet you looked at the options and picked the
21 ones that you thought the Town would need, and then
22 added those back into the cost, one (1) of them being
23 two (2) compartment sinks?

24 MR. DAVE MCNALTY: It appears so.

25 MR. RYAN BREEDON: Okay. And can we

1 go back to the spreadsheet, please? I'm not going to
2 go through all of them because it's very tedious, but
3 there is one (1) I do want to ask about.

4

5 (BRIEF PAUSE)

6

7 MR. RYAN BREEDON: So, you'll see the
8 third last number that was included, eighty-three
9 thousand six hundred and two fifty (83,620.50)?

10 MR. DAVE MCNALTY: Yes.

11 MR. RYAN BREEDON: That's the cost of
12 the elevator?

13 MR. DAVE MCNALTY: It may be.

14 MR. RYAN BREEDON: We'll go back to
15 the budget, please.

16

17 (BRIEF PAUSE)

18

19 MR. RYAN BREEDON: And again, back to
20 page 4 where we were looking before. All right. So,
21 you'll see the fourth from the bottom of the options
22 section, right towards the bottom of the screen,
23 "Elevator." It's number 17-111?

24 MR. DAVE MCNALTY: Yes.

25 MR. RYAN BREEDON: And the cost of

1 that is the eighty-three thousand six-o-two fifty
2 (83,602.50)?

3 MR. DAVE MCNALTY: Yes.

4 MR. RYAN BREEDON: All right. And so,
5 that was one (1) of the options that you had added
6 back in when you were preparing the spreadsheet?

7 MR. DAVE MCNALTY: It appears so.

8 MR. RYAN BREEDON: Okay. Fair enough.
9 And -- and the point, I guess, is that the elevator
10 was one (1) of the options that BLT offered, not
11 something that was included in the base price?

12 MR. DAVE MCNALTY: Correct.

13 MR. RYAN BREEDON: Okay. And then if
14 we go back to the spreadsheet, please.

15

16 (BRIEF PAUSE)

17

18 MR. RYAN BREEDON: And again, after
19 calculating out that figure you added to it the site
20 development cost, the \$1.64 million figure that you've
21 talked about a fair bit today?

22 MR. DAVE MCNALTY: Yes.

23 MR. RYAN BREEDON: And that -- that,
24 you've told us, came from the WDG report?

25 MR. DAVE MCNALTY: Yes.

1 MR. RYAN BREEDON: And then you added
2 a hundred thousand dollars for design fees and permits
3 for the Sprung structure?

4 MR. DAVE MCNALTY: Yes.

5 MR. RYAN BREEDON: And again, you
6 thought there would be design fees and permit costs
7 associated with the Sprung structure?

8 MR. DAVE MCNALTY: Certainly, a
9 building permit if nothing else --

10 MR. RYAN BREEDON: Right.

11 MR. DAVE MCNALTY: -- but, yes.

12 MR. RYAN BREEDON: And you had the --
13 BLT's budget that this point, so you knew what was and
14 was not included in -- in what BLT was proposing to
15 do?

16 MR. DAVE MCNALTY: Yes.

17 MR. RYAN BREEDON: Okay. And then you
18 also again added a contingency fee of 5 percent,
19 you've -- you've told us, and we see that, correct?

20 MR. DAVE MCNALTY: Yes.

21 MR. RYAN BREEDON: All right. And the
22 -- then if we go back to the staff report, the
23 CJI6146, please.

24

25 (BRIEF PAUSE)

1 MR. RYAN BREEDON: On page 4 -- scroll
2 down. All right. So, this paragraph that you've read
3 many times, the second from the bottom of the screen
4 here:

5 "The estimated cost for the supply
6 and construction of the basic
7 insulated architectural membrane
8 arena is seven million three hundred
9 and ninety-two thousand
10 (7,392,000)."

11 Just stop there for a second. So, that
12 number is the number that BLT had proposed without any
13 options whatsoever, correct?

14 MR. DAVE MCNALTY: Okay, yes. I -- I
15 don't remember the number from the other page, but if
16 you're saying so, I -- yes.

17 MR. RYAN BREEDON: All right. And I -
18 - I'll -- I can show you.

19 THE HONOURABLE FRANK MARROCCO: I'll
20 take your -- we'll take your -- we'll take your word
21 for it, unless there's some -- somebody objects to --

22 MR. RYAN BREEDON: Okay. Thank you.

23

24 CONTINUED BY MR. RYAN BREEDON:

25 MR. RYAN BREEDON: And -- and you've

1 been asked this, I think, but -- so, again, this has
2 stripped out the design fees and the contingency that
3 you had added?

4 MR. DAVE MCNALTY: I believe so, yes.

5 MR. RYAN BREEDON: And who made that
6 decision?

7

8 (BRIEF PAUSE)

9

10 MR. DAVE MCNALTY: Is that the same
11 number that was in my draft of the report? Do you
12 recall?

13 MR. RYAN BREEDON: I -- I don't recall
14 offhand.

15 MR. DAVE MCNALTY: So who made that
16 decision to put that number there without the site
17 works and contingency? Is that the question?

18 MR. RYAN BREEDON: Yes. And the
19 design permit costs.

20 MR. FREDERICK CHENOWETH: Your Honour,
21 I wonder if it's useful, given the nature of the
22 question, to have a look at the report that this
23 witness is -- his report, as it was described, that
24 he's referring to, just to make sure we're on track
25 here. I guess -- I guess I'm -- I'm asking to have it

1 looked at.

2 THE HONOURABLE FRANK MARROCCO: Get an
3 answer, and then we'll put the document up there --

4 MR. RYAN BREEDON: Sure.

5 THE HONOURABLE FRANK MARROCCO: -- and
6 so we'll do it with both.

7

8 CONTINUE BY MR. RYAN BREEDON:

9 MR. RYAN BREEDON: Sure.

10 MR. DAVE MCNALTY: The numbers that --
11 that went into my draft report from the night before,
12 I think, stemmed from the discussion that we had as to
13 how we were going to present the information the night
14 before.

15 MR. RYAN BREEDON: Well, your
16 spreadsheet from the day -- your spreadsheet is dated
17 the day before, right? It's dated the 23rd of August.

18 MR. DAVE MCNALTY: 23rd, yes.

19 MR. RYAN BREEDON: And in that
20 spreadsheet, you have included -- you, yourself,
21 putting it together, included cost for design permits,
22 contingency, site works.

23 MR. DAVE MCNALTY: Yes.

24 MR. RYAN BREEDON: How -- how did we
25 go from that to a final report given to Council that

1 doesn't include any of those costs with respect to the
2 Sprung structure?

3 MR. DAVE MCNALTY: I -- I don't know
4 if I have an answer for that at this point in time,
5 other than that's the -- that's the conversation that
6 evolved. Certainly, my intention at -- at this point
7 and all along was to have an objective comparison
8 between the two (2).

9 MR. RYAN BREEDON: Right, by -- by
10 presenting the two different alternatives on an even
11 basis, an apples-to-apples basis, correct?

12 MR. DAVE MCNALTY: Correct.

13 MR. RYAN BREEDON: Right. So -- so --
14 and that was why you prepared the spreadsheet in the
15 way that you did.

16 MR. DAVE MCNALTY: Yes.

17 MR. RYAN BREEDON: And -- and we've
18 all go -- gone through it. It includes different
19 contingencies. You've explained your rationale behind
20 how you determined what was appropriate in the
21 different cases. It included site works. It included
22 the -- those various components.

23 What I'm trying to understand is how,
24 when the final report is delivered to Council, the
25 decision was made to strip out all of those

1 contingencies, site works, et cetera, from the price
2 associated with a Sprung structure.

3 MR. DAVE MCNALTY: I don't -- I don't
4 recall how -- how that was arrived at as -- as the
5 approach.

6 MR. RYAN BREEDON: Okay. Do you know
7 --

8 MR. DAVE MCNALTY: I don't -- I don't
9 recall, and I'd be interested now to see what number
10 was in my report.

11 MR. RYAN BREEDON: We'll pull it up in
12 one second.

13 MR. DAVE MCNALTY: Yes.

14 MR. RYAN BREEDON: Do you know who
15 made the decision?

16 MR. DAVE MCNALTY: I -- I can't say I
17 know who made the decision. It probably was made that
18 next morning.

19 MR. RYAN BREEDON: Can we then --

20 MR. DAVE MCNALTY: Or --

21 MR. RYAN BREEDON: -- pull -- pull up
22 the witness's draft report.

23 MR. JOHN MATHER: The version of the
24 report that was circulated at 11:45 on August 23rd is
25 TOC0203891.

1

2 CONTINUED BY MR. RYAN BREEDON:

3 MR. RYAN BREEDON: And that -- that's
4 the version that you're asking to see, sir, the one
5 that you sent that late in the evening? Okay.

6 MR. DAVE MCNALTY: Yes.

7 THE HONOURABLE FRANK MARROCCO: Let --
8 let him see it, and if it's not what you were looking
9 for, we'll pull up another one.

10

11 CONTINUED BY MR. RYAN BREEDON:

12 MR. RYAN BREEDON: Okay, so scroll
13 down to -- I -- I'm sure it's also on page 4 of this
14 version. Okay. So it -- it looks like, in the draft
15 that you circulated, sir, the cost associated with the
16 Sprung structure is 7,476,000. Do you see that?

17 MR. DAVE MCNALTY: Yes.

18 MR. RYAN BREEDON: All right. So that
19 -- I'm not certain just how that fig -- well, maybe
20 you can tell us. Do you know how that figure was
21 calculated?

22 MR. DAVE MCNALTY: It would be a
23 combination of numbers off this spreadsheet.

24 MR. RYAN BREEDON: All right. I spent
25 some time puzzling through it. I couldn't figure it

1 out, but it -- it certainly would not include the site
2 services or the contingency.

3 MR. DAVE MCNALT: Correct.

4 MR. RYAN BREEDON: All right. And --
5 and I suppose it might or might not include something
6 for design permits. That -- that could be the \$80,000
7 difference.

8 MR. DAVE MCNALT: It could be.

9 MR. RYAN BREEDON: All right. You
10 don't know?

11 MR. DAVE MCNALT: I don't remember.

12 MR. RYAN BREEDON: So I guess maybe
13 this will help. Do you know, then, who made the
14 decision to not include the site services and the
15 construction contingencies in the staff report with
16 respect to the Sprung structure?

17 MR. DAVE MCNALT: I can -- I can only
18 reflect that the direction that these numbers were
19 going to be put in the report, how they were going to
20 be represented in the report, may have been part of
21 the discussion on Thursday night, the evening of the
22 23rd. Again, I can't remember any specifics of that
23 conversation, so beyond that, I don't know.

24 THE HONOURABLE FRANK MARROCCO: The --
25 the direction -- well, regardless of the specifics of

1 the conversation, the direction appears to be that the
2 Sprung structure cost will go down because it goes
3 down.

4 MR. DAVE MCNALTY: That's what the
5 numbers seem to present.

6 THE HONOURABLE FRANK MARROCCO: I'm
7 not suggesting you did that. I'm just saying that's
8 the direction the conversation must have gone.

9 MR. PAUL BONWICK: Your Honour, if you
10 check the budget that he showed just a minute ago, I
11 think it's at the top. The BLT budget.

12 THE HONOURABLE FRANK MARROCCO: That's
13 fine. Just get an answer.

14 MR. DAVE MCNALTY: Yes, I -- the
15 impact was to show lower numbers in the report.

16 THE HONOURABLE FRANK MARROCCO: For
17 the Sprung structure.

18 MR. DAVE MCNALTY: And -- and, in my
19 mind, was to present a comparable number for the --
20 for the pre-eng steel structure.

21 THE HONOURABLE FRANK MARROCCO: That
22 number goes up.

23 MR. DAVE MCNALTY: Well, but this
24 number, 10,592, is less than the number that's on my
25 August 23rd spreadsheet. The number that's on my

1 August 23rd spreadsheet is 11,741. So -- but then I'm
2 rec -- recalling now that maybe the difference here is
3 the mezzanine.

4 THE HONOURABLE FRANK MARROCCO: That's
5 a million.

6 MR. DAVE MCNALTY: Yes.

7 THE HONOURABLE FRANK MARROCCO: Okay.
8 All right, Mr. Breedon, I'm sorry. I interrupted your
9 line of cross-examination.

10 MR. RYAN BREEDON: No, no, no, thank
11 you, Your Honour.

12 THE HONOURABLE FRANK MARROCCO:
13 Actually, what I might -- what I might do is take a
14 five (5) or ten (10) minute break if -- if this is a
15 convenient time; if not, I'll take it later or I won't
16 take it at all.

17 MR. RYAN BREEDON: Well, I -- I'm just
18 -- I understand from staff that we have to be out of
19 here at four o'clock again for a council meeting.

20 THE HONOURABLE FRANK MARROCCO: And I
21 want you to finish, if I can.

22 MR. RYAN BREEDON: So I'm happy to
23 just press on if that's convenient.

24 THE HONOURABLE FRANK MARROCCO: Let's
25 go.

1 MR. RYAN BREEDON: Unless -- unless
2 you need a break. All right, so --

3 MR. FREDERICK CHENOWETH: Your Honour,
4 before we continue this line of questioning, I -- I
5 would like a brief break so I might have an
6 opportunity to check some other numbers in other
7 documents so I can follow this cross-examination.

8 THE HONOURABLE FRANK MARROCCO: We'll
9 take a brief break but --

10 MR. FREDERICK CHENOWETH: Take about
11 five (5) minutes.

12 THE HONOURABLE FRANK MARROCCO: -- I
13 can tell you we're going to sit a few minutes later
14 then because we're going to finish this witness.

15 MR. FREDERICK CHENOWETH: Thank you,
16 Your Honour.

17

18 --- Upon recessing at 3:21 p.m.

19 --- Upon resuming at 3:27 p.m.

20

21 CONTINUED BY MR. RYAN BREEDON:

22 MR. RYAN BREEDON: Now Mr. McNalty,
23 the actual amount included in the contract with
24 respect to the arena was seven million seven hundred
25 and eight thousand two hundred and twenty-four dollars

1 and eighty-two cents (\$7,780,224.82).

2 Do you know?

3 MR. DAVE MCNALTY: If you say so.

4 MR. RYAN BREEDON: All right. And by
5 my math, that's about three hundred and sixteen
6 thousand dollars (\$316,000) higher than the amount
7 that had been approved by Council in -- in this report
8 that we were looking at a moment ago?

9 MR. DAVE MCNALTY: Yes.

10 MR. RYAN BREEDON: All right. And it
11 appears from reviewing the actual contract that what
12 happened is that some of the options got added back
13 in, correct?

14 MR. DAVE MCNALTY: Okay.

15 MR. RYAN BREEDON: Like the elevator,
16 for instance?

17 MR. DAVE MCNALTY: Yes.

18 MR. RYAN BREEDON: Okay. There's
19 elevator there now?

20 MR. DAVE MCNALTY: Yes.

21 MR. RYAN BREEDON: Yes. And was this
22 ever brought to Council?

23

24 (BRIEF PAUSE)

25

1 MR. DAVE MCNALTY: Not that I'm aware
2 of, unless it was some time later, as far as sort of a
3 reconciliation.

4 MR. RYAN BREEDON: All right. But --
5 but nobody, to your knowledge, went to Council and
6 obtained approval to enter into a contract for some
7 three hundred thousand (\$300,000) more than had
8 initially been approved?

9 MR. DAVE MCNALTY: Not that I'm aware
10 of.

11 MR. RYAN BREEDON: All right. And you
12 told me that, with respect to the pool, the reason you
13 thought that was -- was because the -- the amount was
14 immaterial within -- within --

15 MR. DAVE MCNALTY: Within staff's
16 ability to rationalize it.

17 MR. RYAN BREEDON: Okay. What about a
18 three hundred thousand (\$300,000) figure?

19 MR. DAVE MCNALTY: Three hundred
20 thousand (\$300,000) on 7.4 million is still a fairly
21 small percentage. Outside of this particular process,
22 we had sort of a -- a rule -- it may have been a
23 written rule, I'm not sure -- that if a -- if a
24 project were overspent while it was in progress, up to
25 10 percent, that you could proceed on that basis, but

1 once you reached a 10 percent point, that's where you
2 needed to get further Council approval.

3 MR. RYAN BREEDON: Okay. And wouldn't
4 that cover things like change orders, you know,
5 changes to the -- the project or unexpected costs, as
6 the project is being completed?

7 MR. DAVE MCNALTY: It would, yes.

8 MR. RYAN BREEDON: This is actually
9 signing the contract before anything at all has been
10 done, right?

11 MR. DAVE MCNALTY: Yes. It was after
12 the award, before anything else was done, so it was
13 fresh, yes.

14 MR. RYAN BREEDON: Well, was it within
15 staff's authority to take a -- an approved amount by
16 Council and then immediately add 10 percent to that?

17 MR. DAVE MCNALTY: That would, I
18 guess, be at the peril of the staff that made the
19 decision to do that. If -- if they felt that it was
20 defensible, and they were prepared to defend it, then
21 that would be their peril, I suppose.

22 At -- at some point in time, in terms
23 of reconciling it, it would go back to Council,
24 whether it would be in a future budget meeting, or in
25 -- in some -- in some format.

1 MR. RYAN BREEDON: To explain after
2 the fact why the project actually cost 'X' instead of
3 whatever had been originally -- originally approved?

4 MR. DAVE MCNALTY: Yes.

5 MR. RYAN BREEDON: Okay. Let's then
6 turn to the costing of the pre-engineered steel
7 building. Can we pull up TOC0218073, please?

8

9 (BRIEF PAUSE)

10

11 MR. RYAN BREEDON: All right. You've
12 testified about this document at some length. I
13 understand, I -- I think, that this document itself
14 may have been created after the fact, but sets a the
15 manner in which the twelve point three (12.3) figure
16 was calculated?

17 MR. DAVE MCNALTY: Yes.

18 MR. RYAN BREEDON: Okay. And what you
19 did is you started with the figure from the WG -- WDG
20 report?

21 MR. DAVE MCNALTY: Yes.

22 MR. RYAN BREEDON: All right. And
23 then you added a series of recommended upgrades, and
24 those totalled just over \$1 million.

25 We see that on this page?

1 MR. DAVE MCNALTY: Yes.

2 MR. RYAN BREEDON: And as I understood
3 your evidence, the recommended upgrades were intended
4 to capture the cost of making this building -- this
5 pre-engineered steel building LEED silver equivalent?

6 MR. DAVE MCNALTY: Yes.

7 MR. RYAN BREEDON: Okay. And -- and
8 the reason that that was necessary is because it was
9 your understanding that the Sprung building, as built,
10 was LEED silver equivalent?

11 MR. DAVE MCNALTY: Yes.

12 MR. RYAN BREEDON: Okay. So the --
13 the building as it sits today, and the building as it
14 had been proposed back at the time?

15 MR. DAVE MCNALTY: Yes.

16 MR. RYAN BREEDON: Okay. Now my
17 understanding, and I -- I understand that the evidence
18 that we're going to hear from other witnesses is going
19 to be that that is not correct, that the Sprung
20 building is not LEED silver equivalent as built.

21 Do you know, sitting here today,
22 whether that's true or not?

23 MR. DAVE MCNALTY: I don't know that,
24 because at that -- because once the contract was in
25 place, it was turned over to someone else to manage,

1 and I wasn't involved in those specific discussions.

2 MR. RYAN BREEDON: Okay. Fair enough.
3 You'll agree with me, I think, that if it is -- if I'm
4 correct that the building was not LEED silver
5 equivalent, that in order to make an apples-and-apples
6 comparison, you would not add these costs to the pre-
7 engineered steel building?

8 MR. DAVE MCNALTY: Correct. That was
9 -- correct.

10 MR. RYAN BREEDON: Okay. And -- and
11 so I think this is going to be very important for the
12 Inquiry. Who told you that the Sprung building as
13 built was LEED silver equivalent?

14 MR. DAVE MCNALTY: Sprung.

15 MR. RYAN BREEDON: Who?
16

17 (BRIEF PAUSE)
18

19 MR. DAVE MCNALTY: I -- I can't be
20 sure. There was three (3) individuals from Sprung
21 involved and at various meetings, but it was part of
22 their representation at those meetings that the
23 building as delivered was -- or as it would be
24 delivered, would be LEED silver equivalent.

25 MR. RYAN BREEDON: Who are the three

1 (3) individuals from Sprung who were involved?

2

3

(BRIEF PAUSE)

4

5 MR. DAVE MCNALTY: Tom Lloyd, Patrick
6 Mills, and, sorry, David MacNeil.

7

8 MR. RYAN BREEDON: Okay. Tom Lloyd,
9 Patrick Mills, and David MacNeil. And do I
10 understand, then, your evidence that this
11 representation was made by one (1) of those three (3)?

12

13 MR. DAVE MCNALTY: That's my
14 recollection.

15

16 MR. RYAN BREEDON: Okay. And -- and
17 you don't recall who told you, which -- which of the
18 three (3) it was?

19

20 MR. DAVE MCNALTY: No, and I also
21 can't recall at this point in time whether there was
22 any literature to support that. There may have been.

23

24 MR. RYAN BREEDON: All right. You
25 don't have any, though, now. You -- you haven't seen
any?

26

27 MR. DAVE MCNALTY: Everything was
28 passed on to the -- to the Inquiry.

29

30 MR. RYAN BREEDON: If we scroll down a
31 little bit on this page, you then told us you took out

1 the 25 percent contingencies that the architects had
2 added in, and then you added in the cost of the
3 second-floor mezzanine.

4 That's the nine hundred and ninety-five
5 thousand dollar (\$995,000) figure, correct?

6 MR. DAVE MCNALTY: Yes.

7 MR. RYAN BREEDON: And if we look at
8 the second page of this document, this sets out how
9 that nine hundred and ninety-five thousand dollars
10 (\$995,000) was calculated?

11 MR. DAVE MCNALTY: Yes.

12 MR. RYAN BREEDON: All right. And
13 you've testified that the first three (3) items and
14 then also the exterior windows were taken from the WGD
15 estimate?

16 MR. DAVE MCNALTY: Yes.

17 MR. RYAN BREEDON: And the balance of
18 the items on here came from BLT's budget?

19 MR. DAVE MCNALTY: I believe so.

20 MR. RYAN BREEDON: And -- and you've
21 explained you -- you did some adjustments to the
22 figures to reflect what you thought was going to
23 actually be built.

24 Now one (1) of the items that is on
25 here, if we scroll down, please.

1 (BRIEF PAUSE)

2

3 MR. RYAN BREEDON: You'll see the very
4 last item on this page is the elevator?

5 MR. DAVE MCNALTY: Yes.

6 MR. RYAN BREEDON: Okay. And so we
7 saw earlier, the elevator was actually an optional
8 item that was not included in BLT's base budget,
9 right?

10 MR. DAVE MCNALTY: Yes.

11 MR. RYAN BREEDON: And was not
12 included in the cost that was presented to Council for
13 the BLT -- or for the Sprung structure, because that
14 was just the based cost?

15

16 (BRIEF PAUSE)

17

18 MR. DAVE MCNALTY: Yes. Okay.

19 MR. RYAN BREEDON: All right.

20 MR. DAVE MCNALTY: That's the number
21 that was in the staff report, then, you're saying?

22 MR. RYAN BREEDON: Right, the 7 -- the
23 7.3 million figure.

24 MR. DAVE MCNALTY: Okay.

25 MR. RYAN BREEDON: So -- so in trying

1 to add in the cost of the mezzanine, you're -- you're
2 actually now overbuilding the steel structure as
3 opposed to what was being proposed to Council for the
4 Sprung structure. I mean, there are things that are
5 included in this costing that are actually not
6 included in the costing for the Sprung structure?

7 MR. DAVE MCNALTY: That may be the way
8 that the numbers turned out, but my intention was to -
9 - to make them equivalent, yes.

10 MR. RYAN BREEDON: I -- I appreciate
11 it might have been an inadvertent error, and we can go
12 through all of them. The only -- I picked the
13 elevator because I know what an elevator is.

14 But, you know, the elevator, for
15 instance, is an \$83,000 item that is being included in
16 the cost of the steel structure that we've seen was
17 not included in the base cost of the Sprung structure
18 which was approved by Council. You see that?

19 MR. DAVE MCNALTY: Yes.

20 MR. RYAN BREEDON: And so if you're
21 trying to present these projects on an apples-to-
22 apples basis, you have to include the same items in
23 both projects. I mean, that's what you were actually
24 trying to do, right?

25 MR. DAVE MCNALTY: Yes. Would it be

1 the case that that's the difference between the number
2 that was in my report from the evening of the 23rd and
3 what was in the final report?

4 MR. RYAN BREEDON: So it appears to me
5 that the -- the difference in those reports was the
6 full 995 and then an adjustment on the contingencies.
7 I haven't done the arithmetic to just make sure it's
8 exactly it, but I -- I think that's what happened.

9 So I -- I don't think the elevator is
10 the explanation, if that's your -- your question.

11 MR. DAVE MCNALTY: Okay.

12 MR. RYAN BREEDON: Anyways, all my
13 point is, is that it -- it appears from looking at
14 this that the cost -- the mezzanine costs are
15 overstated in this number that goes into the
16 calculation of the \$12.3 million. Correct?

17

18 (BRIEF PAUSE)

19

20 MR. DAVE MCNALTY: If, for instance,
21 the elevator was mishandled in that, the cost of the
22 elevator, then that's one thing, but also the basis
23 for the comparison was that it was using the same
24 numbers in both estimates.

25 So if -- if the number was wrong in one

1 (1) estimate, it was wrong in the other estimate, or -
2 - or if it was right in one (1) estimate, it was right
3 in the other estimate, and essentially using the same
4 numbers in both budgets, it would cancel each other
5 out as far as the comparison.

6 MR. RYAN BREEDON: Okay. I'm going to
7 come back to that because I have a couple of questions
8 about that also, but -- but -- but my point is that if
9 you've included the numbers in one (1) estimate and
10 not in the other estimate -- so, for instance, the
11 cost of the elevator is included in the -- in the
12 estimate for the cost of the pre-engineered steel
13 building and is not included in the cost of the Sprung
14 building, that's an error, correct?

15 MR. DAVE MCNALTY: That's an error.

16 MR. RYAN BREEDON: Okay. And not your
17 intention, I assume.

18 MR. DAVE MCNALTY: And I'm not sure
19 it's my error.

20 MR. RYAN BREEDON: And it may be not
21 your error, fair enough.

22 Now, the -- well, who made the decision
23 to present to Council the cost of the BLT structure
24 without any options at all?

25 MR. DAVE MCNALTY: I -- I -- I can't -

1 - I don't think I have an answer for that. I don't --
2 I think that's the same question as a little while
3 ago, and I -- I don't have an answer.

4 MR. RYAN BREEDON: All right. Now, we
5 know that the costs that BLT provided included in them
6 a -- a payment of 6.5 percent to Mr. Bonwick or to Mr.
7 Bonwick's company. I assume you've now seen that in
8 the Foundation Document.

9 MR. DAVE MCNALTY: Yes.

10 MR. RYAN BREEDON: All right. And --
11 and I presume you were not aware of that at the time.

12 MR. DAVE MCNALTY: I was not.

13 MR. RYAN BREEDON: Okay. Now, if the
14 Town -- if the Council had decided to go with a steel
15 building, that would have gone out for tender,
16 correct?

17 MR. DAVE MCNALTY: Yes.

18 MR. RYAN BREEDON: All right. And
19 presumably at least some of the bidders would not be
20 doing business with Mr. Bonwick.

21 MR. DAVE MCNALTY: If there was more
22 than one (1) bidder, I would hope that they wouldn't
23 be doing business with one -- with one (1) entity.

24 MR. RYAN BREEDON: Right. And so
25 presumably those who were not involved with Mr.

1 Bonwick would not be including a 6 1/2 percent
2 surcharge in their costs to cover that expense.

3 OBJ MR. PAUL BONWICK: Your Honour, just
4 an objection there. Nobody has determined that there
5 was any surcharge as a result of any fees charged.
6 Mr. Ryan's -- Breedon's assertion is false.

7 THE HONOURABLE FRANK MARROCCO: Well,
8 I guess he's -- I don't know if the word "surcharge"
9 is right. I guess he's referring to the evidence that
10 said they were told to add 6 1/2 percent. Whether
11 they did or not, we'll all find out, but -- but I -- I
12 assume that's what he's referring to.

13 Could you be a little clearer about
14 that?

15 MR. RYAN BREEDON: Well, that's right.

16

17 CONTINUED BY MR. RYAN BREEDON:

18 MR. RYAN BREEDON: So the -- the
19 evidence as I understand it, what we've seen and what
20 I anticipate we're going to hear, is that BLT
21 determined its costs and then added an additional 6.5
22 percent in order to pay Mr. Bonwick. And I appreciate
23 you, yourself, sir, don't have any knowledge of that.

24 All my question is, is that if this
25 matter had gone out to tender, there would have been

1 bidders who did not build in a 6 1/2 percent charge to
2 Mr. Bonwick, presumably.

3 MR. DAVE MCNALT: That's correct.

4 MR. RYAN BREEDON: Okay, thank you.

5 THE HONOURABLE FRANK MARROCCO: I
6 think that sort of question, Mr. Breedon, is more a
7 matter of argument than -- you know, Mr. McNalty did
8 the work he did, and he -- he is not the sole author
9 of these documents and --

10 MR. RYAN BREEDON: Of course.

11 THE HONOURABLE FRANK MARROCCO: -- and
12 he's not familiar with what's going on internally at
13 BLT, and we should be a little careful not to put too
14 much of a burden on him.

15 MR. RYAN BREEDON: Well, I appreciate
16 that, Your Honour. He's here, so I thought I'd ask
17 the question --

18 THE HONOURABLE FRANK MARROCCO: Well,
19 and he --

20 MR. RYAN BREEDON: -- but I'll move on
21 to --

22 THE HONOURABLE FRANK MARROCCO: -- and
23 he's doing a fine job in answering the questions, but
24 I just want to --

25 MR. RYAN BREEDON: That's fine.

1 THE HONOURABLE FRANK MARROCCO: -- be
2 a little careful with the assumptions.

3

4 CONTINUED BY MR. RYAN BREEDON:

5 MR. RYAN BREEDON: And I guess my only
6 point, sir, is that given that, given that fact, if
7 this had gone out to tender, the costs associated with
8 constructing the mezzanine may have been lower.

9 MR. DAVE MCNALTY: That would be the
10 objective of going out to tender, yes.

11 MR. RYAN BREEDON: Thank you. Okay.
12 The -- if we look at the staff report again, CJI6146,
13 and again back to -- I have it as page 69 on the --
14 the bottom figures. Yeah, that's -- that's it,
15 thanks.

16 And then Mr. Chenoweth was asking you a
17 number of questions about this. You've added at the
18 end of the third paragraph from the bottom that the
19 cost of the second floor improvements is included in
20 the above estimate, but a similar addition to the pre-
21 engineered steel arena would add up to a million
22 dollars to the investment. And I think I have your
23 evidence that that seems to have been a -- a mistaken
24 inclusion from an earlier draft.

25 MR. DAVE MCNALTY: Once -- once the

1 numbers in the above text were changed, then that
2 changed the context of that final sentence, yes.

3 MR. RYAN BREEDON: Right. So that --
4 that probably should have come out?

5 THE HONOURABLE FRANK MARROCCO: I just
6 want to stop you there, Mr. Breedon. I think this is
7 the point I'm trying to make. It's an error but I'm
8 not sure who the author of the error is, and I don't
9 think the question should imply that it was -- if that
10 was the implication, which is what I took, that --
11 that Mr. McNalty made the error. There is an error
12 there.

13 MR. RYAN BREEDON: I -- I didn't mean
14 to imply that at all, Your Honour, or Mr. McNalty.

15

16 CONTINUED BY MR. RYAN BREEDON:

17 MR. RYAN BREEDON: All right. And
18 then the -- as we've seen, the -- the costs that lead
19 up to this \$12.3 million on the pre-engineered steel
20 building also includes site costs, design and permit
21 fees, and contingencies, right?

22 MR. DAVE MCNALTLY: Correct.

23 MR. RYAN BREEDON: Okay. And you've
24 been asked a number of questions about this. I want
25 to make sure just that I have your evidence. Di --

1 did somebody make a conscious decision or was there an
2 actual discussion of the -- surrounding the decision
3 to include those costs with respect to the pre-
4 engineered steel building?

5 MR. DAVE MCNALTY: I don't recall that
6 there was any discussion around that.

7 MR. RYAN BREEDON: Do you know who
8 made the decision to include those costs in the
9 costing of the pre-engineered steel building?

10 MR. FREDERICK CHENOWETH: Your Honour,
11 he's already answered that question during the course
12 of my cross-examination.

13 THE HONOURABLE FRANK MARROCCO: I'm
14 going to allow it.

15 MR. FREDERICK CHENOWETH: It's the
16 same question. And I wonder if that's useful.

17 THE HONOURABLE FRANK MARROCCO: I'll
18 hear the answer.

19 MR. DAVE MCNALTY: There was a -- I
20 don't know when exactly those numbers were changed in
21 the report. There was an earlier draft that morning,
22 as well, which was the -- the first -- the first
23 revisit to the draft that I provided the night before.

24 I don't know whether the numbers were
25 changed in that draft or whether they were changed

1 during the discussion that ensued that morning, of the
2 24th.

3

4 CONTINUED BY MR. RYAN BREEDON:

5 MR. RYAN BREEDON: Okay. Di -- did
6 somebody actually make the decision to make that
7 change?

8 MR. DAVE MCNALTY: I didn't.

9 MR. RYAN BREEDON: Okay.

10 MR. DAVE MCNALTY: I -- I don't know
11 if someone else did.

12 MR. RYAN BREEDON: And would there be
13 any reason if you were trying to present the two (2)
14 projects on an apples-to-apples basis to exclude all
15 of those costs in the Sprung building and include all
16 of those costs in the pre-engineered steel building?

17 MR. DAVE MCNALTY: Not in my -- not in
18 my mind.

19

20 (BRIEF PAUSE)

21

22 MR. RYAN BREEDON: And can we look at
23 TOC0201266, please?

24

25 (BRIEF PAUSE)

1 MR. RYAN BREEDON: Page 10.

2

3 (BRIEF PAUSE)

4

5 MR. RYAN BREEDON: All right. Mr.
6 Chenoweth asked you a number of questions this morning
7 about whether any of these costs were included in
8 BLT's bid.

9 And I understood your evidence to be
10 that some of these site costs may have been included
11 in BLT's bid. Is that right?

12 MR. DAVE MCNALTY: Yes.

13 MR. RYAN BREEDON: Okay. And just so
14 that we are all clear, I want to know which of these
15 costs were included in BLT's bid?

16 MR. DAVE MCNALTY: Based just on
17 looking at this list...

18

19 (BRIEF PAUSE)

20

21 MR. DAVE MCNALTY: If I recall, I
22 think the ball diamond was taken down in the end by
23 the Town prior to BLT being onsite. And the horse
24 barn that was there was taken down by the Town.

25 So, I can't think of any site

1 demolition that would have been included in BLT's.

2 MR. RYAN BREEDON: Okay.

3 MR. DAVE MCNALTY: Cut and patch. It
4 was more of a site thing.

5 MR. RYAN BREEDON: And sorry, what is
6 "cut and patch" for those of us who are not in the
7 construction business?

8 MR. DAVE MCNALTY: If you were putting
9 a new sewer, for instance, into a property, you may
10 have to cut the road asphalt so you can make the
11 connection, and then -- and then replace that after
12 the fact, that sort of damage to other infrastructure
13 perhaps.

14 MR. RYAN BREEDON: That would be
15 outside of the scope of BLT's contract?

16 MR. DAVE MCNALTY: That's what I would
17 assume, yes.

18 MR. RYAN BREEDON: All right. And
19 then site excavation, I think you told Mr. Chenoweth,
20 would have been included, or at least some site
21 excavation?

22 MR. DAVE MCNALTY: Yes. Probably a
23 lot of that site excavation and certainly a lot, if
24 not most, of building backfill would be, I would
25 think, included in BLT's scope.

1

2

(BRIEF PAUSE)

3

4

MR. DAVE MCNALTY: It would be a small component of electrical site services and mechanical site services that would be included in BLT's estimate because of the way that they define the perimeter of their scope of work.

9

MR. RYAN BREEDON: And can I just interrupt you there just so we are on the same page? Electrical site services, as I understand it, are the costs of bringing in power to the building?

13

MR. DAVE MCNALTY: In this case, it would have been from the street to a transformer onsite and up to that point, 10 feet from the building.

17

MR. RYAN BREEDON: Right. And -- and mechanical site services is the same thing but with respect to sewer and water?

20

MR. DAVE MCNALTY: Yes. And there was also a natural gas service, but the same thing.

22

MR. RYAN BREEDON: All right. And then what about any of the other costs, the paving, concrete curb, sidewalks, fencing, gates, et cetera? Is any of that included in BLT's contract?

25

1

2

(BRIEF PAUSE)

3

4

MR. DAVE MCNALTY: If you consider
5 that 10-foot perimeter -- perimeter of the building,
6 there is an asphalt strip up each side of the building
7 which I would think would have been included.

8

And whatever concrete sidewalks would
9 be sort of right outside the door of the facility.
10 The rest of it I would say would be site works.

11

MR. RYAN BREEDON: Okay. Are you able
12 to estimate what the percentage of those costs
13 included in the BLT contract would be?

14

15

(BRIEF PAUSE)

16

17

MR. DAVE MCNALTY: Something like a
18 hundred and fifty thousand (150,000).

19

MR. RYAN BREEDON: Okay. Of the total
20 amount?

21

MR. DAVE MCNALTY: Of the one point
22 one six four (1.164).

23

MR. RYAN BREEDON: Okay. Thank you.
24 Thank you very much, sir. Those are my questions.
25 Thank you.

1 MR. JOHN MATHER: Yes, Your Honour.

2

3 RE-DIRECT EXAMINATION BY MR. JOHN MATHER:

4 MR. JOHN MATHER: If I could actually
5 turn that document back up, and going back to the same
6 page. So, Mr. McNalty, I have a couple ex -- other
7 questions about these numbers. And then, hopefully,
8 you won't have to look at them for a little bit.

9 You may recall it was suggested to you
10 by Mr. Chenoweth that for certain of these numbers,
11 for instance, site demolition or excavation, that a
12 component of those numbers would be for the building
13 itself as well as site servicing.

14 Do you recall that?

15 MR. DAVE MCNALTLY: Yes.

16 MR. JOHN MATHER: And so, I take it
17 from your answers to Mr. Breedon everything below
18 mechanical site servicing is, for the most part, a
19 site servicing cost or is a site servicing cost?

20 MR. DAVE MCNALTLY: Aside from that
21 sort of 10-foot peram -- perimeter around the
22 building, yes.

23 MR. JOHN MATHER: And -- and
24 similarly, with electrical site services and
25 mechanical site services?

1 MR. DAVE MCNALTY: Yes, it would --
2 everything up to that 10-foot parameter around the
3 building would be site, and small component would be
4 getting it into the building.

5 MR. JOHN MATHER: So, if we could pull
6 up -- I'm sorry -- TOC218072.

7

8 (BRIEF PAUSE)

9

10 MR. JOHN MATHER: Sorry. One (1)
11 moment. I'll come back to that in a moment.

12 Mr. Bonwick was asking you questions
13 about had the Central Park Steering Committee's
14 recommendation been followed whether or not WGD would
15 have some role in the development or the construction
16 of the multi-use facility.

17 Do you recall those questions?

18 MR. DAVE MCNALTY: Yes.

19 MR. JOHN MATHER: Had WGD wanted to
20 have a role in the construction, would they have had
21 to participate in an RFP to do so?

22 MR. DAVE MCNALTY: They had already
23 participated in an RFP, and I would have to refer to
24 the terms and reference in that RFP to recall what --
25 how far their role could be extended.

1 MR. JOHN MATHER: If it was the case
2 that it didn't encapsulate that, they would have --
3 would there have been another RFP?

4 MR. DAVE MCNALTY: If it didn't
5 include that additional scope of work, then there
6 likely would have been another RFP to select a
7 consultant.

8 MR. JOHN MATHER: Okay. So you may also
9 recall that Mr. Chenoweth was asking you certain
10 questions about what numbers were before the EMC and
11 yourself, and they met on August 24th at 8:30 in the
12 morning. Do you recall those questions?

13 MR. DAVE MCNALTY: Yes.

14 MR. JOHN MATHER: So we've seen
15 several times today that on August 23rd you sent a
16 version of the spreadsheet we've been looking at with
17 the total costs for the pre-engineered steel building
18 being 11.741 million.

19 You recall looking at that spreadsheet?

20 MR. DAVE MCNALTY: Yes.

21 MR. JOHN MATHER: And we've seen in
22 the version of the staff report that you sent at
23 11:45 p.m. that the number for the pre-engineered
24 steel building was about 10.592 million.

25 Do you recall that?

1 MR. DAVE MCNALTY: Yes.

2 MR. JOHN MATHER: And we can pull it
3 up if it's of assistance, but Mr. Houghton circulates
4 a revised version of the staff report at 7:34 a.m.
5 that morning, and that revised version of the staff
6 report also has the 10.592 million number in it.

7 So my question for you, Mr. McNalty,
8 with that background in mind is when you -- when the
9 meeting began at 8:30 that morning, had you come to
10 \$12.3 million as a potential figure for the
11 pre-engineered steel building?

12 MR. DAVE MCNALTY: No, I don't believe
13 so.

14 MR. JOHN MATHER: Do you know if
15 anyone else had come to the meeting with that number
16 prepared?

17 MR. DAVE MCNALTY: Not that I'm aware
18 of.

19 MR. JOHN MATHER: If we could pull up
20 paragraph 418 of the Foundation Document.

21

22 (BRIEF PAUSE)

23

24 MR. JOHN MATHER: So this email
25 reflects that Mr. Houghton circulated a version of the

1 staff report at 12:05 p.m. on that same date, at which
2 point we see the range of 11.1 to 12.3 million.

3 Do you know how that number changed in
4 that time span from 8:30 in the morning to 12:00 noon?

5 MR. DAVE MCNALTY: I don't know how,
6 and I don't recall the discussion.

7 MR. JOHN MATHER: All right. One (1)
8 moment.

9

10 (BRIEF PAUSE)

11

12 MR. JOHN MATHER: Those are my
13 questions.

14 THE HONOURABLE FRANK MARROCCO: Well
15 as you know, we have to -- well, first of all,
16 Mr. McNalty, thank you for your testimony. You're
17 finished as far as giving evidence is concerned. It's
18 been very helpful.

19 We're all -- we have to be out of here,
20 as you know, because of the Council meeting. So 9:00
21 tomorrow morning. All right.

22

23 (WITNESS STANDS DOWN)

24

25 --- Upon adjourning at 4:05 p.m.

1

2 Certified Correct,

3

4

5 _____

6 Wendy Woodworth, Ms.

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