



**“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

October 17th, 2019

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APPEARANCES

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John Mather ) Associate Inquiry  
 ) Counsel  
(No Counsel) ) For Paul Bonwick  
George Marron ) For Sandra Cooper  
Frederick Chenoweth ) For Edwin Houghton  
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1 --- Upon commencing at 9:03 a.m.

2

3 THE HONOURABLE FRANK MARROCCO: Mr.  
4 Bonwick isn't here. Anybody have any reason to think  
5 he's not coming? That sounds like no.

6

7 (BRIEF PAUSE)

8

9 THE HONOURABLE FRANK MARROCCO: I'll -  
10 - I'll wait a -- I'll wait five (5) minutes or so to  
11 see where he is and then we'll get started.

12

13 --- Upon recessing at 9:04 a.m.

14 --- Upon resuming at 9:08 a.m.

15

16 THE HONOURABLE FRANK MARROCCO: Go  
17 ahead, Mr. Chenoweth.

18 MR. FREDERICK CHENOWETH: Thank you,  
19 sir.

20

21 ED HOUGHTON, Previously Sworn

22

23 CONTINUED EXAMINATION-IN-CHIEF BY MR. FREDERICK  
24 CHENOWETH:

25 MR. FREDERICK CHENOWETH: Good

1 morning, Mr. Houghton.

2 MR. ED HOUGHTON: Good morning.

3 MR. FREDERICK CHENOWETH: We're going  
4 to start off this morning by having a bit of a -- a  
5 brief discussion about councillors' emails leading up  
6 to the July 16th meeting.

7 If I could take you to document number  
8 TOC0170467. Could you pull that up, please.

9

10 (BRIEF PAUSE)

11

12 MR. FREDERICK CHENOWETH: A little  
13 further down. I'm looking for an email from Mr.  
14 Lloyd. Thank you.

15 Could you review this email, please.

16

17 (BRIEF PAUSE)

18

19 MR. ED HOUGHTON: I have.

20 MR. FREDERICK CHENOWETH: Go up  
21 further in the email so we can see the whole rest of  
22 the email chain.

23

24 (BRIEF PAUSE)

25

1 MR. FREDERICK CHENOWETH: Tell me, if  
2 you would please, Mr. Houghton, what's your sense of  
3 what the -- these emails are about.

4 MR. ED HOUGHTON: I -- I had no  
5 history to any of the issues with the 'Y' but  
6 obviously Council is -- is, again, having issues with  
7 the 'Y'. It appears that -- that everybody's  
8 understanding of what was promised and it appeared  
9 that the 'Y' was intent on getting the Town of  
10 Collingwood to pay for the entire expansion of their  
11 pool where most of Council had -- were saying that  
12 they believed that they were only going to provide up  
13 to 1.5 million.

14 MR. FREDERICK CHENOWETH: All right,  
15 what does that tell of the mood of Council with  
16 respect to the YMCA at this juncture?

17 MR. ED HOUGHTON: Again, the mood was  
18 that there was -- there was becoming a very definitive  
19 line between the 'Y' and -- and Council, and it became  
20 very clear that that line was going to be very  
21 difficult to -- to get people to cross back over.

22 MR. FREDERICK CHENOWETH: Very good,  
23 thank you. If we could look again just for a brief  
24 moment at the June 14th email of Deputy Lloyd, which  
25 we referred to earlier in your testimony, and that's



1 TOC0172233. Would you pull it up, please?

2

3 (BRIEF PAUSE)

4

5 MR. FREDERICK CHENOWETH: Thank you.

6 I'm looking for the email from Deputy Mayor Lloyd.

7

8 (BRIEF PAUSE)

9

10 MR. FREDERICK CHENOWETH: I take it  
11 this is the -- the re-issuance of the June 12th email  
12 that we spoke of yesterday?

13 MR. ED HOUGHTON: That's correct.

14 MR. FREDERICK CHENOWETH: All right.  
15 And again there's a request here for -- for you to do  
16 certain things, and on this occasion he copies all  
17 Councillors, correct?

18 MR. ED HOUGHTON: That's correct.

19 MR. FREDERICK CHENOWETH: All right.  
20 And I think we went over yesterday that in this  
21 particular email he actually asks for quotes with  
22 respect to the Sprung building products, correct?

23 MR. ED HOUGHTON: That's correct.

24 MR. FREDERICK CHENOWETH: All right.  
25 Now, I understand that there's -- there is some

1 response from other Councillors with respect to this  
2 request that all Councillors have been -- been aware  
3 of.

4 And if we could, please, could we turn  
5 to document TOC0172239?

6

7 (BRIEF PAUSE)

8

9 MR. FREDERICK CHENOWETH: And I'm  
10 looking for the -- the email of Kevin Lloyd, and it's  
11 up there on the screen now.

12 It appears that on the bottom half we  
13 have the June 14th correspondence forwarded by Deputy  
14 Mayor Rick Lloyd, and then Councillor Lloyd responds.

15 And what do you take from -- from the  
16 tone of that -- of that email?

17 MR. ED HOUGHTON: Well, there --  
18 there's two (2) things. I think the one (1) thing is  
19 that Councillor Lloyd is asking staff to get a price,  
20 and get a price on a Sprung-type structure, and the --  
21 the mood was that there was many people in support of  
22 the structure and there was also support for the  
23 request that staff had -- or the -- the Deputy Mayor  
24 had of staff.

25 MR. FREDERICK CHENOWETH: And I'm

1 interested in the Mayor's involvement, if any, with  
2 respect to this matter.

3 In that respect, could we turn to  
4 document number TOC0172262? Could we bring that up,  
5 please?

6

7 (BRIEF PAUSE)

8

9 MR. FREDERICK CHENOWETH: And I take  
10 it, as you understand it, this is a June 14th email  
11 sent by Sandra Cooper, the Mayor, in response to the  
12 June 14th email initiated by Mr. Lloyd to all  
13 Councillors. Is that correct?

14 MR. ED HOUGHTON: That's correct.

15 MR. FREDERICK CHENOWETH: All right.  
16 And what do you take from the contents of the Mayor's  
17 email on that occasion?

18 MR. ED HOUGHTON: She's actually  
19 speaking of only half of the Deputy Mayor's email,  
20 which specifically is the pool. She's thanking him  
21 for that suggestion.

22 She -- she thinks it's a wonderful  
23 opportunity for expanded activities at Heritage Park,  
24 which they've been trying to for a period of time, and  
25 that there was great parking at that location because

1 of the -- at the Central Park location they were  
2 concerned that there was going to be a lack of parking  
3 if they put in the multi-use facility.

4 MR. FREDERICK CHENOWETH: Could we  
5 turn to an email from Councilor West, which is email  
6 TOC -- by the way, is --

7 Does the Mayor appear to be in favour  
8 of or not in favour of the concept introduced by  
9 Deputy Mayor Lloyd to obtain these appraisals?

10 MR. ED HOUGHTON: I think it's  
11 obviously -- she's in favour. She's thanking him and  
12 suggesting positive opportunities with that  
13 suggestion.

14 MR. FREDERICK CHENOWETH: Thank you.  
15 If we could again look at the Lloyd's -- or an email  
16 from Councilor West. If we could draw up document  
17 number TOC0184413.

18

19 (BRIEF PAUSE)

20

21 MR. FREDERICK CHENOWETH: Go up a  
22 little further, if you would -- down a little further.  
23 Thank you. A little further down. Actually I may  
24 have just gone too far down. Go back to the other  
25 one.

1                   We have an email from Dale West to  
2 Councillor Lloyd on this occasion. You're not copied  
3 on this -- on this email, but do you have any sense of  
4 what the discussions are on this occasion, being July  
5 13th?

6                   MR. ED HOUGHTON: Yes. I understand  
7 that -- and I had conversations with Councillor West  
8 at the time, and he was very animated that there was  
9 an urgency for -- for a new -- new ice pad, which is -  
10 - was primarily his focus.

11                   He -- he -- there was a -- going to be  
12 a presentation at Council. They -- they have read the  
13 -- the presentation that will be made to Council, and  
14 as he's saying, that reading it, he's -- he was very  
15 upset because it said that there was nothing urgent  
16 and they should -- we should take the time to consider  
17 it, and he's saying there is an urgency.

18                   MR. FREDERICK CHENOWETH: I could go  
19 through some more emails but I don't think I'll do  
20 that. There's emails with respect to Councillor  
21 Cunningham, there's emails with respect to Councillor  
22 Chadwick, and further emails from Councillor -- not  
23 Councillor -- well, actually from Councillor Lloyd and  
24 Deputy Mayor Lloyd.

25                   What did you take from -- what did you

1 learn about the mood of Council building up to the  
2 July 16th meeting from those emails?

3 MR. ED HOUGHTON: Well, even in  
4 response to the -- to the June 14th Deputy Mayor  
5 Lloyd's email, even Councillor Hull, who has been --  
6 who was strong in his convictions all the way along,  
7 sent a link to the Sprung website, and it appeared  
8 like -- well, not even appeared, it was very accurate  
9 that the mood was that they were excited about looking  
10 for alternatives and something that they could do in a  
11 very short time line.

12 MR. FREDERICK CHENOWETH: Good.  
13 Turning for the moment to the July 16th Council  
14 meeting, I note that on July 4th, Ms. Proctor sends  
15 out a certain document with Options A and Options B in  
16 it.

17 And could we look at that for a moment,  
18 please? And that's TOC0180099.

19

20 (BRIEF PAUSE)

21

22 MR. FREDERICK CHENOWETH: What is  
23 Marta Proctor sending out on this occasion, to the  
24 best of your knowledge?

25 MR. ED HOUGHTON: She's providing

1 information that's going to be given to Council on the  
2 16th, and the Option A was moving -- moving forward  
3 with -- with the Central Park project, and then B was  
4 options if they were going to -- there was going to be  
5 a departure from that Central Park concept.

6 MR. FREDERICK CHENOWETH: And can you  
7 tell me who drafted these options?

8 MR. ED HOUGHTON: I would expect that  
9 Ms. Proctor, with assistance of her staff.

10 MR. FREDERICK CHENOWETH: Did you have  
11 any input into the drafting of these options that went  
12 before the Council on the 16th?

13 MR. ED HOUGHTON: I don't recall  
14 making any -- any -- any suggestions for them.

15 MR. FREDERICK CHENOWETH: Thank you.  
16 Could we next look at document TOC0183198.

17

18 (BRIEF PAUSE)

19

20 MR. FREDERICK CHENOWETH: And this  
21 again appears to be an email by Marta Proctor; that  
22 she's forwarding on July the 12th in the morning and  
23 she appears to be sending this to a series of  
24 individuals, including yourself and what is she  
25 sending on this occasion?

1 MR. ED HOUGHTON: Can -- can I see  
2 further down? Is that the first email?

3 MR. FREDERICK CHENOWETH: Go down  
4 further if we could, please?

5 MR. ED HOUGHTON: So here's -- this is  
6 the first email, there's two (2) documents here that  
7 Marta is sending to her Council representatives for  
8 comments.

9 MR. FREDERICK CHENOWETH: All right.  
10 And what are the documents that she's sending?

11 MR. ED HOUGHTON: They would be the  
12 Central Park resolutions.

13 MR. FREDERICK CHENOWETH: Does that  
14 include the options that we earlier spoke to?

15 MR. ED HOUGHTON: That's correct.

16 MR. FREDERICK CHENOWETH: She's  
17 sending the entire Monday Council agenda package, is  
18 she not?

19 MR. ED HOUGHTON: She's sending, on  
20 July 11th, whatever day that is, to -- for the  
21 information that's going to be going to Council.

22 MR. FREDERICK CHENOWETH: All right.  
23 Including those options, and then I note that she  
24 sends it to -- to Councillor West and -- and to  
25 another councillor as well, Councillor Hull.



1 I had some understanding that there may  
2 be some concerns about sending documents to  
3 councillors.

4 MR. ED HOUGHTON: I've -- I've heard  
5 that as well, that they felt that it was inappropriate  
6 to be providing information to Council reps for their  
7 -- of the documentation or the staff reports or those  
8 kinds of things going to -- to Council.

9 But in -- my understanding is that a  
10 Council representative is supposed to be able to bring  
11 to -- to the staff report, to those kinds of things,  
12 their perspective, which is from not a -- not from a  
13 bureaucrat's perspective, it's actually supposed to be  
14 bringing the -- the perspective of the public, the  
15 people who have elected them.

16 And so the Council rep is, in my -- as  
17 I've been always told, that they -- they are involved  
18 with -- with whatever committee that they're involved  
19 with, as an example, Councillor Lloyd was with the  
20 economic development, was very much involved with  
21 that. Councillor Hull and West were very much  
22 involved with Parks, Recreation, and Culture.

23 When -- when a staff report or -- or  
24 documents such as these come to Council, they are able  
25 to then provide their perspective of what that's about

1 so that Council hears not just from the bureaucrat,  
2 but from the -- from the people elected. That's  
3 always been the way it's -- I -- I've been taught  
4 anyway.

5 MR. FREDERICK CHENOWETH: Thank you.  
6 I note that -- can we move directly to the meeting of  
7 July 16th. And can you tell me what your involvement  
8 was in that meeting?

9 MR. ED HOUGHTON: On July 16th?

10 MR. FREDERICK CHENOWETH: Yes.

11 MR. ED HOUGHTON: I -- I basically  
12 just introduced it. Ms. Proctor went through all of  
13 the -- the resolutions.

14 MR. FREDERICK CHENOWETH: All right.  
15 And I take it she introduced options A and options B  
16 that was set out in her resolution document to Council  
17 at that time. Is that correct?

18 MR. ED HOUGHTON: That's correct.

19 MR. FREDERICK CHENOWETH: All right.  
20 And what was the result that occurred on that  
21 occasion?

22 MR. ED HOUGHTON: Again, significant  
23 excitement. The Deputy Mayor first started by saying  
24 that he was concerned with the \$35 million, that he  
25 wanted to offer up alternative suggestion, which he

1 did.

2 He then suggested that as Chair of  
3 Finance he'd like to be involved with this project and  
4 help staff prepare the report that would be coming  
5 back.

6 At the point -- at that point he wanted  
7 it July 30th. I believe that virtually all -- many of  
8 the other Council members made -- save and except for  
9 again potentially Councillor Hull, spoke in favour of  
10 -- of what the Deputy Mayor was talking about. Some  
11 said let's buy these buildings and get moving. They  
12 all talked about urgency, they all were concerned  
13 about \$35 million.

14 When I left that Council meeting, it  
15 was pretty clear in my mind the direction that Council  
16 wanted. The resolution was very prescriptive. It  
17 said to put a cover over the pool.

18 MR. FREDERICK CHENOWETH: Could we  
19 look at the resolution, if we could, just for a  
20 moment, which I believe is contained in the minutes  
21 and the document is CJI0008083.

22 We're going to have to go down in the  
23 minutes, I'm not exactly sure what page it's on. But  
24 if we could move down to the resolutions.

25

1 (BRIEF PAUSE)

2

3 MR. ED HOUGHTON: There it is.

4 MR. FREDERICK CHENOWETH: There we go,  
5 thank you.

6 So tell us, and I think we can do this  
7 very quickly, what were the resolutions that were  
8 passed on that occasion?

9 MR. ED HOUGHTON: It's -- in my -- in  
10 my estimation it's very clear. It says Council direct  
11 staff to pursue the following recommended options and  
12 develop a project timeline and detailed estimates and  
13 bring the report back to Council, not later than  
14 August 27th.

15 And that is to construct a single-pad  
16 arena that can be phased into a double-pad.

17 MR. FREDERICK CHENOWETH: Yes.

18 MR. ED HOUGHTON: And enclose the  
19 outdoor pool with a fabric building. It doesn't talk  
20 about Eddie Bush, it doesn't talk about anything else.  
21 It was very prescriptive.

22 MR. FREDERICK CHENOWETH: All right.  
23 Was there -- you say there was no request with respect  
24 to Eddie Bush. Did the final staff report deal with  
25 Eddie Bush?

1 MR. ED HOUGHTON: There was some  
2 information about Eddie Bush in this -- in the final  
3 staff report. But Council didn't ask us to consider  
4 this -- Eddie Bush in this. And I would expect that  
5 why staff wanted to put it in, because they had had a  
6 -- a past history, which I didn't have about what was  
7 going on with the Eddie Bush.

8 MR. FREDERICK CHENOWETH: Is -- is  
9 there anything confusing or unclear about -- about  
10 item 8, enclose the outdoor pool with a fabric  
11 building?

12 MR. ED HOUGHTON: Zero. It doesn't  
13 tell us to look at it, it doesn't -- it just -- it  
14 tells us to do that.

15 MR. FREDERICK CHENOWETH: All right.  
16 And in your view, was there anything unclear about  
17 Part 1 of the resolution with respect to constructing  
18 a single-pad arena?

19 MR. ED HOUGHTON: It -- it just tells  
20 us that we're going to -- we're going to be  
21 constructing a single-pad arena that could be phase to  
22 a double-pad.

23 MR. FREDERICK CHENOWETH: All right.  
24 You may have heard Marta Proctor's evidence that she  
25 was under some confusion with respect to what Council

1 wished staff to do as a result of that resolution.

2                   You've told us you found that, the  
3 confusing. Did you have any confusion about what you  
4 were required to do?

5                   MR. ED HOUGHTON: No. It was clear to  
6 me and it was clear what Council was saying the  
7 evening of July 16th.

8                   MR. FREDERICK CHENOWETH: I notice  
9 that there is a -- a -- certain documentation, certain  
10 emails that occur between yourself and Deputy Mayor  
11 Lloyd during the course of the meeting.

12                   Can we turn to TOC0185481, if we could,  
13 please? Could you go down to the bottom of that,  
14 please?

15                   And this is -- is this sent to you by  
16 Rick Lloyd during the course of the meeting on that  
17 evening?

18                   MR. ED HOUGHTON: Yes.

19                   MR. FREDERICK CHENOWETH: All right.  
20 And can you tell me -- and you eventually respond to  
21 this. And what was your understanding of what Rick  
22 Lloyd was requesting of you at 7:51 on that evening?

23                   MR. ED HOUGHTON: To -- to kind of  
24 give you a bit of the landscape, I sit over in the  
25 corner where the empty computer is. Typically, that

1 would be the staff table. I didn't sit where the CAO  
2 sat, which would be to the -- to the -- to the left of  
3 His Honour.

4 I -- I allowed -- or asked Marjory if  
5 she -- she would like to sit up there, which she did.  
6 I stayed with staff. Where Ms. McGrann is is where  
7 the deputy mayor sat. And he often during Council  
8 meetings would send me stuff. And he'd turn around  
9 and he'd point at the computer to look at it.

10 I was attempting to try to listen to  
11 what was going on at Council because it was a very  
12 important meeting, and he pointed at his computer. I  
13 looked at it. And I quickly typed something.

14 He turned around again and said, Can I  
15 -- so I can make it shorter. I said, No. I said,  
16 Make it no earlier than August 27th. And he -- he  
17 said, That's not what you said.

18 And I looked at it. And he kind of  
19 laughed at me. And that's the date they picked.

20 MR. FREDERICK CHENOWETH: I -- I take  
21 it in his email Mr. Lloyd is attempting to make the  
22 date for the presentation of the staff report at a  
23 Council meeting that's July 30th rather than August  
24 27th. Is that correct?

25 MR. ED HOUGHTON: Yes. And I -- when

1 I first saw it, again, I was trying to concentrate on  
2 what was going on around in the -- in the Council  
3 meeting.

4 And I -- I wrote the wrong thing but  
5 tried to get him to change it, but he didn't. I  
6 believe he even said that in his testimony.

7 MR. FREDERICK CHENOWETH: Okay. And  
8 can we just see your response, if we could? Further.  
9 Thanks.

10

11 (BRIEF PAUSE)

12

13 MR. FREDERICK CHENOWETH: What did you  
14 intend to write in this response?

15 MR. ED HOUGHTON: Make it no earlier  
16 than August the 27th.

17 MR. FREDERICK CHENOWETH: Very good.  
18 Okay. Thank you.

19 MR. ED HOUGHTON: Or make it later  
20 than August 27th I think would make -- make sense,  
21 make it later than August 27th.

22 MR. FREDERICK CHENOWETH: Okay. Now,  
23 you've spoken of the -- and we've referred to it with  
24 some frequency through the course of this Inquiry.  
25 You spoke of the kinds of things that were said by



1 councillors during the course of -- of this meeting.

2 Can you tell me what you recall?

3 You've had occasion to review the transcript. Do you  
4 recall what Deputy Mayor Lloyd said on that occasion?

5 MR. ED HOUGHTON: On the 16th?

6 MR. FREDERICK CHENOWETH: Yes.

7 MR. ED HOUGHTON: Yeah. As I  
8 mentioned earlier, he -- he first started by saying  
9 that he was very concerned about the 35 million. He  
10 felt that the people of the Town of Collingwood  
11 deserved water and ice and that he was prepared to --  
12 to move forward with that. He was prepared to accept  
13 the additional costs of having those facilities.

14 He -- he offered up an alternative,  
15 which was the -- the Sprung type buildings, I'll say.  
16 And he also offered again his -- his guidance,  
17 assistance with -- with drafting, preparing,  
18 investigating for the staff report.

19 MR. FREDERICK CHENOWETH: Do you have  
20 any sense of what you took from the re -- from the  
21 remarks of Councillor West on that occasion?

22 MR. ED HOUGHTON: Again, Dale -- Dale  
23 just believed that there was an urgency. He talked  
24 about the fact that, you know, for many, many years  
25 he'd taken his children. In fact, my brother used to

1 play on his -- his son's hockey team way back when,  
2 that -- that they -- they wanted to -- or they'd take  
3 them to Singhampton or Feversham or those places for  
4 hockey and that, in the wintertime, it was a terrible,  
5 dangerous thing to do and that there was lost  
6 revenues, and he felt that there was an urgency.

7 MR. FREDERICK CHENOWETH: All right.  
8 And do you recall the tone of Councillor Edwards's  
9 remarks?

10 MR. ED HOUGHTON: Mike was involved  
11 with, I think, adult figure skating -- or not adult  
12 figure skating, adult skating. And he -- he knew that  
13 there was -- there was -- you know, there was a need  
14 for ice.

15 He also knew that there was a ladies  
16 hockey team. And I think -- I believe that they were  
17 playing more in -- in Stayner, Wasaga Beach area  
18 rather than the Collingwood area, again, felt that  
19 there -- there was a need for the -- the ice.

20 I wasn't exactly certain what he was  
21 talking about with the pool, but...

22 MR. FREDERICK CHENOWETH: All right.

23 MR. ED HOUGHTON: That wasn't clear to  
24 me.

25 MR. FREDERICK CHENOWETH: Thank you.

1 And I take it other councillors made their comments  
2 with respect to their views on the direction that you  
3 give staff?

4 MR. ED HOUGHTON: Yeah. Councillor  
5 Cunningham was very, very direct. He wanted to get on  
6 with it. He had seen this buildings in -- in, I  
7 believe, Calgary. He knows what they're like.

8 Councillor Lloyd also said let's get  
9 moving, let's get on with this. The -- the mood or  
10 the movement was that they wanted something done in a  
11 very short time line.

12 They talked about being able to get  
13 these things done in a period of time when -- when,  
14 you know, they could have the pool operational in such  
15 and such a time and the ice rink operational in  
16 another time.

17 MR. FREDERICK CHENOWETH: Was there  
18 any sense in that meeting as to specifically what they  
19 wanted done in terms of choice of -- of structures?

20 MR. ED HOUGHTON: It was pretty clear  
21 that for the pool for sure that they wanted a Sprung  
22 type fabric building.

23 MR. FREDERICK CHENOWETH: Thank you.  
24 And tell me, given the mood that you've described that  
25 the councillors exhibited on July 16th, what's your --

1 what's your sense in hindsight of what would have  
2 happened if staff had recommended a bricks and mortar  
3 building or -- or a pre-engineered steel building or  
4 something other than the Sprung building?

5 MR. ED HOUGHTON: Taking that in two  
6 (2) parts, for the pool, they said specifically do  
7 this. That was -- that was their direction. So,  
8 Counc -- so staff is -- is required to follow their  
9 direction.

10 The second part was that -- was to look  
11 at the ice pad. There was no discussion about  
12 options. They didn't say look at options. But  
13 obviously, we were looking at -- we had the price from  
14 -- my understanding, from the Central Park for bricks  
15 and mortar.

16 We tried to find out -- or tried to  
17 determine a price for this pre-engineered steel  
18 building. And we -- in the final analysis, it  
19 appeared likely the Sprung type building was the  
20 cheapest and could be done in a time line that would  
21 meet Council's request.

22 And that was the reason why that  
23 resolution went forward.

24 MR. FREDERICK CHENOWETH: Did you --  
25 but if you'd recommended something else, what do you

1 think might have happened to that?

2 MR. ED HOUGHTON: Well, a) -- a) they  
3 would have looked at and said we -- we thought we were  
4 clear, we thought that the resolution to -- told you  
5 or asked you or directed you to do this, why are you  
6 bringing this back.

7 And I've heard that over the years,  
8 where a staff member has brought back something that  
9 Council hasn't asked for, and they -- they very  
10 clearly tell you that is not what we asked for, come -  
11 - go back -- bring back what we asked for.

12 MR. FREDERICK CHENOWETH: Very good.  
13 Thank you. Moving now to the question of the absence  
14 of Ms. Proctor through the course of the development  
15 of the staff report.

16 Do you have a recollection of -- of  
17 what Ms. -- could -- could we look, first of all, I  
18 guess, if we could, please, of the transcript of the  
19 July 16th meeting with -- oh, by the way, just before  
20 we leave that, I have a sense that -- and I know you  
21 mentioned this earlier in your -- in your evidence,  
22 but it would be useful just to make it clear.

23 There was some comments by Mr. Lloyd,  
24 by Rick Lloyd, the deputy mayor, with respect to his  
25 wish to be involved with staff. What do you recall of

1 that?

2 MR. ED HOUGHTON: Well, he -- he said,  
3 As chair of finance, I would like to be involved with  
4 this project, I would like to work with staff  
5 preparing the report.

6 MR. FREDERICK CHENOWETH: And that --  
7 and that's on the record, as I understand it, with  
8 respect to his remarks on July 16th?

9 MR. ED HOUGHTON: It is.

10 MR. FREDERICK CHENOWETH: All right.  
11 And did anyone object to that suggestion?

12 MR. ED HOUGHTON: Nobody objected to  
13 it.

14 MR. FREDERICK CHENOWETH: All right.  
15 And, again, looking at the transcript of July 16th --  
16 and, again, page 39 of the transcript in the document  
17 is CJI0011234. Could we look at that for a moment,  
18 page 39, please?

19

20 (BRIEF PAUSE)

21

22 MR. FREDERICK CHENOWETH: And I'm  
23 looking specifically at the remarks of Marta Proctor  
24 on that occasion. In essence, did -- did Ms. Proctor  
25 express any concerns about the length of time on that

1 occasion?

2 MR. ED HOUGHTON: What she said was  
3 that she would be happy to explore options. She said  
4 I am concerned a little about the timeline and the  
5 obligations we have as staff with events and summer  
6 schedules.

7 MR. FREDERICK CHENOWETH: All right.  
8 And did she -- during the course of the Council  
9 meeting that you're aware of, advise Council that as  
10 Director of Parks and Recreation, this being a Parks  
11 and Recreation project, that she would be absent for  
12 what amounted to three (3) weeks of the process?

13 MR. ED HOUGHTON: No.

14 MR. FREDERICK CHENOWETH: All right.  
15 And do you know how long Ms. Proctor had occasion to  
16 be on vacation through the course of that period of  
17 time, up to August 27th?

18 THE HONOURABLE FRANK MARROCCO:  
19 Haven't we heard -- haven't we heard evidence was --  
20 like, was it three (3) weeks or something like that?

21 MR. FREDERICK CHENOWETH: I'm -- I'm  
22 content with that.

23 THE HONOURABLE FRANK MARROCCO: Well,  
24 if there's some debate about it, by all means. But if  
25 -- if there's no dispute about the fact that she was

1 absent for that period of time, I --

2 MR. FREDERICK CHENOWETH: I don't  
3 think there is any dispute. I thought it was  
4 contextual for the -- for the comments hereafter.

5 THE HONOURABLE FRANK MARROCCO: That's  
6 fine.

7 MR. FREDERICK CHENOWETH: But I'm --  
8 I'm content with Your Honour's comment and we'll move  
9 on.

10

11 CONTINUED BY MR. FREDERICK CHENOWETH:

12 MR. FREDERICK CHENOWETH: As a result  
13 of Ms. Proctor's absence through the course of this  
14 period of time, can you tell me did this in any way  
15 effect the involvement of the EMC in this project?

16 MR. ED HOUGHTON: Yes, and in fact  
17 also in the -- the transcript Her Worship looks to me  
18 and asks if we can assist, which we said we would,  
19 that we -- staff would caucus and we would assist to  
20 help get this project through.

21 So -- now I've forgotten your question.  
22 Sorry.

23 MR. FREDERICK CHENOWETH: The question  
24 was: Was there any effect on the involvement of EM --  
25 of the EMC as a result of Marta Proctor being absent



1 for what amounted to nearly three (3) weeks?

2 MR. ED HOUGHTON: Thank you.

3 As EMC we discussed it, we -- we felt  
4 that this was something, again, at that point in time  
5 all of our memories were fresh, they don't seem to be  
6 as fresh today, but all of our memories were fresh,  
7 and that we recognized that Council was very excited  
8 about moving this project forward. They wanted to do  
9 this obviously within their -- their timeframe and --  
10 and we felt that if we went to Council and said that  
11 look, one staff member is going to be away for a  
12 period of time, that that would not reflect very well  
13 on that particular staff member.

14 So we felt that we could assist to try  
15 to -- to drive this project forward and have Ms.  
16 Proctor provide the input and that was the decision  
17 and it -- and it put a lot of additional stress and  
18 pressure on -- on all of us, including myself, who was  
19 basically here as a volunteer to assist for a few --  
20 two (2) to three (3) months and I'm already into my  
21 fourth or fifth month.

22 MR. FREDERICK CHENOWETH: And would  
23 the EMC have been as involved in the process if Ms.  
24 Proctor was not absent for three (3) weeks?

25 MR. ED HOUGHTON: I would expect that

1 our participation would have been the same as what  
2 happened on June the 11th, I just facilitated because  
3 I -- that's kind of what I -- I've done many, many,  
4 many times on the June 11th. And on the 16th I  
5 basically introduced it as the -- as the CAO and it  
6 was handed over to Ms. Proctor.

7 Typically, I would expect that Ms.  
8 Proctor would have -- would have been taking the omens  
9 portion of this project.

10 MR. FREDERICK CHENOWETH: And I take  
11 it the EMC, we've heard evidence to this effect from  
12 Marjory Leonard, the EMC pitched in to -- to help in  
13 her absence. Is that fair?

14 MR. ED HOUGHTON: Yeah, you know, and  
15 -- and until I watched the last couple of days, I was  
16 quite proud of -- of the work that all of us did and -  
17 - and moving forward as a team, as a group.

18 MR. FREDERICK CHENOWETH: Thank you.  
19 And how about the involvement of Marjory Leonard? Did  
20 that change as a result of the absence of Marta  
21 Proctor during this period of time?

22 MR. ED HOUGHTON: It did. Marjory  
23 picked up the ball and ran with it in a few different  
24 locations, yes.

25 MR. FREDERICK CHENOWETH: All right.

1                   With respect to the timeline, there's a  
2 sense expressed by Marta Proctor on the 16th that this  
3 was a short period of time.

4                   What was your sense of the period of  
5 time involved?

6                   MR. ED HOUGHTON:     It was a short  
7 period of time. I spoke to the Deputy Mayor on two  
8 (2) occasions about it. And on one (1) of those  
9 occasions it was one (1) of the meetings that we had  
10 with the Mayor and the Deputy Mayor.

11                   And again, the Deputy Mayor, and I  
12 think he's already said that, you know, he -- he just  
13 said no, let's -- we've got to drive forward for Her  
14 Worship, basically said that, you know, Council has  
15 given us this -- this timeline, we need to try to work  
16 to it. And those were appropriate comments.

17                   MR. FREDERICK CHENOWETH:   All right.

18                   And so you're telling me that you  
19 raised the issue of the short timeline on two (2)  
20 different occasions with the Deputy Mayor, did you?

21                   MR. ED HOUGHTON:     Yes, and I -- and to  
22 be -- to fair to EMC, I don't think -- I didn't hear  
23 them complain.

24                   MR. FREDERICK CHENOWETH:   All right,  
25 thank you.

1                   And did you raise -- are you telling me  
2 that on one (1) of the occasions you raised the short  
3 timeline with the Deputy Mayor that the Mayor was also  
4 part of those conversations?

5                   MR. ED HOUGHTON:     That's correct.

6                   MR. FREDERICK CHENOWETH:   And again, I  
7 think you've told me the results of the request you  
8 made at that time.

9                   MR. ED HOUGHTON:     Yes, I expressed  
10 that this was really tight and we -- you know, we're -  
11 - we're all busy and -- and again, their comments were  
12 we'd like to drive forward and so we did.

13                  MR. FREDERICK CHENOWETH:   Can you tell  
14 me, we heard evidence over the last couple of days  
15 from Marjory Leonard that you spoke to her and -- and  
16 told her that she should write the staff report.

17                  What is your reaction to those  
18 suggestions?

19                  MR. ED HOUGHTON:     When we would --  
20 we'd get together as the EMC, we'd talk about things.  
21 I don't have a specific recollection about that  
22 conversation, but when -- when I know that Marta had  
23 sent a -- an email or a meeting request with Sara,  
24 Marjory, and herself, just prior to -- to Marta going  
25 on holidays, and that meeting occurred, what they did

1 was they actually had Dave McNalty, so they -- they  
2 must have asked Dave McNalty to -- to attend the  
3 meeting.

4                   During that -- during that meeting, it  
5 looked like they tried to call me, because they  
6 emailed me and I -- I -- they just asked me a question  
7 about if I'd had any more information from Sprung.

8                   And then I said did you try to call me  
9 and she said yes, we just thought it was easier to  
10 email. So that was on a Friday.

11                   MR. FREDERICK CHENOWETH:    What was the  
12 date of that meeting? Was that August 17th?

13                   MR. ED HOUGHTON:        17th.

14                   MR. FREDERICK CHENOWETH:    Yes.

15                   MR. ED HOUGHTON:        And -- and the next  
16 day Marjory started drafting. I don't recall ever  
17 asking her to do that.

18                   It -- we worked as -- the whole intent  
19 of the EMC was that I -- I can't -- I couldn't do  
20 everything, I needed -- I needed, you know, their  
21 assistance and it was always -- it was never managed  
22 by edict, it was always based on a consensus, I would  
23 expect that Marjory took that upon herself to do it.

24                   And I -- I remember being very -- very  
25 proud of the fact that Marjory had -- was -- was doing

1 these things and -- and chipping in and -- and being  
2 part of the team, because if you know Marjory, that's  
3 not always the way she was.

4 But I'll tell you, when I was here that  
5 period of time, she was excellent.

6 MR. FREDERICK CHENOWETH: And she  
7 wrote her first report on the 18th, is that correct?

8 MR. ED HOUGHTON: That's correct.

9 MR. FREDERICK CHENOWETH: And that was  
10 a first draft of the report circulated?

11 MR. ED HOUGHTON: That's correct.

12 MR. FREDERICK CHENOWETH: All right.  
13 And that appears to have been circulated the day after  
14 the meeting that you've described on August 17th, and  
15 again, who was that meeting amongst on that occasion?

16 MR. ED HOUGHTON: Well again, the  
17 original meeting, and it talked about and -- it said  
18 Central Park Staff Report was the subject line, sent  
19 from Marta to Sara and -- and Marjory. And it said  
20 hello ladies, I hope -- I hope this time works for you  
21 or -- and where would you like to meet.

22 Again, the next -- that -- that day,  
23 which is the 17th, they asked -- they obviously asked  
24 Mr. McNalty to -- to attend as well.

25 So it was specific to talk about the

1 staff report. That was the subject line.

2 MR. FREDERICK CHENOWETH: Okay. Thank  
3 you.

4

5 (BRIEF PAUSE)

6

7 MR. FREDERICK CHENOWETH: If we could  
8 for a moment have a look at document number EHH10,  
9 please?

10

11 (BRIEF PAUSE)

12

13 MR. FREDERICK CHENOWETH: And could  
14 you go down to the bottom of that email chain? I'm  
15 looking for an email from Mr. Houghton. Thank you.

16 Let's take the email chain in its  
17 entirety. Scroll up so the witness can see the whole  
18 email chain and do so slowly.

19 MR. ED HOUGHTON: Yeah.

20 MR. FREDERICK CHENOWETH: Can you --  
21 can you tell me what this email chain was about?

22 MR. ED HOUGHTON: In one of the --

23 MR. FREDERICK CHENOWETH: It appears,  
24 by the way, on August 21st.

25 MR. ED HOUGHTON: One (1) of the

1 occasions that I was speaking to Councillor West about  
2 how things were going, you know, his -- you know,  
3 talking about his excitement, he said unfortunately  
4 Marta feels a little bit left out of the loop and I  
5 said, you know, I understand why she might feel left  
6 out of the loop, but she's not being left out of the  
7 loop on our part. It's because she has been away, she  
8 -- she had spoke to me about issues that she was  
9 working through and with, with her family.

10                   So we were very understanding. So I  
11 was a little disappointed that she actually brought  
12 this up to one of the councillors to complain about  
13 the fact that she felt a little bit out of the loop.  
14 Her well recognizing that -- that she has been away  
15 and will be away again and has been away for real --  
16 you know, personal and right reasons.

17                   So I just sent this to the group and --  
18 and you can see Larry's -- who I did not tell him  
19 about her personal issues, it just says that she --  
20 she backed away and Marjory has been keeping her up to  
21 speed and Sara said, you know, I'm -- I'm -- there's  
22 been a million meetings with her because, you know,  
23 Marta likes to have meetings, and obviously that she  
24 was -- she was talking to Marge about it earlier that  
25 day and that she was sick and tired of it.



1 I was -- I was disappointed that she a)  
2 spoke to Councillor West and that she was saying very  
3 negative things about the -- the Deputy Mayor and  
4 we're supposed to not do those kinds of things as  
5 staff, certainly not espouse things like that to  
6 another Council member, but another particular Council  
7 member.

8 MR. FREDERICK CHENOWETH: Is it fair  
9 to say that this email shows a certain amount of  
10 frustration amongst Sara Almas and other members of  
11 the EMC with respect to Ms. Proctor's absence?

12 MR. ED HOUGHTON: Certainly it was --  
13 it was a lot of work to do. I was just disappointed  
14 and -- and I was disappointed on another aspect too  
15 with how Marta handled herself.

16 MR. FREDERICK CHENOWETH: Now, if we  
17 could turn briefly to an email dated September 19th,  
18 2012 and that's TOC00215881. Could we look at that  
19 document, please. And yes, the document number is  
20 TOC00215881.

21 I'm looking for an email from Marta  
22 Proctor.

23

24

(BRIEF PAUSE)

25

1 CONTINUED BY MR. FREDERICK CHENOWETH:

2 MR. FREDERICK CHENOWETH: In any  
3 event, do you remember receiving an email in -- on or  
4 about September 19th from -- from Marta Proctor with  
5 respect to her absences in the month of September from  
6 Council?

7 THE HONOURABLE FRANK MARROCCO: I  
8 think it's on the screen now, Mr. --

9 MR. FREDERICK CHENOWETH: Very good.  
10 Thank you.

11

12 CONTINUED BY MR. FREDERICK CHENOWETH:

13 MR. FREDERICK CHENOWETH: Have a read  
14 of that email, if you would. I apologize, Your  
15 Honour.

16 THE HONOURABLE FRANK MARROCCO: All  
17 right.

18 MR. ED HOUGHTON: Yes. This was later  
19 on in September. And -- and, again, Marta had been  
20 away again. And she was actually thanking me for the  
21 situation that -- you know, from my understanding.

22 And -- and I had kept this situation to  
23 myself because it was a personal situation.

24

25 CONTINUED BY MR. FREDERICK CHENOWETH:

1 MR. FREDERICK CHENOWETH: Thank you.

2 MR. ED HOUGHTON: He also -- and --  
3 and this is kind of alluding to the fact that, you  
4 know, because she has been away, she realized there  
5 was a Council meeting and -- and that she hadn't been  
6 to some, that she felt that maybe, from optics  
7 perspective, it might be best that she be there.

8 MR. FREDERICK CHENOWETH: All right.  
9 I'm going to turn now, if we could, please, to your  
10 interactions with BLT. And I'm wondering, Your  
11 Honour, if -- if we might take an opportunity to -- to  
12 ensure that the next witness is here.

13 You talked about starting at 10:00 with  
14 him.

15 THE HONOURABLE FRANK MARROCCO: Sure.

16 MR. FREDERICK CHENOWETH: I'm prepared  
17 to proceed if you'd wish.

18 THE HONOURABLE FRANK MARROCCO: No.  
19 No. If Mr. Scott's here and you're about to start a  
20 discrete topic with Mr. Houghton, I think you're  
21 probably wise to get on with Mr. Scott.

22 But -- so we'll stand down for a few  
23 minutes and bur -- for five (5), ten (10) minutes.  
24 And maybe you can let us know what -- what you want to  
25 do.

1                   If Mr. Scott's not here, then I think  
2 we should continue with Mr. Houghton.

3                   MR. FREDERICK CHENOWETH:    I'm content,  
4 Your Honour.

5

6 --- Upon recessing at 9:57 a.m.

7 --- Upon resuming at 10:04 a.m.

8

9                   JOHN MICHAEL SCOTT, Sworn

10

11 EXAMINATION-IN-CHIEF BY MR. FREDERICK CHENOWETH:

12                   MR. FREDERICK CHENOWETH:    Good  
13 morning, Mr. Scott.

14                   MR. JOHN SCOTT:        Good morning.

15                   MR. FREDERICK CHENOWETH:    Again, we  
16 haven't met before and just met this morning. My name  
17 is Fred Chenoweth. And I understand that -- I again  
18 want to thank you for your courtesy in attending here  
19 today. I very much appreciate you coming up this  
20 morning to assist the Inquiry.

21                   You were kind enough at my request to  
22 write a report dated October 2019. Do you have that  
23 report in front of you?

24                   MR. JOHN SCOTT:        Yes, I do.

25                   MR. FREDERICK CHENOWETH:    All right.

1 We're going to go through that report. And I  
2 understand that you've been in the construction  
3 business for what amounts to, in essence, fifty (50)  
4 years at this juncture.

5 Is that correct?

6 MR. JOHN SCOTT: Correct, yes.

7 MR. FREDERICK CHENOWETH: And I have a  
8 sense that you've developed a particular expertise  
9 over that forty-five (45) to fifty (50) years. And  
10 what is the particular expertise that you've  
11 developed?

12 MR. JOHN SCOTT: The general  
13 contracting firm that I spent most of my fifty (50)  
14 years with is specialized in design build  
15 construction.

16 MR. FREDERICK CHENOWETH: Very good.  
17 And -- and just tell us if you would, what do you  
18 consider the essence of design build to be? In other  
19 words, how does one define design build?

20 MR. JOHN SCOTT: Design build is -- is  
21 generally the -- specific to the designers,  
22 architects, engineers, et cetera working for the  
23 contractor rather than working for the client.

24 MR. FREDERICK CHENOWETH: All right.  
25 Thank you. And what do you regard as your areas of

1 expertise in the design build field?

2 MR. JOHN SCOTT: I particular  
3 specialized in design build util -- utilizing pre-  
4 engineered buildings. I did a substantial amount of  
5 conventional buildings, but a lot of our work was pre-  
6 engineered.

7 MR. FREDERICK CHENOWETH: Right. And  
8 does it continue to be pre-engineered?

9 MR. JOHN SCOTT: Yes, it does, to this  
10 day.

11 MR. FREDERICK CHENOWETH: Thank you.  
12 And you mention under, "Areas of expertise," that you  
13 have an expertise in strategic planning, project  
14 leadership, and budget development.

15 Can you tell me something of that?

16 MR. JOHN SCOTT: So, our -- our method  
17 of operation was to source leads as early as possible  
18 for construction projects and make contact direct with  
19 the owner rather than go through any kind of a tender  
20 process with an extensive number of bidders.

21 And we would try and develop a  
22 relationship with the -- with the customer client  
23 right from day 1.

24 MR. FREDERICK CHENOWETH: All right.  
25 You suggest an expertise in budget development?

1 MR. JOHN SCOTT: Yes. We would do --

2 MR. FREDERICK CHENOWETH: Tell us  
3 about that.

4 MR. JOHN SCOTT: Internally, we would  
5 do our -- all our own costing in consultation with key  
6 subcontractors and suppliers, put together budgets for  
7 -- for clients or firm figures.

8 MR. FREDERICK CHENOWETH: All right.  
9 Did you have a particular educational background that  
10 -- that allowed you to consider -- consider budgetary  
11 matters?

12 MR. JOHN SCOTT: Yes. Part of the  
13 courses at George Brown College that I took  
14 specifically were for estimating quantity surveying  
15 and design.

16 MR. FREDERICK CHENOWETH: All right.  
17 And you also mentioned that you had an area of  
18 expertise in the contract negotiation on design build  
19 and tender projects. What was your --

20 MR. JOHN SCOTT: Correct.

21 MR. FREDERICK CHENOWETH: -- meaning  
22 of that?

23 MR. JOHN SCOTT: Design build  
24 specifically is much more in tune with a negotiated  
25 contract, whereas a tender, especially nowadays, you

1 just submit your price and your proposal is generally  
2 based on what the price is compared to the  
3 competitors, whereas design build you get to  
4 communicate your particular skills and the history of  
5 your company and your reputation.

6 MR. FREDERICK CHENOWETH: And I take  
7 it that the owner gets a chance to advise the supplier  
8 with respect to his particular wants and needs.

9 Is that the case?

10 MR. JOHN SCOTT: Correct. Yes.

11 MR. FREDERICK CHENOWETH: All right.

12 Now, I'm interested in your career history. I  
13 understand that you began working with Wheelwright  
14 Construction in or about 1969.

15 Is that correct?

16 MR. JOHN SCOTT: Correct.

17 MR. FREDERICK CHENOWETH: And were you  
18 a project coordinator for a period of time?

19 MR. JOHN SCOTT: Yes. I would say for  
20 the first four (4) or five (5) years I was a project  
21 coordinator. Wheelwright Construction was my first  
22 in-office job right -- right from George Brown  
23 College.

24 MR. FREDERICK CHENOWETH: Yes.

25 MR. JOHN SCOTT: And it worked well



1 for forty (40) years.

2 MR. FREDERICK CHENOWETH: All right.  
3 Thank you. And what does a project coordinator do on  
4 a design build project?

5 MR. JOHN SCOTT: Project coordinator  
6 is generally -- works in conjunction with estimators -  
7 - estimates prepared by the estimator and -- and  
8 sometimes under a project manager.

9 So, he is the main connection between  
10 the field and the office mostly during the  
11 construction stage.

12 MR. FREDERICK CHENOWETH: Very good.  
13 And did you, with Wheelwright, become a project  
14 manager?

15 MR. JOHN SCOTT: Yes, I did.

16 MR. FREDERICK CHENOWETH: And I have a  
17 sense from looking at your report that you were a  
18 project manager for nine (9) years with Wheelwright,  
19 from 1974 to 1983. Is that correct?

20 MR. JOHN SCOTT: Correct, yes.

21 MR. FREDERICK CHENOWETH: And tell us  
22 if you would, please, about your design build  
23 experience through the course of the time that you  
24 were a project manager for that nine (9) years.

25 MR. JOHN SCOTT: So, the project

1 manager is the direct link to the customer and clients  
2 representatives and -- and takes his lead from the  
3 management of the company to follow the project from  
4 conception right through to completion.

5 MR. FREDERICK CHENOWETH: So, you  
6 would see the whole process of design build on a  
7 number of projects, I take it, through the course of  
8 those nine (9) years?

9 MR. JOHN SCOTT: Correct. And -- and  
10 the project manager is generally involved in the  
11 putting together of the estimates and the negotiations  
12 with the client.

13 MR. FREDERICK CHENOWETH: Right. So,  
14 you'd see the entire proj -- process?

15 MR. JOHN SCOTT: Correct. Yes.

16 MR. FREDERICK CHENOWETH: Thank you,  
17 right from the original contact with the client. Is  
18 that correct?

19 MR. JOHN SCOTT: Yes.

20 MR. FREDERICK CHENOWETH: Thank you.  
21 And then you became a vice-president of sales and  
22 construction with Wheelwright. And you did that for a  
23 period of nine (9) years, from 1983 to 1992.

24 Is that correct?

25 MR. JOHN SCOTT: That's correct.

1 MR. FREDERICK CHENOWETH: All right.  
2 And what would your responsibilities have involved in  
3 terms of sales and construction at that position?

4 MR. JOHN SCOTT: My responsibilities  
5 were to secure sales and administer the construction,  
6 supervise the project managers, the coordinators, and  
7 the site superintendents.

8 MR. FREDERICK CHENOWETH: So, again,  
9 your involvement was with design build projects. Is  
10 that correct?

11 MR. JOHN SCOTT: Correct.

12 MR. FREDERICK CHENOWETH: All right.  
13 And then you had occasion to move to Matthews  
14 Construction. And I get the impression that you were  
15 three (3) years with Matthews, from 1992 to 1995.

16 Is that correct?

17 MR. JOHN SCOTT: That's correct.

18 MR. FREDERICK CHENOWETH: All right.  
19 And what was your particular responsibilities with  
20 Matthews Construction?

21 MR. JOHN SCOTT: Matthews  
22 Construction, I was responsible for international  
23 sales and design build. Matthews, at that time, was  
24 interested in getting more into the pre-engineered  
25 market and wanted the so -- wanted somebody with

1 design build experience.

2 MR. FREDERICK CHENOWETH: And tell me,  
3 you then, I -- I take it, went back to Wheelwright?

4 MR. JOHN SCOTT: Correct. Yes.

5 MR. FREDERICK CHENOWETH: And how is  
6 it that you had occasion to go back to Wheelwright?

7 MR. JOHN SCOTT: The owner was -- was  
8 getting on in years and was looking at a turnover to  
9 younger members of his family, but they weren't at the  
10 stage that they -- they could take over a company of  
11 that size. So, he re-recruited me to come in and run  
12 the company.

13 MR. FREDERICK CHENOWETH: Thank you.  
14 And how long did run the company Wheelwright for?

15 MR. JOHN SCOTT: Right up until 2017,  
16 I think.

17 MR. FREDERICK CHENOWETH: All right.  
18 And in 2017, you joined another organization?

19 MR. JOHN SCOTT: Yes. Yeah.

20 MR. FREDERICK CHENOWETH: What  
21 organization is that?

22 MR. JOHN SCOTT: It was a new company  
23 that was just being put together called Steel Can --

24 MR. FREDERICK CHENOWETH: Yes.

25 MR. JOHN SCOTT: -- based on --

1 MR. FREDERICK CHENOWETH: Is that who  
2 you -- is that who you're presently with?

3 MR. JOHN SCOTT: Yes. Yeah.

4 MR. FREDERICK CHENOWETH: And what do  
5 you do for Steel Can?

6 MR. JOHN SCOTT: I'm the seals --  
7 senior sales -- sales manager and responsible for  
8 sales and negotiation of design build contracts.

9 MR. FREDERICK CHENOWETH: All right.  
10 So, again, Steel Can, your present employer, is --  
11 continues to be involved in the design build area, do  
12 they?

13 MR. JOHN SCOTT: Correct, specializing  
14 in pre-engineered buildings.

15 MR. FREDERICK CHENOWETH: There you  
16 go. And what percentage of the project that Steel Can  
17 takes on at this juncture are a design build?

18 MR. JOHN SCOTT: I would say 90  
19 percent.

20 MR. FREDERICK CHENOWETH: And while  
21 you're with Wheelwright, what percentage of the  
22 projects that Wheelwright carried on were a design  
23 build?

24 MR. JOHN SCOTT: I would say that same  
25 percentage, 90 percent.

1 MR. FREDERICK CHENOWETH: Thank you.  
2 And during the time that -- that you were active at  
3 Wheelwright and, again, during the time that you ran  
4 Wheelwright, can you tell me what accomplishments you  
5 achieved with respect to the growth in revenue and  
6 sales of that particular company?

7 MR. JOHN SCOTT: Well, I think when I  
8 started with Wheelwright, they were in the  
9 neighbourhood of 1 1/2 to a 2 -- \$2 million gross  
10 revenue company. And we built that up to  
11 approximately \$30 million.

12 MR. FREDERICK CHENOWETH: Very good.  
13 Thank you. And, again, you say that approximately 90  
14 percent of that would have been design builds?

15 MR. JOHN SCOTT: Correct.

16 MR. FREDERICK CHENOWETH: All right.  
17 Now, I see that you've had a number of achievements  
18 which can be read here. And I take it you had a  
19 project with respect to a hangar in Sri Lanka?

20 MR. JOHN SCOTT: Yes.

21 MR. FREDERICK CHENOWETH: Can you tell  
22 me of that?

23 MR. JOHN SCOTT: That was a negotiated  
24 contract with a Toronto company, EDC Finance. I  
25 believe there were three (3) international bidders

1 asked to put in proposals, and -- and we were  
2 successful.

3 MR. FREDERICK CHENOWETH: All right.

4 And --

5 MR. JOHN SCOTT: All -- all the  
6 material on that project was shipped from Canada,  
7 Toronto area, loaded on a boat and shipped to Columbo,  
8 Sri Lanka and put up with a lot of Canadian labour.

9 MR. FREDERICK CHENOWETH: And, again,  
10 that was a design build project?

11 MR. JOHN SCOTT: Design build for the  
12 -- for the steel, yes.

13 MR. FREDERICK CHENOWETH: And you also  
14 were involved in a project with Worldways airlines at  
15 the Pearson Airport?

16 MR. JOHN SCOTT: Correct.

17 MR. FREDERICK CHENOWETH: Can you tell  
18 us something of that project?

19 MR. JOHN SCOTT: Yeah. That was a  
20 private company. And we were -- we were requested to  
21 submit a proposal to both design and construct the  
22 hangar from the anchor bolts up, which we did and  
23 successfully completed to the owner's satisfaction.

24 MR. FREDERICK CHENOWETH: If you  
25 could, please, tell me about -- about your involvement

1 and start off by telling me what the MasterCard Centre  
2 is, if you would, please?

3 MR. JOHN SCOTT: Well, the MasterCard  
4 Centre, at the time it was built, we felt was a very  
5 prestigious project. And we were awarded the contract  
6 to design the facility, a six (6) arena complex, which  
7 was to be leased by the Toronto Maple Leafs as their  
8 practice facility and use for tournaments in the  
9 Toronto area.

10 It's located at Ki -- Kipling south of  
11 the Browns Line on the west side of Toronto and is  
12 functioning well today.

13 MR. FREDERICK CHENOWETH: And what was  
14 your involvement with that particular project?

15 MR. JOHN SCOTT: I negotiated the  
16 supply and install of the pre-engineered building. At  
17 the time it came into Canada, it was the biggest pre-  
18 engineered building that had ever been built up here.

19 MR. FREDERICK CHENOWETH: Now, I have  
20 a sense that you've been involved in the construction  
21 of a number of ice arena complexes in the Province of  
22 Ontario?

23 MR. JOHN SCOTT: Yes. There was a  
24 period in the 1980s when the government was providing  
25 grants to small municipalities to put up arenas. So,



1 there was actually a rush on arenas at that time, and  
2 we did them in many small communities where we would  
3 work with the community.

4 I can remember one (1), an ops arena  
5 adjacent to Lindsay where they wanted a great portion  
6 of the labour to be -- to be local and volunteer. And  
7 we negotiated a contract with them to supply the  
8 building and -- and do the dangerous parts of the  
9 construction and whereas locals supplied the labour  
10 for the balance of it.

11 MR. FREDERICK CHENOWETH: And what  
12 were your obligations in those projects?

13 MR. JOHN SCOTT: I was as -- as the --  
14 then, I was the project manager. And I specifically  
15 was responsible for the cu -- construction of those  
16 arenas.

17 MR. FREDERICK CHENOWETH: Very good,  
18 thank you. And again, they were design build?

19 MR. JOHN SCOTT: Correct.

20 MR. FREDERICK CHENOWETH: All right.  
21 And I understand you had some involvement with the LOF  
22 glass plant in the town we're presently in,  
23 Collingwood, Ontario?

24 MR. JOHN SCOTT: That's correct. We'd  
25 completed a project design build up in Huntsville for

1 Algonquin Metal Products and the manager from that  
2 facility who supervised us and worked with us in  
3 building that became the general manager of LOF in  
4 Collingwood and -- and he called us and asked if -- if  
5 we could handle a \$150,000 contract on a design build  
6 basis.

7                   And we said yes, and we did. We worked  
8 with them to design that building. It was a  
9 conventional building, it was not pre-engineered and  
10 we negotiated the contract and it was one of the more  
11 significant projects that helped us make the jump from  
12 2 million to 30 million.

13                   MR. FREDERICK CHENOWETH: Very good.  
14 You mentioned that was a conventional project as  
15 opposed to design build. What's --

16                   MR. JOHN SCOTT: No, it was still  
17 design build.

18                   MR. FREDERICK CHENOWETH: I'm sorry,  
19 it was still design build, as opposed to pre-  
20 engineered?

21                   MR. JOHN SCOTT: Correct. And --

22                   MR. FREDERICK CHENOWETH: But when  
23 you're mentioning pre-engineered, is that pre-  
24 engineered steel buildings?

25                   MR. JOHN SCOTT: Pre-engineer -- pre-

1 engineered steel buildings with the primary dis --  
2 difference between them and a conventional building is  
3 much of the components are manufactured in the  
4 factory, so there's less labour to do in the field.

5 MR. FREDERICK CHENOWETH: All right.  
6 And the IOF glass was a conventional form of building  
7 as opposed to a pre-engineered steel building?

8 MR. JOHN SCOTT: Correct. And that  
9 relationship with LOF glass allowed us to do a \$12  
10 million contract in Lindsay two (2) years later, and a  
11 \$15 million contract in Lexington, Kentucky, they were  
12 so satisfied with the -- with the performance and the  
13 relationship.

14 MR. FREDERICK CHENOWETH: All right.  
15 And again, were these design build projects?

16 MR. JOHN SCOTT: All design build and  
17 all conventional.

18 MR. FREDERICK CHENOWETH: All right,  
19 thank you.

20 So you've had substantial experience  
21 with -- with both pre-engineered steel buildings and  
22 conventional construction as well --

23 MR. JOHN SCOTT: Correct.

24 MR. FREDERICK CHENOWETH: -- in the  
25 design build area?

1 MR. JOHN SCOTT: Yes.

2 MR. FREDERICK CHENOWETH: Very good.

3 And again, you've told us of the sales volume increase  
4 that you -- that you were able to achieve on behalf of  
5 Wheelwright?

6 MR. JOHN SCOTT: Correct.

7 MR. FREDERICK CHENOWETH: Now just  
8 let's briefly learn something of your educational  
9 background to be involved in this area.

10 I understand that your first education  
11 in the construction area was at George Brown College.

12 MR. JOHN SCOTT: Correct. I took a --  
13 a two-year construction technician's course there,  
14 which was designed to put people with no desire to go  
15 to university into the workforce as quickly as  
16 possible.

17 MR. FREDERICK CHENOWETH: Yes.

18 MR. JOHN SCOTT: So they had some very  
19 practical courses there that helped you be productive  
20 as soon as you started into the workforce.

21 MR. FREDERICK CHENOWETH: Right.  
22 What's a construction technician?

23 MR. JOHN SCOTT: I guess if you put  
24 them in order, they would be the engineer, the  
25 technologist and then the technician.

1                   So more basic learning at the -- during  
2 the courses, such as quantity serving, estimating,  
3 strength of materials, field surveying, that type of  
4 thing.

5                   MR. FREDERICK CHENOWETH:    Yes, thank  
6 you.  And have you taken some further courses at  
7 Ryerson with respect to quantity surveying?

8                   MR. JOHN SCOTT:     Yes, for the -- after  
9 graduation and --

10                  MR. FREDERICK CHENOWETH:   First of  
11 all, tell us what quantity surveying is.

12                  MR. JOHN SCOTT:     So quantity surveying  
13 is a professional activity that was developed in  
14 Europe where quantity surveyors would do bills of  
15 quantities, they'd figure out what the tonnage of  
16 granular is, what the cubic metres of concrete is and  
17 they would submit that bill of material to contractors  
18 and get it priced.

19                         So the responsibility on the quantities  
20 would be with generally the owner, and then the  
21 contractors would bit based on the quantities.

22                         Whereas in our world here, we do both.  
23 We are responsible for the quantities of concrete and  
24 price it accordingly.

25                   MR. FREDERICK CHENOWETH:    Very good.

1 And I take it you took two (2) courses at Ryerson in  
2 that area of expertise?

3 MR. JOHN SCOTT: I took two (2)  
4 courses per year for two (2) years after I graduated.

5 MR. FREDERICK CHENOWETH: Thank you.  
6 And how long in each one (1) of those years would your  
7 courses have been?

8 MR. JOHN SCOTT: The courses were  
9 around four (4) months, two (2) nights a week, four  
10 (4) hours each.

11 MR. FREDERICK CHENOWETH: Now, as I  
12 understand it, you've also served on the President's  
13 Advisory Council of American Building Company, is that  
14 correct?

15 MR. JOHN SCOTT: Correct.

16 MR. FREDERICK CHENOWETH: And you did  
17 so for approximately ten (10) years?

18 MR. JOHN SCOTT: Correct.

19 MR. FREDERICK CHENOWETH: And can you  
20 tell me what that advisory council was all about?

21 MR. JOHN SCOTT: So I believe there is  
22 the neighbourhood of 250 builders in North America, US  
23 and Canada that have relationships with American  
24 Buildings. And the American Buildings Company would  
25 select representatives across North America, maybe I

1 think there were three (3) in Canada and maybe twelve  
2 (12) in the States to advise the manufacturer how they  
3 could improve their product, how they could improve  
4 their sales, how they could improve their relationship  
5 with contractors and assist them, and they would have  
6 two (2) meetings a year.

7 MR. FREDERICK CHENOWETH: All right.  
8 And the American Building Company, are they involved  
9 in the design build area?

10 MR. JOHN SCOTT: Yes, American  
11 Buildings Company is owned by Nucor Steel, Nucor Steel  
12 is the biggest steel manufacturer in North America,  
13 located in the States with maybe five plants. And  
14 American Buildings is owned by them and they design  
15 and fabricate pre-engineered buildings.

16 MR. FREDERICK CHENOWETH: All right.  
17 Do I take it as a result of that, that -- that you  
18 have a number of relationships with -- well, you  
19 clearly have a relationship with the American Building  
20 Company, and again that relationship involves the  
21 utility of their product being a pre-engineered steel  
22 building.

23 MR. JOHN SCOTT: Correct, they're --  
24 they're a source of LEEDs, like they go to most  
25 builder meetings, general building meetings and set up

1 a booth and have people represent them and -- and do  
2 get inquiries, and they distribute those inquiries --  
3 inquiries to their network of builders.

4 In addition, we rely on them for  
5 feasibility studies on the practicality of using their  
6 system for different uses, everything from mining,  
7 where you could have an 80 foot high building with a  
8 100 tonne crane to a six-pad arena such as the  
9 MasterCard Centre.

10 MR. FREDERICK CHENOWETH: So I take it  
11 as a result of those relationships with this supplier  
12 of pre-engineered steel buildings, that a good deal of  
13 your work with both Wainwright (sic) -- and I take it  
14 now -- Wheelwright and I take it now with Steel Can is  
15 in the pre-engineered steel building area?

16 MR. JOHN SCOTT: Correct, and I still  
17 have that strong relationship with American Buildings.

18 MR. FREDERICK CHENOWETH: Thank you.

19 And you were on the executive -- you  
20 were an executive member of that president's council  
21 with American Buildings for three (3) years, were you?

22 MR. JOHN SCOTT: Correct. That  
23 advisory council of twelve (12) to twenty (20) people  
24 was asked to elect, amongst them, five (5) people to  
25 be on the executive that would maybe meet once or more



1 a year and I was selected for that.

2 MR. FREDERICK CHENOWETH: All right.

3 In your position and in your experience  
4 in the design build area, have you had occasion to  
5 become familiar with Sprung buildings?

6 MR. JOHN SCOTT: Yes, I have. They're

7 --

8 MR. FREDERICK CHENOWETH: And how does  
9 that arise?

10 MR. JOHN SCOTT: They're a competitor  
11 and we're aware of them in the marketplace. We know  
12 they're a reputable firm. I'm not sure the exact  
13 number of years, but I think it's over 100 that  
14 they've been in business.

15 And so they have a good reputation and  
16 we -- we're just aware of them and if we're bidding we  
17 know that they're very, very competitive.

18 MR. FREDERICK CHENOWETH: Very good,  
19 thank you. And I also understand that you've had some  
20 experience with LEEDs buildings. Can you tell us of  
21 that?

22 MR. JOHN SCOTT: Yes, I've taken some  
23 courses on -- on LEEDs construction and have been  
24 involved with a couple of large buildings, one (1) for  
25 the City of London, a transfer recycling facility that

1 the City of London originally wanted to have LEED's  
2 categorization. But as things moved forward they  
3 realized it was going to be a -- a probably a 20  
4 percent cost increase to meet the LEED's criteria, all  
5 of it.

6                   The pre-engineered buildings have the  
7 benefit of being 80 percent recycled material, which  
8 is a -- a high LEED's point item. And so lots of  
9 times on LEED's jobs you'll say this component meets  
10 LEED's standards or that component meets LEED's  
11 standards, but you can't meet the ultimate  
12 classification.

13                   MR. FREDERICK CHENOWETH: All right.  
14 So I take it your experience with LEEDs is both  
15 educational and that you've had some education in the  
16 area and you've had some experience with LEED's  
17 building through the course of your construction  
18 activities?

19                   MR. JOHN SCOTT: Correct, with -- with  
20 the courses I've taken through the Toronto  
21 Construction Association and through my exposition --  
22 exposure to it, through the building part.

23                   MR. FREDERICK CHENOWETH: Thank you,  
24 Mr. Scott. Can you tell me, as a matter of interest,  
25 have you ever had occasion to qualify as a -- an

1 expert witness in a court proceeding before?

2 MR. JOHN SCOTT: No, I haven't.

3 MR. FREDERICK CHENOWETH: All right.

4 And have you ever had occasion to -- to write an  
5 expert's report on earlier occasions?

6 MR. JOHN SCOTT: No. Just this once.

7 MR. FREDERICK CHENOWETH: Thank you  
8 very much. And again, we appreciate your being here  
9 and assisting us.

10 That completes my review of the  
11 qualifications of this individual, and I'm going to  
12 move on to the comments he makes through the course of  
13 his report.

14 THE HONOURABLE FRANK MARROCCO: I -- I  
15 indicated, I think, that that's the way I -- I'm going  
16 to proceed, so just go ahead and then we'll have a  
17 cross-examination on all aspects of it and when I'm  
18 dealing with the evidence, I'll deal with both the  
19 qualifications and the opinion.

20 MR. FREDERICK CHENOWETH: Appreciate  
21 it. Thank you very much.

22 MR. WILLIAM MCDOWELL: For what it's  
23 worth, I don't think there will be a lot of dispute  
24 about his ability to give opinion evidence as an  
25 expert, but could -- could I ask at this juncture

1 what's he being qualified in -- as an expert in what  
2 exactly?

3 MR. FREDERICK CHENOWETH: Well, I  
4 think that's set out in the first part of the report.  
5 He's qualified as an expert in design build projects,  
6 having had forty-five (45) years' experience in that  
7 field, and he mentions in his report on page 1, the  
8 particular areas of expertise that he has in the  
9 design build area, including such things as budget  
10 development, contract negotiations on design build,  
11 and -- and the control of design build projects.

12 MR. WILLIAM MCDOWELL: All right. So  
13 he's -- and he's giving opinion evidence with respect  
14 to design build projects. That's fine.

15 THE HONOURABLE FRANK MARROCCO: That -  
16 - that's what I understood from the report and I think  
17 that's what Mr. Chenoweth just said, so --

18 MR. WILLIAM MCDOWELL: Okay. So that  
19 --

20 THE HONOURABLE FRANK MARROCCO: -- I  
21 think that's --

22 MR. WILLIAM MCDOWELL: -- that's fine.  
23 Thanks.

24

25 CONTINUED BY MR. FREDERICK CHENOWETH:

1 MR. FREDERICK CHENOWETH: Now, I  
2 understand that you had occasion at my request to  
3 review the transcript of the evidence of Ron Martin  
4 given at this Inquiry.

5 MR. JOHN SCOTT: Correct. Yes, I did.

6 MR. FREDERICK CHENOWETH: All right.  
7 And I also understand that, again at my request, you  
8 had occasion to review the CCDC design build contract  
9 that was entered into between BLT and the Town of  
10 Collingwood on August 30th, 20 -- 2012, correct?

11 MR. JOHN SCOTT: That's correct.

12 MR. FREDERICK CHENOWETH: All right.  
13 And I understand that appended to that contract is the  
14 payment schedule that the Town of Collingwood agreed  
15 to with BLT with respect to the erection of those  
16 Sprung buildings in 2012-2014.

17 MR. JOHN SCOTT: Correct. I did.

18 MR. FREDERICK CHENOWETH: All right.  
19 Thank you. And having read the transcript of Ron  
20 Martin, did you have a sense of what experience Ron  
21 Martin had had with design build projects when -- when  
22 he commenced his involvement with that project in  
23 2013?

24 MR. JOHN SCOTT: I mean, from reading  
25 his own statements, he had no expertise in -- in

1 design build.

2 MR. FREDERICK CHENOWETH: And do you  
3 have any thoughts as to the appropriateness of -- of a  
4 gentleman with no expertise in design builds being  
5 involved in this design build project that Collingwood  
6 undertook at that time?

7 MR. JOHN SCOTT: I think it would be a  
8 difficult transition to go from tendered projects  
9 where the architects and engineers have prepared  
10 detailed specifications into a design build project,  
11 and also I observed in his statements that he was not  
12 involved in the negotiation of the contract or in the  
13 conceptual design between the client and the ultimate  
14 design builder. He came on board after everything was  
15 committed.

16 MR. FREDERICK CHENOWETH: All right.  
17 And tell me, you say he was come on -- he came on  
18 board after the contracts were signed.

19 Is that in any way unusual in the  
20 design build process?

21 MR. JOHN SCOTT: Yes. I think in the  
22 design build process, generally the owner's  
23 representative is involved at an earlier stage --

24 MR. FREDERICK CHENOWETH: Right.

25 MR. JOHN SCOTT: -- and can understand

1 the whole concept and can understand why certain  
2 things are done, and -- and I don't think without  
3 participating in that, you would be at a disadvantage  
4 to move in later on and try and administer the  
5 project.

6 MR. FREDERICK CHENOWETH: Is -- is it  
7 an all -- at all unusual that the administrator of  
8 that project would not be involved until after the  
9 contracts are signed?

10 Does that -- does that occur with some  
11 frequency?

12 MR. JOHN SCOTT: I would say that it  
13 would be a bit unusual, particularly in design build.  
14 If it's a tendered project with specific  
15 specifications and contract documents, it's not so  
16 unusual, but for design build it's unusual.

17 MR. FREDERICK CHENOWETH: Does it --  
18 does it occur?

19 MR. JOHN SCOTT: I think the -- the  
20 individual is at a disadvantage.

21 MR. FREDERICK CHENOWETH: Thank you.  
22 Now, it appears that the contract that -- that was  
23 entered into on this occasion was a CCDC contract --  
24 contract between the Town and BLT?

25 MR. JOHN SCOTT: Correct, yes.

1 MR. FREDERICK CHENOWETH: And is that  
2 the usual form of contract for a design build of this  
3 nature?

4 MR. JOHN SCOTT: Yes, speci --  
5 specifically with municipalities who like one (1) of  
6 the versions of the Canadian contracts. There is a  
7 stipulated sum contract that's design build and  
8 there's construction management. There's various  
9 versions of the CCDC contracts, but this one (1) is  
10 specific for design build and is quite functional and  
11 developed through both the Architects Association and  
12 the Contractors Association.

13 MR. FREDERICK CHENOWETH: All right.  
14 And would you be of the view that the form of contract  
15 that the Town of Collingwood entered into with BLT for  
16 this project was the appropriate contract under the  
17 circumstances?

18 MR. JOHN SCOTT: Yes. This would be  
19 the appropriate contract for this -- this type of a  
20 situation, and it seemed to be filled out properly and  
21 the items all covered. I think it's a good solution.

22 MR. FREDERICK CHENOWETH: I'm  
23 interested in the suitability of the design build  
24 approach for this kind of contract that was undertaken  
25 by Collingwood.



1                   Are there any advantages that you're  
2 aware of, of undertaking a design build contract for  
3 the kind of construction that Collingwood was  
4 undertaking at this time?

5                   MR. JOHN SCOTT:   Well, I think it's a  
6 -- a good -- a good solution because in that contract  
7 -- at the stage of signing the contract, the drawings  
8 aren't complete, and once the contract is signed and  
9 the contract is in place, the design builder completes  
10 the drawings and the -- I believe the Town of  
11 Collingwood gets the opportunity to both review and  
12 sign those contract drawings, and I would assume at  
13 that stage that both parties are satisfied with the  
14 drawings.

15                  MR. FREDERICK CHENOWETH:   And is there  
16 any time savings that's involved for an owner/client  
17 with respect to the design build project?

18                  MR. JOHN SCOTT:   Yes, because I -- I  
19 believe that once that contract is signed, some key  
20 components like the Sprung building and possibly the  
21 ice-making equipment, which are very long delivery  
22 items, can be released and that would be a time  
23 saving.

24                  MR. FREDERICK CHENOWETH:   All right.  
25 How about time savings in terms of the management

1 element or the necessary management by the owner  
2 through the course of the project, is there any time  
3 savings with respect to that?

4 MR. JOHN SCOTT: Well, there's a time  
5 savings with either the Sprung building or  
6 comparatively a pre-engineered building, that the time  
7 of construction or installation of that component is  
8 faster than bricks and mortar, and that type of thing.

9 MR. FREDERICK CHENOWETH: How about  
10 the necessary involvement of the owner in the project  
11 as it proceeds?

12 MR. JOHN SCOTT: Well, it's a -- is a  
13 simpler mesod -- method for the owner because it's the  
14 design builder who's dealing with the architects and  
15 engineers to resolve all the minor issues, and if  
16 there's a significant issue, they would call in the  
17 owner's rep, but the day-to-day ones, they would  
18 resolve themselves.

19 MR. FREDERICK CHENOWETH: And with  
20 respect to cost control, is there any advantages in  
21 the use of a design build project such as Sprung?

22 MR. JOHN SCOTT: Well, keep in mind I  
23 have a contractor's opinion, but I believe that  
24 contractors are more aware of costs than architects  
25 are, and so when something is proposed by a supplier

1 or a subcontractor, they have a better feel for what  
2 things should cost and can therefore keep -- keep  
3 costs under control.

4 MR. FREDERICK CHENOWETH: All right.  
5 And how about as the -- as the project continues  
6 through its course, does a design build afford  
7 opportunities for cost control?

8 MR. JOHN SCOTT: Yes. I think they  
9 can minimize changes, and again handle them within the  
10 -- the internal design group and the contractors and  
11 resolve them without -- the case of some consultants'  
12 jobs, the consultant is allowed ten (10) days to  
13 review any requests for information and the contractor  
14 is allowed ten (10) days to respond, and all of a  
15 sudden you've lost three (3) weeks for the relocation  
16 of a door.

17 MR. FREDERICK CHENOWETH: Thank you.  
18 And again, the design build avoids that prospect, does  
19 it?

20 MR. JOHN SCOTT: Correct.

21 MR. FREDERICK CHENOWETH: All right.  
22 Now, the -- then make some comments with respect to  
23 construction bonds and the use of construction bonds.

24 In your experience, what is the -- the  
25 frequency with which bid bonds are utilized -- or not

1 bid bonds but construction bonds.

2 MR. JOHN SCOTT: Construction bonds  
3 for our company or any companies I've been involved  
4 with, I said 2 percent in my report, and that's being  
5 overly generous with how often they're used.

6 The requirement for a construction bond  
7 from an owner, I would think would be when there is  
8 something questionable about the contractor they're  
9 using. If they're comfortable with the contractor and  
10 they get statutory declarations at the end of each  
11 month, people have been paid on site, and there's  
12 payment certifier visits to the site, I don't see a  
13 need for a bond.

14 MR. FREDERICK CHENOWETH: Thank you.  
15 And again you say that only 2 percent of the projects  
16 that -- that you've been involved in utilize  
17 construction bonds?

18 MR. JOHN SCOTT: Correct.

19 MR. FREDERICK CHENOWETH: All right.  
20 And tell me, would that be the case for both large and  
21 small projects?

22 MR. JOHN SCOTT: Correct. I've done -  
23 - recently I've done design build transfer stations  
24 that were in excess of ten (10) million and had no  
25 bonding requirement.

1 MR. FREDERICK CHENOWETH: Thank you.

2 And how many construction bonds have you seen in  
3 projects over about the last five (5) years?

4 MR. JOHN SCOTT: I would say one (1).

5 MR. FREDERICK CHENOWETH: Thank you.

6 And how many projects have you been involved in over  
7 the last five (5) years?

8 MR. JOHN SCOTT: Fifty (50).

9 MR. FREDERICK CHENOWETH: All right.  
10 Thank you. Does the use of a construction bond affect  
11 the number of the contractors that might be interested  
12 in being involved in your project?

13 MR. JOHN SCOTT: Absolutely. It  
14 reduces it by -- my estimate is 50 percent, but for a  
15 municipality like a Lindsay or a Collingwood or a  
16 Kincardine, all local contractors would almost all be  
17 eliminated if there was a bonding requirement, and so  
18 you would end up having to get contractors from the  
19 bigger cities, London or Toronto or Hamilton, to come  
20 up to remote comm -- not that Collingwood's remote,  
21 but to more distant communities and eliminate the  
22 opportunity for local contractors and taxpayers to bid  
23 on the jobs.

24 MR. FREDERICK CHENOWETH: Help me  
25 understand why that's the case. Why are people,

1 particularly those involved in the community and those  
2 local to the community -- why would they be less  
3 interested in bidding if we're talking about the  
4 utility of a construction bond?

5 MR. JOHN SCOTT: So to secure bonding,  
6 you must report to the bonding company monthly, and --  
7 and it's -- it a high volume amount of information  
8 they want to know. They want to know every job you're  
9 doing, every cost-to-date on that job, how much it's  
10 going to cost to finish the job, and what your  
11 anticipated profit is.

12 And it's so demanding that even  
13 companies that could afford to be bonded just don't  
14 want to do it.

15 MR. FREDERICK CHENOWETH: So, there's  
16 a significant administrative burden if an owner  
17 chooses to employ a construction bond. Is that  
18 correct?

19 MR. JOHN SCOTT: Correct. And if you  
20 were a smaller company and you want to go get a bond  
21 for \$2 million, you have to put up security for 50  
22 percent.

23 So, it would lead me to believe that  
24 you'd have to put your house up for security unless  
25 you have a million dollars in the bank.

1 MR. FREDERICK CHENOWETH: Very good.

2 And what about the cost of employing a construction  
3 bond? Can you tell us something of that?

4 MR. JOHN SCOTT: It's quite expensive.

5 And, generally, the kind of historical rule is  
6 contractors don't mark up the bond. So, if the bond  
7 is going to cost fifty thousand dollars (\$50,000) or  
8 two hundred thousand (200,000), that's the cost that's  
9 put into the tender.

10 And the way it used to be up until  
11 about five (5) years ago is that clients would ask for  
12 an agreement to bond, which would mean the bonding  
13 company would say we will bond this company if they're  
14 successful to get the job, and there was no charge for  
15 that.

16 And then, if the bond came about, the  
17 bonding company would get the job. But so many  
18 clients, owners, were, once they got the agreement to  
19 bond, they thought, well, this contractor's successful  
20 and reliable, so now that I have this, why am I going  
21 to pay for the bond, and so they wouldn't pay for the  
22 bonds.

23 So, as of a few years ago, now you pay  
24 for the -- for the agreement to bond, and it's  
25 nominal, you know, twenty-five hundred dollars

1 (\$2,500) or something like that.

2 MR. FREDERICK CHENOWETH: So, they --  
3 they plugged that loophole?

4 MR. JOHN SCOTT: Yes. Yeah.

5 MR. FREDERICK CHENOWETH: All right.  
6 Now, can you tell me about the -- the attitude -- or  
7 what's your experience with the attitude of -- of the  
8 bonding companies and their -- and their adjustment of  
9 claims?

10 Have you had any experience in that  
11 respect?

12 MR. JOHN SCOTT: Yes, I have. I was  
13 involved with one (1) of the biggest bonding claims  
14 from Zurich Insurance in the -- in the mid '90s. And  
15 when we had a meeting with the bonding company once it  
16 was decided -- and this was with the Matthews group  
17 after Kim Campbell had signed the contract with the  
18 Matthews group to build terminal 3.

19 And then there was a transition of  
20 power from Kim Campbell to Jean Chretien. And  
21 Matthews had a signed contract for \$750 million and  
22 had -- started doing active work on it.

23 And Jean Chretien came in and cancelled  
24 that contract arbitrarily. And eventually, Matthews  
25 went bankrupt and seven hundred and fifty (750)



1 employees lost their -- their jobs.

2                   And when we met with the bonding  
3 company, the bonding company made it clear, is they  
4 had no interest in looking after the interests of the  
5 clients. They wanted project managers, vice-  
6 presidents and coordinators to collect every cent they  
7 could from the owners.

8                   And then how -- how that works is,  
9 however much comes into the pot, whatever's left is  
10 distributed to build the job, and it's very  
11 adversarial and I -- I was turned off by the whole  
12 process.

13                   MR. FREDERICK CHENOWETH: All right.

14                   MR. JOHN SCOTT: And I -- I can't say  
15 that every bonding situation like that is like that,  
16 but that's just my experience.

17                   MR. FREDERICK CHENOWETH: And so that  
18 your experience is that it's having to deal with the  
19 bonding company should you be required to call on the  
20 construction bond is a less than satisfactory  
21 experience?

22                   MR. JOHN SCOTT: Correct. And -- and  
23 although the bonding company's responsibility is,  
24 because the owner is paying for that bond, is to make  
25 sure the job is completed with no negative implica --

1 implications to the owner, but it just doesn't happen  
2 that way.

3 MR. FREDERICK CHENOWETH: Thank you.  
4 Now, I'm interested to note that the contract in this  
5 matter is -- that the Town of Collingwood entered into  
6 on September 30th, and you've got a copy of it there,  
7 is not a contract with -- with Sprung, but it's a  
8 contract with BLT, who I take it you would describe as  
9 the contractor?

10 MR. JOHN SCOTT: Correct. Yes.

11 MR. FREDERICK CHENOWETH: All right.  
12 Is -- is that -- that situation, i.e., where the owner  
13 contracts with the -- with the construction company,  
14 is that in any way unusual --

15 MR. JOHN SCOTT: No.

16 MR. FREDERICK CHENOWETH: -- or is  
17 that a more standard situation?

18 MR. JOHN SCOTT: Sorry, could you  
19 repeat the wording of that?

20 MR. FREDERICK CHENOWETH: Is that in  
21 any way unusual --

22 MR. JOHN SCOTT: Which --

23 MR. FREDERICK CHENOWETH: -- the fact  
24 that the co --

25 MR. JOHN SCOTT: Which --

1 MR. FREDERICK CHENOWETH: -- the fact  
2 that the contract -- and, in fact, in this particular  
3 case, it was a contract between the -- the owner, the  
4 Town, and the contractor, BLT.

5 MR. JOHN SCOTT: No, that's not --

6 MR. FREDERICK CHENOWETH: Is that in  
7 any way unusual?

8 MR. JOHN SCOTT: That's not unusual.  
9 Similar things happened with the pre-engineered  
10 business where the big manufacturers, like American  
11 Buildings, Butler, Richar -- Robertson, they get  
12 leads.

13 They get people calling them up and  
14 asking them to come and visit them and describe how  
15 their building works and they're impressed. And they  
16 say, okay, we would like -- and Robertson would say,  
17 or Butler, we don't do the whole project, we only do  
18 the pre-engineered building, but we have affiliations  
19 with people in your area who are not only good  
20 contractors, but they specialize in our product, we --  
21 they specialize in putting up Sprung buildings.

22 And so, clients and customers would  
23 say, okay, give me their name. And then they would  
24 have to deal with the general because the contractor  
25 does the foundations. He does the interior finishing.

1 He'll do the whole package.

2 Sprung only wants to do that enclosure.

3 That -- that's their interest.

4 MR. FREDERICK CHENOWETH: All right.

5 So, this form of contract between the Town and -- and

6 BLT, the contractor, you didn't find that unusual in

7 any way?

8 MR. JOHN SCOTT: No. And I would make

9 the assumption that the Town investigated references

10 from BLT and met with them and satisfied themselves

11 that this was a good -- a good option to build their

12 building.

13 MR. FREDERICK CHENOWETH: Thank you.

14

15 (BRIEF PAUSE)

16

17 MR. FREDERICK CHENOWETH: Now, you

18 make some comments in your report with respect to

19 Sprung. And can you -- you -- you've already told me

20 something of Sprung, but you say that they're experts

21 in their particular building type.

22 Tell me what you know of that if you

23 would, please.

24 MR. JOHN SCOTT: Correct. They --

25 they are competitors, so I have no love for them. But

1 as years have gone by, where they used to be a very  
2 select usage fabricated building, they were less  
3 competition. Now their product has developed and we  
4 know they're tougher conver -- competition and it puts  
5 more pressure on our manufacturers and us to be more  
6 competitive and -- and to do a better job.

7                   So, they have a good product. I don't  
8 know that it's for every use, but in certain circumsta  
9 -- circumstances it certainly seems to do the job,  
10 satisfy the Ontario building code and be able to meet  
11 the insulation requirements that we have in the world  
12 today.

13                   MR. FREDERICK CHENOWETH: Have you --  
14 have you seen Sprung utilized in the arena  
15 construction area?

16                   MR. JOHN SCOTT: Yes, I have, yes.

17                   MR. FREDERICK CHENOWETH: Thank you.  
18 And have you seen Sprung utilized in the pool  
19 construction or pool covering area?

20                   MR. JOHN SCOTT: I can't say that I've  
21 ever seen it used for a pool, no.

22                   MR. FREDERICK CHENOWETH: Thank you.  
23 And is there anything about the Sprung facility that -  
24 - that you're aware of that would make it particularly  
25 suited for a frequently cold weather like tom -- like

1 this morning climate or -- or a heavy snowfall area  
2 like Collingwood?

3 MR. JOHN SCOTT: Well, their -- their  
4 ability to provide the 'R' values, or the insulation  
5 values, that are required and their ability to do  
6 clear spans, like, they can have a clear area between  
7 columns that's significant which makes it good use for  
8 hangars, arenas, sports facilities, that type of  
9 thing.

10 MR. FREDERICK CHENOWETH: And what is  
11 their reputation with respect to bearing snow loads?

12 MR. JOHN SCOTT: I think they have a  
13 good reputation. I know that they're built a lot in  
14 the North, even the far North, so I would say they  
15 have a good reputation.

16 MR. FREDERICK CHENOWETH: And in terms  
17 of -- of cold weather, I take it that -- do they -- do  
18 they have a particular 'R' factor in the Sprung  
19 buildings that are utilized?

20 MR. JOHN SCOTT: They do. And I'm not  
21 sure -- I'm not exactly sure how they achieve it. I  
22 believe it's a double membrane system with -- with  
23 something in-between, but I don't know what 'R' values  
24 they can achieve.

25 MR. FREDERICK CHENOWETH: And -- and

1 how about price? Where do they stand in terms of the  
2 panoply of -- of building options, including  
3 engineered steel?

4 MR. JOHN SCOTT: I believe they're  
5 selling them far too cheaply.

6 MR. FREDERICK CHENOWETH: That --

7 MR. JOHN SCOTT: That's humour.  
8 They're very, very competitive. We know going in that  
9 they'll be more economical than we will be, and so we  
10 have to either up sell or convince somebody to deal  
11 with us rather than Sprung.

12 MR. FREDERICK CHENOWETH: Thank you  
13 very much.

14 MR. JOHN SCOTT: And that's harder and  
15 harder to do.

16 MR. FREDERICK CHENOWETH: I note in  
17 the evidence of Ron Martin that he expressed a concern  
18 about the fact that, if the Town got involved in the  
19 site servicing process during the construction of  
20 these two (2) buildings, that that had the potential  
21 to lead to conflicts onsite with respect to the  
22 management of the safety issues on the project.

23 What's your thought with respect to  
24 that view expressed by Ron Martin?

25 MR. JOHN SCOTT: I -- I don't think

1 that's correct. I'm presently working on a few  
2 projects where the owner, for specific reasons, has  
3 awarded all the outside work, including paving curbs,  
4 landscaping, and outside lighting, for a separate  
5 contract for the construction of the building portion.

6 And there's a procedure of doing a  
7 notice of project to the Ministry of Labour. And you  
8 can have two (2) notice of projects on the same site.  
9 And if the -- one (1) of the contractors has to pass  
10 through the site of the other one (1), that's just --  
11 everybody has to adhere to the same safety rules and  
12 there general -- generally would be two (2) safety  
13 reps onsite, but it's certainly manageable.

14 MR. FREDERICK CHENOWETH: Right. And  
15 have you -- have you seen this two (2) site contracts  
16 situation occur on some of your projects?

17 MR. JOHN SCOTT: Yes. Yes.

18 MR. FREDERICK CHENOWETH: And has it  
19 worked out satisfactorily in your experience?

20 MR. JOHN SCOTT: Yes. I think that  
21 you could always have an issue. If somebody's walking  
22 to their work station and they don't have their hard  
23 hat but they're not working for you and you'll go and  
24 tell them, put your hard hat on, you know, your  
25 supervisor has to be pretty forceful to make sure,



1 regardless of who that individual's working for, he  
2 has to adhere to all the safety features on that site.

3 MR. FREDERICK CHENOWETH: So, I take  
4 it you don't see any problems with the two (2) site  
5 contractors on the -- on the -- in the same area?

6 MR. JOHN SCOTT: No. No.

7 MR. FREDERICK CHENOWETH: Right. Tell  
8 me, this -- this contract called for BLT to do the  
9 site servicing up to 10 feet outside the structure  
10 itself.

11 Is that -- is that in any way unusual?

12 MR. JOHN SCOTT: No, it's a standard  
13 practice. And it's a practice that contractors like.  
14 The issue is, if you have a service contractor running  
15 the water line or the sprinkler line or the power into  
16 the building through the foundation walls and into the  
17 -- say the electrical room, if the outside con --  
18 contractor breaks through the wall and does some  
19 damage, there's an issue.

20 So, if you run all of the services from  
21 the building out 10 feet, who -- whoever the outside  
22 contractor is bringing in those type of things, it's  
23 clean. He's not going into the building. He has no  
24 liability around the building. His work starts 10  
25 feet outside the building.

1                   And the other benefit is in the costing  
2 part of it. The general contractor or the building  
3 contractor doesn't have to worry about how deep the  
4 water line is or getting the water line certified for  
5 quality.

6                   You have to test the water as it comes  
7 into the building, and sometimes it can take you five  
8 (5) times to get it tested. And so, the general  
9 contractor doesn't have to put in the contingencies or  
10 any items. And I think it allows you to get a more  
11 competitive price.

12                   MR. FREDERICK CHENOWETH: Thank you.  
13 So, if the Town in this particular case chose to do  
14 the site work outside of the 10 feet from the  
15 structure, I take it that has a number of benefits,  
16 one (1) of which is the pricing your -- of your -- of  
17 the construction of your building with that particular  
18 contractor?

19                   MR. JOHN SCOTT: Correct. And, also,  
20 that portion of the work is not marked up by the -- by  
21 the general contractor, so the outside work could be  
22 extensive, it could be millions.

23                   And if the contractor's going to mark  
24 it up, he's going to be 15 percent or something like  
25 that on top of the site work. And -- and I would

1 think, with that type of a setup, you save that  
2 markup.

3 MR. FREDERICK CHENOWETH: So, you  
4 would see the decision that Collingwood made at this  
5 time to do outside the 10 feet site servicing  
6 themselves would have been an appropriate decision?

7 MR. JOHN SCOTT: Yes. Yes.

8 MR. FREDERICK CHENOWETH: All right.  
9 Now, you would have had occasion to look at the -- at  
10 the payment schedule that was Appendix A to the  
11 contract?

12 MR. JOHN SCOTT: Yes, I did.

13 MR. FREDERICK CHENOWETH: All right.  
14 And were you, in any event, in any way surprised or --  
15 or concerned about the nature of the payment schedule  
16 that the Town of Collingwood chose to enter into on  
17 that occasion?

18 MR. JOHN SCOTT: No, I -- I have no  
19 concerns about it. Design builders, particularly,  
20 seldom start a project without a significant deposit.

21 MR. FREDERICK CHENOWETH: Yes.

22 MR. JOHN SCOTT: We are more concerned  
23 about not being paid than I -- I think the client  
24 should be worried about us not fulfilling our  
25 obligations.

1 I -- I think the deposit, as much as a  
2 signed contract does, the deposit solidifies that this  
3 project is going ahead.

4 And it's -- it's good for both sides,  
5 the client knows that his contractor is secured, and  
6 the contractor knows that he's in a good position.

7 The subsequent payments, I'm not sure  
8 exactly I understood what the second payment was for  
9 when the site work was completed.

10 MR. FREDERICK CHENOWETH: I take it  
11 that was the site work for -- for inside the 10 feet  
12 from the -- from the structure itself.

13 MR. JOHN SCOTT: Oh, okay. Then that  
14 makes sense, yes. So it wasn't the external site  
15 work.

16 MR. FREDERICK CHENOWETH: No.

17 MR. JOHN SCOTT: Okay, then that makes  
18 sense, yes.

19 MR. FREDERICK CHENOWETH: All right.  
20 And tell me again why the contractor in a design  
21 build, and this Sprung project is an example of such a  
22 thing, is quite anxious to get a reasonable deposit  
23 upfront, why is that? Is that the norm -- is that the  
24 norm in these design build contracts?

25 MR. JOHN SCOTT: I would say yes, that

1 -- the percentage may vary, but to get a significant  
2 deposit is the norm.

3                   As soon as he has a contract, he would  
4 want to order or tie up his order for, in this case,  
5 refrigeration equipment, which is an extended  
6 delivery.

7                   The Sprung building, because those  
8 manufacturers have such a strong steady stream of  
9 business, you have to get your order in to block off  
10 your design and engineering time and the fabrication  
11 time for the enclosure itself.

12                   And I -- I'm not sure on this contract  
13 if timing was important, but if it was, it would be  
14 important to pay these guys the deposit and get them  
15 moving.

16                   MR. FREDERICK CHENOWETH: All right.  
17 And I take it the -- the contractor has to purchase  
18 this significant component, i.e., the Sprung roof?

19                   MR. JOHN SCOTT: Correct. And many of  
20 the items -- I believe this is a double arena?

21                   MR. FREDERICK CHENOWETH: It has a  
22 potential to be a double arena. But at the moment  
23 it's a single arena.

24                   MR. JOHN SCOTT: Okay, but initially -  
25 - so something like the boards, they Crystalplex or

1 whoever is supplying those boards, that's an extended  
2 delivery and obviously the arena can't be functional  
3 if the boards aren't there when they're needed.

4 MR. FREDERICK CHENOWETH: Is it the  
5 case that in your experience the supplier, in this  
6 case Sprung, would require a substantial payment with  
7 respect to that structure --

8 MR. JOHN SCOTT: I believe so, but not  
9 having --

10 MR. FREDERICK CHENOWETH: -- before  
11 producing?

12 MR. JOHN SCOTT: -- not having dealt  
13 with Sprung, I can't say for sure. But typically  
14 manufacturers want a significant payment when the  
15 buildings order and sometimes a significant payment  
16 when the drawings are complete.

17 MR. FREDERICK CHENOWETH: And I -- and  
18 I take it that suppliers take that position because  
19 they're -- they're building a -- a structure with  
20 particular design utility?

21 MR. JOHN SCOTT: Correct. Correct.

22 MR. FREDERICK CHENOWETH: They don't  
23 want to find themselves with a -- some unique product  
24 that -- that they have on their shelf that no one has  
25 paid for?

1                   MR. JOHN SCOTT:    Correct.  I can think  
2 of one (1) example that really exemplifies this.  In  
3 the area I've been it's called Caledonia where a few  
4 years ago there were some issues with Aboriginal  
5 rights, et cetera.

6                   MR. FREDERICK CHENOWETH:    Yes.

7                   MR. JOHN SCOTT:    It was town land and  
8 they contract -- a customer bought the land, ordered  
9 the building.  The building was in the magnitude of \$4  
10 million.  They started the job, the building was  
11 delivered and the Aboriginals protested and not only  
12 stopped the job, cancelled the job permanently, and  
13 that building had to be sold for scrap.

14                   And that client did not want to pay  
15 because as far as he's concerned, he had a building  
16 permit, he had everything and thought he could go and  
17 the whole thing fell apart.  Both the contractor and  
18 the manufacturer suffered some injury.

19                   MR. FREDERICK CHENOWETH:    I  
20 understand.

21                   And is there -- is there any difference  
22 when one is dealing with the government or a  
23 municipality or the Federal Government, or something  
24 of that nature, would -- would one as a -- a  
25 contractor or a supplier would one not require a

1 significant deposit because you're dealing with --  
2 with the government?

3 MR. JOHN SCOTT: So from the  
4 government's perspective?

5 MR. FREDERICK CHENOWETH: Yes.

6 MR. JOHN SCOTT: I would say on  
7 occasion there is sometimes some resistance, or  
8 reluctance rather than resistance.

9 But I think once it's explained that  
10 for this project to move forward the -- the suppliers  
11 and the manufacturers have to be paid and it's -- it's  
12 very standard when there's large equipment on mining  
13 projects where they're ordering mining equipment,  
14 large deposits are required before they'll ship.

15 MR. FREDERICK CHENOWETH: I notice in  
16 your report that you mentioned that many project  
17 managers are not hired until the contract is signed.

18 MR. JOHN SCOTT: Correct. And I think  
19 that's just economics, that some contracts take months  
20 to develop and finalize. The intent can be to enter  
21 into a contract in June and it might not be signed  
22 until September.

23 And so to have that person on staff is  
24 usually a significant cost. So it's not unusual for  
25 them to not be hired.



1 MR. FREDERICK CHENOWETH: Thank you.

2 With respect to municipalities, is the  
3 design build approach, is that -- is that a particular  
4 utility to municipalities?

5 MR. JOHN SCOTT: Yes, I think it's --  
6 I don't think it's as common as a tendered project,  
7 but there are certainly many municipalities that like  
8 to shift that design responsibility to the contractor.

9 MR. FREDERICK CHENOWETH: All right.  
10 Now, I'm -- I'm interested in the -- in the  
11 negotiations that might take place between the  
12 contractor and the owner with respect to a design  
13 build project.

14 Is it -- is it in any way common that  
15 the contractor, after consultation with -- with the  
16 owner and getting some understanding of -- of what's  
17 required in the project, that he would come up with a  
18 number and there may not be extensive negotiations  
19 between the parties?

20 MR. JOHN SCOTT: For the final  
21 contract price?

22 MR. FREDERICK CHENOWETH: Yes.

23 MR. JOHN SCOTT: I don't think that  
24 comes up too often. By the time you get close to the  
25 contract signing, there's been considerable back and

1 forth and it might be things that maybe can't afford  
2 to be put in the project, maybe it's the bleachers in  
3 the arena, maybe it's the type of bleachers, whether  
4 they're individual seats with arms or whether they're  
5 just bleachers or something like that.

6 I would think that would be developed  
7 as the project gets close to signing. But by the time  
8 you're going to sit and sign, I would think the  
9 negotiation of price is over.

10 MR. FREDERICK CHENOWETH: All right.  
11 And I take it the negotiation that occurs in many of  
12 the design build projects is simply with respect to  
13 what's going to be included in the project, rather  
14 than the actual number for that item, is that correct?

15 MR. JOHN SCOTT: Correct. The scope  
16 of work would be something that's probably discussed  
17 extensively.

18 MR. FREDERICK CHENOWETH: All right.  
19 So there would have to be some meetings between the  
20 owner and the -- and the contractor with respect to  
21 communicating what should be included in the project?

22 MR. JOHN SCOTT: I would say yes, that  
23 there would be extensive meetings, more than if it was  
24 a -- a lump sum contract or a tendered contract.

25 MR. FREDERICK CHENOWETH: Yes.

1 MR. JOHN SCOTT: And, you know, I -- I  
2 would say that this adds to why these contractors want  
3 a significant deposit, because there's probably been  
4 extensive negotiations and development of the project  
5 going on for months.

6 MR. FREDERICK CHENOWETH: M-hm.

7 MR. JOHN SCOTT: And the contractor  
8 doesn't get paid for that. He doesn't -- his first  
9 payday is when the contract is signed and he gets his  
10 deposit. He could have invested a year. I've had  
11 projects I've worked on a year.

12 So again, yes, there would be extensive  
13 meetings before the contract is signed.

14 MR. FREDERICK CHENOWETH: All right.

15 And -- and I take it that would lead to  
16 probably less negotiation of -- of the price?

17 MR. JOHN SCOTT: Correct.

18 MR. FREDERICK CHENOWETH: Thank you.

19

20 (BRIEF PAUSE)

21

22 MR. FREDERICK CHENOWETH: I'm  
23 interested in your experience is -- is sole sourcing  
24 and design build projects, is that in any way unusual  
25 or do you see that with any frequency in design build

1 projects?

2 MR. JOHN SCOTT: I see it quite  
3 frequently and my particular experience it's common.  
4 I know of other contractors similar to ones I've  
5 worked with are -- are the same. I don't know how  
6 extensive that is, but if my biggest client I built  
7 fourteen (14) buildings for them, some over 100,000  
8 square feet, single source design build and over that  
9 time period, after the first three (3) or four (4),  
10 they have confidence in -- in myself and my company  
11 that we're going to give them what they want.

12 We can't pretend that we don't know  
13 what the use of their building is, and we didn't put  
14 an 8 inch floor in because we thought a 4 inch floor  
15 would do. So I think it's a common situation.

16 MR. FREDERICK CHENOWETH: Thank you.  
17 And have you seen it with respect to government  
18 buildings as well?

19 MR. JOHN SCOTT: I -- I can't think of  
20 that off-hand, no.

21 MR. FREDERICK CHENOWETH: Thank you.  
22 One (1) moment, Your Honour.

23

24 (BRIEF PAUSE)

25

1 MR. FREDERICK CHENOWETH: Those are my  
2 questions of this witness, Your Honour. Thank you.

3 THE HONOURABLE FRANK MARROCCO: Thank  
4 you, Mr. Chenoweth.

5 I think I'll take the morning break.  
6 We'll take a break for ten (10) or fifteen (15)  
7 minutes.

8 MR. FREDERICK CHENOWETH: Thank you.

9

10 --- Upon recessing at 11:12 a.m.

11 --- Upon resuming at 11:26 a.m.

12

13 THE HONOURABLE FRANK MARROCCO: Mr.  
14 Marron...?

15 MR. GEORGE MARRON: I have no  
16 questions. Thank you.

17 THE HONOURABLE FRANK MARROCCO: Mr.  
18 Neubauer...?

19 MR. ERIC NEUBAUER: No questions.

20 THE HONOURABLE FRANK MARROCCO: Mr.  
21 Bonwick...?

22 I -- I just should tell you, Mr. Scott,  
23 since you said, I think, this was the first time  
24 you've ever been a witness, that the various people  
25 asking questions now are all participants in the -- in

1 the Inquiry, so I go through each participant and ask  
2 them if they what they want to ask you any questions  
3 arising out of -- of what you've said.

4 MR. JOHN SCOTT: Okay. I understand.

5 THE HONOURABLE FRANK MARROCCO: Right.

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

8

9 CROSS-EXAMINATION BY MR. PAUL BONWICK:

10 MR. PAUL BONWICK: Mr. Scott, my name  
11 is Paul Bonwick, and as the judge just indicated, I'm  
12 a participant at the hearing, and again thanks very  
13 much for making time available to come up this morning  
14 and share your experiences as it relates to the  
15 construction process.

16 I want to touch on, to start, any  
17 dealings you may have had with municipal governments  
18 in your capacity with Wheelwright -- I'm sorry, the  
19 other company -- Matthews.

20 Did you -- have you had dealings with  
21 municipal governments over the course of your forty-  
22 five (45) or fifty (50) year career?

23 MR. JOHN SCOTT: Yes, yes.

24 MR. PAUL BONWICK: In terms of the  
25 dealings that you've had, is it reasonable to state

1 that a large part of your dealings are with municipal  
2 staff?

3 MR. JOHN SCOTT: Correct, yes.

4 MR. PAUL BONWICK: You mentioned that,  
5 depending on the particular circumstance, that there  
6 could be significant time involved in regards to your  
7 engagement with staff or their consultants as it  
8 relates to getting to a point where you've determined  
9 what the -- what the client needs or the customer  
10 needs and how you're going to meet those needs.

11 Is that a fair representation?

12 MR. JOHN SCOTT: Yes. Yes, it is.

13 MR. PAUL BONWICK: Irrespective of how  
14 involved that process has been, what is your  
15 understanding of the obligations of the municipality  
16 as it relates to the work that's been done by staff  
17 and yourself in moving the contract forward?

18 MR. JOHN SCOTT: Well, my experience  
19 would be that the municipalities do not pay the  
20 contractor for any of that time and effort that's put  
21 out prior to contract signing. I guess they would be  
22 obligated to pay their own personnel.

23 MR. PAUL BONWICK: Fair enough. And  
24 so is it your opinion that staff have the authority to  
25 bind the corporation based on these discussions that

1 go on, or at the conclusion of a process where you've  
2 determined what the product is, how you're going to  
3 service the product, and establish costs, does that  
4 responsibility lie solely with the elected officials  
5 or -- or Council?

6 MR. JOHN SCOTT: No. We wouldn't --  
7 my assumption would be in a process like that that the  
8 designated representative of the municipality that I'm  
9 dealing with has the authority to bind the  
10 municipality.

11 MR. PAUL BONWICK: So going down that  
12 path, is it reasonable to assume or would it be  
13 accurate to state that that person only has that  
14 authority based on the fact that Council has, in fact,  
15 voted and given that person that authority?

16 MR. JOHN SCOTT: Correct.

17 MR. PAUL BONWICK: Have you seen  
18 situations where you've been involved in any matters  
19 related to the municipality where, in fact, it's got  
20 to Council and Council has chosen a different  
21 direction?

22 MR. JOHN SCOTT: Not that I can  
23 recall.

24 MR. PAUL BONWICK: So to surmise on  
25 that one, it's your understanding that at -- at the



1 conclusion of the process, the final approval really  
2 rests with Council --

3 MR. JOHN SCOTT: Correct.

4 MR. PAUL BONWICK: -- in order to  
5 authorize anybody to engage in any formal contract?

6 MR. JOHN SCOTT: Right. I think what  
7 I meant was, if I'm dealing with a representative of  
8 the municipality and they're having input into  
9 building design scope, I would know that that needs  
10 the ultimate approval of the municipality before it's  
11 concrete, but you may move forward with desi --  
12 preliminary design or anything at your own expense  
13 based on those discussions.

14 MR. PAUL BONWICK: Thank you. At any  
15 time during your involvement with municipalities, have  
16 you ever seen or witnessed a situation where, in fact,  
17 a Councillor, from Mayor through to any member of  
18 Council, might involve themselves in that process?

19 MR. JOHN SCOTT: No.

20 MR. PAUL BONWICK: I'm going to  
21 assume, and correct me if I'm wrong, that you will not  
22 be aware of the long-standing history of Collingwood  
23 as it relates to delivering on recreational  
24 facilities.

25 MR. JOHN SCOTT: No, I was not aware

1 of that project.

2 MR. PAUL BONWICK: That answers that  
3 question.

4 Under a situation where a Council or  
5 many previous councils had been wrestling with the  
6 idea of delivering an aquatic facility arena or  
7 something substantially more than that in terms of a  
8 multi-use integrated recreational facility, under a  
9 scenario where that had been going on for twenty (20)  
10 plus years, if Council identified that one (1) of the  
11 major considerations was delivery and timing, would it  
12 be reasonable that Council would move in a direction  
13 of sort of turnkey sole-source solution versus going  
14 to an RFP where you would extend the opportunity for  
15 other options, other types of building structures, and  
16 other types of approach?

17 MR. JOHN SCOTT: I would think so. I  
18 think that would be a good approach.

19 MR. PAUL BONWICK: The -- you spoke in  
20 terms of the design build and the fact that American  
21 Build -- sorry, American Builders or American Steel,  
22 has designated contractors, or general contractors,  
23 that they deal with in specific regions throughout  
24 North America.

25 Did I understand you correctly?

1 MR. JOHN SCOTT: Correct.

2 MR. PAUL BONWICK: What is the  
3 advantage in having a client or an owner deal through  
4 an alliance member or a recommended general contractor  
5 versus trying to secure the design fabricated steel  
6 independent and then going out and hiring their own  
7 general contractor or managing the project on their  
8 own?

9 MR. JOHN SCOTT: I think with systems  
10 like Sprung buildings and pre-engineered buildings,  
11 you want to be comfortable that the general contractor  
12 familiar -- is familiar with putting those structures  
13 up.

14 The anchor bolts have to be in the  
15 right place, they have to have the right projection,  
16 they have to have the right embedment to secure that  
17 building, and you want to know that the manufacture,  
18 if it's Sprung, has confidence in the building. If  
19 it's a builder that's never done anything like this  
20 before, you -- you run the risk of inexperience.

21 MR. PAUL BONWICK: There was some  
22 discussion related to the quality -- your  
23 understanding of the quality of product that Sprung  
24 provides, especially in relationship to insulating  
25 factor and winter climates. You did reference that

1 you weren't completely aware of the fact of what their  
2 "R" rating was. Sprung, through their testimony, has  
3 suggested that their "R" value is an R-30 value.

4 Is -- through other evidence that's  
5 been provided or testimony that's been provided, it's  
6 been suggested that a standard steel approach would be  
7 something more in line with an R-19 and an R-11  
8 approach.

9 Can you comment on the additional works  
10 that would be required or are they substantial in  
11 terms of getting to an R-30 like the integrated  
12 membrane system that Sprung offers?

13 MR. JOHN SCOTT: That would be  
14 substantial. You would have to have special clips in  
15 the roof to get the right thickness of insulation.  
16 More -- more insulation would be required. So there  
17 are some components that would make it adaptable to  
18 those "R" values, but they would all be cost.

19 MR. PAUL BONWICK: Thank you. In  
20 terms of your experience with LEED, and there's been  
21 significant discussion, as a layperson, what appears  
22 to be one (1) of the more significant value-added  
23 propositions that LEEDs encourages is the insulating  
24 factor. Is that fair?

25 MR. JOHN SCOTT: It's -- it's one (1)

1 -- one (1) factor, yes.

2 MR. PAUL BONWICK: But through  
3 testimony we've learned that there is a long list of  
4 other contributing factors that lead to the point  
5 scoring to become certified. Is that accurate?

6 MR. JOHN SCOTT: Correct.

7 MR. PAUL BONWICK: Can you comment on  
8 the impact of addressing any of the other, what I'll  
9 refer to as smaller line items, specific to cost to  
10 secure that LEED certification?

11 MR. JOHN SCOTT: Yes. I'm -- I'm  
12 going by memory here because it's a few years that --  
13 since I did my LEED project, but each item has a --  
14 has a point system, and if you can accumulate so many  
15 points, I think you're bronze, and there's platinum  
16 and there's various levels, and some things are  
17 unattainable.

18 If you have a building in a bit of a  
19 remote subdivision, you can't get a bus stop there and  
20 a bus stop has a certain number of points. You get a  
21 certain number of points for a bicycle rack, if you  
22 have a bicycle rack out front. So everybody should  
23 get those points.

24 You get points if your source of  
25 material is within a certain distance. If your steel

1 is coming from Concord, Ontario, instead of from  
2 Virginia, you get more points. If your material  
3 that's recyclable is high, so on a steel building it's  
4 80 percent. So to achieve some of the things, it's  
5 almost impossible, and other ones it's -- it's quite  
6 easy.

7 MR. PAUL BONWICK: So if I understand  
8 you properly, through a competitive process, if I were  
9 buying a pre-eng steel building and the cost was 15  
10 percent higher from Concord versus ordering it from  
11 Virginia or --

12 MR. JOHN SCOTT: Right.

13 MR. PAUL BONWICK: -- Sault Ste. Marie  
14 or --

15 MR. JOHN SCOTT: Right.

16 MR. PAUL BONWICK: -- some place  
17 further afield, the only way to qualify for the points  
18 is to pay the ex -- the additional funds.

19 MR. JOHN SCOTT: Correct.

20 MR. PAUL BONWICK: So then I would  
21 understand that, to sort of capture this, the criteria  
22 from a points' perspective can lead to substantial  
23 increases in cost with not necessarily providing any  
24 additional value to the end user.

25 MR. JOHN SCOTT: Correct. When we're

1 assessing a project, if we were asked to submit a  
2 price on a project and we were told it was LEEDs, we  
3 assume a 20 percent increase in cost, so a \$10 million  
4 building would cost 12 million, and that excludes  
5 monitoring that has to happen after the building is  
6 done.

7 MR. PAUL BONWICK: Which leads me to  
8 my next line of questioning specific to LEEDs. We  
9 have heard some testimony that it's a fairly onerous  
10 reporting structure in terms of securing the LEED's  
11 designation, whether it's two (2) years or three (3)  
12 years after the building has gone up.

13 Can you share any of your experiences  
14 or understanding of that process?

15 MR. JOHN SCOTT: Yes, the project I  
16 was involved in, the air monitoring inside the  
17 building was an ongoing testing procedure to make sure  
18 the quality of the air doesn't deteriorate as the  
19 building gets older.

20 And so there has to be a monitoring  
21 company that comes -- I -- I can't remember if it was  
22 monthly or quarterly, over a -- a multi-year time  
23 period to ensure the quality of the air is -- is --  
24 stays the same.

25 MR. PAUL BONWICK: Thank you. So it's

1 reasonable to suggest or to state that the costs are  
2 not only centred around the capital requirements to  
3 get to that standard, but very substantial beyond  
4 there in terms of actually getting your plaque on the  
5 wall and the ---

6 MR. JOHN SCOTT: They're ongoing  
7 costs, post-construction.

8 MR. PAUL BONWICK: Thank you. Bit of a  
9 sense of discussion, perhaps from your perspective,  
10 seeing as you're still in business, but can you help  
11 establish what you believe to be industry norms in  
12 terms of profit margins within the general contracting  
13 business, industry?

14 MR. JOHN SCOTT: I would say --  
15 venture to say that to -- to my knowledge, they vary  
16 between 6 percent gross mark-up to 20 percent gross  
17 mark-up.

18 MR. PAUL BONWICK: Okay, that's a  
19 fairly big span, I --

20 MR. JOHN SCOTT: Well I say that  
21 because there may be some projects where there's  
22 little interest.

23 There's a project out for tender now in  
24 Toronto and they're looking for design builds, sole  
25 source responsibility, but they dispose of batteries



1 and nobody wants to work there.

2                   So contractors that are going to bid  
3 that job because of the acid and the risks, et cetera,  
4 would -- would have a much higher mark-up than  
5 somebody just doing a storage building.

6                   MR. PAUL BONWICK:    In your experience  
7 through an RFP process, and I'm not sure whether the  
8 fair word to use is "standard", but is it -- is it a  
9 regular occurrence through an RFP process for bidders  
10 to come in with the lowest possible price to meet the  
11 bare minimum criteria with the understanding that as  
12 change orders or as changes take place, that's where  
13 the additional profits can come through.

14                  MR. JOHN SCOTT:    I think that's a fair  
15 statement, and without tarnishing myself, I would  
16 think when you look at the RFP you're looking at  
17 opportunities.

18                   Like, what isn't quite right in that  
19 RFP, or what might be omitted that you would have an  
20 opportunity to get paid for later on at some --  
21 another bidder might not notice.

22                   So you examine the -- the documents  
23 very, very carefully and only do what you're asked to  
24 do. And -- and there might be some cases where you  
25 know it's not really correct. Just like you

1 mentioned, the insulation and the roof, you can get an  
2 RFP that has documents from twenty-five (25) years ago  
3 and says R-12 on the roof. Well, all contractors know  
4 that you can't build a building anymore with R-12. It  
5 doesn't meet the building code.

6                   But if the RFP says it, you'd do it as  
7 per the RFP, you're successful, you get the job and  
8 now you're going to up that insulation value and tell  
9 them they can't get their building code met without  
10 going to R-33 or something like that.

11                   MR. PAUL BONWICK:    When you're dealing  
12 with extras within the industry, and my experience has  
13 indicated that the profit margins quite often change  
14 dramatically, from what your initial bid is in an RFP  
15 process versus when there's significant changes that  
16 need to be made, and they need to be accommodated  
17 through change work orders.

18                   Is there -- is there typically a  
19 significantly higher profit margin attached to those  
20 kinds of items?

21                   MR. JOHN SCOTT:    Yes, the 6 percent is  
22 scratched off the list. So you're 15 to 25 percent  
23 markup on -- on contract changes.

24                   MR. PAUL BONWICK:    There was some  
25 brief discussion or conversation between yourself and

1 Mr. Chenoweth related to on-site versus off-site, and  
2 I'm going to set aside the safety aspect of things.

3                   Is it a standard approach, is it most  
4 common to have somebody deal with the off-site and  
5 somebody deal with 10 feet and the building envelope  
6 itself separately?

7                   MR. JOHN SCOTT: I don't know that I  
8 could say it's standard, but it's very common. And  
9 the reason it's common is it seems like all the  
10 complicated things on a project are site servicing,  
11 duct banks, sprinkler lines coming from the street,  
12 connections at the street. Those type of things are  
13 very hard to get a hard number on in a short period of  
14 time.

15                   So if you're asked to tender a job, and  
16 there's a week, those things are very difficult to do.

17                   If the project calls for you to put  
18 your price in based on 10 feet outside the building,  
19 it's pretty straightforward, you should be able to do  
20 that in-house.

21                   MR. PAUL BONWICK: And if I understood  
22 you correctly, hypothetically if the off-site works --  
23 and again, I just pick a number -- if the off-site  
24 works represent seven hundred thousand dollars  
25 (\$700,000), did I understand you correctly to say that

1 you would attach -- you'll typically attach a 15 or 20  
2 percent margin on top of that for assuming the  
3 responsibility and the risk associated with doing that  
4 work?

5 MR. JOHN SCOTT: If it was going to be  
6 added to the general contract --

7 MR. PAUL BONWICK: Right.

8 MR. JOHN SCOTT: -- absolutely, yes.

9 MR. PAUL BONWICK: And so by having an  
10 owner separate that and take that responsibility on  
11 themselves, they obviously save paying you 140,000 or  
12 if it was a million dollars --

13 MR. JOHN SCOTT: It's a real -- it's a  
14 real savings and generally the municipalities have  
15 people in-house that are quite knowledgeable on water  
16 lines, servicing, that type of things. Storm sewers.

17 MR. PAUL BONWICK: One of the -- one  
18 (1) of the pieces of one (1) of the bits of testimony  
19 that was provided by -- I think it was Mr. Barrows  
20 (sic) from BLT, but I could be mistaken, was one (1)  
21 of the key benefits behind a turnkey design build  
22 operation was that the owner only has one (1) person  
23 to grab a hold of, or I think they said one (1) throat  
24 to grab versus through a -- an arrangement where the  
25 owner is dealing with all the individual

1 subcontractors that it becomes a much more complicated  
2 process from the owner's perspective.

3                   Would you agree with that analysis?

4                   MR. JOHN SCOTT:    Yes, I'd agree with  
5 that.

6                   MR. PAUL BONWICK:    Have you had the  
7 opportunity to visit Collingwood's arena or aquatics  
8 facility?

9                   MR. JOHN SCOTT:    No, I have not.

10                  MR. PAUL BONWICK:    You've referenced a  
11 situation where on a very large scale there was a  
12 change in position on government, specific to Terminal  
13 3 or Terminal 1, I was -- Terminal 3, where there were  
14 signed contracts and works started to get underway and  
15 the Government of Canada, as a result of an election,  
16 changed its mind.

17                  From what I understand, the  
18 consequences to the building community were rather  
19 catastrophic.

20                  MR. JOHN SCOTT:    Correct, yes.

21                  MR. PAUL BONWICK:    You provided a  
22 smaller -- smaller example wherein Caledonia First  
23 Nation people became concerned about a project moving  
24 forward and it ended up going south as well.

25                  The reason I identify those two (2)

1 examples is there is those that would suggest that if  
2 you're dealing with a municipality there's a higher  
3 threshold of safety or comfort than arguably dealing  
4 with one (1) of your clients that you build your ten  
5 (10) buildings for or twenty (20) buildings for,  
6 whatever you identify, and I think this goes to the  
7 point of -- of the performance payments.

8                   Could you share any information that  
9 might be of value for the Inquiry in terms of your  
10 comfort level in dealing with government versus the  
11 private sector and the safety levels that are in place  
12 as it relates to payment?

13                   MR. JOHN SCOTT: Well, I would say you  
14 -- as in any business, you would categorize your  
15 clients. And for contractors, at the bottom level is  
16 developers because it can -- the project can be in the  
17 books and started and stop dead for whatever --  
18 usually financial.

19                   And municipalities would be in the top  
20 half, but there -- there -- nothing's definite. I  
21 mean, something can happen that slows down a payment  
22 or stops the payment or, you know, a change in  
23 personnel from the municipality that creates obstacles  
24 for you.

25                   So, I think I read somewhere in the

1 documentation that you shouldn't worry because it's a  
2 municipality, and I don't think that's the case. You  
3 always have to worry about payments, and I think  
4 that's still the case.

5

6 (BRIEF PAUSE)

7

8 MR. PAUL BONWICK: In review of  
9 whatever documents you've been provided, and I'm not  
10 privy to those other than Mr. Martin's testimony, is  
11 there anything that has caused you any concern in  
12 terms of how staff, BLT, or Council moved forward with  
13 this process and ended up getting the product that  
14 Council approved?

15 THE HONOURABLE FRANK MARROCCO: I'm --  
16 I'm not sure that's covered in the report myself. I  
17 don't --

18 MR. PAUL BONWICK: Okay. I -- yeah.

19 THE HONOURABLE FRANK MARROCCO: --  
20 think so. And that may affect the weight attached to  
21 the answer, but I'll allow the witness to answer the  
22 question.

23 MR. PAUL BONWICK: Oh, okay. I mean,  
24 I can withdraw it.

25 THE HONOURABLE FRANK MARROCCO: I -- I

1 think I'll hear it. I'm just saying it -- I -- it's  
2 not in the report. But what -- what's your answer?

3 MR. PAUL BONWICK: I apologize, I  
4 didn't realize I was supposed to stick to just the --

5 THE HONOURABLE FRANK MARROCCO: No.

6 MR. PAUL BONWICK: That -- that's  
7 fine.

8 THE HONOURABLE FRANK MARROCCO: It's  
9 not hard and fast, but...

10 MR. JOHN SCOTT: I don't think there  
11 was anything in there that shocked me or surprised me  
12 or I would be adverse to. I -- I feel sympathy for  
13 the gentleman that was put in the role of, I'm  
14 assuming, being the Town's representative on this  
15 project with how little information he seemed to have  
16 or be aware of.

17 Maybe the information was there and he  
18 just didn't have it, but that's a real handicap.

19 MR. PAUL BONWICK: Thank you. That  
20 ends my questions.

21 THE HONOURABLE FRANK MARROCCO: Just  
22 before the next cross-examination starts, the 6  
23 percent -- or 6 1/2 percent to 20 percent, is that a  
24 markup on your actual costs?

25 MR. JOHN SCOTT: Yes. Yes.



1 THE HONOURABLE FRANK MARROCCO: Thank  
2 you.

3 MR. JOHN SCOTT: So, it would include  
4 overhead and profit.

5 THE HONOURABLE FRANK MARROCCO: That's  
6 what I meant, yes.

7 MR. JOHN SCOTT: Yes.

8

9 CROSS-EXAMINATION BY MR. JOHN MATHER:

10 MR. JOHN MATHER: Good morning, Mr.  
11 Scott. I'm John Mather. I'm associate Inquiry  
12 counsel. If we could actually pull up a copy of the  
13 report that you've provided, which is EHH187.

14

15 (BRIEF PAUSE)

16

17 MR. JOHN MATHER: If we'd go to the  
18 top of the second page. You write here that you've  
19 been requested to review the CCDC contract between the  
20 Town of Collingwood and BLT Construction Services, the  
21 Ron Martin transcript, including the cross-examination  
22 of Ms. -- Mr. Ron Martin by Mr. Breedon, and you have  
23 completed this review.

24

Just to make sure we're all on the same  
25 page, if we could pull up TOC207516.

1 (BRIEF PAUSE)

2

3 MR. JOHN MATHER: And we can -- you  
4 can direct our court operator to scroll through this,  
5 but I take it this is the contract that you reviewed  
6 or you were provided. Is that correct?

7 MR. JOHN SCOTT: That's correct.

8 MR. JOHN MATHER: Okay. And I take it  
9 you were provided Mr. Martin's transcript and this  
10 contract by Mr. Chenoweth. Is that correct?

11 MR. JOHN SCOTT: His -- the transcript  
12 and which?

13 MR. JOHN MATHER: And this contract.  
14 You were provided that by Mr. Chenoweth?

15 MR. JOHN SCOTT: His contract?

16 MR. JOHN MATHER: This contract,  
17 sorry.

18 MR. JOHN SCOTT: Oh, this con --

19 MR. JOHN MATHER: Sorry.

20 MR. JOHN SCOTT: Yes. Yes, sorry.

21 MR. JOHN MATHER: Did Mr. Chenoweth  
22 provide you with any other documents or information  
23 before you prepared your report?

24 MR. JOHN SCOTT: No.

25 MR. JOHN MATHER: Did he provide you

1 with any further documents or information before you  
2 testified today?

3 MR. JOHN SCOTT: No.

4 MR. JOHN MATHER: Have you reviewed  
5 anything else other than this -- this contract and Mr.  
6 Martin's transcript before testifying today?

7 MR. JOHN SCOTT: No.

8 MR. JOHN MATHER: Okay. Can we go  
9 back to the report, EHH187? And go back to the top of  
10 page 2. So, you write that you'd been requested to  
11 review the contract and Mr. Martin's transcript.

12 Did Mr. Chenoweth provide you with any  
13 specific questions he wanted you to answer after you  
14 reviewed -- reviewed the contract and the transcript?

15 MR. JOHN SCOTT: No.

16 MR. JOHN MATHER: Sorry?

17 MR. JOHN SCOTT: No.

18 MR. JOHN MATHER: Can we go to page 5  
19 of the report? And scroll down to the bottom. So,  
20 this is at the end of the report, Mr. Scott. And you  
21 write that:

22 "The examination of Ron Martin  
23 highlighted the lack of experience  
24 of Mr. Martin in both the design  
25 build process and recreation

1 facilities."

2 And you've spoken a bit to that today.

3 And then you also said:

4 "Despite his best efforts, there  
5 appears to be issues that could have  
6 been addressed more thoroughly."

7 One (1) of the things you mentioned  
8 today was Mr. Martin's comments with respect to the  
9 site servicing and the separation of the site  
10 servicing.

11 Is that one (1) of the issues you  
12 believe could have been addressed more thoroughly?

13 MR. JOHN SCOTT: Yes. I think I was  
14 thinking more along the lines of -- in his testimony,  
15 I think he said that he wasn't given, like, documents,  
16 like, drawings that showed what he was supposed to be  
17 checking on. That's -- I think that's more what I was  
18 getting on.

19 MR. JOHN MATHER: Are you referring to  
20 what you spoke with -- with Mr. Bonwick just before he  
21 concluded about how you had some sympathy for Mr.  
22 Martin, that it didn't appear he had reviewed some of  
23 the documents relating to the contract before he was  
24 brought on to the contract?

25 MR. JOHN SCOTT: Correct.

1 MR. JOHN MATHER: Okay. I take it  
2 that, to the extent that you have any disagreement or  
3 take any issue with anything Mr. Martin said about  
4 design build contracts or this contract, you've set  
5 that out in the contents of this report.

6 Is that fair?

7

8 (BRIEF PAUSE)

9

10 MR. JOHN SCOTT: Could you repeat  
11 that, sorry?

12 MR. JOHN MATHER: Is there anything  
13 that Mr. Martin said about design build contracts or  
14 the design build process that you disagree with or  
15 take issue with?

16 MR. JOHN SCOTT: I believe there were  
17 some comments about sole source and design build, that  
18 he was not pro those methods.

19 MR. JOHN MATHER: And to the extent  
20 that you don't agree with him, you've set out the  
21 reasons for that in the report you've provided?

22 MR. JOHN SCOTT: Correct.

23 MR. JOHN MATHER: If we could go to  
24 page 2 of your report.

25

1 (BRIEF PAUSE)

2

3 MR. JOHN MATHER: So, you write that -  
4 - in the second paragraph, that you are:

5 "...a design build specialist with  
6 over forty-five (45) years  
7 experience securing and executing  
8 design build projects with  
9 particular expertise in the pre-  
10 engineered structure area.

11 The following are my comments  
12 confirming that, in my opinion, the  
13 single source design build approach  
14 to the design and construction of  
15 arena facility for the Town of  
16 Collingwood was the appropriate way  
17 forward to get this project done."

18 And I take it -- if we could scroll  
19 down to page 3, you see there's a heading called,  
20 "Comments." And if we scroll down, you've provided  
21 nine (9) numbered paragraphs containing your comments.

22 I take it these are the comments you're  
23 referring to above when you say, "My comments below on  
24 why a design build was appropriate"?

25 MR. JOHN SCOTT: Correct.

1

2

(BRIEF PAUSE)

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MR. JOHN MATHER: And if we could go  
back to page 2. You say that:

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"The following co -- the following  
are my comments confirming that, in  
my opinion, the single source design  
build approach to the design and  
construction of the arena facility  
for the Town of Collingwood was  
appropriate."

13

14

15

I take it from this that you were not  
asked to provide an opinion about whether or not  
design build was appropriate for the pool?

16

17

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MR. JOHN SCOTT: I -- I don't re --  
recall being asked about the pool.

(BRIEF PAUSE)

MR. JOHN MATHER: I take it from your  
earlier answers that you have -- you were not provided  
with any information about what the Town's goals and  
priorities were with respect to constructing  
recreation facilities in 2012. Is that fair?

1 MR. JOHN SCOTT: That's fair.

2 MR. JOHN MATHER: And I take it that  
3 you were also not provided with any information about  
4 the other options that the Town was evaluating  
5 regarding re -- recreation facilities at that point in  
6 time. Is that fair?

7 MR. JOHN SCOTT: That's fair.

8 MR. JOHN MATHER: If you had been  
9 provided that information, I take it you would agree  
10 that that might have informed your opinion about  
11 whether or not design build was appropriate for the  
12 Town when it came to the arena?

13 MR. JOHN SCOTT: If I had been  
14 provided more information, it -- it could impact it,  
15 yes.

16 MR. JOHN MATHER: So if we could go  
17 down to your job history, I take it in your experience  
18 working at both Wheelwright and Steel Can, one (1) of  
19 the facilities, both of those companies offered was  
20 the option of constructing an arena for a potential  
21 customer. Is that correct?

22 MR. JOHN SCOTT: With Steel Can I have  
23 yet to be involved with an arena project. With --

24 MR. JOHN MATHER: Is that something  
25 Steel Can could do?



1 MR. JOHN SCOTT: Yes.

2 MR. JOHN MATHER: As a general matter,  
3 are pre-engineered steel buildings appropriate for  
4 arenas?

5 MR. JOHN SCOTT: I believe, yes.

6 MR. JOHN MATHER: Can they offer the  
7 same sort of quality that a Sprung fabric arena could  
8 provide?

9 MR. JOHN SCOTT: I would say yes, with  
10 the condition that I'm not really familiar with what  
11 the Sprung qualities are.

12 MR. JOHN MATHER: You were asked some  
13 questions about Sprung's insulation value and snow  
14 load, which you said you understood they had a good  
15 reputation for.

16 I take it that pre-engineered steel  
17 buildings also have good reputations for insulative  
18 value and snow load. Is that fair?

19 MR. JOHN SCOTT: That's fair.

20 MR. JOHN MATHER: I take it if -- if  
21 your company had had the opportunity, whether that be  
22 Wheelwright or Steel Can today, to bid on the  
23 construction of the arena in Collingwood, that would  
24 have been something they would have been interested  
25 in?

1                   MR. JOHN SCOTT:    I would have been  
2 interested in, but knowing the environment in  
3 Collingwood and the number of local contractors that  
4 are specialists in pre-engineered buildings up here, I  
5 -- I probably would not pursue it.

6                   MR. JOHN MATHER:    Is the concern  
7 you're expressing that there might be a local  
8 competitor who the Town may be more interested in  
9 proceeding with because they're local?

10                  MR. JOHN SCOTT:    Yes, and -- and they  
11 had advantage of geography.

12                  MR. JOHN MATHER:    And is -- what's the  
13 advantage of geography?

14                  MR. JOHN SCOTT:    That they're workers  
15 and their key site people don't have to travel or  
16 don't have to pay board.

17                         If I was coming up here to build that  
18 arena, I would probably have four (4) or five (5)  
19 people that would need places to live.

20                  MR. JOHN MATHER:    And that's a cost  
21 that you --

22                  MR. JOHN SCOTT:    Those are cost  
23 issues, yes.

24                  MR. JOHN MATHER:    And you would  
25 incorporate those costs in any proposal you made to

1 the Town?

2 MR. JOHN SCOTT: Hurts the opportunity  
3 to be competitive.

4 MR. JOHN MATHER: I take it from the  
5 comment you made about -- that you know Sprung as a  
6 competitor and you've bid against them, you have  
7 participated in procurement processes in which both  
8 you -- the company you worked for and Sprung have put  
9 together a proposal, is that fair?

10 MR. JOHN SCOTT: That's fair, yes.

11 MR. JOHN MATHER: And I take it that  
12 you viewed the proposals at the pre-engineered steel  
13 company you worked for was a competitive proposal?

14 MR. JOHN SCOTT: Yes.

15 MR. JOHN MATHER: Including with  
16 respect to pricing?

17 MR. JOHN SCOTT: Yes.

18 MR. JOHN MATHER: Mr. Chenoweth asked  
19 you about your experience on the -- your experience  
20 with securing and overseeing design build projects  
21 from the design builders side of the contract.

22 Do you have any experience being an  
23 owner in a design build contract?

24 MR. JOHN SCOTT: No.

25 MR. JOHN MATHER: Have you ever worked

1 for or consulted with -- or consulted a municipality  
2 when it came to a design build contract?

3 MR. JOHN SCOTT: Yes.

4 MR. JOHN MATHER: And can you tell me  
5 about that experience?

6 MR. JOHN SCOTT: Yes, I did a design  
7 build contract for the City of Brampton. I think -- I  
8 think I did three. I did an arena pool complex, I did  
9 a curling rink and a -- a stand-alone arena.

10 MR. JOHN MATHER: And in those  
11 instances were you working for the design builder that  
12 ultimately constructed those buildings?

13 MR. JOHN SCOTT: No, we were -- we  
14 were the design -- Wheelwright was the design builder.

15 MR. JOHN MATHER: You were the design  
16 builder?

17 MR. JOHN SCOTT: Correct, yes.

18 MR. JOHN MATHER: Have you ever --  
19 have you ever consulted a municipality not in the  
20 capacity as a design builder, but in the capacity as a  
21 -- assisting them in identifying potential  
22 construction options or considering what they might be  
23 looking for in a design builder?

24 MR. JOHN SCOTT: I'd say no to a  
25 municipality.

1 MR. JOHN MATHER: Have you ever done  
2 that for any government entity?

3 MR. JOHN SCOTT: No.

4 MR. JOHN MATHER: I just want to cover  
5 something off, I -- I think I know the answer, but Mr.  
6 Chenoweth asked you if you'd ever been qualified as an  
7 expert by a -- by a court or in a proceeding.

8 I take it no one has ever refused to  
9 qualify you as an expert?

10 MR. JOHN SCOTT: That's correct.

11 MR. JOHN MATHER: If we can go down to  
12 your education and professional development.

13 So this references the fact that you've  
14 participated in something called a LEED's development  
15 program, Toronto Construction Association. Mr.  
16 Chenoweth asked you some questions about your  
17 experience with LEEDs and the LEED's process, as did  
18 Mr. Bonwick.

19 I take it that Mr. Chenoweth, however,  
20 did not request that you provide any opinion with  
21 respect to the -- the LEED's portions of Mr. Martin's  
22 testimony?

23 MR. JOHN SCOTT: No.

24 MR. JOHN MATHER: Other than Sprung  
25 being a competitor, do you have any relationship with

1 any individual who works at Sprung?

2 MR. JOHN SCOTT: No.

3 MR. JOHN MATHER: Do you have any  
4 relationship with BLT?

5 MR. JOHN SCOTT: No.

6 MR. JOHN MATHER: Do you have any  
7 relationship with anyone who works for or with BLT?

8 MR. JOHN SCOTT: No.

9 MR. JOHN MATHER: Are you aware of  
10 BLT's reputation within the construction industry?

11 MR. JOHN SCOTT: No, before the  
12 information on this Inquiry I'd never heard of them.

13 MR. JOHN MATHER: If we could go to  
14 paragraph 4 of your report.

15 You write that Sprung is a common  
16 choice for municipalities and government agencies.

17 Other than the pool and arena project  
18 in Collingwood, are you aware of any municipality that  
19 has used Sprung to construct a pool or arena?

20 MR. JOHN SCOTT: No, not to construct  
21 a pool or an arena, no.

22 MR. JOHN MATHER: Mr. Dave Barrow, who  
23 was with BLT, he's given evidence, it's been indicated  
24 and he stated that BLT had never constructed a pool or  
25 arena with Sprung prior to the Collingwood projects.

1 I take it that was not something you  
2 were aware of?

3 MR. JOHN SCOTT: No.

4 MR. JOHN MATHER: If we can go to  
5 paragraph 2 of your opinion. Your report, I should  
6 say.

7 In this paragraph, Mr. Scott, you talk  
8 about some of the benefits of a design build process,  
9 which you elaborated on in response to questions from  
10 Mr. Chenoweth.

11 I take it that the benefits that you  
12 see and you identify here are equally true for a pre-  
13 engineered steel building and for a pre-fabricated --  
14 sorry, pre-engineered steel building and a fabric  
15 structure along the lines of what Sprung provides?

16 MR. JOHN SCOTT: Correct.

17 MR. JOHN MATHER: And these are the  
18 sorts of benefits that Steel Can, for instance, could  
19 provide a potential buyer?

20 MR. JOHN SCOTT: Correct.

21 MR. JOHN MATHER: At the bottom of  
22 this paragraph, you say that:

23 "Costs are controlled by the  
24 contractor to minimize changes and  
25 discourage change orders unless

1 absolutely necessary, thus keeping  
2 both schedule and budget under  
3 control."

4 Mr. Bonwick had asked you a question in  
5 respect of an RFP whereby the suggestion was that in  
6 an RFP process, a bidder may bid the bare minimum with  
7 the intent of earning their profit or seeking more  
8 money in change orders after the contract is  
9 consummated.

10 Is that -- do you recall him asking  
11 questions along those lines?

12 MR. JOHN SCOTT: Yes, I do.

13 MR. JOHN MATHER: Speaking more  
14 generally, in your experience are there design build  
15 suppliers who will take that approach in any form of  
16 procurement process whereby they will submit a  
17 proposal, whether it's through RFP or sole source that  
18 is low with the intention of recuperating profit  
19 through a change order process?

20 MR. JOHN SCOTT: Yes.

21 MR. JOHN MATHER: And I take it that  
22 one (1) of the ways a potential buyer, for instance,  
23 the Town of Collingwood could protect themselves  
24 against that is through thorough and careful  
25 negotiations at the outset to ensure that the initial



1 contract has a full scope of work that identifies  
2 everything that they need in the building. Is that  
3 fair?

4 MR. JOHN SCOTT: That's fair, yes.

5 MR. JOHN MATHER: And just to confirm,  
6 other than what was set out in Mr. Martin's testimony,  
7 you're not aware of what sort of negotiations took  
8 place before the -- the BLT and Town of Collingwood  
9 contract was signed?

10 MR. JOHN SCOTT: No.

11 MR. JOHN MATHER: So if we can go on  
12 to paragraph 3, this paragraph discusses bonding.

13 Again, you -- you've spoken to some of  
14 these points and elaborated on some in response to  
15 questions from Mr. Chenoweth.

16 I take it, again, that other than what  
17 Mr. Martin had said in his testimony, you're not aware  
18 of what the Town's policies or practices were in 2012  
19 when it came to requiring performance bonds?

20 MR. JOHN SCOTT: No, I'm not.

21 MR. JOHN MATHER: And Mr. Martin's  
22 evidence was that when a construction project was  
23 tendered, it was the Town's normal process to have the  
24 bidder submit both a bid and performance bond.

25 I take it you have no basis to dispute

1 that that was the Town's practice at that point in  
2 time?

3 MR. JOHN SCOTT: No, I think he  
4 indicated it was sometimes relative to the size of the  
5 project in his testimony.

6 MR. JOHN MATHER: The idea being the  
7 larger the project, the more likely you are to require  
8 a performance bond?

9 MR. JOHN SCOTT: Correct.

10 MR. JOHN MATHER: And that would be  
11 the case because the Town has more exposure in case --  
12 in the event of a contractor default?

13 MR. JOHN SCOTT: Correct.

14 MR. JOHN MATHER: One (1) of the  
15 things you mentioned with Mr. Chenoweth today and you  
16 mentioned in the report, is that bonding is very  
17 expensive and reduces by at least 50 percent of  
18 interested contractors.

19 In your report you don't explain how  
20 you arrived at that 50 percent number. Is that  
21 accurate?

22 MR. JOHN SCOTT: Well, it's -- it's my  
23 estimate. I taught to -- so I would view Wheelwright  
24 as a mid-size contractor and in the last 15 years they  
25 would not bid a job that required bonding.

1 I've bid jobs with Wheelwright where  
2 bonding was required. And I approached the owner, it  
3 was -- I had the best proposal and said we won't bond  
4 this. It was a project building six (6) buildings in  
5 the Bahamas and I said we're -- we won't bond this,  
6 but we negotiated another 2 percent on the holdback  
7 and the statutory declarations on a regular basis.

8 So we were able to void the bonding  
9 requirement and -- and that is not an irregular  
10 practice.

11 MR. JOHN MATHER: So I take it from  
12 that if, in your experience if it's the case that an  
13 owner is seeking a -- a performance bond, one of the  
14 things the owner and the potential contractor can do  
15 is negotiate an alternative form of protection or  
16 security as opposed to the performance bond itself.

17 MR. JOHN SCOTT: Right, correct.

18 MR. JOHN MATHER: And that's  
19 something, at least in your experience, you were open  
20 to as a contractor?

21 MR. JOHN SCOTT: Yes.

22 MR. JOHN MATHER: You mentioned that  
23 you might have some concern about a local Collingwood  
24 or Lindsay contractor's ability to post a performance  
25 bond.

1 I take it that that statement was based  
2 on your experience with the cost of bonding from your  
3 perspective at the companies you've worked for. Is  
4 that correct?

5 MR. JOHN SCOTT: Yeah, and it wasn't  
6 meant to dis -- disrespect local contractors in small  
7 towns, but owners of construction companies, because  
8 we live in such a volatile world, they're not too  
9 interested in putting up their homes or their farms or  
10 all their assets to build a building.

11 MR. JOHN MATHER: And I -- do you have  
12 any first-hand experience of a contractor having to  
13 put up their home or their farm in order to secure a  
14 contract?

15 MR. JOHN SCOTT: Yes, yes.

16 MR. JOHN MATHER: Could you tell me  
17 about that?

18 MR. JOHN SCOTT: The principal of  
19 Steel Can was -- I think he had bonding of, say, \$2  
20 million and was invited to bid substantial projects  
21 and the bonding company wanted him to put up all his  
22 assets, including his house.

23 MR. JOHN MATHER: Okay. So that was a  
24 requirement from the bonding company?

25 MR. JOHN SCOTT: From the bonding

1 company. And he -- he refused.

2 MR. JOHN MATHER: With respect to the  
3 expense of bonding, one (1) of the things Mr. Barrow  
4 said in his evidence was that the cost associated with  
5 a performance bond are included in the contract cost,  
6 and then passed on to the owner.

7 Is that -- and Mr. Martin also said  
8 that was hi -- his experience. I take it you have no  
9 basis to dispute that that's what they've experienced  
10 when it come to bonding?

11 MR. JOHN SCOTT: The only issue I  
12 dispute is most tenders separate the bonding. They --  
13 you identify the cost of the bond separately. And I'm  
14 sure that's because an owner might not want to take  
15 the bonding.

16 That being said, if it was a \$10  
17 million project and the low bidder was 6 million and  
18 all the other bidders were 9, 10, and 11 regardless of  
19 the cost of the bond, they would probably say we want  
20 a bond to -- to give this contractor the job.

21 So, usually, the bonding is isolated  
22 and no markup on it.

23 MR. JOHN MATHER: And so, can I take -  
24 - take it from that that, at least in your experience,  
25 when a owner is looking at potential bids, they can

1 look at exactly what the bonding cost will be to them,  
2 if it's passed through to them, and then decide  
3 whether or not they want to elect --

4 MR. JOHN SCOTT: Correct.

5 MR. JOHN MATHER: -- to that form of  
6 security?

7 MR. JOHN SCOTT: Correct.

8 MR. JOHN MATHER: Okay.

9

10 (BRIEF PAUSE)

11

12 MR. JOHN MATHER: You say in -- in  
13 this paragraph with respect to bonding that there are  
14 other suitable options for a client to use rather than  
15 the expense of a bond.

16 I think one (1) of the examples you've  
17 already provided of -- of that is the situation in  
18 which you agreed to a greater hold back as well as  
19 statutory declarations.

20 Is that an example of another form --

21 MR. JOHN SCOTT: Yes.

22 MR. JOHN MATHER: -- of security that  
23 can be provided?

24 MR. JOHN SCOTT: Yes.

25 MR. JOHN MATHER: Mr. Barrow, from BLT

1 again, his evidence was that, rather than take out a  
2 bond, the owner and the design builder can agree to a  
3 payment schedule that provides for payments for work  
4 that has been complete.

5                   Mr. Martin's evidence was also that  
6 that was the Town's standard process when it came to  
7 payments, that the payment schedule would be for work  
8 that has been complete.

9                   I take it those -- that is another form  
10 of security that a owner can request from a design  
11 builder if they don't want to proceed with a pers --  
12 performance bond?

13                   MR. JOHN SCOTT: That's correct. But  
14 in the CCDC contract there is a payment certifier  
15 named. And I would think that, in most projects, the  
16 payment certifier goes to the job and he has whatever  
17 month invoice it is and he matches the invoice for the  
18 work complete onsite, and that -- that's a method,  
19 too.

20                   MR. JOHN MATHER: Can you explain that  
21 method?

22                   MR. JOHN SCOTT: The -- the payment  
23 certify -- certifier has to give a written notice that  
24 the contractor's bidding for 50 percent of the job,  
25 that the job is 50 percent done.

1                   And there is a bit of a breakdown, so  
2 is the structural steel onsite or is it in the air.  
3 And -- and it's that certifier's responsibility to --  
4 to make sure they're not overpaying.

5                   MR. JOHN MATHER:    So, another form of  
6 security that is available in a design build process  
7 is actually having an independent certifier come and  
8 say this amount of work has been done, so, therefore,  
9 the owner needs to release the equivalent amount of  
10 funds.

11                   Is that what you're saying?

12                   MR. JOHN SCOTT:    Correct, but it would  
13 have to be in line with what the terms of the contract  
14 are.

15                   MR. JOHN MATHER:    The payment schedule  
16 that had been agreed --

17                   MR. JOHN SCOTT:    Yes.

18                   MR. JOHN MATHER:    -- as between the  
19 owner and the design builder?

20                   MR. JOHN SCOTT:    Correct.    Yes.

21

22   (BRIEF PAUSE)

23

24                   MR. JOHN MATHER:    If we could go to  
25 paragraph 6 of your report.



1 (BRIEF PAUSE)

2

3 MR. JOHN MATHER: This paragraph you  
4 discuss the requirements -- or the common requirement  
5 for a significant deposit when it comes to design  
6 build contracts. Again, it's something you elaborated  
7 on in response to questioning from Mr. Chenoweth.

8 And I take it the point that you're  
9 seeking to make here is that a large deposit is not  
10 uncommon, especially when it comes to an arena style  
11 building, because whoever is providing the actual  
12 structure itself needs to get paid in order for that  
13 process to commence.

14 Is that fair?

15 MR. JOHN SCOTT: Correct. Yes.

16 MR. JOHN MATHER: And so, so long as  
17 the initial deposit covers whatever the structure  
18 manufacturer requires, that concern is addressed?

19 MR. JOHN SCOTT: Correct.

20 MR. JOHN MATHER: The Inquiry has  
21 heard from Tom Lloyd, who is a representative of  
22 Sprung. And Mr. Lloyd's evidence was that Sprung  
23 requires from anybody 50 percent of the cost of a  
24 structure on order and 50 percent on delivery.

25 I take it that's something you weren't

1 aware of when you wrote this report?

2 MR. JOHN SCOTT: No, I wasn't aware.

3

4 (BRIEF PAUSE)

5

6 MR. JOHN MATHER: I also take it that  
7 -- and let me -- let me rephrase. You discussed that  
8 there is -- there can be a bit of a back and forth  
9 between the owner and the design builder when it comes  
10 to a deposit.

11 I take it the back and forth is the  
12 design builder is seeking a certain level of  
13 commitment from the owner before it invests in the  
14 project. And to avoid being left in the lurch and not  
15 the other end, the owner is looking to make sure they  
16 aren't overpaying for work that's not been complete  
17 yet.

18 Is that a fair characterization of the  
19 dynamic?

20 MR. JOHN SCOTT: Yes, it is.

21 MR. JOHN MATHER: And that's  
22 ultimately a subject of negotiation between the owner  
23 and design builder in terms of what the appropriate  
24 amount is to address both sides' concerns?

25 MR. JOHN SCOTT: Correct.

1 MR. JOHN MATHER: And I take it you'd  
2 expect that sort of negotiation would take place prior  
3 to a large design build contract being finalized?

4 MR. JOHN SCOTT: Yes. Yes.

5 MR. JOHN MATHER: If we can open up  
6 the design build contract itself, TOC207516.

7

8 (BRIEF PAUSE)

9

10 MR. JOHN MATHER: And if we can go to  
11 page 35.

12

13 (BRIEF PAUSE)

14

15 MR. JOHN MATHER: I'm sorry, if we  
16 continue to scroll down. I'm looking for the payment  
17 schedule. Oh, there it is, page 36. So, this is the  
18 payment schedule that formed part of the -- the BLT  
19 and Town of Collingwood contract.

20 I assume you reviewed this payment  
21 schedule as part of your review of the overall  
22 contract. Is that fair?

23 MR. JOHN SCOTT: That's fair.

24 MR. JOHN MATHER: And the payment  
25 schedule itself, that's not something that's standard

1 form, that's something that the parties have to agree  
2 to separately?

3 MR. JOHN SCOTT: Correct.

4

5 (BRIEF PAUSE)

6

7 MR. JOHN MATHER: So, we see that the  
8 first payment was a 25 percent deposit upon signing of  
9 the contract. And we've spoken about the reasons why  
10 a large deposit may be required.

11 We then see that a further 25 percent  
12 is required on the completion of ground preparation,  
13 and then a further 25 percent is due when the  
14 structure arrives onsite.

15 And while you've said that large  
16 deposits are usual or typical, in your experience, is  
17 it usual or typical for an owner to have paid 75  
18 percent of the contract's value before the structure  
19 itself has been erected?

20

21 (BRIEF PAUSE)

22

23 MR. JOHN SCOTT: I would say it's not  
24 usual.

25 MR. JOHN MATHER: That would be a

1 significant amount of payment for when -- when the  
2 actual product that the Town would have should the  
3 contractor walk away is, essentially, a site that's  
4 ready to be built on but hasn't been built on.

5 Is that fair?

6 MR. JOHN SCOTT: It's fair, but I  
7 would think there would be some clarification as to  
8 what's in the draw number 2 because for the Sprung  
9 structure to come onsite, I would assume the  
10 foundations are done and ready for it to be erected.

11 And that's a substantial part of the  
12 building, the foundations.

13 MR. JOHN MATHER: So, in any event,  
14 there's clarity required --

15 MR. JOHN SCOTT: Yes.

16 MR. JOHN MATHER: -- from your  
17 perspective in terms of what exactly the Town is  
18 receiving for the substantial amounts it's paying for  
19 as contemplated by this contract?

20 MR. JOHN SCOTT: Correct.

21

22 (BRIEF PAUSE)

23

24 MR. JOHN MATHER: If we can go to  
25 paragraph 7 of your report.

1 (BRIEF PAUSE)

2

3 MR. JOHN MATHER: This discusses a  
4 point that Mr. Chenoweth raised to you that you said -  
5 - in that it -- in your experience:

6 "It's common not to have the project  
7 coordinator involved with the  
8 project negotiations and development  
9 as that can be a lengthy pro --  
10 process."

11 And then you go on to say:

12 "Many project managers are not hired  
13 until the contract is signed."

14 You've used two (2) terms there. One's  
15 project coordinator and one's project manager. Is  
16 there any distinction between those two (2) positions?

17 MR. JOHN SCOTT: There is. I probably  
18 should -- well, I should have put project coordinator  
19 is -- is lower down the scale and probably not crucial  
20 to the development of the project and the negotiation  
21 of the project.

22 But his role would start once the  
23 contract's signed, and so I should have had project  
24 coordinator there.

25 MR. JOHN MATHER: So, in a design

1 build pro -- process, there's the project coordinator  
2 you've just described. And then there's also someone  
3 who's a project manager?

4 MR. JOHN SCOTT: Yes.

5 MR. JOHN MATHER: And what's the  
6 project manager's role?

7 MR. JOHN SCOTT: More to deal with the  
8 client and the development of the project and  
9 supervise the project coordinator. But he would  
10 probably pick the subcontractors and suppliers.

11 MR. JOHN MATHER: Does the project  
12 manager work for the design builder or for the owner?

13 MR. JOHN SCOTT: Design builder.

14 MR. JOHN MATHER: And the project  
15 coordinator, who does --

16 MR. JOHN SCOTT: He works for the  
17 design builder, too.

18 MR. JOHN MATHER: Okay. Mr. Martin  
19 didn't work for Sprung or BLT, as I'm sure you're  
20 aware.

21 MR. JOHN SCOTT: Right.

22 MR. JOHN MATHER: He worked for the  
23 Town of Collingwood. I've seen in the CCDC contract a  
24 reference to an owner's representative.

25 Is that the role that Mr. Martin

1 performed, at least based on what you've reviewed?

2 MR. JOHN SCOTT: I -- I would  
3 interpret it that way. Although, in that CCDC  
4 contract there's a section where it says,  
5 "Consultant." And I think the consultant was the  
6 payment certifier. And I think he worked for the  
7 general contractor.

8 So, Mr. Martin would have been the  
9 owner's representative.

10 MR. JOHN MATHER: And so, when you're  
11 talking about when it's typical for a project  
12 coordinator or a project manager to get involved,  
13 you're talking about people who are retained by the  
14 design builder?

15 MR. JOHN SCOTT: Correct.

16 MR. JOHN MATHER: You're not talking  
17 about someone who is in mi -- Mr. Martin's position?

18 MR. JOHN SCOTT: No.

19

20 (BRIEF PAUSE)

21

22 MR. JOHN MATHER: And I take it you  
23 have not been provided with any information about what  
24 the cost was to the Town to have Mr. Martin involved  
25 in this project?



1 MR. JOHN SCOTT: No.

2 MR. JOHN MATHER: Okay. I also take  
3 it you would -- you would agree with me that, from the  
4 Town's perspective, there would be benefit in having  
5 someone like Mr. Martin, who was a thirty (30) year  
6 employee and a project manager for the Town for other  
7 large construction projects, involved in this project  
8 from the inception.

9 That's something that could have -- be  
10 a benefit, or you could see why the Town may want  
11 that?

12 MR. JOHN SCOTT: Yes, the Town --

13 MR. JOHN MATHER: Is that fair?

14 MR. JOHN SCOTT: The Town should have  
15 a representative for sure.

16 MR. JOHN MATHER: Is it common for the  
17 Town's representative to be introduced after the  
18 contract is signed?

19 MR. JOHN SCOTT: I would say yes.

20 MR. JOHN MATHER: And why is that  
21 unusual?

22 MR. JOHN SCOTT: Oh, unusual?

23 MR. JOHN MATHER: Yeah. Sorry, is it  
24 usual or unusual?

25 MR. JOHN SCOTT: Oh, no, I thought you

1 said usual. It would be usual.

2 MR. JOHN MATHER: It would be usual --

3 MR. JOHN SCOTT: Yeah.

4 MR. JOHN MATHER: -- for the -- the --  
5 and are we talking about the owner's representative?

6 MR. JOHN SCOTT: Yes.

7

8 (BRIEF PAUSE)

9

10 MR. JOHN MATHER: If we could go to  
11 paragraph 9. So, in this paragraph, you're talking  
12 about the advantages. Well, you start by saying:

13 "The design build concept is an  
14 excellent method for municipalities  
15 to use for many projects."

16 No surprise there that this is a view  
17 that you hold given that you're in the business of  
18 seeking to sell design build projects. Is that fair?

19 MR. JOHN SCOTT: Yes. I try to be  
20 unbiassed.

21 MR. JOHN MATHER: I wasn't suggesting  
22 otherwise. I'm just -- that -- that is a perspective  
23 you're bringing to this?

24 MR. JOHN SCOTT: Yes.

25 MR. JOHN MATHER: Yeah.

1 MR. JOHN SCOTT: Yeah.

2 MR. JOHN MATHER: You say in this  
3 paragraph that -- and let me just make sure I have it.  
4 You say:

5 "The negotiations must be thorough  
6 and carefully done to ensure  
7 satisfor -- satisfactory scope and  
8 schedule."

9 Do you see that?

10 MR. JOHN SCOTT: Yes.

11 MR. JOHN MATHER: Can you explain what  
12 you mean by that?

13 MR. JOHN SCOTT: Well, be -- because  
14 in the design build process and with the CCDD (sic)  
15 contract they use, the drawings aren't completed under  
16 after the contract is signed, so there has to be a  
17 document that has a scope of work.

18 And, again, I haven't seen that  
19 document, but I would think that would include whether  
20 the Zambo -- Zamboni is included in the price of the  
21 building, whether the ice equipment is, what -- what's  
22 in the contract.

23 And then you proceed once the  
24 contract's signed and do the detailed drawings which  
25 has massive, you know, scope items on it, a door and

1 room schedule or the lights in the dressing rooms,  
2 motion detectors as you have for a LEED's building, or  
3 are they just switches, that type of thing.

4 MR. JOHN MATHER: So, the -- the  
5 document you're describing, the scope of work  
6 document, it's quite a detailed document?

7 MR. JOHN SCOTT: I would think so,  
8 yes.

9 MR. JOHN MATHER: And -- and I -- I  
10 assume that, from the owner's perspective, you want a  
11 very detailed document because that is your primary  
12 means of controlling the end product that the design  
13 builder will create for you?

14 MR. JOHN SCOTT: Correct. And that's  
15 not to say that the -- in the negotiation of this  
16 contract, that the two (2) sides didn't say -- sit  
17 down and go through all those things and say, okay, we  
18 both have our notes.

19 When you do the drawings that come  
20 after the contract is signed, we want to make sure all  
21 the items we've discussed are on those drawings.  
22 That's a possibility.

23 MR. JOHN MATHER: And -- and correct  
24 me if I'm wrong, it's my understanding that if --  
25 well, actually let me ask you this first.

1                   The scope of work your document --  
2 referring to, is that sometimes called a statement of  
3 requirements?

4                   MR. JOHN SCOTT:     It could be, yes.

5                   MR. JOHN MATHER:    And I've seen that  
6 defined term within the CCDC.

7                   When you reviewed it, was it your  
8 understanding that the statement of requirements term  
9 in the CCDC was referencing the scope of work document  
10 you've referred to?

11                  MR. JOHN SCOTT:    I can't say that I  
12 examined that -- that item.

13                  MR. JOHN MATHER:    In either case, I  
14 take it, and I just want to confirm, you haven't seen  
15 the scope of work that was agreed to prior to this  
16 contract being entered into?

17                  MR. JOHN SCOTT:    No, I haven't.

18                  MR. JOHN MATHER:    And it wasn't  
19 included in the contract you reviewed?

20                  MR. JOHN SCOTT:    No.

21                  MR. JOHN MATHER:    And my understanding  
22 of the design build process generally, and please  
23 correct me if I'm wrong, is that the scope of work  
24 document is heavily negotiated and it's finalized, and  
25 then af -- one (1) of the first steps after the

1 contract is signed is the design builder comes back  
2 with a design and one (1) of the things that is done  
3 is that design is compared to the scope of work. Is  
4 that correct?

5 MR. JOHN SCOTT: Correct.

6 MR. JOHN MATHER: And if -- at that  
7 point in the process, if the owner wants something  
8 that's not set out -- wants something in the design  
9 that's not set out in the scope of work, that's  
10 something that may become a change. Is that correct?

11 MR. JOHN SCOTT: Correct.

12 MR. JOHN MATHER: And then there would  
13 be additional costs if the owner then decided they  
14 wanted that put into the scope of work?

15 MR. JOHN SCOTT: Correct.

16 MR. JOHN MATHER: And something that's  
17 open to the design builder is, if -- if the owner  
18 comes and says we want this included, one (1) of the  
19 things the design builder can say is, well, you're  
20 going to have to pay more for that because it's not in  
21 the scope of work?

22 MR. JOHN SCOTT: Correct.

23

24 (BRIEF PAUSE)

25

1 MR. JOHN MATHER: Mr. Scott, do you  
2 recall when you were retained to provide an expert  
3 opinion with respect to this matter?

4 MR. JOHN SCOTT: Yes.

5 MR. JOHN MATHER: And when was that?

6 MR. JOHN SCOTT: I -- I can't say an  
7 exact date. I would say it was three (3) weeks or a  
8 month ago.

9 MR. JOHN MATHER: And do you remember  
10 on what date you submitted your final report to Mr.  
11 Chenoweth?

12 MR. JOHN SCOTT: No, I don't remember  
13 the date.

14 MR. JOHN MATHER: Before you submitted  
15 the final report, did you provide Mr. Chenoweth any  
16 drafts of the report?

17 MR. JOHN SCOTT: No. I think I sent  
18 the report and that was it.

19 MR. JOHN MATHER: Did you provide  
20 anyone with any drafts of the report?

21 MR. JOHN SCOTT: No.

22 MR. JOHN MATHER: Did anyone assist  
23 you in drafting the report?

24 MR. JOHN SCOTT: No.

25 MR. JOHN MATHER: Have you ever had

1 any conversations with Mr. Houghton, who's Mr.  
2 Chenoweth's client?

3 MR. JOHN SCOTT: No.

4 MR. JOHN MATHER: And the reason I ask  
5 is, when we look at the metadata in the report that  
6 you've provided in Microsoft Word, it indicates who  
7 the author of the report was, which I understand to be  
8 the person who created the document, and that  
9 individual is identified as someone named "Ed."

10 Do you know who that is?

11 MR. JOHN SCOTT: In what part of the  
12 document?

13 MR. JOHN MATHER: So when -- if we  
14 could open up this document in native format?

15

16 (BRIEF PAUSE)

17

18 MR. JOHN MATHER: We'll pull it up to  
19 show you, but I'll just help you. And if you can go  
20 to "File." And...

21

22 (BRIEF PAUSE)

23

24 MR. JOHN MATHER: So what they're  
25 trying to figure out is, when you look at the --



1 there's a field in Microsoft Word that identifies the  
2 individual who created the Microsoft Word document,  
3 and it is identified as an individual named "Ed" and  
4 just "Ed."

5 Do you know who that would be?

6 MR. JOHN SCOTT: No. But is that  
7 specific to the cover page or is that the report?

8 MR. JOHN MATHER: It's specific to the  
9 entire document.

10 MR. WILLIAM MCDOWELL: Why don't we --  
11 why don't we wait until we have it up on the screen.

12 MR. JOHN MATHER: Oh, here we go.

13

14 CONTINUED BY MR. JOHN MATHER:

15 MR. JOHN MATHER: So as we see, in the  
16 document, the author is identified as someone named  
17 "Ed," and it says "last modified" by someone named  
18 "Ed."

19 Do you see that?

20 MR. JOHN SCOTT: Yes.

21 MR. JOHN MATHER: Do you know what  
22 that is referencing?

23 MR. JOHN SCOTT: No.

24 MR. JOHN MATHER: Did anyone you know  
25 named "Ed" have any involvement in the document that

1 you prepared?

2 MR. JOHN SCOTT: No, but when I sent  
3 my report to Fred, maybe my cover page was a bit  
4 rough, and I don't know if that was modified because I  
5 lack some computer skills.

6 MR. JOHN MATHER: Did someone indicate  
7 to you that your cover page was rough?

8 MR. JOHN SCOTT: No.

9 MR. JOHN MATHER: So when you say  
10 that, is that something you're speculating or is it  
11 something you have knowledge of --

12 MR. JOHN SCOTT: Speculating.

13 MR. JOHN MATHER: Speculating, okay.  
14 I have no further questions.

15 THE HONOURABLE FRANK MARROCCO: Thank  
16 you. Who's -- no, he has no questions.

17

18 CROSS-EXAMINATION BY MR. WILLIAM MCDOWELL:

19 MR. WILLIAM MCDOWELL: I -- sir, I'm  
20 William McDowell. I'm one (1) of the counsel for the  
21 Town of Collingwood.

22 So just following on that, you don't  
23 know Mr. Houghton, I take it?

24 MR. JOHN SCOTT: No.

25 MR. WILLIAM MCDOWELL: So you're --

1 and it's the first time you've ever been an expert  
2 witness?

3 MR. JOHN SCOTT: Yes.

4 MR. WILLIAM MCDOWELL: So you're  
5 sitting at home minding your own business. Were you  
6 watching the Collingwood Inquiry on the Internet or  
7 anything?

8 MR. JOHN SCOTT: No, I've never  
9 watched that.

10 MR. WILLIAM MCDOWELL: How did you  
11 come to be involved in this?

12 MR. JOHN SCOTT: I was asked by a  
13 local builder here if I would help.

14 MR. WILLIAM MCDOWELL: And who is  
15 that?

16 MR. JOHN SCOTT: Brian Dempsey.

17 MR. WILLIAM MCDOWELL: Brian Dempsey?

18 MR. JOHN SCOTT: Yeah.

19 MR. WILLIAM MCDOWELL: Thank you. And  
20 do you know the name of his company?

21 MR. JOHN SCOTT: DBD Consultants, or  
22 DBD Structures, I think.

23 MR. WILLIAM MCDOWELL: Right. So --  
24 and anyway, leaving that aside, you have described  
25 Sprung as a competitor. So there have been instances

1 where you've been in a head-to-head competition with  
2 Sprung for a project, I take it?

3 MR. JOHN SCOTT: Yes.

4 MR. WILLIAM MCDOWELL: Right. Can we  
5 pull up TOC600353?

6

7 (BRIEF PAUSE)

8

9 MR. WILLIAM MCDOWELL: Okay. So this  
10 is a feasibility study that was done for the Town of  
11 Whistler in 2015, and I just want to ask you some  
12 questions about it.

13 Whistler, as I understand it, is  
14 another town that has a ski hill out back and --

15 MR. JOHN SCOTT: A big one.

16 MR. WILLIAM MCDOWELL: Yeah, a big  
17 one. And where the real estate is even more expensive  
18 than in Collingwood.

19 But if we -- if we look at this, and we  
20 scroll to the description -- I think it's on the first  
21 page -- this is done by Mr. Hewko, and Mr. Hewko, as I  
22 understand it, is an architect who has become a  
23 consultant in relation mostly to recreational  
24 projects. So what was up for discussion here was the  
25 possibility of a project to cover a soccer pitch.

1 Have a look at that, if you want.

2

3 (BRIEF PAUSE)

4

5 MR. WILLIAM MCDOWELL: And then if we  
6 scroll down, there -- if you see the bullets there,  
7 there are four (4) things that are under discussion.  
8 One was a bubble; the next one, a rigid frame fabric  
9 structure, which is the Sprung building, and then a  
10 fabric building with pre-engineer structural skeleton.

11 Have you run across that one before?

12 MR. JOHN SCOTT: Is that the PEMB?

13 MR. WILLIAM MCDOWELL: No, the one  
14 above that, the fabric building with pre-engineer  
15 structural skeleton.

16 MR. JOHN SCOTT: No, I haven't.

17 MR. WILLIAM MCDOWELL: Okay. And then  
18 the last one, pre-engineered medical -- metal --  
19 sorry, metal building, which is the one that you're  
20 involved with.

21 MR. JOHN SCOTT: Correct, yeah.

22 MR. WILLIAM MCDOWELL: Okay. So then  
23 if we go down to, I think it is 4.1 -- Section 4.1.

24

25 (BRIEF PAUSE)

1 MR. WILLIAM MCDOWELL: So here we got  
2 the comparison of different types, and I won't take  
3 your time with the bubble, but one (1) of the concerns  
4 with the bubble -- there were two (2) really. One (1)  
5 was the operating cost, because you have to keep the  
6 bubble inflated constantly, but the second one is the  
7 snow load, and Whistler, I gather, has a massive snow  
8 load.

9 So if we keep going, 4.2. -- so here we  
10 are, the rigid frame fabric structure, so the Sprung  
11 structure. And I'll just give you a minute or two (2)  
12 to look at that.

13

14 (BRIEF PAUSE)

15

16 MR. WILLIAM MCDOWELL: So if I can ask  
17 you a question. So there's the sentence there at the  
18 end of the second paragraph:

19 "As with ASFS"[so that's the bubble]  
20 manufacturers claim the outer skin  
21 can last over 20 years, but in most  
22 cases partial or whole re-skinning  
23 should be is required between 10 and  
24 15 years."

25 Do you have any knowledge about --

1 about that, one way or the other, whether -- whether  
2 that's right that you've got to replace the outer  
3 membrane in that time period?

4 MR. JOHN SCOTT: I have no knowledge  
5 of that and wasn't aware of it.

6 MR. WILLIAM MCDOWELL: Okay. And then  
7 if we keep going down, the third paragraph, the back  
8 half, it says:

9 "And like the bubble, the RFFS, our  
10 fabric skin to the ground line and  
11 are highly susceptible to vandalism,  
12 usually requiring a perimeter chain  
13 link fence."

14 When you're out in these competitions  
15 where you're up against Sprung, is it a selling  
16 feature of your metal building that it's less  
17 susceptible to vandalism?

18 MR. JOHN SCOTT: I would say yes.

19 MR. WILLIAM MCDOWELL: Okay. And then  
20 --

21 MR. FREDERICK CHENOWETH: Your Honour,  
22 I'm wondering before we go -- go too much further with  
23 this line of cross, do we -- I'm wondering if it's a  
24 useful line of cross in that do we have some -- some  
25 authority to say that the gentleman, Mr. Hewko, who

1 wrote this report, is -- is -- has some particular  
2 skill to -- to do that? We're -- we're comparing the  
3 comments of this gentleman to some other expert that,  
4 frankly, I don't know anything about and I'm not sure  
5 that it's useful to -- to make those comparisons  
6 without -- without in some way qualifying the accuracy  
7 or the skills with which this report was done.

8 THE HONOURABLE FRANK MARROCCO: I  
9 think the line of questioning is entirely proper.

10 MR. WILLIAM MCDOWELL: I might say  
11 that if --

12 THE HONOURABLE FRANK MARROCCO: I  
13 don't want to get into it, you can ask the questions.

14 MR. WILLIAM MCDOWELL: Sure. The  
15 qualifications are on his website.

16

17 CONTINUED BY MR. WILLIAM MCDOWELL:

18 MR. WILLIAM MCDOWELL: So if we look  
19 at the last paragraph, it probably doesn't have a  
20 whole lot of application here:

21 "Whistler snow loads are  
22 prohibitively high, there are no  
23 precedents for these structures with  
24 significant clear spans in these  
25 conditions."



1                   Then they've got the data about just  
2 how much snow falls in Whistler.

3                   If these buildings fail, however, it  
4 tends to be localized to single bays unless the frame  
5 buckles regarding -- resulting in a serious failure.

6                   Do you have any knowledge about that  
7 aspect of it?

8                   MR. JOHN SCOTT:   No, and as they are  
9 my competitor, if there were examples of failure --

10                  MR. WILLIAM MCDOWELL:   You'd be keen  
11 to know about it?

12                  MR. JOHN SCOTT:   And I think our --  
13 our manufacturers would have researched it and  
14 certainly provided us with the information.

15                  MR. WILLIAM MCDOWELL:   Right. I take  
16 this to say that no one has tried this in Whistler or  
17 a comparative location, rather than making a positive  
18 statement that there have been failures.

19                  MR. JOHN SCOTT:   Yes.

20                  MR. WILLIAM MCDOWELL:   Now, if we keep  
21 going up, 4.3, this is -- sorry, 4.4, this is familiar  
22 ground for you. And I'll just give you a minute to  
23 read this.

24

25   (BRIEF PAUSE)

1 MR. JOHN SCOTT: Okay.

2 MR. WILLIAM MCDOWELL: So they mention  
3 there one of the largest producers of pre-engineered  
4 medical -- medal buildings for recreational purposes  
5 is Butler Buildings. And I think you've mentioned  
6 Butler on the way through your testimony?

7 MR. JOHN SCOTT: Yes.

8 MR. WILLIAM MCDOWELL: And they're a  
9 major competitor of yours as well?

10 MR. JOHN SCOTT: Yes.

11 MR. WILLIAM MCDOWELL: And then they  
12 mention that there are other Canadian steel building  
13 manufacturers, including on the lower mainland.

14 Now, the next paragraph:

15 "The PEMB are far more durable than  
16 any fabric building, but the price  
17 leap upwards is significant."

18 So just taking that statement, can you  
19 give us a sense of, first of all, whether you agree  
20 with that, and second what we're talking about in  
21 terms of cost difference.

22 MR. JOHN SCOTT: Well, I -- I agree  
23 with the statement, the price leap upward is  
24 significant. I don't know that I can say what the  
25 price difference is.

1 MR. WILLIAM MCDOWELL: It all depends  
2 on the features of the --

3 MR. JOHN SCOTT: Right, and I've never  
4 -- never asked for a price on a Sprung building or  
5 anything along those lines.

6 MR. WILLIAM MCDOWELL: Right. And in  
7 your testimony in-chief, what I took you to say was  
8 that when you're competing with Sprung, price is a  
9 weakness for your company.

10 MR. JOHN SCOTT: Correct.

11 MR. WILLIAM MCDOWELL: So it's  
12 something that you have to address somehow?

13 MR. JOHN SCOTT: Yes.

14 MR. WILLIAM MCDOWELL: Right, so the  
15 next line, that said:

16 "The PEMB can be expected to last  
17 two to three times longer than a  
18 fabric building in total building  
19 life with lower and fewer capital  
20 upgrades during the years of  
21 operation."

22 Do you agree with that statement?

23 MR. JOHN SCOTT: Again, I'm -- I'm  
24 certainly not an expert on -- on Sprung buildings and  
25 I'm -- I'm not sure. Some pre-engineered buildings

1 don't need much upgrades over the years.

2 MR. WILLIAM MCDOWELL: Right. What --  
3 what about the durability of the pre-engineered metal  
4 building?

5 MR. JOHN SCOTT: It's fairly durable,  
6 it -- it can dent, but not much happens to it.

7 MR. WILLIAM MCDOWELL: Is it a selling  
8 feature for your metal buildings that you expect them  
9 to last longer than a Sprung building?

10 MR. JOHN SCOTT: I think it's a  
11 selling feature. It sometimes can't overcome that  
12 price jump.

13 MR. WILLIAM MCDOWELL: Right. But you  
14 would say with some confidence that a -- a metal  
15 building would last longer than a Sprung building.

16 MR. JOHN SCOTT: Again, with my lack  
17 of knowledge of the Sprung building, I don't know that  
18 I could -- that I could say that.

19 MR. WILLIAM MCDOWELL: But it's  
20 something that you represent in the market place that  
21 you're paying --

22 MR. JOHN SCOTT: That our building is  
23 more durable and -- yes. Yes. And it shouldn't need  
24 as much maintenance.

25 MR. WILLIAM MCDOWELL: Then lastly,

1 the author says:

2 "Structurally the PEMB represents  
3 the least risk of building failure  
4 with the snow loads expected in  
5 Whistler."

6 And then explains that. Would you  
7 agree with that statement?

8 MR. JOHN SCOTT: From the knowledge I  
9 have, yes.

10 MR. WILLIAM MCDOWELL: And then the  
11 last line:

12 "The building can be significantly  
13 insulated to the equivalent of R-20  
14 to R-30, retaining heat and  
15 resulting in operating savings in  
16 the long-term that will recoup some  
17 of the capital premium."

18 Do you agree with that?

19 MR. JOHN SCOTT: I agree with it, but  
20 I'm not sure what the date on this report is and I --

21 MR. WILLIAM MCDOWELL: December 2015.

22 MR. JOHN SCOTT: '15. So four (4)  
23 years ago?

24 MR. WILLIAM MCDOWELL: Correct.

25 MR. JOHN SCOTT: And I do understand

1 that the Sprung building has improved --

2 MR. WILLIAM MCDOWELL: In that time.

3 MR. JOHN SCOTT: As have -- as have  
4 the pre-engineered.

5 MR. WILLIAM MCDOWELL: All right.  
6 Thanks for that.

7 Now, one (1) of the things that we  
8 covered with an architect named Mr. Dabrus in his  
9 testimony was the process leading up to a design build  
10 building.

11 Did you read any of his testimony?

12 MR. JOHN SCOTT: I don't recall.

13 MR. WILLIAM MCDOWELL: Do you know,  
14 have you run across him in your travels?

15 MR. JOHN SCOTT: The name is familiar.

16 MR. WILLIAM MCDOWELL: Right. Let me  
17 just cover this quickly.

18 So he said that often what happens is  
19 that the owner creates a tender for a concept design,  
20 so you've got sort of a generic design of what you  
21 want and then there are specifications. The type of  
22 the arena, the type of insulation, the type of glazing  
23 on the windows and something.

24 And then that concept is put out to a  
25 competitive process.

1 MR. JOHN SCOTT: Yes.

2 MR. WILLIAM MCDOWELL: Are you  
3 familiar with that?

4 MR. JOHN SCOTT: Yes.

5 MR. WILLIAM MCDOWELL: Okay. And then  
6 the design build team is selected after that. Is that  
7 something --

8 MR. JOHN SCOTT: Yes.

9 MR. WILLIAM MCDOWELL: You've got  
10 experience with that?

11 MR. JOHN SCOTT: Yes.

12 MR. WILLIAM MCDOWELL: And that is an  
13 optimal way of proceeding, is that fair?

14 MR. JOHN SCOTT: Optimal?

15 MR. WILLIAM MCDOWELL: Well, put it  
16 this way. Is that a common way of proceeding?

17

18 (BRIEF PAUSE)

19

20 MR. WILLIAM MCDOWELL: Let me add  
21 something to my question.

22 MR. JOHN SCOTT: Yeah.

23 MR. WILLIAM MCDOWELL: Is it a common  
24 way of proceeding when you're dealing with public  
25 money, to proceed in that way?

1 MR. JOHN SCOTT: I don't think I could  
2 say that. I mean, the common way is to tender --

3 MR. WILLIAM MCDOWELL: Right.

4 MR. JOHN SCOTT: -- especially for  
5 government.

6 MR. WILLIAM MCDOWELL: Right.

7 MR. JOHN SCOTT: In my experience,  
8 what happened is, when the tender process goes through  
9 and the budget can't be achieved, all of the sudden  
10 there's a desire to find an alternative way to do  
11 things.

12 MR. WILLIAM MCDOWELL: Right.

13 MR. JOHN SCOTT: And maybe, in that  
14 case, what you're talking about could happen.

15 MR. WILLIAM MCDOWELL: Right.

16 MR. JOHN SCOTT: Or they could focus  
17 in on -- on some other combination of a product and a  
18 contractor.

19 MR. WILLIAM MCDOWELL: Right. So, if  
20 you take the Whistler example, you know, what they  
21 might do is say --

22 MR. JOHN SCOTT: Okay.

23 MR. WILLIAM MCDOWELL: -- okay, here's  
24 the size of the artificial turf we want enclosed, here  
25 are the dressing rooms we need, and try and tender for



1 that?

2 MR. JOHN SCOTT: Correct. Yes.

3

4 (BRIEF PAUSE)

5

6 MR. WILLIAM MCDOWELL: And then at  
7 paragraph 9 of your report -- if we can just pull that  
8 up for a second.

9

10 (BRIEF PAUSE)

11

12 MR. WILLIAM MCDOWELL: Just while  
13 you're -- while they're doing that, in your report a  
14 number of places you talk about negotiations, that  
15 there's a lot of negotiating in the process between  
16 the owner and the builder, the design builder,  
17 correct?

18 MR. JOHN SCOTT: Correct.

19 MR. WILLIAM MCDOWELL: And so, at 9  
20 you say:

21 "Careful selection of the design  
22 builder saves a great deal of time  
23 and eliminates the time necessary to  
24 evaluate many inexperienced and  
25 unworthy bidders."

1                   So, you're contemplating there some  
2 kind of competitive process, I take it?

3                   MR. JOHN SCOTT:    In my experience,  
4 yes.

5                   MR. WILLIAM MCDOWELL:   Okay.  And then  
6 the next line:

7                   "The negotiations must be thorough  
8 and carefully done to ensure  
9 satisfactory scope and schedule."

10                  This again would be, in this case, the  
11 Town negotiating with its selected design builder?

12                  MR. JOHN SCOTT:    Correct.

13                  MR. WILLIAM MCDOWELL:   Right.  And my  
14 friend for the Commission covered with you in the  
15 deposits and in the payment schedule.  That's a  
16 negotiated process?

17                  MR. JOHN SCOTT:    Yes.

18                  MR. WILLIAM MCDOWELL:   It's not  
19 typically --

20                  MR. JOHN SCOTT:    There's no standard.

21                  MR. WILLIAM MCDOWELL:   There's no  
22 standard, right.  Now, you talked about in a number of  
23 places in your testimony in-chief what you do  
24 frequently is you develop leads.  So, you find  
25 prospects for projects --

1 MR. JOHN SCOTT: Yes.

2 MR. WILLIAM MCDOWELL: -- correct? Do  
3 I take it that you do this personally with your  
4 colleagues at the -- at your company?

5 MR. JOHN SCOTT: No. Our preferred  
6 manufacturer, American Buildings, has direct mailings.  
7 And say the Toronto Construction Association has their  
8 Christmas luncheon and at the -- in the area where it  
9 is, they put up booths.

10 So, American Buildings would put up --

11 MR. WILLIAM MCDOWELL: Right.

12 MR. JOHN SCOTT: -- booths. And they  
13 would contact me and other builders and say, would you  
14 like to man this booth for a couple hours over this  
15 five (5) day exposium or whatever it is.

16 And we would say, sure, we -- we'll  
17 come down. And so, you man the booth. And people  
18 wander around and ask questions. And you give them  
19 brochures and get their business cards. And you hope  
20 to come out of something like that with maybe fifty  
21 (50) names that you can do.

22 MR. WILLIAM MCDOWELL: Right. And  
23 then you -- you work the leads?

24 MR. JOHN SCOTT: You work the leads.  
25 So, there's the mining show.

1 MR. WILLIAM MCDOWELL: Yeah.

2 MR. JOHN SCOTT: There's the -- some  
3 of the winter facilities and the -- the recycling  
4 garbage show --

5 MR. WILLIAM MCDOWELL: Right.

6 MR. JOHN SCOTT: -- which are big ones  
7 now.

8 MR. WILLIAM MCDOWELL: Okay. If  
9 you're dealing with projects like an arena project, so  
10 you've got -- the Town of Lindsay was one (1) of your  
11 examples.

12 MR. JOHN SCOTT: Right.

13 MR. WILLIAM MCDOWELL: Would you hire  
14 a consultant who had relationships with the municipal  
15 Council at the time of the Town of Lindsay to assist  
16 you with getting a sole source contract?

17 MR. JOHN SCOTT: You might try and  
18 align yourself with the consultant, but I don't know  
19 that, at that stage, we'd hire a consultant, no.

20 MR. WILLIAM MCDOWELL: Right. And if  
21 I told you that, in relation to this project, a  
22 consultant with relationships to the mayor and  
23 relationships to members of Town Council was paid  
24 seven hundred and fifty thousand dollars (\$750,000),  
25 would that surprise you?

1 MR. JOHN SCOTT: What was the size of  
2 the project?

3 MR. WILLIAM MCDOWELL: Well, it's this  
4 project. It's the --

5 MR. JOHN SCOTT: What was the dollar  
6 value of the project?

7 MR. WILLIAM MCDOWELL: The dollar val  
8 -- value of the project is -- we'll call it 13 million  
9 roughly.

10 MR. JOHN SCOTT: I don't think it  
11 would surprise me. I mean, I'm a commission salesman.

12 MR. WILLIAM MCDOWELL: Right.

13 MR. JOHN SCOTT: If I sell a 10 to \$15  
14 million job, I'm going to be looking for a substantial  
15 payment.

16 MR. WILLIAM MCDOWELL: You're the  
17 salesman?

18 MR. JOHN SCOTT: Yeah.

19 MR. WILLIAM MCDOWELL: Right. But  
20 you're -- but the consultant working under you, not --  
21 not you, but somebody with these relationships you  
22 would pay that much to?

23 MR. JOHN SCOTT: I mean, it depends on  
24 what they did. I mean, without them, would there have  
25 been a project?

1 MR. WILLIAM MCDOWELL: Well, that's a  
2 --

3 OBJ MR. PAUL BONWICK: Your Honour, just  
4 if I might object to this. I -- I noticed you  
5 correcting me in terms of questions that I was leading  
6 away from the statement that the expert had provided.

7 I see My Friend, Mr. McDowell, going  
8 down a path that has nothing to do with the  
9 information he's reviewed, nothing contained in the  
10 report that he's presented and asking to speculate on  
11 information that he has no access to.

12 I -- I'm just struggling with how I go  
13 in one (1) direction, Mr. McDowell goes in another,  
14 and it's being allowed.

15 THE HONOURABLE FRANK MARROCCO: Well,  
16 I think -- I don't find -- I'm not sure this line of  
17 questioning is really helping me. You can --

18 MR. WILLIAM MCDOWELL: Just a couple  
19 more questions.

20 THE HONOURABLE FRANK MARROCCO: What  
21 are they?

22 MR. WILLIAM MCDOWELL: The experience  
23 of this witness with this phenomenon.

24

25 (BRIEF PAUSE)

1 THE HONOURABLE FRANK MARROCCO: I  
2 think it's outside his area of expertise.

3 MR. WILLIAM MCDOWELL: Well, it's --  
4 well, it's the -- it's the world -- I mean, I know  
5 nothing of this world; the witness does. And if these  
6 kinds of arrangements are commonplace, it'd be keen to  
7 know that, but I'm in your hands, frankly.

8 THE HONOURABLE FRANK MARROCCO: I --  
9 I'm not -- I'm not sure he's qualified to give an  
10 opinion on it.

11 MR. WILLIAM MCDOWELL: May I ask him  
12 the factual question though?

13 THE HONOURABLE FRANK MARROCCO: Yes.

14

15 CONTINUED BY MR. WILLIAM MCDOWELL:

16 MR. WILLIAM MCDOWELL: When you have  
17 been a salesperson for pre-engineered steel buildings  
18 dealing with governments, have you paid consulting  
19 fees of this kind, of this magnitude?

20 MR. JOHN SCOTT: Again, I would say it  
21 depends on the size of the project. And consulting  
22 fees? Yes, we pay consulting fees.

23 MR. WILLIAM MCDOWELL: And are the  
24 consulting fees paid, in your experience, not for  
25 expertise, but for the connections the consultant has?

1 OBJ MR. PAUL BONWICK: Once again, Your  
2 Honour, I raise the objection. If Mr. McDowell wants  
3 to call an expert in terms of consultants, I would  
4 certainly invite him to do so.

5 He's got an expert witness here that's  
6 speaking to a number of different items identified in  
7 his witness -- or his expert report. I was asked to  
8 confine my questions to the expert report, and yet  
9 again Mr. McDowell is going down a path that goes  
10 beyond that.

11 And respectfully, I have no idea if Mr.  
12 Scott has any expertise as it relates to hiring  
13 consultants, what the role the consultant plays or how  
14 that should work, and it's certainly not part of his  
15 expert witness statement.

16 THE HONOURABLE FRANK MARROCCO: Well,  
17 it's not in -- it's not in his report and it's not  
18 within his area of expertise. I think you can ask him  
19 if he's done it.

20 MR. WILLIAM MCDOWELL: Right.

21 THE HONOURABLE FRANK MARROCCO: But  
22 beyond that... In terms of industry practice or -- I  
23 think we're in a different area. I agree with Mr.  
24 Bonwick.

25 MR. WILLIAM MCDOWELL: No, that's



1 fine. I mean, but --

2 MR. FREDERICK CHENOWETH: I think he  
3 already answered that, Your Honour. He said that he -  
4 -

5 MR. WILLIAM MCDOWELL: No, he -- he  
6 hasn't.

7 THE HONOURABLE FRANK MARROCCO: I'm  
8 going to let him put the question.

9

10 CONTINUED BY MR. WILLIAM MCDOWELL:

11 MR. WILLIAM MCDOWELL: So, the  
12 question was: When you're paying a consultant, when  
13 you're talking about paying a consultant, are you  
14 talking about paying a consultant who has particular  
15 expertise or are you talking about paying a consultant  
16 who has con -- who has personal connections to the  
17 owner?

18

19 (BRIEF PAUSE)

20

21 MR. JOHN SCOTT: I'm not sure how to  
22 answer this. I -- I haven't paid anybody for their  
23 personal connections.

24 MR. WILLIAM MCDOWELL: That was my  
25 question.

1 MR. JOHN SCOTT: Okay.

2 THE HONOURABLE FRANK MARROCCO: I --  
3 I'm not -- I don't think this is -- I -- I think we  
4 should try to stay within the report. I appreciate  
5 there's a le -- I actually allowed that area before  
6 with -- but I did indicate I didn't want to get  
7 outside the report, and I don't want to.

8 MR. WILLIAM MCDOWELL: No, fair  
9 enough. It's just -- it's an area --

10 THE HONOURABLE FRANK MARROCCO: I -- I  
11 just think it's hard because who -- who knows. I'm  
12 kind of sympathetic to the idea that the witness's  
13 area of expertise is reflected in the report, not in  
14 the area that he's now being led into.

15 And so, I -- I think this line of  
16 questioning should end.

17 MR. WILLIAM MCDOWELL: Okay. I'm just  
18 -- I'm looking -- and it will. It has. I'm just  
19 looking down the road to recommendations where --

20 THE HONOURABLE FRANK MARROCCO: Well,  
21 I think -- I think, in part -- I think when we get  
22 into policy and -- I think we're -- we're talking  
23 about a whole different -- I -- I don't mean to imply  
24 that we're not going to get into it --

25 MR. WILLIAM MCDOWELL: Okay.

1 THE HONOURABLE FRANK MARROCCO: --  
2 into the appropriate way these things are done. They  
3 are recommendations that have been made in the past,  
4 but that's not -- that -- that's different.

5 MR. WILLIAM MCDOWELL: Okay.

6 THE HONOURABLE FRANK MARROCCO: That  
7 deals with policy in the future.

8 MR. WILLIAM MCDOWELL: All right.  
9 Well, Mr. Scott, I think those are all my questions.

10 MR. JOHN SCOTT: Thank you.

11 MR. WILLIAM MCDOWELL: Thank you for  
12 your assistance.

13 MR. JOHN SCOTT: Thanks.

14 THE HONOURABLE FRANK MARROCCO: We'll  
15 break for lunch. And then, Mr. Chenoweth, you may  
16 have so -- do you have some re-examination?

17 MR. FREDERICK CHENOWETH: Limited,  
18 but, yes.

19 THE HONOURABLE FRANK MARROCCO: All  
20 right. And we'll -- we'll deal with it at two  
21 o'clock.

22 MR. WILLIAM MCDOWELL: So -- so,  
23 Commissioner, just because we've got an inexperienced  
24 expert --

25 THE HONOURABLE FRANK MARROCCO: Oh,

1 yes.

2 MR. WILLIAM MCDOWELL: -- perhaps we  
3 better give him the warning.

4 THE HONOURABLE FRANK MARROCCO: Yeah.  
5 Since you've never testified before, but do -- don't -  
6 - don't -- this isn't -- doesn't imply that you would,  
7 it's a just a warning that you give witnesses, not to  
8 discuss their evidence while they're in the witness  
9 stand doing -- doing what you're doing.

10 MR. JOHN SCOTT: Okay. Okay.

11

12 --- Upon recessing at 1:01 p.m.

13 --- Upon resuming at 2:03 p.m.

14

15 MR. FREDERICK CHENOWETH: Thank you,  
16 Your Honour.

17

18 RE-EXAMINATION-IN-CHIEF BY MR. FREDERICK CHENOWETH:

19 MR. FREDERICK CHENOWETH: Mr. Scott,  
20 just a couple of little clarifications with respect to  
21 some of your evidence.

22 You indicated that you felt a little  
23 sorry for the -- the owner's rep, Mr. Ron Martin here,  
24 because you had a sense that maybe he didn't have all  
25 the -- the charts and diagrams and -- and

1 specifications that he might like to have had,  
2 correct?

3 MR. JOHN SCOTT: Correct.

4 MR. FREDERICK CHENOWETH: All right.

5 I -- I take it there's a -- a solution to that. You -  
6 - you ask for them and -- and get them. Is that the  
7 idea?

8 MR. JOHN SCOTT: Correct.

9 MR. FREDERICK CHENOWETH: All right.

10 MR. JOHN SCOTT: And I think I'd said  
11 I was sympathetic to him because there are instances  
12 when people are put in that position and they don't  
13 have all the documentation, but you're right, he could  
14 specifically ask for them.

15 MR. FREDERICK CHENOWETH: All right.

16 And I suppose he could do a thing -- if he was  
17 concerned about it, he could do maybe a chart of -- of  
18 contractors responsible for A, B, C, and D, and the  
19 owner is responsible for E, F, G, and F, if I've got  
20 that right.

21 MR. JOHN SCOTT: Correct.

22 MR. FREDERICK CHENOWETH: And so he  
23 could do that kind of thing to clarify where he was  
24 going on the project.

25 MR. JOHN SCOTT: Yes.

1 MR. FREDERICK CHENOWETH: I -- I don't  
2 -- you obviously don't know whether Mr. Martin did  
3 that.

4 MR. JOHN SCOTT: No.

5 MR. FREDERICK CHENOWETH: Okay.

6 MR. WILLIAM MCDOWELL: Sorry,  
7 Commissioner, if this is re-examination it should be a  
8 little more open than that, I think.

9 THE HONOURABLE FRANK MARROCCO: It's  
10 not re-examination but it is re-examination, so I'm  
11 just going to let it go. The witness is quite clear.

12 MR. WILLIAM MCDOWELL: Thank you for  
13 clarifying.

14 THE HONOURABLE FRANK MARROCCO: Think  
15 nothing of it.

16

17 CONTINUED BY MR. FREDERICK CHENOWETH:

18 MR. FREDERICK CHENOWETH: You  
19 indicated with respect some of the questions asked by  
20 My Friend, Mr. Mather, Inquiry counsel, that there's  
21 sometimes a back-and-forth with respect to the amount  
22 of the deposit and the payment schedule.

23 MR. JOHN SCOTT: Correct.

24 MR. FREDERICK CHENOWETH: And I take  
25 it on other occasions there isn't much of a back-and-

1 forth on the deposit and payment schedule.

2 MR. JOHN SCOTT: Yeah. I should  
3 clarify that. On some occasions there is and on some  
4 occasions it's -- it's cut and dried.

5 MR. FREDERICK CHENOWETH: Thank you.  
6 And I had a sense just from I guess what I'm learning  
7 about these matters, and -- and you can correct me if  
8 I'm wrong, but I take it that this is often a point at  
9 which the contractor will test the owner.

10 He's interested in -- in testing the  
11 commitment of the owner, as to whether or not he's  
12 committed to this project and -- and, therefore, going  
13 to pay a reasonable deposit, or he's going to test him  
14 as to whether or not he has some dollars available.

15 MR. JOHN SCOTT: Correct. It's --  
16 it's -- a significant part of the request for a  
17 deposit is to make sure the project's going to move  
18 forward.

19 THE HONOURABLE FRANK MARROCCO: Are  
20 you going to ask a re-examination question during the  
21 course of this or not?

22 MR. FREDERICK CHENOWETH: Well, I  
23 thought that was re-examination in that I'm probing  
24 with respect to a question that was raised by My  
25 Friend and answered during the course of My Friend's

1 examination, Mr. Mather. But in any event, try one  
2 (1) more question, if I might.

3

4 CONTINUED BY MR. FREDERICK CHENOWETH:

5 MR. FREDERICK CHENOWETH: We've looked  
6 at -- through the course of today, we've looked at --  
7 you've had your report in front of you through the  
8 course of your examination?

9 MR. JOHN SCOTT: Yes.

10 MR. FREDERICK CHENOWETH: And just  
11 look again, if you would, please, at the substance of  
12 your report on page 2, page 3, page 4, and page 5 of  
13 your report.

14 Is there any doubt that the -- that the  
15 -- the words and writing set out on those pages were  
16 authored by you?

17 MR. JOHN SCOTT: No doubt.

18 MR. FREDERICK CHENOWETH: Very good.  
19 Thank you very much. Those are my questions.

20 MR. JOHN MATHER: Yes, Your Honour.

21

22 RE-CROSS-EXAMINATION BY MR. JOHN MATHER:

23 MR. JOHN MATHER: In response to  
24 questions from Mr. McDowell, you referenced that you  
25 were contacted by an individual named Brian Dempsey



1 regarding the Inquiry and -- and this project.

2 Can you tell me what Mr. Dempsey told  
3 you about the Inquiry when he spoke to you?

4 MR. JOHN SCOTT: He told me it was  
5 regards to a design and construct of an arena, and I  
6 don't actually remember the pool part, but the complex  
7 that was design build had been awarded by the Town of  
8 Collingwood to companies that -- other than Sprung, I  
9 didn't know the -- the

10 MR. JOHN MATHER: Did he give you any  
11 other information about the Inquiry?

12 MR. JOHN SCOTT: I think he felt that  
13 the Inquiry needed somebody who was -- who could  
14 explain design build and how design build work and how  
15 -- how it's different from conventional construction  
16 or tendering.

17 MR. JOHN MATHER: Are you aware of any  
18 relationship between Mr. Dempsey and any of the  
19 participants in the Inquiry?

20 MR. JOHN SCOTT: I think Brian Dempsey  
21 knows most people involved with this Inquiry.

22 MR. JOHN MATHER: And who do you have  
23 in mind when you say that?

24 MR. JOHN SCOTT: I can't remember the  
25 one (1) gentleman's name, but I think he's familiar

1 with Paul Bonwick.

2 MR. JOHN MATHER: Anyone else that you  
3 can think of?

4 MR. JOHN SCOTT: I can't remember the  
5 names.

6 MR. JOHN MATHER: Mr. Chenoweth asked  
7 you a question in his re-examination about your report  
8 and -- and -- and the authorship of the report. I  
9 just have two (2) final questions on that.

10 Who did you submit your report to?

11 MR. JOHN SCOTT: Fred Chenoweth.

12 MR. JOHN MATHER: And how did you  
13 submit it?

14 MR. JOHN SCOTT: Email.

15 MR. JOHN MATHER: And what format was  
16 it in?

17 MR. JOHN SCOTT: I don't know.

18 MR. JOHN MATHER: Was it in Microsoft  
19 Word, do you know?

20 MR. JOHN SCOTT: I don't know.

21 MR. JOHN MATHER: Those are my  
22 questions.

23 THE HONOURABLE FRANK MARROCCO: Thank  
24 you very much.

25 MR. JOHN SCOTT: Thank you.

1 (WITNESS STANDS DOWN)

2

3 THE HONOURABLE FRANK MARROCCO: So I  
4 guess we're back with Mr. Houghton.

5 MR. FREDERICK CHENOWETH: Correct,  
6 Your Honour.

7 THE HONOURABLE FRANK MARROCCO: Do you  
8 want to...

9

10 (ED HOUGHTON RETAKES THE STAND)

11

12 CONTINUED EXAMINATION-IN-CHIEF BY MR. FREDERICK  
13 CHENOWETH:

14 MR. FREDERICK CHENOWETH: Good  
15 afternoon, Mr. Houghton.

16 MR. ED HOUGHTON: How are you?

17 MR. FREDERICK CHENOWETH: I'm going to  
18 take you to document TOC0202596. Could we turn up  
19 that document, please?

20

21 (BRIEF PAUSE)

22

23 MR. FREDERICK CHENOWETH: And I'm --  
24 yeah, this appears to be the email. Go down a little  
25 bit further so we can see the text of it. Thank you.

1                   This is an email that appears to been  
2 sent by you on the 21st of August around 4:41 p.m.  
3 You say you just got off the line with Sprung/B -- BLT  
4 and was talking to them about their pricing.

5                   Does the rest of that email accurately  
6 set out the nature of the conversation that you had  
7 with BLT on that day about pricing?

8                   MR. ED HOUGHTON:    That's correct.

9                   MR. FREDERICK CHENOWETH:   Do you have  
10 any memory of -- of anything else that might have been  
11 discussed by yourself and BLT on that day?

12                   MR. ED HOUGHTON:    I don't recall any  
13 specifics.  Again, my -- my desire was to get it in a  
14 format that would be pretty cut and dry; here are the  
15 price, here are the -- here are the options.  And at  
16 that point I said I -- I -- I don't know what the  
17 price is, I didn't want them to tell me.  Certainly it  
18 was -- my understanding was that we could not  
19 negotiate price.  I've never negotiated price.

20                   MR. FREDERICK CHENOWETH:   Okay.  And  
21 so was there a back-and-forth between yourself and  
22 Sprung with -- I'm sorry, with BLT with respect to  
23 this pricing?

24                   MR. ED HOUGHTON:    Well, I think the  
25 pricing came back, and then I had to -- from Mr.

1 Barrow, and I'm not sure -- I don't recollect who  
2 exactly I spoke to.

3 MR. FREDERICK CHENOWETH: Yes.

4 MR. ED HOUGHTON: But it came back  
5 from Mr. Barrow and -- and I had to -- I think I, once  
6 again, said this is the -- this is what I wanted, this  
7 is the -- you know, we're -- so I didn't get exactly  
8 the way I wanted it the first time.

9 MR. FREDERICK CHENOWETH: All right.  
10 So there was a bit of a back-and-forth between you and  
11 Mr. Barrow until he got the form of that correct. Is  
12 that right?

13 MR. ED HOUGHTON: Yeah. Just one (1)  
14 email, yes.

15 MR. FREDERICK CHENOWETH: And there  
16 seems to have been some back-and-forth with respect to  
17 -- at some juncture in any event, with respect to what  
18 items were contained in the pricing.

19 MR. ED HOUGHTON: I think we took the  
20 entire -- are you talking about the options?

21 MR. FREDERICK CHENOWETH: yes.

22 MR. ED HOUGHTON: Yes. I think we  
23 took the entire options, save and except for we chose  
24 to go with the propane Zamboni rather than the  
25 electric because it was cheaper.

1 MR. FREDERICK CHENOWETH: All right.  
2 So your discussions with Mr. Barrow, at least on those  
3 occasions, where with respect to the options to be  
4 included and what was -- with respect to what the -- I  
5 -- I'm -- I --

6 THE HONOURABLE FRANK MARROCCO: There  
7 was an outbreak of coughing all at the same moment,  
8 Mr. Chenoweth.

9 MR. FREDERICK CHENOWETH: All right.

10

11 CONTINUED BY MR. FREDERICK CHENOWETH:

12 MR. FREDERICK CHENOWETH: There was  
13 some back-and-forth with respect to what was actually  
14 included in the project.

15 Is that correct, there was some back-  
16 and-forth with respect to what was actually included  
17 in the project?

18 MR. ED HOUGHTON: The only back-and-  
19 forth was, you know, provide to us exactly the  
20 building as we -- it was originally discussed, and  
21 then the options in a separate line item, or lines  
22 item, a separate section.

23 MR. FREDERICK CHENOWETH: All right.

24 MR. ED HOUGHTON: Yeah.

25 MR. FREDERICK CHENOWETH: I note that

1 there's another document dated August 30th, 2012, and  
2 again this is an email from Dave Barrow.

3                   Could we pull up TOC0202989?  
4

5   (BRIEF PAUSE)

6  
7                   MR. FREDERICK CHENOWETH:    I may have  
8 the wrong document number.  I'm looking for an August  
9 30th email in which Mr. Barrow sent you two (2)  
10 attachments, one (1) being the contract and one (1)  
11 being the payment schedule.

12  
13   (BRIEF PAUSE)

14  
15                   MR. FREDERICK CHENOWETH:    And it may  
16 be that -- I'm sorry, I think I have it here in a --  
17 in another reference.

18                   Could we try TOC020299?  Well, that's  
19 the attachments.

20                   I -- I think I may have the correct  
21 document number.  It may be that we didn't -- I didn't  
22 search through that document to see the reference to  
23 Mr. Barrow sending you the contract and the -- so  
24 could we bring that document we last had up back up  
25 again, please, TOC0202989?

1 MS. KATE MCGRANN: Mr. Chenoweth, I  
2 think it might be in CJI7138.

3 MR. FREDERICK CHENOWETH: Content to  
4 try that. Thank you.

5

6 (BRIEF PAUSE)

7

8 CONTINUED BY MR. FREDERICK CHENOWETH:

9 MR. FREDERICK CHENOWETH: And do I  
10 take it that in this email Mr. Barrow forwarded to you  
11 the contract and the payment schedule with respect to  
12 this particular matter?

13 MR. ED HOUGHTON: That's correct.

14 MR. FREDERICK CHENOWETH: All right.  
15 And with respect to the contract, can you tell me what  
16 you did, if anything, to obtain advice with respect to  
17 the nature of the contract that was being presented to  
18 you?

19 MR. ED HOUGHTON: I had an earlier  
20 discussion about the contract, but at this point in  
21 time what I did was I forwarded the contract, which  
22 included the -- the payment schedule, to Mr. John  
23 Mascarin, the Town's lawyers -- lawyer.

24 MR. FREDERICK CHENOWETH: What did you  
25 ask Mr. Mascarin for?



1 MR. ED HOUGHTON: To -- to review the  
2 contract and provide his thoughts and comments on it.

3 MR. FREDERICK CHENOWETH: Did he  
4 provide his thoughts and comments on it?

5 MR. ED HOUGHTON: Yes, he did.

6 MR. FREDERICK CHENOWETH: And without  
7 getting into the details of those communications, did  
8 he provide you with what, in essence, was a go-ahead  
9 to use those materials?

10 MR. ED HOUGHTON: Yes.

11 MR. FREDERICK CHENOWETH: Thank you.

12 Now, you said you'd earlier had discussions with  
13 respect to the contract.

14 What were you referring to when you  
15 said that?

16 MR. ED HOUGHTON: I believe that Ms.  
17 Stec had contacted me on the -- like the 28th --

18 MR. FREDERICK CHENOWETH: Yes.

19 MR. ED HOUGHTON: -- and suggested  
20 that they were putting together a contract if I -- if  
21 -- if I was content with the CCDC, whatever it was,  
22 and I -- I at that point said I don't know that  
23 contract -- not aware of that contract, but if it's a  
24 standard contract, I'm sure that those are the kind of  
25 things, but it would probably -- it would have to go

1 through to the lawyer.

2 She also talked about the -- the  
3 payment schedule and if I would be comfortable with  
4 the payment schedule, and I said, well, I would speak  
5 to the Deputy Mayor because I didn't really have a lot  
6 of -- of experience for that, and that's -- that was  
7 the earlier conversation I had.

8 MR. FREDERICK CHENOWETH: All right.  
9 And you're moving to the payment schedule, and that's  
10 a good thing.

11 Did you have occasion to raise the  
12 matter of the payment schedule with the Deputy Mayor?

13 MR. ED HOUGHTON: Yes.

14 MR. FREDERICK CHENOWETH: And -- and  
15 why would you take that payment schedule issue to the  
16 Deputy Mayor?

17 MR. ED HOUGHTON: Two -- two (2)  
18 reasons: he's the Chair of Finance, and the second, he  
19 -- he has some pretty significant construction  
20 background.

21 So I -- I felt that that was -- that  
22 was a good thing to do. I also had suggested that,  
23 you know, we -- once we -- we needed to have the  
24 comfort that this is the right thing to do and could  
25 you please speak to Ms. Leonard about it.

1 MR. FREDERICK CHENOWETH: Very good.

2 And what eventual rejoinder did you get from Rick

3 Lloyd with respect to that payment schedule?

4 MR. ED HOUGHTON: What kind of? I'm

5 sorry.

6 MR. FREDERICK CHENOWETH: What answer

7 did you eventually get from Rick Lloyd with respect to

8 the payment schedule?

9 MR. ED HOUGHTON: Well, I think we had

10 the same discussion, I think it -- the -- that it made

11 sense for the -- the -- the 25 percent upfront made

12 sense for that to -- because they're going to have to

13 order some of the longer-term products, including the

14 Sprung -- Sprung building. That they would, once they

15 start excavating and putting in the foundation, by the

16 time it -- it was created, that there -- there would

17 be another one.

18 And the third one, when -- when the

19 Sprung facility came to site, was the -- was the

20 third. He felt those were appropriate.

21 MR. FREDERICK CHENOWETH: Thank you.

22 Could we move to document number TOC0208167.

23 This is simply a meeting schedule

24 notice, it was sent out by you and it appears to be a

25 -- a -- the attendees appear to be Bill Plewes, Almas,

1 Leonard, Proctor, Larry Irwin, and -- and Nancy  
2 Farrer.

3 And can you tell me what this meeting  
4 was about?

5 MR. ED HOUGHTON: Basically it was to  
6 -- to bring the different departments together. Bill  
7 Plewes is the Chief Building Official, and Nancy is --  
8 was our -- our planner.

9 MR. FREDERICK CHENOWETH: Right. And  
10 what -- what topics did you wish to bring them  
11 together with respect to?

12 MR. ED HOUGHTON: The -- the  
13 construction of the -- the Sprung BLT buildings.

14 MR. FREDERICK CHENOWETH: All right.  
15 And what part, if any, did Bill Plewes pay -- play in  
16 that meeting?

17 MR. ED HOUGHTON: Well, Bill's a --  
18 Bill's a pretty knowledgeable guy and from a building  
19 official perspective.

20 Bill and I had had a conversation and -  
21 - about getting Mr. Martin involved --

22 MR. FREDERICK CHENOWETH: Yes.

23 MR. ED HOUGHTON: -- at the time when  
24 I first had my conversation.

25 MR. FREDERICK CHENOWETH: And when

1 would that be, as a matter of interest?

2 MR. ED HOUGHTON: It wasn't -- I mean,  
3 obviously it wasn't real early in the -- in the  
4 process because it -- this was a continuing moving  
5 target and I spoke to Bill about it and he had said  
6 that -- that Ron was very busy. Bill brought it up  
7 again at a -- at a department heads meeting and said  
8 that if -- if we were looking to have Ron do this,  
9 we're going to have to hire somebody to do his regular  
10 job because he's already being engaged with the -- the  
11 new fire hall, et cetera. So --

12 MR. FREDERICK CHENOWETH: Sorry, did  
13 you --

14 THE HONOURABLE FRANK MARROCCO: I'm  
15 sorry, were you in the middle of an answer there?

16 MR. ED HOUGHTON: No, I don't think  
17 so.

18 THE HONOURABLE FRANK MARROCCO: Okay.

19

20 CONTINUED BY MR. FREDERICK CHENOWETH:

21 MR. FREDERICK CHENOWETH: Tell me,  
22 your purpose in speaking to Bill at an earlier time,  
23 was that related to getting Ron Martin involved, or  
24 why would you speak to him in an earlier time?

25 MR. ED HOUGHTON: Well, Bill -- Bill

1 and I are not only colleagues, we're -- we're also  
2 good friends as well, and we were having a  
3 conversation about the Sprung facility, about what we  
4 were doing.

5                   And again, I can't -- I can't even  
6 really gage the timing of when that was. But he had  
7 just said I -- I think I may have even mentioned that  
8 the Deputy Mayor said if we -- if we move forward we  
9 should make sure that Ron is involved, and I spoke to  
10 him about it and he had just said about the -- the  
11 pressures that they have with all the different  
12 permits that were going on in the community at the  
13 time and that there needed to be some consideration to  
14 get him extra help if that's the case.

15                   MR. FREDERICK CHENOWETH: All right.  
16 So I take it you had some resistance from -- from the  
17 building department, I take it, Bill Plewes being the  
18 -- the head of that with respect to the early  
19 involvement of Ron Martin in this project?

20                   MR. ED HOUGHTON: I think resistance  
21 is maybe not really -- Bill was a very accommodating  
22 guy, he was just saying that the reality of the fact  
23 that if -- if Ron is going to be otherwise  
24 significantly busy on this project as well as other  
25 projects, there needs to be consideration given.

1                   And again, he brought it up at a -- a  
2 department heads.

3                   MR. FREDERICK CHENOWETH:    What  
4 consideration would that involve?

5                   MR. ED HOUGHTON:    Well, what Bill was  
6 saying, that he'd need to have help to -- to be able  
7 to review all the permits and the permitting in the --  
8 in the building office.

9                   MR. FREDERICK CHENOWETH:    I.e., you  
10 need to get more staff, is that correct?

11                  MR. ED HOUGHTON:    Exactly, yes.

12                  MR. FREDERICK CHENOWETH:    Thank you.

13                  MR. ED HOUGHTON:    I -- I don't know if  
14 that ever occurred, but that was what he was saying.

15                  MR. FREDERICK CHENOWETH:    He was  
16 saying that would be necessary if you got Ron  
17 involved.

18                  MR. ED HOUGHTON:    Potentially that  
19 would be necessary if we got Ron involved, yes.

20                  MR. FREDERICK CHENOWETH:    Thank you.  
21 And did you later have a further conversation with Mr.  
22 Plewes with respect to having Ron Martin become  
23 involved?

24                  MR. ED HOUGHTON:    Yes, again Bill  
25 brought it up at a department heads meeting and we

1 said that we need to -- we should -- we should get  
2 together and discuss this, which we -- we did.

3 He -- he agreed and hence the reason at  
4 some point in time I brought the parties together,  
5 which was really the last time that I was sort of  
6 significantly involved at that point.

7 MR. FREDERICK CHENOWETH: Thank you.  
8 May we look at a further document, CJI0007237.

9

10 (BRIEF PAUSE)

11

12 MR. FREDERICK CHENOWETH: And in this  
13 email, sent by you on October 11th, you raise the  
14 issue of the warm water therapy pool.

15 What was -- what was the issue with  
16 respect to that at that time and how did that come up?

17 MR. ED HOUGHTON: One (1) of the  
18 members of the Parks, Recreation, Culture advisory  
19 committee was questioning Marta how the therapy pool  
20 could only be 500 to 550 when it was supposed to be  
21 some very huge number previously.

22 And -- and then as well the other one,  
23 which was there was some technical questions that Mr.  
24 Cadieux had -- had proposed which I certainly didn't  
25 have any answers to. So I forwarded them to -- to



1 Mark Watts and Dave Barrow and -- and said by the way,  
2 Paul Waddell is doing a -- is doing an amazing job  
3 keeping this thing going and moving forward.

4 MR. FREDERICK CHENOWETH: All right.  
5 This is a letter to Watts and Barrow. You're  
6 referring to Paul and again tell me who the Paul was  
7 that you're referring to?

8 MR. ED HOUGHTON: Paul Waddell is the  
9 -- I would expect their site superintendent from BLT.

10 MR. FREDERICK CHENOWETH: From BLT.

11 MR. ED HOUGHTON: And -- and he was --  
12 again, we had sort of said here's the project and then  
13 all of a sudden now we're adding a warm water therapy  
14 pool and then all of a sudden now we're expanding it.

15 And -- and he was very -- very  
16 accommodating, he was working extremely well with Ron  
17 Martin.

18 MR. FREDERICK CHENOWETH: Thank you.  
19 Could we look at document number CJI0007247, please.

20

21 (BRIEF PAUSE)

22

23 MR. FREDERICK CHENOWETH: This is an  
24 August 1st email sent by Abby Stec to David Barrow and  
25 -- and Mark Watts at BLT and -- and copied to Mr.

1 Bonwick. The email suggests:

2 "Dear Dave and Mark, Paul met with  
3 Ed Houghton today to continue  
4 discussions regarding the  
5 Collingwood project."

6 What Paul is that?

7 MR. ED HOUGHTON: This would be Paul

8 Bonwick.

9 MR. FREDERICK CHENOWETH: All right.

10 And can you advise as to whether or not you had a  
11 meeting with Paul Bonwick on August 1st, 2012?

12 MR. ED HOUGHTON: Yes, I had a --  
13 excuse me -- I had a conversation with Mr. Bonwick  
14 that day.

15 MR. FREDERICK CHENOWETH: All right.

16 And can you tell me what the nature of the  
17 conversation was that you had with Mr. Bonwick on  
18 August 1st, 2012?

19 MR. ED HOUGHTON: That was the day  
20 that Mr. Bonwick advised me that he, through Ms. Stec,  
21 had created a relationship with Sprung and then,  
22 ultimately, BLT and that they're going to be working  
23 with BLT and that Ms. Stec was going to be basically  
24 the facilitator for -- the local facilitator for BLT.

25 MR. FREDERICK CHENOWETH: So I take it

1 you learned that -- on that day that Stec and Bonwick  
2 and Green Leaf were working on behalf of BLT, is that  
3 correct?

4 MR. ED HOUGHTON: That's correct.

5 MR. FREDERICK CHENOWETH: Thank you.  
6 And did you pass that information to anyone at that  
7 time?

8 MR. ED HOUGHTON: No.

9 MR. FREDERICK CHENOWETH: And can you  
10 tell me why you did not relay that information?

11 MR. ED HOUGHTON: Well, one (1) of the  
12 reasons, at this point in time I was busy, which is  
13 not an excuse.

14 But the other one (1) was just, you  
15 know, a short period of time previous they -- they had  
16 done a full -- Mr. Bonwick and PowerStream had done a  
17 full disclosure to the Town of Collingwood, it didn't  
18 appear that -- that there was going to be an issue.

19 I seemed to have the, as I said in Part  
20 1, the emotional allergy to having something that was  
21 in that case and -- and didn't appear in the Municipal  
22 Act that Her Worship had any kind of a -- a conflict  
23 and -- and as my boss at the time, Mr. Muncaster, God  
24 bless him, he said if Mr. Bonwick can help get a  
25 better deal for Collingwood, God bless him too.

1                   So I -- if -- and I -- I kind of just  
2 felt that it just seemed to be a normal thing, and  
3 quite frankly, and many years since Mr. Bonwick was  
4 our member of Parliament, was involved with many  
5 different aspects of the community. If ten (10)  
6 things were going on in Collingwood, he was probably  
7 involved with seven (7) and four (4) of them he was  
8 being paid for, the other three (3) he was  
9 volunteering.

10                   MR. FREDERICK CHENOWETH: You seem to  
11 have been referring to -- to a meeting that took place  
12 at earlier times.

13                   Was that a meeting -- what I think is  
14 referred to often as the disclosure meeting, that took  
15 place on June 28th with the Mayor and the Mayor of  
16 Barrie and -- and others, I think Mr. Bentz, with  
17 respect to Mr. Bonwick's involvement in the sale of 50  
18 percent of the shares of -- of Collus?

19                   MR. ED HOUGHTON: Yes, it was June  
20 28th, 2011, and I believe the meeting was between the  
21 Mayor, the Deputy Mayor, the CAO of the Town of  
22 Collingwood, Mr. Bentz, the president and CEO of  
23 PowerStream, Mayor Jeff Lehman, City of Barrie board  
24 member of PowerStream, and Dean Muncaster, the Chair  
25 of Collus Power.

1                   MR. FREDERICK CHENOWETH:    And was it  
2 your understanding that revelations had been made at  
3 that meeting about Mr. Bonwick's involvement on behalf  
4 of PowerStream?

5                   MR. ED HOUGHTON:       That's correct.

6                   MR. FREDERICK CHENOWETH:    All right.  
7 And what did you understood -- understand the upshot  
8 of -- of that disclosure was at that meeting?

9                   MR. ED HOUGHTON:       That Mr. Bonwick was  
10 a private citizen working in the Town of Collingwood,  
11 working for different aspects of the Town of  
12 Collingwood and -- and there was no conflict between  
13 his sister and -- and himself.

14                  MR. FREDERICK CHENOWETH:    Very good.  
15 If we could move to a -- by the way, this meeting that  
16 you had, did you have any sense as to whether or not  
17 in any event there were others involved with Town  
18 Council that had knowledge of -- of this relationship  
19 between Green Leaf and BLT?

20                  MR. ED HOUGHTON:        I don't know if I  
21 put my mind to it at this point in time. I -- it --  
22 it was -- Mr. Bonwick's involved, I -- I don't think I  
23 put my mind to it whether others knew at this point in  
24 time.

25                  I do have suspicions today, but I

1 didn't -- you know, at that point in time I don't.

2 MR. FREDERICK CHENOWETH: Very good.

3 Could we move to an August 6th meeting request which  
4 is TOC0195563.0001? I'll try that again just to make  
5 sure we've got it right. TOC0195563.1. Okay, all  
6 right.

7 There seems to have been a request for  
8 a meeting, again in this correspondence between Mr.  
9 Bonwick and yourself, and as a result, was there a  
10 meeting set up between yourself and Mr. Bonwick?

11 MR. ED HOUGHTON: Yes.

12 MR. FREDERICK CHENOWETH: Did that  
13 meeting occur on August 6th?

14 MR. ED HOUGHTON: Yes, I believe so.

15 MR. FREDERICK CHENOWETH: All right.  
16 And can you tell me -- you asked what is the topic.  
17 And can we go up a little further to see if you got  
18 answer?

19 You appear to have gotten the answer,  
20 "Golf tournament, BLT, new board, and Mountain View."  
21 You mentioned that Mr. Bonwick was involved in -- in  
22 seven (7) out of ten (10) things that might have going  
23 on in the Town.

24 Were these matters that were at issue  
25 in the Town on or about August 6th, 2012?

1 MR. ED HOUGHTON: Yeah. And that's  
2 why I wasn't intuitive, you know, what is the topic.  
3 It wasn't intuitive that it was just BLT. The golf  
4 tournament was for a couple reasons, Her Worship's  
5 golf tournament, which, you know, many of us were  
6 always trying to make the mayor's golf tournament  
7 bigger and better because it always went to a great  
8 charity.

9 It also was going to be the launching  
10 point for Collus PowerStream. That's where we were  
11 going to unveil Collus PowerStream on -- at the gol --  
12 mayor's golf tournament and -- and take all the money  
13 that others wanted us to spend on balloons and -- and  
14 other things.

15 In -- instead, what we wanted was --  
16 excuse me -- to take that money and put it into a  
17 large cheque and give it to the -- to the Collingwood  
18 General Marine Hospital, which we did.

19 So, there was two (2) reasons for that  
20 discussion. The BLT, we obviously had a discussion  
21 about it. I probably remember less about that.

22 I don't recall about the new board or  
23 whether it was just a question of how's -- how is the  
24 new board or is the -- when will the new board be  
25 brought into place because, again, July 31st was the -

1 - the closing, so this is only just a short period of  
2 time after that.

3                   And Mt. View Hotel was the -- the choke  
4 point that we had at the corner of Hume/Hurontario and  
5 1st Street. And the Mt. View Hotel was a piece of  
6 property owned by Mr. Dunn that -- that Mr. Bonwick  
7 had helped in a couple ways.

8                   He -- I think he was also working with  
9 Mr. Dunn in some way, but assisted in getting  
10 approvals from the Ministry of Transportation to  
11 remove that choke point.

12                   MR. FREDERICK CHENOWETH: All right.  
13 I take it what you're telling us is what you remember  
14 about your discussions with Mr. Bonwick on August 6th.

15                   Is that correct?

16                   MR. ED HOUGHTON: Actually, I probably  
17 pontificated a little bit further. I know we had a  
18 conversation about the Mt. View, and that would --  
19 that's what it would have been about, yes, sorry.

20                   MR. FREDERICK CHENOWETH: I'm -- I'm  
21 sorry, you're confusing me. Tell me -- I'm -- I'm  
22 looking to understand what your memory is of the  
23 conversation that took place on August 6th, 2012, with  
24 Mr. Bonwick.

25                   MR. ED HOUGHTON: My apologies. I



1 talked too long. I -- I know what I spoke about the  
2 golf tournament was what happened. I -- I don't  
3 recollect a clear understanding what we talked about  
4 with BLT.

5 I -- I don't recollect exactly what we  
6 talked about with the new board. I made an  
7 assumptions, which I shouldn't have. And the Mt. View  
8 -- I just explained what was going on with the Mt.  
9 View.

10 And those would have been those  
11 discussions because, at that point in time, either the  
12 Mt. View was about to close or was soon to close from  
13 a sale perspective.

14 MR. FREDERICK CHENOWETH: Thank you.  
15 Could we turn, if we could, please, to document number  
16 CJI7217?

17

18 (BRIEF PAUSE)

19

20 MR. FREDERICK CHENOWETH: And this  
21 appears to be -- and could we go down to see if  
22 there's further document covered by that? I see that  
23 this seems to have started out with an email from  
24 David MacNeil, of Sprung.

25 Wait, there's -- there's further

1 documents. What's this string of emails all about  
2 with respect to this matter?

3 MR. ED HOUGHTON: If my recollection  
4 is correct, that BLT were -- were aware that Sprung  
5 had provided us with -- with estimates back in July,  
6 and they wanted to take a look at those.

7 They could not find --

8 MR. FREDERICK CHENOWETH: Who wanted  
9 to look at those?

10 MR. ED HOUGHTON: I -- I would -- BLT  
11 wanted to take a look at those.

12 MR. FREDERICK CHENOWETH: Yes.

13 MR. ED HOUGHTON: The -- they could  
14 not find them on the website, asked if we had them.  
15 So, I got them Dave McNalty. When I handed them over  
16 I said, you know, these are the estimates. And we --  
17 you know, we -- we're hoping that the pricing that we  
18 get back from Sprung BLT is close to these kinds of  
19 estimates without, you know, a huge departure for good  
20 reason.

21 MR. FREDERICK CHENOWETH: Who are you  
22 -- who are you telling that to and who are you -- you  
23 sent the estimates to whom, to --

24 MR. ED HOUGHTON: I believe -- I -- I  
25 believe I forwarded these to Mr. Bonwick.

1 MR. FREDERICK CHENOWETH: Can we look  
2 further up, if we could?

3

4 (BRIEF PAUSE)

5

6 MR. FREDERICK CHENOWETH: All right.  
7 And further up, if we could. I take it that's the --  
8 the email pursuant to which you send that to Paul  
9 Bonwick, just the one (1) below the email we're  
10 looking at now.

11 I take it you're sending the original  
12 Sprung budget numbers off to Mr. Bonwick at that  
13 juncture?

14 MR. ED HOUGHTON: That's correct.

15 MR. FREDERICK CHENOWETH: All right.  
16 And as a result of your sending them to him at that  
17 time, what did Mr. Bonwick do with those numbers? Go  
18 to the next email up so we can see all of it to see  
19 what Mr. Bonwick did.

20 Can you tell us what Mr. Bonwick did as  
21 a result of that?

22 MR. ED HOUGHTON: Apparently, Mr.  
23 Bonwick forwarded them on to -- to BLT and, basically,  
24 espoused the same kind of thing that I was saying, was  
25 that these -- you know, anything that we get from BLT

1 Sprung better be in keeping with the -- the estimates  
2 that started us moving down a path.

3 MR. FREDERICK CHENOWETH: Thank you.

4

5 (BRIEF PAUSE)

6

7 MR. FREDERICK CHENOWETH: Can we look  
8 at -- at a further document, which is CJI7208?

9

10 (BRIEF PAUSE)

11

12 MR. FREDERICK CHENOWETH: This  
13 suggests that on or about the 24th of August, 2012,  
14 Ms. Stec had a conversation with you with respect to  
15 garage type doors which opened the pool to the  
16 outdoors.

17 What was the nature of the discussion  
18 as you remember it that you had with Abby Stec on --  
19 on or about the 24th day of August?

20 MR. ED HOUGHTON: I believe that Ms.  
21 Stec just reached out to see if -- you know, if  
22 everything was good, what was going on, if -- if  
23 they're -- they -- we needed anything.

24 And I told her that when -- when Dave  
25 and I were reviewing the -- the budgets, it did -- we

1 couldn't see -- it wasn't clear if those garage type  
2 doors which we wanted to have, I believe it was three  
3 (3) or four (4) on the one (1) -- one (1) side and one  
4 (1) or two (2) on the other side, that they -- that  
5 they -- we didn't see them.

6                   And we wanted to make sure that they  
7 were included in the budget because that was -- that  
8 was a very important feature to us, to have this pool  
9 that would appear to be, you know, an outside pool in  
10 the summertime and an inside pool in the wintertime.

11                   MR. FREDERICK CHENOWETH:    Another  
12 contact that appears with Green Leaf is set out in  
13 correspondence of CJI7201.  Could we look at that if  
14 we could, please?

15

16   (BRIEF PAUSE)

17

18                   MR. FREDERICK CHENOWETH:    And again,  
19 Ms. Stec indicates she just spoke with Ed, and he is  
20 content with the standard CCD contract, et cetera.  
21 Have a review of this email if we could, please, and  
22 bring it all the way up so make -- make sure we're  
23 seeing all of it.

24                   And -- thank you very much.  And if you  
25 could, can you tell me your best memory of -- of this

1 conversation with Ms. Stec that's referred to in this  
2 correspondence?

3 MR. ED HOUGHTON: Yes. Again, Ms.  
4 Stec reached out the day after Council had voted and  
5 was asking me about the standard CCDC. I think this  
6 is a little poetic licence where I had said, you know,  
7 a standard contract seems fine to me.

8 I was thinking about, you know, whether  
9 she was talking standard versus a specific -- you  
10 know, one (1) wri -- written as a one off. But I said  
11 that, obviously, we would be sending it to the -- to  
12 the lawyer.

13 And the regular hold-back provisions --  
14 I'm not exactly sure about what she was saying there.  
15 But we did talk about the -- the options that were in  
16 -- in that.

17 As I talked about before, we -- were  
18 looking at doing the propane Zamboni because it was  
19 less expensive than the electric. She talked about  
20 the 25 percent. I just asked what that -- what that  
21 dollar amount would be and -- and said that I would --  
22 I would be speaking to the deputy mayor because he  
23 knows more about this than I and, as well, was the  
24 budget chief.

25 MR. FREDERICK CHENOWETH: Thank you.

1 Could we look very briefly at -- at a further  
2 document, TOC0205857.1?

3

4 (BRIEF PAUSE)

5

6 MR. FREDERICK CHENOWETH: This appears  
7 to be an email from Mr. Bonwick to you on the 27th of  
8 August. Could you read that email if you would,  
9 please?

10 MR. ED HOUGHTON: I have.

11 MR. FREDERICK CHENOWETH: And tell me,  
12 there seems to be some suggestion of -- of a message  
13 about sabotage.

14 What, if anything, are you aware that  
15 Mr. Bonwick was talking about on that occasion?

16 MR. ED HOUGHTON: Actually, I don't  
17 know because my recollection of the meeting didn't  
18 occur. I don't believe I responded to it. I  
19 certainly wasn't angry at all. In fact, we were -- we  
20 were quite content at this point in time, all of us, I  
21 think.

22 So, I'm not -- I'm not exactly sure  
23 where this came from.

24 MR. FREDERICK CHENOWETH: I have a  
25 sense from what I've seen that you had occasion to

1 speak to Mr. Bonwick on August 29th, 2012.

2 Is that correct?

3 MR. ED HOUGHTON: Yes. Yes.

4 MR. FREDERICK CHENOWETH: All right.

5 And what occasioned -- was that a phone conversation?

6 Or what happened on that occasion?

7 MR. ED HOUGHTON: Oh, I think I know  
8 what you're talking about. Yeah, it was during the  
9 day, like, late afternoon, early evening.

10 MR. FREDERICK CHENOWETH: Yes.

11 MR. ED HOUGHTON: And it was as a  
12 result of -- and I think Mr. Bonwick actually  
13 precipitated the call. It was a result of me getting  
14 more and more -- we're getting more and more emails.  
15 We're getting people making comments and -- and  
16 things.

17 So, it precipitated me to basically  
18 speak to Mr. Bonwick about the engagement that he had  
19 with -- with BLT at this point in time and that, you  
20 know, you -- you basically came into this late in the  
21 game and, you know, what's -- like, I'm -- I'm trying  
22 to get a better handle and understanding on it  
23 because, again, I'm -- I'm starting to get emails --

24 MR. FREDERICK CHENOWETH: A better  
25 handle --



1 MR. ED HOUGHTON: -- not me -- not --  
2 not just me personally. I mean, the Town of  
3 Collingwood's getting emails complaining about the  
4 structures, complaining about things and -- and some -  
5 - some comments.

6 So, Mr. Bonwick explained to me what --  
7 what their intent was. And I think it was the second  
8 time he's already said this to me. I think the first  
9 time, he told me that -- that what they were thinking  
10 about was that this could be transferrable to other  
11 municipalities.

12 MR. FREDERICK CHENOWETH: What could  
13 be transferrable?

14 MR. ED HOUGHTON: Sorry, the -- the  
15 concept of -- of, you know, the pool and outdoor --  
16 like, or the indoor pool covered by a Sprung facility,  
17 the -- the ice pad covered by a Sprung facility could  
18 be something that would be -- could be easily  
19 transferrable; that this could be a flagship and they  
20 could be using that as a -- as a flagship and -- and  
21 that, you know, their -- their original thought when -  
22 - when they first approached with Ms. Stec was that --  
23 that this could be something that they could -- they  
24 could carry out through Ontario.

25 And, you know, the discussion came to

1 his compensation and the compensa -- and he said it's  
2 -- it's like a real estate agent, it's based on a  
3 percentage. And he offered, you know, to tell me what  
4 it was -- what it was.

5                   And, at that point, I said it -- it's  
6 not really my business to know it. I need to under --  
7 I just need to understand more about it. He explained  
8 to me that it was going to be part of -- that their  
9 agreement was it was going to be part of the overheads  
10 that -- that BLT put together.

11                   And so, that gave me some comfort.  
12 That had nothing to do with what -- what it was. And,  
13 again, he offered -- he said, well, you know, I'll  
14 tell you the amount. And I said I don't need to know  
15 the amount, and we car -- carried on with the  
16 conversation.

17                   MR. FREDERICK CHENOWETH: All right.  
18 Did you have occasion to receive an email from Mr.  
19 Bonwick later that evening? And let's look at that  
20 email. And it's TOC0207207.1. Could we pull that up,  
21 please?

22

23                   (BRIEF PAUSE)

24

25                   MR. FREDERICK CHENOWETH: This appears

1 to be an email sent by Paul Bonwick to yourself at  
2 8:34 on the evening of August 29th. Did you receive  
3 this email and what happened?

4 MR. ED HOUGHTON: I think I -- I -- I  
5 believe I received it, yeah, 8:34. I was -- I was at  
6 the office working at 43 Stewart Road. And I just was  
7 getting into my car.

8 And if you think about an old  
9 BlackBerry, they're -- the screens were only yay big.  
10 I saw the con -- I saw the subject line, "Contact  
11 info" and I was driving, so I just -- as I typically  
12 do, I forward it to the old computer in the office  
13 that we never turned it off because we were afraid it  
14 would never start up again, and if you look at it --

15 MR. FREDERICK CHENOWETH: The old  
16 computer in what office?

17 MR. ED HOUGHTON: My apologies. My  
18 home office.

19 MR. FREDERICK CHENOWETH: Thank you.  
20 And you seem to have followed that practice from time  
21 to time of sending things to the home office computer,  
22 and whose -- whose name was -- would you have to send  
23 it to to send it to the home office computer?

24 MR. ED HOUGHTON: Typically when I  
25 would do it, I would -- I would send it to Shirley's

1 because her -- her computer was up and running.

2 I carry my computer all the time, I  
3 could turn it on and do those things, but I typically  
4 would -- would do that because it was -- it was  
5 usually on. It was always on. That's what I did.

6 MR. FREDERICK CHENOWETH: Did that  
7 give you -- what opportunity did that give you to send  
8 it to that computer?

9 MR. ED HOUGHTON: It allows me to read  
10 it. As -- as you can see when I'm squinting, I don't  
11 have the greatest eyesight and the last thing you want  
12 me to do is read it -- my Blackberry, while I'm  
13 driving.

14 MR. FREDERICK CHENOWETH: All right.  
15 And the email appears to suggest that the revenue that  
16 Mr. Bonwick was receiving from this project was  
17 \$675,000 approximately, maybe a bit more.

18 And I -- when did you read this email?

19 MR. ED HOUGHTON: When I got to my  
20 house.

21 MR. FREDERICK CHENOWETH: Thank you.  
22 And what was your reaction to reading this email?

23 MR. ED HOUGHTON: That's a big number.

24 MR. FREDERICK CHENOWETH: All right.

25 And --

1 MR. GEORGE MARRON: Sorry, I didn't  
2 hear the response.

3 MR. FREDERICK CHENOWETH: "That's a  
4 big number" was the response.

5

6 CONTINUED BY MR. FREDERICK CHENOWETH:

7 MR. FREDERICK CHENOWETH: And did you  
8 take the trouble to bring this information to anybody  
9 else at the Town?

10 MR. ED HOUGHTON: No. I mean, at this  
11 time I -- I was under the assumption that others knew  
12 that he was working. I'm -- already been reassured  
13 that it was part of the overheads of BLT, so it wasn't  
14 coming directly out of Collingwood's pockets.

15 I -- Mr. Bonwick is a good biller,  
16 obviously, and I -- I didn't.

17 MR. FREDERICK CHENOWETH: Thank you.  
18 And I had the impression that the contracted issue was  
19 signed on the next day, being August 30th.

20 MR. ED HOUGHTON: That's correct.

21 MR. FREDERICK CHENOWETH: All right.  
22 And you had occasion to meet with any of the Town's  
23 people or members of the EMC or others on August 30th?

24 MR. ED HOUGHTON: I'm sure I was in  
25 and out of this building, yes.

1 MR. FREDERICK CHENOWETH: And did you  
2 take the time to speak to anyone else in the building  
3 or on the EMC or -- or the Deputy Mayor or the Mayor  
4 which you saw frequently about what you'd learned on  
5 the evening of the 29th?

6 MR. ED HOUGHTON: Well, again, it  
7 wasn't something that I even asked for. I kept saying  
8 this is not my business, he did -- he offered it, but  
9 I still felt that it was still not my business.

10 I don't -- I didn't know what the --  
11 the people who supplied the concrete, I didn't know  
12 the people did the electrical work, any of those kinds  
13 of things.

14 I just -- at this point in time it was  
15 -- it is part of the overheads of -- of BLT Sprung and  
16 that was their -- that was their business.

17 MR. FREDERICK CHENOWETH: Good.  
18 Could we turn to your interaction with WGD, and in  
19 particular could we turn up document number  
20 TOC0188070.

21 And this appears to be minutes of the  
22 department's heads meeting that takes place --

23 THE HONOURABLE FRANK MARROCCO: July  
24 24th?

25 MR. ED HOUGHTON: This is the agenda,

1 the minutes will be attached, or be further down.

2 MR. FREDERICK CHENOWETH: All right,  
3 let's move further down and see if we can get to the  
4 minutes. Stop us when we get to the minutes, Mr.  
5 Houghton.

6 MR. ED HOUGHTON: Right there.

7 MR. FREDERICK CHENOWETH: There we go.

8

9 CONTINUED BY MR. FREDERICK CHENOWETH:

10 MR. FREDERICK CHENOWETH: Okay, and I  
11 take it the meeting took place on July 17th, 2012, is  
12 that correct?

13 MR. ED HOUGHTON: That's correct, yes,  
14 the day after our July 16th Council meeting.

15 MR. FREDERICK CHENOWETH: Thank you.  
16 And go further down if you would, just leave it there  
17 for a second. Thank you. Further, I believe.

18 Is there something in these minutes  
19 that assists us with respect to how WGD became  
20 involved?

21 MR. ED HOUGHTON: Yes, right under  
22 Central Park there.

23 MR. FREDERICK CHENOWETH: Thank you.  
24 And can you tell me what you understand took place at  
25 the department heads meeting on July 17th with respect

1 to WGD?

2 MR. ED HOUGHTON: In -- in fairness, I  
3 didn't know until I read these minutes now, I mean  
4 obviously I --

5 MR. FREDERICK CHENOWETH: Why is it  
6 you didn't know?

7 MR. ED HOUGHTON: As I was going to  
8 say, --

9 THE HONOURABLE FRANK MARROCCO: That's  
10 -- you -- that's what I was going to say, what were  
11 you going to say.

12 MR. ED HOUGHTON: What I was going to  
13 say -- I -- I didn't know at the time how WGD got  
14 involved. I was not at this meeting. Obviously they  
15 do send the minutes out and I'd like to think that I  
16 read all the minutes but obviously I can't and I  
17 didn't, I don't.

18 But it appears like in -- in the -- in  
19 this that Marta took the opportunity for a comment  
20 that Councillor Gardhouse made at the July 16th  
21 Council meeting to be able to use the -- the budget  
22 for the market sounding to hire somebody, such as WGD,  
23 to do some work to help her or assist us to get to the  
24 August 27th deadline.

25 Both Marjory and Sara were at this



1 meeting, but if you -- but -- but that was not what  
2 was discussed at Council that night. It's -- it's not  
3 the same as where the Deputy Mayor said I will do this  
4 and there was no comments made.

5                   What this was, I specifically said that  
6 -- thank you, Councillor Gardhouse we'll take that  
7 under advisement and if we decide that we're going to  
8 hire a consultant, which by the way is totally  
9 diametrically different than everything that Council  
10 had been wanting to do at this point in time, we will  
11 send an email to you with who and what they're doing  
12 and the cost.

13                   And to my knowledge, that did not  
14 occur. And this is why I was confused from day one  
15 who WGD was, what they were doing and you know, even  
16 though I'd get a bit of an explanation I'd -- I kept  
17 thinking that it was because I was busy and I wasn't  
18 understanding or I didn't -- I'd missed something, but  
19 this -- this -- it was less of me being busy and the  
20 fact that I was never informed that this is what we  
21 were doing.

22                   MR. FREDERICK CHENOWETH: All right.  
23 You weren't at that meeting and I -- I take it just  
24 from reading the text before us that Marta suggested  
25 that if was WGD doing -- had done the initial

1 estimates for the original version, that they can give  
2 -- they could, again, give the contract to WGD.

3 Is that what you understood?

4 MR. ED HOUGHTON: That was her -- her  
5 logic in this, yes.

6 MR. FREDERICK CHENOWETH: So she was,  
7 in fact, recommending that WGD proceed, is that  
8 correct?

9 MR. ED HOUGHTON: That's correct.

10 MR. FREDERICK CHENOWETH: All right  
11 and -- and is that what you understand from what  
12 you've read in the -- in the Foundation documents took  
13 place?

14 MR. ED HOUGHTON: Yes, and -- and --  
15 and even the line about Marjory agreeing to talk off  
16 line and invite Marcus and Brian, I -- I have no  
17 concept of what that even means when I think about how  
18 is -- how is Marcus and Brian going to determine  
19 whether Council's desire is to abandon the original  
20 concept. I just don't get that.

21 MR. FREDERICK CHENOWETH: All right.  
22 So, you at -- were you or were you not aware of this -  
23 - this referral of the feasibility study to WGD on or  
24 about July 19th?

25 MR. ED HOUGHTON: I was not.

1 MR. FREDERICK CHENOWETH: Thank you.  
2 I'm looking at a further document, TOC0187441. Could  
3 we turn that up, please.

4

5 (BRIEF PAUSE)

6

7 MR. FREDERICK CHENOWETH: And this is  
8 an email from David McNalty to Marta Proctor who was  
9 chair of Parks Recreational Culture department and he  
10 appears to be sending that the drafts terms of  
11 reference to -- to Marta.

12 Is that the case?

13 MR. ED HOUGHTON: That's correct.

14 MR. FREDERICK CHENOWETH: All right.  
15 What do you understand the drafts terms of reference  
16 to be with respect to?

17 MR. ED HOUGHTON: Well, I understand  
18 what they are today. I'm -- I'm always confused about  
19 what the title The Ice Arena Feasibility Study was,  
20 but I see -- I see the document that Mr. McNalty  
21 worked on and -- and provided to Ms. Proctor that did  
22 have the terms of reference for work that was to be  
23 completed by WGD.

24 MR. FREDERICK CHENOWETH: And this  
25 draft terms of reference, the email suggests it's only

1 being sent to Marta Proctor.

2 MR. ED HOUGHTON: That's correct.

3 MR. FREDERICK CHENOWETH: Did you have  
4 occasion to see this draft terms of reference on or  
5 about the time of this email sent on the 19th day of  
6 July?

7 MR. ED HOUGHTON: Not that I recall.

8 MR. FREDERICK CHENOWETH: All right  
9 and so I take it at this juncture were you or were you  
10 not aware of WG's (sic) engagement in this respect  
11 pursuant to those terms of reference?

12 MR. ED HOUGHTON: Not -- no. Not at  
13 all.

14 MR. FREDERICK CHENOWETH: Thank you.  
15 And if we could refer to one (1) other document, which  
16 is TOC0188041.1. If you could pull that up if you  
17 would please.

18

19 (BRIEF PAUSE)

20

21 MR. FREDERICK CHENOWETH: And this  
22 again appears to be an email of Dave McNalty and he  
23 appears to be sending this ice arena feasibility study  
24 document which I take to be the terms of reference.  
25 He appears to be sending it to Brian Gregersen.

1                   Who do you understand Brian Gregersen  
2 to be?

3                   MR. ED HOUGHTON:    I understand now he  
4 is one (1) of the partners of WGD.

5                   MR. FREDERICK CHENOWETH:   WGD.

6                   MR. ED HOUGHTON:    Brian Gregersen is  
7 WGD.

8                   MR. FREDERICK CHENOWETH:   Thank you.  
9 And were you copied on this email?

10                  MR. ED HOUGHTON:    No.

11                  MR. FREDERICK CHENOWETH:   All right.  
12 Did you know on or about the 20th of July that WGD had  
13 been given certain terms of reference pursuant to  
14 which they were to operate?

15                  MR. ED HOUGHTON:    I don't believe so.

16                  MR. FREDERICK CHENOWETH:   So what was  
17 the state of your awareness of the engagement of WGD  
18 in or about this time?

19                  MR. ED HOUGHTON:    I -- again, when you  
20 see further emails, I'm confused about WGD, who they  
21 are, what they're doing. So I'm assuming that I've  
22 not seen anything at this point in time. I don't know  
23 anything about them.

24                  MR. FREDERICK CHENOWETH:   Thank you.  
25 I notice there is another email and we'll pull it up

1 if we could please. It's TOC0189916.

2

3

4

(BRIEF PAUSE)

5

6

MR. FREDERICK CHENOWETH: Go down a  
7 little further in that email if we could please.

8

9

(BRIEF PAUSE)

10

11

MR. FREDERICK CHENOWETH: And what do  
12 you understand is -- go further down in the email  
13 chain, if you would.

14

And I see the -- I see this is an email  
15 chain that involves Marjory Leonard and I note that on  
16 this occasion July 24th you were copied with this  
17 email; correct?

18

MR. ED HOUGHTON: That's correct.

19

MR. FREDERICK CHENOWETH: What do you  
20 understand -- if you take a second to look at the  
21 email and tell us what you understand is taking place.

22

MR. ED HOUGHTON: When I first looked  
23 at it, it looked like Marjory was -- was providing  
24 guidance to where about in -- in the Central Park that  
25 we wanted to locate the ball diamonds.

1                   Again, it was Council's desire to -- to  
2 try to save the existing assets as much as possible.  
3 It -- it says pricing of a bricks and mortar building,  
4 pricing of a prefabricated steel structure.

5                   MR. FREDERICK CHENOWETH:    Okay, we can  
6 see -- we can see that and -- but in any event, I take  
7 it as a result of Marjory Leonard's email on July  
8 24th, which was copied to you, you became aware of the  
9 then instructions that were be given to Dave McNalty  
10 to give to WGD, is that right?

11                  MR. ED HOUGHTON:        That's correct.

12                  MR. FREDERICK CHENOWETH:   All right.  
13 And I had the impression that there is another email  
14 between yourself and McNalty that's of interest and  
15 let's look at document TOC0189964.

16

17   (BRIEF PAUSE)

18

19                  MR. FREDERICK CHENOWETH:   Let's go  
20 down a little further than that particular email.  
21 We'll come back to it, thank you.

22   You're having an interaction with Dave  
23 McNalty at this point on July 24th and it's getting  
24 into the evening and what's the nature of the  
25 interaction that you're having at this time?

1 MR. ED HOUGHTON: I -- I've reviewed  
2 what -- there's -- there's been a bit of an email  
3 trail going on and we're talking about the information  
4 again that -- that Marjory originally sent out. Dave  
5 makes a response -- actually if we went down further.  
6 I think it's probably down further. Oh, you're too  
7 far.

8 It said -- I said:  
9 "The second thing is regarding the  
10 structural steel building. You  
11 mentioned it is in response to the  
12 request in our terms of reference  
13 for other affordable structures.  
14 What do you mean our terms of  
15 reference?"

16 And again, I -- I should say that, you  
17 know, not telling me is not the worst thing in this  
18 world. It's -- it's the fact that, you know, they're  
19 -- they're doing their thing. It's only now that I'm  
20 kind of being looking silly and being blamed for  
21 things that are going on. The fact that I wasn't as  
22 fussed then as I am today about the fact that I have  
23 been totally left out of the loop on this thing.

24 MR. FREDERICK CHENOWETH: Left out  
25 of the loop, I take it, what, with respect to the



1 retention of WGD and the terms of reference on which  
2 it was operating?

3 MR. ED HOUGHTON: Yeah, the -- the --  
4 yeah, WGD had been -- had been engaged obviously to do  
5 a specific job. It wasn't clear to me what it was and  
6 -- and again, you know, they're doing this to get  
7 inputs into the -- to the whole process which is fine,  
8 but now because I'm -- I'm sort of not understanding,  
9 making comments I don't get or don't understand, and  
10 then you read that I'm confused three (3) times that -  
11 - that's -- that's the only thing that fuses me.

12 MR. FREDERICK CHENOWETH: All right,  
13 thank you. Could we go back up to -- to your last  
14 email to Mr. McNalty on that occasion.

15 And that's your email of July 25th at  
16 7:53 a.m. Could you read that email.

17 MR. ED HOUGHTON: Yes. I know this  
18 one.

19 MR. FREDERICK CHENOWETH: The last --  
20 the last sentence of that email, the deputy mayor made  
21 that -- first of all, he says:

22 "The last point I should -- you say,  
23 the last point I should make is that  
24 I will be the contact person with  
25 Sprung. The deputy mayor made that

1 perfectly clear with me on the  
2 weekend."

3 Can you tell me, if you would please,  
4 what the -- how this instruction that you gave to Mr.  
5 McNalty on that occasion arose?

6 MR. ED HOUGHTON: Well, as we talked  
7 about earlier, the first time it arose was when we  
8 were having a discussion and we found out that David  
9 McNalty and -- and Dennis Seymour had had a  
10 conversation and he had said, you know, we need to --  
11 we need to have one (1) point of contact.

12 And -- and then over --

13 MR. FREDERICK CHENOWETH: About a  
14 minute --

15 THE HONOURABLE FRANK MARROCCO: Excuse  
16 --

17 MR. FREDERICK CHENOWETH: You -- you  
18 were talking about -- about a discussion --

19 THE HONOURABLE FRANK MARROCCO: I'm  
20 sorry, wasn't the witness in the middle of an answer?

21 MR. FREDERICK CHENOWETH: He was, Your  
22 Honour, but I'm going to try and place him in time if  
23 I could because I think if I did so it will be --

24 THE HONOURABLE FRANK MARROCCO: I  
25 mean, previously -- you know, previously, the witness

1 was in the middle of an answer and then you ended up  
2 suggesting an answer to him.

3 Then it's a question of whose answer it  
4 is; yours or the witnesses.

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

7

8 CONTINUED BY MR. FREDERICK CHENOWETH:

9 MR. FREDERICK CHENOWETH: Continue  
10 with your answer.

11 MR. ED HOUGHTON: So in -- in June we  
12 had a conference call, deputy mayor, myself and Sprung  
13 folks. During that conference call we had found out  
14 that earlier that week Dennis Seymour and Dave McNalty  
15 had all -- also had conversations as a result of  
16 directions from Marta to Dennis Seymour to get pricing  
17 on a pool and a -- pool enclosure and the ice rink  
18 enclosure.

19 We got off the phone that day, as we'd  
20 already talked about. The deputy mayor said we really  
21 should have one (1) person so the information flows  
22 through one (1) person, and that should be you, it  
23 should flow through you.

24 I had a conversation again on -- prior  
25 to this, on the weekend. And not unlike other

1 people's opinions, I was a very -- I was busy at this  
2 point in time. I didn't need more jobs. But he had  
3 suggested again that you should be that -- that point  
4 of contact, information should be going through the  
5 CAO's office.

6                   And he -- whether it's -- it's having  
7 meetings, it should go through your office, or  
8 information should go through your office.

9                   So, I just took this opportunity early  
10 in the morning on Wednesday saying, by the way, the  
11 deputy mayor made it perfectly clear that he would  
12 like to see me as a point of contact.

13                   And, Your Honour, it was not the  
14 draconian way of not having anybody speak to Sprung at  
15 all. That was never the intent. I would take  
16 responsibility.

17                   Because David is a guy that takes every  
18 word that you say accurately, I should have said, as I  
19 just said, we just need to have -- make sure that we  
20 facilitate it so if anybody needs anything, it can go  
21 through my office and, you know, meetings are set up  
22 through that way so that we have control over it.

23                   David's a great guy. I should have  
24 been more careful with my wording.

25                   MR. FREDERICK CHENOWETH:    Thank you.

1 Could we look at a further document, which is  
2 TOC0196651?

3

4 (BRIEF PAUSE)

5

6 MR. FREDERICK CHENOWETH: And again...

7

8 (BRIEF PAUSE)

9

10 MR. FREDERICK CHENOWETH: This appears  
11 to be a correspondence from Matthew Chung, who I  
12 understand is -- who do you understand Matthew Chung  
13 to be?

14 MR. ED HOUGHTON: I understand he  
15 works for WGD, according to Mr. Dabrus the other day.

16 MR. FREDERICK CHENOWETH: Right. And  
17 this is an email to Marta Proctor?

18 MR. ED HOUGHTON: Yes.

19 MR. FREDERICK CHENOWETH: Do you come  
20 to understand what was being forwarded to Marta  
21 Proctor in this email?

22 MR. ED HOUGHTON: It appears like  
23 they're giving two (2) plans of a pre-engineered  
24 structure and one (1) of Sprung structure.

25 MR. FREDERICK CHENOWETH: And were

1 these documents -- these documents come to your  
2 attention?

3 MR. ED HOUGHTON: This is one (1) of  
4 those times when I'm not sure whether they came to me  
5 or I've read them in the -- in the Foundation  
6 Document.

7 MR. FREDERICK CHENOWETH: Did you get  
8 these documents on or about August 8th, 2012?

9 MR. ED HOUGHTON: Not -- not that I'm  
10 aware of.

11 MR. FREDERICK CHENOWETH: Thank you.

12

13 (BRIEF PAUSE)

14

15 THE HONOURABLE FRANK MARROCCO: Is  
16 this a convenient time maybe for me to take the  
17 afternoon break, Mr. Chenoweth?

18 MR. FREDERICK CHENOWETH: Content,  
19 Your Honour. Thank you.

20

21 --- Upon recessing at 3:14 p.m.

22 --- Upon resuming at 3:26 p.m.

23

24 MR. WILLIAM MCDOWELL: So, Commiss --  
25 Commissioner, just -- just before we begin, I have to

1 deal with something urgent on the phone right at 4:30,  
2 so I'll withdraw a little bit before then. And I'm  
3 not leaving in a huff or anything, I just have to do  
4 that.

5 THE HONOURABLE FRANK MARROCCO: All  
6 right. No, that -- that's fine. And we'll see where  
7 we are at 4:30 --

8 MR. WILLIAM MCDOWELL: All right.

9 THE HONOURABLE FRANK MARROCCO: --  
10 generally. And we'll...

11

12 CONTINUED BY MR. FREDERICK CHENOWETH:

13 MR. FREDERICK CHENOWETH: Again, Mr.  
14 Houghton, if we could, I'd like you to refer -- like  
15 to refer you to DWG's terms of reference which are at  
16 TOC0188041.1.1.

17

18 (BRIEF PAUSE)

19

20 MR. FREDERICK CHENOWETH: And just so  
21 we can see what this document is, I take it this --  
22 you indicated to us in your earlier testimony that  
23 this wasn't something that you were initially familiar  
24 with?

25 MR. ED HOUGHTON: That's correct.

1 MR. FREDERICK CHENOWETH: But did you  
2 become familiar with it as a result of a review of the  
3 Foundation Document?

4 MR. ED HOUGHTON: That's correct.

5 MR. FREDERICK CHENOWETH: All right.  
6 And let's -- let's go further down into the document.  
7 And I'm looking for the chart that's referred to in  
8 this document. There we go. Thank you very much.  
9 Just that -- that's good. Thank you.

10 And it appears to talk about a variety  
11 of things. It talks about the proposed Central Park  
12 redevelopment project, the initial -- the initial  
13 phase of single-pad arena and necessary park  
14 improvements and future options to combine into the  
15 overall redevelopment concept and a standalone single-  
16 pad arena and upgrades to the Eddie Bush.

17 I notice that in columns 2 and 3 it  
18 appears that in these terms of reference WGD is  
19 directed specifically to fabi -- to fabric membranes  
20 over both of those columns, Sprung or equivalent.

21 Is that the case?

22 MR. ED HOUGHTON: That's clear, yes.

23 MR. FREDERICK CHENOWETH: All right.  
24 And I understand that further, by an additional email,  
25 which we -- if we could turn to, TOC0196651. If you



1 could pull that up, as well. Actually, I'm sorry, I  
2 think I have the wrong email in that respect.

3 This is the email I wish to pull up.  
4 The document I wish to pull up is TOC0200936.

5

6 (BRIEF PAUSE)

7

8 MR. FREDERICK CHENOWETH: So, having  
9 been referred specially to -- to Sprung in the terms  
10 of reference, again, I take it that on August 17th at  
11 9:00 a.m. in the morning Dave McNalty sends a further  
12 email to Richard Dabrus.

13 He appears to be attaching a brochure  
14 on insulated fabric membrane arenas. And could we  
15 look at -- at the attachment to this email, which is  
16 TOC0200937?

17

18 (BRIEF PAUSE)

19

20 MR. FREDERICK CHENOWETH: As I  
21 understand it, this is a multi-page presentation with  
22 respect to Sprung performance arenas.

23 Is that your understanding of what Mr.  
24 McNalty sent to -- to Mr. Dabrus on that day?

25 MR. ED HOUGHTON: That's -- that's

1 correct.

2 MR. FREDERICK CHENOWETH: All right.  
3 And in any event of that, later on that day, at 1:30,  
4 there's a -- there's a response from WGD. Can we look  
5 at that if we could, please, which is at TOC0201146?

6

7 (BRIEF PAUSE)

8

9 MR. FREDERICK CHENOWETH: And in this  
10 email, and we've seen it before during the course of  
11 this Inquiry, Mr. Dabrus sends a document:

12 "Below are some additional points  
13 that I will have that will have to  
14 be in the main body. I am still  
15 waiting the costing, et cetera."

16 But he's at least putting out some  
17 further paragraphs that will be contained in his  
18 eventual report. You obviously weren't copied on  
19 this. Can you have a look? And I take it Marta and  
20 Dave were.

21 Can we have a look at -- at that first  
22 paragraph? Would you read it for me, please. You  
23 don't need to read it out loud. Just read it to  
24 yourself.

25 MR. ED HOUGHTON: I -- I've read it.

1 MR. FREDERICK CHENOWETH: And does the  
2 paragraphs that -- that Mr. Dabrus is reporting that  
3 he's going to include in his report, they -- do they  
4 appear to have any relationship to -- to the Sprung or  
5 a similar building or any relationship that was  
6 originally mentioned in the terms of reference or any  
7 relationship to the documents that were sent to Mr.  
8 Dabrus at 9:00 a.m. on the morning of that same day?

9 MR. ED HOUGHTON: In my opinion, it  
10 would be a stretch to say that these paragraphs have  
11 anything to do with what they were asked to do.

12 MR. FREDERICK CHENOWETH: And I have a  
13 sense that further documents were forwarded on at 4:23  
14 by WGD. Can we look at TOC0201298?

15

16 (BRIEF PAUSE)

17

18 MR. FREDERICK CHENOWETH: And just  
19 going to -- down -- Marta -- forgetting for the moment  
20 about your comment about is this on Central Park,  
21 looking at Marta Proctor's emails:

22 "Please find attached the revised  
23 package with the information  
24 compiled into one (1) report."

25 She says she believes there's only one

1 (1) piece that we are now awaiting, which is the  
2 attached -- which is the estimates for operating  
3 costs. Could we look at the document that was  
4 attached, I believe, which is at TOC0201266?

5

6 (BRIEF PAUSE)

7

8 MR. FREDERICK CHENOWETH: Go down  
9 further in that document, if you would, please.

10

11 (BRIEF PAUSE)

12

13 MR. FREDERICK CHENOWETH: Okay. Just  
14 try a little further if you would.

15

16 (BRIEF PAUSE)

17

18 MR. FREDERICK CHENOWETH: Are you  
19 familiar with this document, Mr. Houghton?

20 MR. ED HOUGHTON: I am now, yes.

21 MR. FREDERICK CHENOWETH: All right.

22 Can you tell me whether this further revised  
23 documented forwarded at 4:23 on the 17th of August,  
24 does that deal with the -- and go -- go down one (1)  
25 further -- further, if you would.

1                   Can you tell me -- yes, I'll do that.  
2 Thank you. Can you tell me whether this relates to  
3 the request that was made in the original terms of  
4 reference to WGD and/or the materials sent by Dave  
5 McNalty at 9:00 a.m. on the morning of the 17th?

6                   MR. ED HOUGHTON: When I review those  
7 terms of reference and what they were asked to do and  
8 I look at this document, I -- I find it difficult to  
9 try again, have a co-relation between the response to  
10 what they were being asked.

11                   I don't know if there was conversations  
12 where they've had -- and they've changed directions.  
13 I'm not aware of those because I wasn't involved with  
14 it. I've never had a conversation with WGD in my  
15 life.

16                   But this -- this -- I mean, these are  
17 all items here that potentially they could add to a  
18 steel fabricated building to get additional points  
19 towards LEED's silver, as I understand it.

20                   But even in the -- the -- further on,  
21 where it gives the price for a steel fabricated  
22 building, it's one (1) line.

23

24

(BRIEF PAUSE)

25

1 MR. FREDERICK CHENOWETH: Thank you.

2 Could we now move to the August 27th meeting that

3 eventually took place with respect to this matter?

4 And let's deal with some of the emails of the

5 councillors that arise prior to August 27th.

6 Could we -- could we look at email

7 number TOC0185611?

8

9 (BRIEF PAUSE)

10

11 MR. FREDERICK CHENOWETH: And this

12 appears to be an exchange between Rick Lloyd and --

13 and Dale West, Councillor West. Could -- could you go

14 down to the bottom of that exchange if we could,

15 please? Thank you. That's good.

16 And again read that email if you would.

17 And then we'll go to the email above that.

18 THE HONOURABLE FRANK MARROCCO: I

19 think part of the -- part of the email's cut off at

20 the bottom.

21 MR. FREDERICK CHENOWETH: Very good.

22 Let's go all the way down to the bottom of it. Thank

23 you.

24

25 (BRIEF PAUSE)

1 MR. ED HOUGHTON: Okay.

2

3 CONTINUED BY MR. FREDERICK CHENOWETH:

4 MR. FREDERICK CHENOWETH: Go up  
5 further.

6

7 (BRIEF PAUSE)

8

9 MR. FREDERICK CHENOWETH: Some  
10 comments with respect to the 'Y'. Could you go up  
11 further?

12

13 (BRIEF PAUSE)

14

15 MR. FREDERICK CHENOWETH: And we have  
16 a final comment from Dale West -- or a comment from  
17 Dale West, at least:

18 "We are closer than what we -- than  
19 -- than we have ever been."

20 "...years and it will happen."

21 Appears to be Mr. Lloyd's reply. What  
22 do you take about the mood of Council from this email  
23 exchange?

24

25 (BRIEF PAUSE)

1                   MR. ED HOUGHTON:    I -- I'm not copied  
2 on this, but certainly these were the conversations  
3 that I was hearing again from Dale and the deputy  
4 mayor, Councillor Lloyd, Councillor Chadwick, some  
5 with Councillor Edwards, was that there -- there is a  
6 desire for this to move forward.

7                   And it's -- as I mentioned earlier, the  
8 -- the crescendo is starting to build.

9                   MR. FREDERICK CHENOWETH:   Thank you.  
10 I'd like, if we could, just to look at a further  
11 document, which is TOC0203901.  Would you pull that  
12 up, please?

13

14   (BRIEF PAUSE)

15

16                   MR. FREDERICK CHENOWETH:   And this  
17 appears to be an email sent by Sandra Cooper on or  
18 about the 24th of August, some three (3) days before  
19 the vote on the 27th.

20                   And what do you take from Ms. Cooper's  
21 correspondence with this private individual?  And  
22 maybe we can go down a little further and see if the  
23 whole correspondence is there.

24

25   (BRIEF PAUSE)



1                   MR. FREDERICK CHENOWETH:    I take it  
2 that Mayor Cooper is responding to the thoughts of a  
3 private individual with respect to what is about to  
4 take place on the 27th of August?

5                   MR. ED HOUGHTON:    That's correct.

6                   MR. FREDERICK CHENOWETH:    All right.  
7 Can we go back up to the Mayor's response?

8

9   (BRIEF PAUSE)

10

11                   MR. FREDERICK CHENOWETH:    You were in  
12 contact with the Mayor on an ongoing basis with  
13 respect to these matters.

14                   And are you able to tell us what this  
15 email tells us and what the Mayor's comments to you  
16 might have been with respect to her attitude towards  
17 the project and -- that was being unfolding on August  
18 27th?

19                   MR. ED HOUGHTON:    As I mentioned  
20 earlier, there -- there was now starting to be a -- a  
21 groundswell by a few people -- a few local people  
22 about the decision that Council was making, which --  
23 or which they were anticipating Council was going to  
24 make, which was not going with a -- the full 35  
25 million plus multi-use facility, and that -- that

1 Council potentially would be considering something  
2 else.

3 Her Worship has remained steady in her  
4 -- her view that \$35 million was very expensive, and  
5 in this email what she's saying is that there will be  
6 a presentation by staff, which is providing a  
7 different option to the 35 million, and she's saying  
8 visit the Sprung website to get an understanding of --  
9 of one (1) of those examples.

10 MR. FREDERICK CHENOWETH: All right.

11 Now --

12 MR. GEORGE MARRON: I -- I just want  
13 to put on the record, Your Honour, that my -- my  
14 client, Sandra Cooper, was not questioned in reference  
15 to this email. It's note that -- I appreciate I have  
16 cross-examination and that I can do that with Mr.  
17 Houghton in the order that has been established.

18 THE HONOURABLE FRANK MARROCCO: Well,  
19 he's not -- he's -- is he copied on this email, Mr.  
20 Houghton?

21 MR. FREDERICK CHENOWETH: I see a  
22 number of Councillors are.

23 THE HONOURABLE FRANK MARROCCO: But  
24 Mr. Houghton isn't. He's -- he's in -- interpreting -  
25 - he's interpreting the Mayor's email. You're welcome

1 to cross-examine him on it. I -- I for -- I -- I  
2 don't know beyond what it says whether I could -- I  
3 certainly couldn't use Mr. Houghton's interpretation  
4 of what he thinks the Mayor meant by her email as some  
5 evidence of what she meant by her email.

6 MR. GEORGE MARRON: I appreciate that,  
7 and I just wanted to note it on the record. Thank  
8 you.

9 MR. ED HOUGHTON: I didn't give my  
10 opinion either. I just read what was there.

11 THE HONOURABLE FRANK MARROCCO: Well,  
12 I -- I appreciate that. I can read it. You can read  
13 it. Argument can be generated about what it says and  
14 what interpretation I should take from it. I -- I  
15 don't think Mr. Houghton can really do that though.

16 MR. FREDERICK CHENOWETH: Thank you,  
17 Your Honour.

18

19 CONTINUED BY MR. FREDERICK CHENOWETH:

20 MR. FREDERICK CHENOWETH: And did you  
21 have conversations, as I indicated in my earlier  
22 question, with -- with the Mayor on or about August  
23 27th with respect to the coming proposal for that  
24 Council meeting?

25 MR. ED HOUGHTON: I did, yes.

1 MR. FREDERICK CHENOWETH: And what did  
2 -- what was the nature of those interactions with the  
3 Mayor on those occasions?

4 MR. ED HOUGHTON: I was keeping her  
5 apprised of where we were -- were in the process and -  
6 - and that there would be a -- a presentation on the  
7 Monday evening, the 27th, that -- I guess that's  
8 really -- really what I've done.

9 MR. FREDERICK CHENOWETH: Thank you.  
10 And can you tell me what you learned about the Mayor's  
11 attitude towards the project that was being put  
12 forward on August 27th as a result of those  
13 conversations?

14 MR. ED HOUGHTON: Well, I -- I've had  
15 this discussions with her and I believe that she was,  
16 in my opinion --

17 OBJ MR. GEORGE MARRON: Once again, I -- I  
18 object to somebody giving an opinion of conversation  
19 without relating the words, Your Honour.

20

21 CONTINUED BY MR. FREDERICK CHENOWETH:

22 MR. FREDERICK CHENOWETH: Would you  
23 relate then, if you would, please, what the Mayor told  
24 you on those occasions?

25 MR. ED HOUGHTON: She was extremely

1 interested in the idea. She was very interested.

2 MR. FREDERICK CHENOWETH: Thank you.

3 Did you have occasion to have some conversations with  
4 Rick Lloyd and Mr. Bonwick in or about this time,  
5 specifically on or about August 22nd?

6 MR. ED HOUGHTON: On August 22nd, yes.

7 MR. FREDERICK CHENOWETH: And can you  
8 tell me how those --- were those telephone  
9 conversations or a -- or a meeting or what took place  
10 at that time?

11 MR. ED HOUGHTON: I think I'd had -- I  
12 was having ongoing discussions with the Deputy Mayor  
13 about many things, including what was going on with  
14 this, because he was heavily involved with it.

15 I had conversations with Mr. Bonwick  
16 about many other things, and I'm not exactly certain  
17 what you're -- you're asking me. Are you asking me a  
18 specific date?

19 MR. FREDERICK CHENOWETH: Yes. I'm  
20 asking --

21 MR. ED HOUGHTON: Oh.

22 MR. FREDERICK CHENOWETH: -- you  
23 August 22nd.

24 MR. ED HOUGHTON: August -- are we  
25 talking the conference call we had?

1 MR. FREDERICK CHENOWETH: That's what  
2 I'm asking --

3 MR. ED HOUGHTON: Okay.

4 MR. FREDERICK CHENOWETH: -- about the  
5 form of your interaction on that day.

6 MR. ED HOUGHTON: Yes.

7 MR. FREDERICK CHENOWETH: Was it a  
8 conference call?

9 MR. ED HOUGHTON: There was a  
10 conference call on the 22nd, yes.

11 MR. FREDERICK CHENOWETH: Thank you.  
12 And do you have a memory of who was involved in that  
13 conference call?

14 MR. ED HOUGHTON: Yes. Deputy Mayor  
15 Lloyd and Mr. Bonwick and myself.

16 MR. FREDERICK CHENOWETH: All right.  
17 And what was the nature of the conversation had on  
18 that day?

19 MR. ED HOUGHTON: The nature of the  
20 conversation was primarily the issue with -- that the  
21 Deputy Mayor had with comments that were made to the  
22 Mayor of Wasaga Beach, Cal Patterson.

23 MR. FREDERICK CHENOWETH: All right.  
24 And what was the nature of -- of the issue that arose  
25 with Cal Patterson?

1                   MR. ED HOUGHTON:    The -- the Deputy  
2 Mayor, for whatever reason, was very fussed over the  
3 fact that there was presentations made, and quite  
4 frankly, I was on the call but I was still working on  
5 my computer, listening, but he was quite fussed over  
6 that, and after quite a conversation Mr. Bonwick said  
7 to him, put it in an email to me and I'll deal with  
8 it.

9                   MR. FREDERICK CHENOWETH:   And how was  
10 it that Mr. Bonwick was involved in this call?

11                   MR. ED HOUGHTON:    I don't recollect --  
12 who instigated the call?

13                   MR. FREDERICK CHENOWETH:    Yes.

14                   MR. ED HOUGHTON:    Whether -- I -- I  
15 don't recollect who -- who instigated the call, sorry,  
16 so I can't help that.

17                   MR. FREDERICK CHENOWETH:    Thank you.  
18 Now, I understand that on August 18th, Marjory Leonard  
19 prepared and circulated the first draft of the staff  
20 report. Is that correct?

21                   MR. ED HOUGHTON:    That's correct.

22                   MR. FREDERICK CHENOWETH:    And could we  
23 look at TOC0201377?

24

25

(BRIEF PAUSE)

1 MR. FREDERICK CHENOWETH: And I take  
2 it this is the email pursuant to which Ms. Leonard  
3 circulated that initial copy of the staff report?

4 MR. ED HOUGHTON: That's correct.

5 MR. FREDERICK CHENOWETH: And it was  
6 circulated to yourself obviously, to Larry Irwin, to  
7 Sara Almas, and to Marta Proctor and Dave McNalty?

8 MR. ED HOUGHTON: Yes.

9 MR. FREDERICK CHENOWETH: In essence,  
10 it was circulated to the -- the EMC and a couple of  
11 staff members?

12 MR. ED HOUGHTON: That's correct.

13 MR. FREDERICK CHENOWETH: Thank you.  
14 Could we look at that first document, if we could?  
15 And could we pull up document number TOC0201378?

16

17 (BRIEF PAUSE)

18

19 MR. FREDERICK CHENOWETH: And could we  
20 look, in particular, at the signature page of that  
21 document? I'm not sure what document -- what page  
22 number that is, but I take it it's -- you've got it,  
23 it seems. Thank you.

24 And could you read that signature page  
25 that's contained on page 6 of that document?



1 MR. ED HOUGHTON: It says:  
2 "Respectfully submitted, Executive  
3 Management Committee" --  
4 -- myself, Mr. Irwin, Ms. Almas, Ms.  
5 Leonard, with in -- input from Ms. Proctor, Mr.  
6 McNalty, and Mr. Seymour.

7 MR. FREDERICK CHENOWETH: I take it  
8 you've got some recollection of the nature of the  
9 signature pages that continue through the various  
10 drafts of -- of the staff report.

11 Can you tell me, did that signature  
12 page ever change through the course of -- of the  
13 various drafts leading to the final draft in this  
14 matter?

15 MR. ED HOUGHTON: It did not change.

16 MR. FREDERICK CHENOWETH: Marta  
17 Proctor suggests that there was a call between  
18 yourself and Ms. Proctor on or about the 25th of  
19 August, 2017, in which you pressed her to -- to be a  
20 team player and to -- to be one (1) of the people that  
21 -- that was indicated as having input into the report.

22 Do you recall such a call?

23 MR. ED HOUGHTON: She emailed me on  
24 the Saturday. She'd been away. She emailed me on the  
25 Saturday, asking -- actually emailed the EMC asking if

1 anybody would be able to have a conversation with her  
2 to bring her up to speed so she could be prepared for  
3 Monday evening. So I said that I would -- I would --  
4 I would speak to her if she wanted, and the call was  
5 on the Sunday, the 26th.

6 MR. FREDERICK CHENOWETH: All right.  
7 And was there such a call?

8 MR. ED HOUGHTON: I believe so, yes.

9 MR. FREDERICK CHENOWETH: Thank you.  
10 And can you tell me your memory of that phone call on  
11 that occasion?

12 MR. ED HOUGHTON: Certainly  
13 diametrically different than Ms. Proctor's. We talked  
14 about the -- about the call -- or about the staff  
15 report and we did those things.

16 At that point in time, again she had  
17 confided in me, things that were going on in her  
18 personal life, and -- and I was -- you know, certainly  
19 this was a lot of work and a lot of stress, but I know  
20 that where -- I did tell her that she might not have  
21 been a team player, but had nothing to do with this.

22 MR. FREDERICK CHENOWETH: Okay. Can  
23 you tell me about the occasion on which you may have  
24 told her she wasn't a team player? When -- when did  
25 that arise?

1                   MR. ED HOUGHTON:    It was -- it was  
2 quite a bit later, and it was with a meeting with the  
3 YMCA, and at that meeting there was the -- the Mayor,  
4 the Deputy Mayor, myself, Ms. Proctor, the gentleman,  
5 the CEO or CA -- I'm not sure which -- how they title  
6 it at the YMCA, and another person, and I can't recall  
7 who the other person was. And the -- the gentleman  
8 from the YMCA looked at me and said, How dare you for  
9 taking this project away from the -- the Director of  
10 Parks, Recreation and Culture.

11                   I was expecting that Ms. Proctor would  
12 have said, well, look it, I had to have this time off  
13 and they were kind enough to be able to let me take  
14 this time off and have helped pick up the pieces, or  
15 whatever you wanted to say. She didn't say anything.  
16 So afterwards I said, you know, that was -- I would  
17 have expected a little bit more out of you in that,  
18 and that's -- that really didn't show you were much of  
19 a team player there.

20                   But again, this is even after the warm  
21 water therapy pool, I believe, where -- where I had  
22 asked her if the warm water therapy pool staff report  
23 should actually go under a Parks, Recreation, Culture  
24 staff report, not from the EMC, because it was  
25 actually put -- being put together by Parks,

1 Recreation and Culture.

2                   And my email just says that maybe you  
3 should -- this should be an EM -- or a PRC report,  
4 just a thought.

5                   MR. FREDERICK CHENOWETH: All right.

6 And that's the only time you have a recollection of --  
7 of pressing --

8                   MR. ED HOUGHTON: It was -- and it was  
9 certainly not aggressive. It was not anything like  
10 that. It was -- it was me more disappointed in the  
11 fact that I felt that I was doing her a great service,  
12 and on the 17th she's thanking me for having an  
13 understanding of the issues that she's been going  
14 through -- unfortunate.

15                   MR. FREDERICK CHENOWETH: You told us  
16 all that you recall about the conversation that took  
17 place with Ms. Proctor on or about the 25th or 26th of  
18 August?

19                   MR. ED HOUGHTON: Yeah. I mean, we --  
20 we basically talked about where it was going, what was  
21 happening, you know, would who be presenting, that  
22 kind of stuff, and that she would be prepared to  
23 answer any questions if they were asked.

24                   MR. FREDERICK CHENOWETH: This  
25 conversation that took place on or about that day, do

1 you know whether the staff report, the final form of  
2 the staff report, had already been circulated to  
3 Councillors on the Friday before that call?

4 MR. ED HOUGHTON: Yeah. It had  
5 already been put in place on -- early on Friday, I  
6 would assume, or Friday -- early afternoon Friday.

7 MR. FREDERICK CHENOWETH: So that any  
8 references to the signature page or who was  
9 contributors, et cetera, were already matters of  
10 record in the staff report that had been circulated?

11 MR. ED HOUGHTON: That's correct.

12 MR. FREDERICK CHENOWETH: Thank you.  
13 Now, could we look at document number TOC0517810?

14

15 (BRIEF PAUSE)

16

17 MR. FREDERICK CHENOWETH: Now, this  
18 appears to be -- go down further, if you would,  
19 please, of the email chain. Go down to the bottom of  
20 the email chain. I think we're all the way down.  
21 Thank you.

22 I see that we first of all have Ms.  
23 Leonard's email of August 18th in which she sends out  
24 the first draft of the staff report. And then move up  
25 from there.

1                   And I take it that you forwarded this  
2 on to Rick Lloyd on that occasion?

3                   MR. ED HOUGHTON:    I did, yes.

4                   MR. FREDERICK CHENOWETH:   And can you  
5 tell me why you chose to forward it on at that time?

6                   MR. ED HOUGHTON:    Well, in my mind two  
7 (2) reasons.  The -- the one (1) that was first and  
8 foremiss -- foremost, was that he had advised that he  
9 wanted to be involved and he was being involved, and  
10 again, a Council representative is to be able to bring  
11 the public's view to the Council table to -- I mean,  
12 that's the reason why there are Council -- there are  
13 Council reps.

14                   If -- if we didn't have Council -- if  
15 we -- if they weren't doing this, why do we need  
16 representatives?  We would just prepare our staff  
17 reports, bring them to a Council meeting, they'd read  
18 -- they'd read them and they'd make decisions.

19                   It doesn't -- doesn't provide much  
20 logic to me that we -- we -- with -- with Rick as our  
21 Council rep for Public Works, we would explain to him  
22 so that if -- if there was a discussion around the  
23 table, he -- he understood it as well as the rest of  
24 us, but he would also say, if we're closing down a  
25 road, do you know the impact, and he -- he brought --

1 the Council representatives bring a different view to  
2 what we're doing.

3                   So we -- we've done that since the  
4 beginning of time, I believe. They may not do it  
5 today, and that's fine, but we did that back then. It  
6 didn't appear to be inappropriate back then.

7                   It -- it's at least -- there's two (2)  
8 examples in the -- in the court book today that show  
9 others are doing it, but irrespective, this is about  
10 this one here and I -- I did that.

11                   And in this particular case I had  
12 talked to Marjory about sending it to -- to Rick, and  
13 she said, well, I'd like to kind of get it a little  
14 bit cleaned up, and I said okay, that's great.  
15 Whenever you can do that, flip it to him, but I -- I'm  
16 going to send it, which I did -- let him know that  
17 Marjory is going to flip it to him as well, and she  
18 then sent one -- she said she's polished up.

19                   MR. FREDERICK CHENOWETH: Thank you.  
20 Could we look at the emails above the ones we're  
21 looking at now? Whoa. I see that Mr. Lloyd makes  
22 some comments with respect to the report in his reply  
23 of August 19th. And if you can read that.

24                   And let's have a look at the rest of  
25 the email chain, if we could, please. Thank you.

1 (BRIEF PAUSE)

2

3 MR. FREDERICK CHENOWETH: Again, the -  
4 - the last email that's sent from whom to whom, can we  
5 just see that, please? Thank you.

6

7 (BRIEF PAUSE)

8

9 MR. FREDERICK CHENOWETH: Did you in  
10 any way feel uncomfortable about the -- about the  
11 comments of Mr. Lloyd made on that day?

12 MR. ED HOUGHTON: I mean, looking at  
13 each one (1) of them, you know, he had a sensitivity  
14 to the -- to the pools in Ontario. And that question  
15 was actually specifically asked that night.

16 You know, he -- he's sort of a  
17 gregarious, positive kind of guy, so he likes to have  
18 that positive spin. When he says you must be careful  
19 about not giving too much information, there --  
20 there's two (2) of reading that, and I'm not sure  
21 which way he was writing it.

22 But my interpretation is, is that, if -  
23 - if you want something pushed through Council, you  
24 give them a very large report. If you want something  
25 to be clear and concise, less words, less pages, given



1 the information, let them understand it.

2 I'm not sure if that's what he was  
3 saying here, but certainly that's the way I take it  
4 anyway.

5 MR. FREDERICK CHENOWETH: Thank you.  
6 And can you tell me, as a result of the receipt of  
7 those emails on Sunday August 19th, did you make any  
8 changes in the report?

9 MR. ED HOUGHTON: I never made changes  
10 until the very end, which is typically what I did.  
11 Like, we would write twenty (20) staff reports a year  
12 at Public Works which I would not draft. But I would  
13 typically, because I'm not the -- I'm -- I'm the less  
14 technical person now, I'm further away from it, I  
15 would put a readable read on it.

16 And that's -- that's what I did with  
17 these reports, as well.

18 MR. FREDERICK CHENOWETH: I'd like to  
19 move to a later report, one (1) that Mr. McNalty  
20 eventually drafts at 11:44 on the night of the 23rd.  
21 And in that respect, could we move to document number  
22 TOC0203834?

23

24 (BRIEF PAUSE)

25

1 MR. FREDERICK CHENOWETH: Go to the  
2 bottom of that email chain, please. Thank you. And I  
3 see that at 5:59 on that evening, McNalty -- being the  
4 evening of the 23rd, McNalty writes to Marjory  
5 Leonard, Ed Houghton, Larry Irwin, and Sara Almas with  
6 respect to another draft.

7 Is that correct?

8 MR. ED HOUGHTON: Yeah. What he said  
9 was he -- he's working on a different draft -- or  
10 another draft. He said:

11 "Same information but a different  
12 approach to the report."

13 MR. FREDERICK CHENOWETH: And did you  
14 understand what he meant in that 6:00 p.m. email that  
15 he set out about a different approach to the report?

16 MR. ED HOUGHTON: No.

17 MR. FREDERICK CHENOWETH: And what  
18 happened as a result of -- of that email sent at 5:59?

19 MR. ED HOUGHTON: The different  
20 approach comment tweaked my interest, so I contacted  
21 David to find out what he was thinking, what -- what  
22 does he mean by a different approach.

23 MR. FREDERICK CHENOWETH: All right.  
24 And that appears to have been a relatively lengthy  
25 conversation of about twenty (20) minutes, according

1 to the phone records, which we were earlier referred  
2 to by Inquiry Counsel.

3 Are you able to tell us what the nature  
4 of the call was that occurred between yourself and  
5 Dave McNalty on that evening?

6 MR. ED HOUGHTON: I -- I can certainly  
7 give you a gist of it but in a lighthearted  
8 perspective. It doesn't take David very long to have  
9 a twenty (20) minute conversation because he talks so  
10 slow.

11 Usually, you're -- you say two (2) or  
12 three (3) times, are you still there, because he talks  
13 very slow, but he's a -- he's a lovely guy.

14 But irrespective, yeah, I -- we talked  
15 about the different approach. We -- he -- he wanted  
16 to repackage it and put it in a little bit different  
17 perspective. You know, he -- he writes a number of --  
18 of reports. We talked about that.

19 We talked a little bit about WGD, not  
20 very much about it, but that he was -- that he was  
21 putting -- he's working on the numbers, getting --  
22 getting the comparisons down.

23 I think there was a third thing I know  
24 we talked about, but...

25 MR. FREDERICK CHENOWETH: Did you at

1 any time talk about procurement or RFPs or sole  
2 sourcing or any other matters through the course of  
3 that conversation?

4 MR. ED HOUGHTON: No, I don't -- I --  
5 I'm pretty sure we did not talk about it. I think  
6 that's the -- that's the reason why shortly  
7 thereafter, he sent me -- excuse me -- an email that  
8 said, you know, it was our thinking we've done this,  
9 we've done our due diligence.

10 MR. FREDERICK CHENOWETH: Could we  
11 look at document TOC0203834?

12

13 (BRIEF PAUSE)

14

15 MR. FREDERICK CHENOWETH: And, again,  
16 this appears to be an email sent to you at about 8:15  
17 p.m. on that evening, Dave McNalty to Ed Houghton.  
18 Could you read that, please?

19 MR. ED HOUGHTON: Yeah, I've read it.

20 MR. FREDERICK CHENOWETH: And it's  
21 pretty clear what it says. Did you -- again, had you  
22 had any conversations about procurement in your phone  
23 call earlier that evening, at six o'clock?

24 MR. ED HOUGHTON: No, I believe we  
25 didn't, or he wouldn't be asking me this question.

1 He's not the kind of guy that would have put it in  
2 here because we talked about it to have somebody else  
3 make that decision.

4 MR. FREDERICK CHENOWETH: Did you  
5 respond in any way to Mr. McNalty's email?

6 MR. ED HOUGHTON: No, I didn't reply  
7 to this one. What I did was I -- I spoke to Ms.  
8 Leonard.

9 MR. FREDERICK CHENOWETH: All right.  
10 And...

11

12 (BRIEF PAUSE)

13

14 MR. FREDERICK CHENOWETH: Do you know  
15 what time you spoke to Ms. Leonard on that evening?

16 MR. ED HOUGHTON: Eight -- eightish.  
17 Short -- short -- I would -- I expect sometime after  
18 the call I had with David.

19 MR. FREDERICK CHENOWETH: Thank you.  
20 And I take it sometime after this email from David to  
21 you?

22 MR. ED HOUGHTON: Yes.

23 MR. FREDERICK CHENOWETH: Thank you.  
24 And can you tell me what the nature of the discussions  
25 were that you had with Marjory Leonard on that

1 evening?

2 MR. ED HOUGHTON: Yes. My -- my  
3 impression -- and I've heard what Marjory has said.  
4 But my impression is that -- that procurement was part  
5 of her portfolio. And she has every opportunity to  
6 talk about it, not just when she signs the cheque, but  
7 all of these things go through department heads for  
8 comments.

9 Every one (1) of -- every -- every  
10 staff report has a finance comment in it, so there's  
11 always that opportunity.

12 I -- I just was under the impression,  
13 not like Ms. Almas or others, that -- that this was  
14 part of her portfolio. And -- and Marjory is a very  
15 demonstrative person; she -- she knows this. So, I  
16 was calling her to seek her advice, what she -- what  
17 was she thinking.

18 I -- I certainly did not -- and I don't  
19 think I have the ability to have her dictate this. We  
20 had a conversation about the fact that, you know --  
21 you know, the whole -- the whole conversation.

22 And -- and she felt very, very  
23 confident that we had done our due diligence and that  
24 she felt comfortable doing that. And that's the  
25 reason why every time I went to her, whether it was

1 when I was first getting the pricing, I sent it to her  
2 first.

3                   It was when I'd ask her -- she was the  
4 one giving the information because I believe that was  
5 part of her -- her portfolio.

6                   MR. FREDERICK CHENOWETH:     Did she  
7 express an opinion to you that evening?

8                   MR. ED HOUGHTON:     She did -- she --  
9 she felt that we had done -- just as -- as her  
10 response says, she -- she believes that we've done our  
11 due diligence.

12                   And it's unfortunate that we -- we're  
13 in a situation where it seems like she's deflecting  
14 from that, but we had that conversation, and that's --  
15 that's what occurred.

16                   MR. FREDERICK CHENOWETH:     Can you tell  
17 me whether or not there was any reference in that  
18 conversation to the email that Dave had earlier sent  
19 to you?

20                   MR. ED HOUGHTON:     Oh, yes. I -- that  
21 was the re -- that was. Yes, that was the genesis. I  
22 forget the com -- or the question -- or the word you  
23 used yesterday, but that was the genesis of the  
24 conversation, was that Dave has just emailed me, and  
25 here's what he said, what are you thinking, what's

1 your opinion, what's your financial professional  
2 opinion.

3 MR. FREDERICK CHENOWETH: All right.  
4 And did -- did this -- Ms. Leonard make any  
5 suggestions as to what she might do with respect to  
6 David's email to you?

7 MR. ED HOUGHTON: She -- she said,  
8 I'll -- I'll send an email out to the group, which she  
9 did. Again, at this point in time, we were working as  
10 a team. We were working extremely well.

11 MR. FREDERICK CHENOWETH: Thank you.  
12 Could we pull up paragraph 403 of the Foundation  
13 Document, please?

14

15 (BRIEF PAUSE)

16

17 MR. FREDERICK CHENOWETH: I take it  
18 that this paragraph encapsulates the nature of the  
19 email that was mailed by Marjory Leonard to Dave  
20 McNalty at 8:27 on that evening?

21 MR. ED HOUGHTON: That's correct.

22 MR. FREDERICK CHENOWETH: All right.  
23 And you told us the conversation you had with Marjory  
24 Leonard on that evening and the opinions she expressed  
25 to you.



1                   Is -- is this email at all divergent  
2 from the opinion that she expressed to you on that  
3 evening?

4                   MR. ED HOUGHTON:    Yeah.  I mean, this  
5 is not just her opinion.  When we had the  
6 conversation, we were both in agreement that we felt  
7 that -- that we had gone through this.

8                   There was a further discussion the next  
9 day which was more -- more robust than this, but this  
10 was -- this was the conversation we had.

11                  MR. FREDERICK CHENOWETH:   Now, I  
12 understand that Mr. McNalty sent out a further draft  
13 of the staff report later that evening, in fact,  
14 pretty late that evening, about 11:44:31 on that  
15 evening?

16                  MR. ED HOUGHTON:    That's correct.

17                  MR. FREDERICK CHENOWETH:   Are you able  
18 to advise whether there was any reference in that  
19 report to the -- to the -- to an RFP at this time?

20                  MR. ED HOUGHTON:    I believe that's  
21 when the -- the mention of RFP was removed from the  
22 document.

23

24

(BRIEF PAUSE)

25

1 MR. FREDERICK CHENOWETH: Now, I have  
2 a sense that you forwarded out a further copy of the  
3 report at 7:34 the next morning?

4 MR. ED HOUGHTON: I had -- yes, I had  
5 gone to the office early in the morning, looked at it.  
6 And I just made -- made a few wording ones, like, the  
7 -- the Sprung material was called architectural  
8 membrane.

9 I just -- I put in those words. I wa -  
10 - I was trying to make it accurate to what it was, not  
11 trying to narrow down anything.

12 MR. FREDERICK CHENOWETH: Did you make  
13 any other changes to the document at 7:34 that morning  
14 --

15 MR. ED HOUGHTON: Yeah.

16 MR. FREDERICK CHENOWETH: -- that had  
17 not been in Mr. McNalty's email of quarter to midnight  
18 on the previous evening?

19 MR. ED HOUGHTON: Yes. I pulled out -  
20 - I pulled out the numbers and put them into, like, a  
21 line item, as an example. The -- the pool was 3.225  
22 million, plus two hundred thousand dollars (\$200,000),  
23 so I -- so I pulled those out and put it in.

24 And then --

25 MR. FREDERICK CHENOWETH: I'm -- I'm

1 not con -- entirely following you.

2 MR. ED HOUGHTON: Sorry.

3 MR. FREDERICK CHENOWETH: Can you tell  
4 me what you pulled out and --

5 MR. ED HOUGHTON: Sorry.

6 MR. FREDERICK CHENOWETH: -- what you  
7 put in?

8 MR. ED HOUGHTON: The -- the -- yes, I  
9 wasn't very clear. The -- I was trying to give you an  
10 example. The -- the pool was 3.225 million, or  
11 whatever it was, and two hundred thousand dollars  
12 (\$200,000) for site works.

13 I put a separate line item, even though  
14 those numbers were still in the body of the -- of the  
15 report, I did a separate line item that was very  
16 clear, so if Cou -- when Council look at it, because  
17 not all of them read every word, it -- it would show  
18 3.225, two hundred thousand dollars (\$200,000).

19 That was the -- the portion for that.

20 MR. FREDERICK CHENOWETH: So, you took  
21 it out of the paragraph and put it in a -- in a  
22 separate subparagraph. Is that right?

23 MR. ED HOUGHTON: Yeah. I -- I left  
24 it in the paragraph but pulled -- and used those  
25 numbers and made it more clear, which is unlike what

1 I'm trying to say right now.

2 MR. FREDERICK CHENOWETH: All right.

3 And I understand that Ms. Leonard called a meeting for  
4 the EMC for 8:30 the next morning?

5 MR. ED HOUGHTON: That's correct.

6 MR. FREDERICK CHENOWETH: All right.

7 And -- and can you tell me who was in attendance at  
8 that meeting?

9 MR. ED HOUGHTON: Marjory -- Ms.  
10 Leonard, Ms. Almas, Mr. Irwin, myself, and Mr.  
11 McNalty.

12 MR. FREDERICK CHENOWETH: And we've  
13 heard from Ms. Almas and Ms. Leonard with respect to  
14 that meeting.

15 Can you tell me, was there any  
16 discussions? What was it -- what was, first of all,  
17 the purpose of that meeting as you understood it?

18 MR. ED HOUGHTON: Well, I think what  
19 we were trying to do is -- was, as Marjory said,  
20 gather the troops, make sure that the report is -- is  
21 full. We know where we're going, have a discussion  
22 about it, flush out any -- any thoughts or comments.

23 MR. FREDERICK CHENOWETH: And do you  
24 have any memory of the matters that were discussed at  
25 the meeting on the morning of the 24th?

1 MR. ED HOUGHTON: Yes. The report  
2 still didn't have a -- did not have a recommendation  
3 or a resolution in it, and so Sara, as the Clerk, said  
4 I will -- I will take a cut at that.

5 We talked about the procurement  
6 section. We needed to do something from the  
7 procurement section. Marjory said she would take a  
8 cut at that.

9 There was discussion about the numbers,  
10 and Dave was explaining to us about how he derived at  
11 the numbers, and -- and we talked about the fact that  
12 his number -- his last number that he had was 12.3  
13 million, and there was -- there was still some  
14 confusion because I had not -- had not looked at this  
15 -- the -- the numbers that he had been putting  
16 together very clearly, or very -- at any length.

17 And we talked about a couple of items  
18 and we -- and he said that, you know, I've -- I've --  
19 I've kind of tried to anticipate a dollar amount -- we  
20 can hopefully talk about this later -- but a dollar  
21 amount that we can -- for a -- green energy products  
22 that -- technology that will help make a little bit  
23 more of a comparison of what the enclosure gives in  
24 points compared to what a -- a standard steel  
25 fabricated building would give in points, and he

1 explained that and he was using numbers there.

2                   And we agreed that because we were  
3 making an assumption, that it made sense to give a  
4 range. So we decided that -- I believe that the  
5 energy products were about a million and change, and  
6 there was also a little bit of a discussion about what  
7 does site works mean. They were a million one sixty-  
8 four. So we gave the range of 1.2 million. So it was  
9 from 11.1 to 12.3.

10                   MR. FREDERICK CHENOWETH: All right.  
11 Did Mr. McNalty come with numbers to that meeting at  
12 8:30 on that morning?

13                   MR. ED HOUGHTON: He had his file with  
14 him, yes.

15                   MR. FREDERICK CHENOWETH: And was  
16 there a consensus developed as to what the numbers  
17 might be that would go into the report?

18                   MR. ED HOUGHTON: Well, again, David,  
19 in his experience, had -- had determined what he felt  
20 was the appropriate thing, the numbers, and again I'd  
21 like to talk about those, but he -- he -- in his  
22 experience he had put the numbers down. We had the  
23 conversation, we felt more comfortable putting a range  
24 in so that we weren't overstating, so 11.1 to 12.3.

25                   MR. FREDERICK CHENOWETH: And those

1 were the discussions about numbers had on that  
2 morning?

3 MR. ED HOUGHTON: That's correct.

4 MR. FREDERICK CHENOWETH: Thank you.  
5 We'll come back to the numbers in a more detailed  
6 fashion in a moment.

7 And could you tell me, how long was  
8 that 8:30 meeting?

9 MR. ED HOUGHTON: I would expect it  
10 must -- it must have went almost ten o'clock, but it  
11 was a fulsome discussion. Consensus was arrived at.  
12 And so everybody -- everybody was kind of taking their  
13 own little stab at it.

14 Sara was going to do the resolutions,  
15 Marjory was going to do the -- the procurement. I  
16 said I'll take a cut at it, to take -- like, what I  
17 typically do with a -- a -- one (1) of the staff  
18 reports from Public Works, a last -- make a -- a last  
19 cut at it and make it readable. I don't mean readable  
20 in the sense -- make it understandable for those less  
21 technical.

22 MR. FREDERICK CHENOWETH: Can we look  
23 at paragraph 413 of the Foundation Document, please?

24

25

(BRIEF PAUSE)

1 MR. FREDERICK CHENOWETH: And this  
2 appears to be procurement section, as it's described  
3 in the email that Marjory Leonard sent to Dave McNalty  
4 and to the EMC at about 10:46 on that morning.

5 And did you receive this email?

6 MR. ED HOUGHTON: I did.

7 MR. FREDERICK CHENOWETH: And I take  
8 it -- this reflect the consensus that was achieved  
9 with respect to procurement in the 8:30 meeting on  
10 that morning?

11 MR. ED HOUGHTON: Yes.

12 MR. FREDERICK CHENOWETH: Thank you.  
13 And it looks like you did a further copy of the report  
14 at about 12:05 on that day and send it out to the --  
15 to the people who'd been at that meeting on that  
16 morning?

17 MR. ED HOUGHTON: Yes, but this was  
18 actually -- Dave McNalty took a look at this and made  
19 I think a revision to the first paragraph and the last  
20 paragraph as well.

21 MR. FREDERICK CHENOWETH: Can we --  
22 can we have a look at that Dave McNalty revision,  
23 which is at TOC0204100?

24

25

(BRIEF PAUSE)



1 MR. FREDERICK CHENOWETH: Go down in  
2 that email, if you would, please. Thank you. Thanks  
3 very much.

4 This is Friday, August 24th, at 11:46,  
5 sent to Houghton and Leonard and Almas and Irwin, by  
6 McNalty. And what changes, if any, is Mr. McNalty  
7 suggesting with respect to the procurement section?

8 MR. ED HOUGHTON: To give you rhyme  
9 and verse, I couldn't do that, but I know that he made  
10 changes in the first and the last paragraphs. I -- I  
11 asked him if -- if this was -- was revised, because it  
12 was Marjory's doing and I didn't -- I was  
13 uncomfortable that -- that we would make much of a  
14 revision if -- because I didn't want it to not be her  
15 -- her thought process.

16 I know that -- I think he just made mi  
17 -- minimal changes. I think he talked about supply  
18 and construction of -- in the first paragraph, and I  
19 forget what's even in the last paragraph.

20 MR. FREDERICK CHENOWETH: All right.  
21 And can you tell me, was it this revised version that  
22 found its way into the amended draft which you did at  
23 12:05 on that day?

24 MR. ED HOUGHTON: That's correct. I  
25 just cut and pasted straight into the document.

1 MR. FREDERICK CHENOWETH: Thank you.

2 And could we turn, if we could, please, to document  
3 number TOC0204140?

4

5 (BRIEF PAUSE)

6

7 MR. FREDERICK CHENOWETH: And go down  
8 a little further, if you would, please, to the Sara  
9 Almas email. Thank you.

10 It appears that Sara Almas sends out an  
11 email at 11:21 a.m. on that morning. And what do you  
12 understand that Ms. Almas is sending out at that time?

13 MR. ED HOUGHTON: This was her draft  
14 of the -- the resolution and recommendation that she  
15 put and sent it to the -- to all of the EMC, Mr.  
16 McNalty, and she actually copied the Deputy Mayor at  
17 this point in time.

18 MR. FREDERICK CHENOWETH: And I note  
19 that under the two (2) "And further that's," that she  
20 makes reference to Sprung insulated architectural  
21 membrane.

22 MR. ED HOUGHTON: That's correct.  
23 Sprung is in -- is in both these paragraphs, that's  
24 correct.

25 MR. FREDERICK CHENOWETH: And I

1 understand that -- could we look for a moment at  
2 TOC0204156?

3

4 (BRIEF PAUSE)

5

6 MR. FREDERICK CHENOWETH: And I may  
7 have the -- the wrong document number. Could we --

8 MR. ED HOUGHTON: No. This is it.

9 MR. FREDERICK CHENOWETH: -- make that  
10 --

11 MR. ED HOUGHTON: This is it.

12 MR. FREDERICK CHENOWETH: Okay, thank  
13 you. Go down to the bottom of that.

14 Tell me, this appears to be with  
15 respect to an email from Dave McNalty at 12:02 on that  
16 day, and he's writing the EMC and other staff members,  
17 and the title is "Suggested modifications to the  
18 recommendations for the EMC."

19 And what was David doing at this time?

20 MR. ED HOUGHTON: I -- I actually see  
21 now what he's done. I didn't -- I don't think I -- I  
22 grasped it -- grasped it at the time, but he took out  
23 the word "Sprung."

24 MR. FREDERICK CHENOWETH: Yes.

25 MR. ED HOUGHTON: And he also put in

1 the architectural membrane, because I think we had a  
2 discussion that morning, was -- that was kind of what  
3 -- what the thing was called, insulated architectural  
4 membrane.

5 MR. FREDERICK CHENOWETH: Are those  
6 the words that appeared in the final form of the  
7 report that you sent out at 12:05?

8 MR. ED HOUGHTON: That's correct.  
9 Originally I did it, I believe, for the pool part, and  
10 then we -- in the second -- and in the next draft I  
11 did it for the -- the arena part as well.

12 In this -- and -- so then -- so Dave  
13 sent this out to Sara, Ms. Leonard, myself, and Deputy  
14 Mayor Lloyd and Larry.

15 MR. FREDERICK CHENOWETH: And can we  
16 scroll up and see if we get a response from Ms. Almas?

17

18 (BRIEF PAUSE)

19

20 MR. FREDERICK CHENOWETH: And I take  
21 it we do. And Ms. Almas indicates, "Good to me."

22 MR. ED HOUGHTON: Yes, "Good to me."  
23 Happy face. And copies Mayor Cooper.

24 MR. FREDERICK CHENOWETH: Thank you.  
25 So it appears that not only Rick Lloyd but Mayor

1 Cooper are copied on these -- on these procurement  
2 sections and the recommendation sections on the 24th  
3 in or about noon on that day, correct?

4 MR. ED HOUGHTON: Certainly on the  
5 recommendations, yes.

6 MR. FREDERICK CHENOWETH: All right.  
7 And can you tell me the form of document that you put  
8 out at 12:05 on that day -- tell me whether or not the  
9 recommendations as set out in Ms. Almas' document and  
10 amended by McNalty -- tell me whether or not they did  
11 or did not find their way into the 12:05 document that  
12 you prepared.

13 MR. ED HOUGHTON: I believe I would  
14 have just cut and paste and put that into the  
15 document, yes.

16 MR. FREDERICK CHENOWETH: And the --  
17 the document that -- that was prepared at this  
18 juncture, can you tell me -- there's a set of numbers  
19 in that document. And can you tell me where you got  
20 the numbers that went into that -- into that document?

21 MR. ED HOUGHTON: All of the numbers -  
22 - the numbers for the pool and the arena came from the  
23 -- the BLT budget that we received. The two hundred  
24 (200) and the \$500,000 were numbers that were derived  
25 by discussions with Brian MacDonald, Dave McNalty,

1 myself, and then the Deputy Mayor.

2                   The -- the prefabricated steel  
3 building, those numbers were Dave McNalty's cut at  
4 using some of the budget numbers from Sprung/BLT and  
5 from WGD.

6                   MR. FREDERICK CHENOWETH:     Could we  
7 look at document TOC0204147?

8                   THE HONOURABLE FRANK MARROCCO:     You --  
9 you can go ahead if you want, Mr. McDowell.

10                   MR. WILLIAM MCDOWELL:     Thanks,  
11 Commissioner. I'll find a member of your staff to let  
12 me back in.

13                   THE HONOURABLE FRANK MARROCCO:     Yeah.

14                   MR. WILLIAM MCDOWELL:     Thanks.

15

16   (BRIEF PAUSE)

17

18                   MR. FREDERICK CHENOWETH:     Could you  
19 scroll down so we can see the recommendation section,  
20 please? Thanks very much.

21   Is this the recommendation section that  
22 was put out by Sara Almas and recommended -- I'm  
23 sorry, and amended by Dave McNalty?

24                   MR. ED HOUGHTON:     Yes, it is.

25                   MR. FREDERICK CHENOWETH:     Thank you.

1 Could we look at page 3 of that report, if we could?

2

3

(BRIEF PAUSE)

4

5 MR. FREDERICK CHENOWETH: I notice  
6 that there are some -- some numbers in this report.  
7 And I'm looking at the third paragraph down on this  
8 particular snap of the report.

9 And there's a number with respect to  
10 the construction of the insulated architectural  
11 membrane to cover the outdoor pool and it's -- the  
12 number that's indicated there is an amount of three  
13 million two hundred and twenty-five thousand dollars  
14 (\$3,225,000).

15 And can you tell me where did that  
16 number come from?

17 MR. ED HOUGHTON: That's the number  
18 that came from the BLT/Sprung budgets.

19 MR. FREDERICK CHENOWETH: And was that  
20 number discussed at the meeting at 8:30 on that  
21 morning?

22 MR. ED HOUGHTON: Yes. I would  
23 believe that this was probably in the previous  
24 documents, but yes.

25 MR. FREDERICK CHENOWETH: Thank you.

1 And go down a little further if you would, please.

2 And we've got total enclosure -- total pool enclosure  
3 costs of three million two hundred and twenty-five  
4 thousand dollars (\$3,225,000), and a site servicing  
5 allowance of two hundred thousand dollars (\$200,000).

6 Can you tell me your memory of -- of  
7 how that site servicing allowance was arrived at?

8 MR. ED HOUGHTON: I think when Brian  
9 and -- and David were originally talking about -- and  
10 myself were originally talking about the site  
11 servicing for both locations, we had them slightly  
12 higher. Not a lot higher. Maybe this might have been  
13 three hundred thousand dollars (\$300,000), and the  
14 other one might have been, you know, six (6) or seven  
15 hundred thousand dollars (\$700,000), versus five  
16 hundred thousand dollars (\$500,000).

17 In a conversation -- and again, at this  
18 point, now -- now the deputy mayor is -- is now chair  
19 of public works. In our conversations, you know, and  
20 -- and he's got a significant of amount of experience  
21 in land -- not landscaping, but these kinds of  
22 infrastructure projects.

23 He felt that if we are using our own  
24 for -- forces, our own staff, we'd be able to do this.  
25 And you'll note that I put in here, Same for all



1 options, because I was thinking that -- that would be  
2 the same for the prefabricated steel building, in one  
3 sense. There'd be that -- that same option.

4                   Because again, I wasn't -- that -- I --  
5 I wasn't -- at that point, was not familiar with all  
6 of the -- the line items that David had put together.  
7 I see what he's done today. I've spent a lot of time  
8 looking at it, but this is what I did at this point in  
9 time.

10                   MR. FREDERICK CHENOWETH: Thank you.  
11 And if we go to the next page, please, and down to  
12 what I believe to be the fourth paragraph on that  
13 page.

14                   Again, there's a -- a series of  
15 numbers. And estimated costs for the supply and  
16 construction of the basic insulated architectural  
17 membrane arena. You've got a number of 7 million and  
18 change, as compared to eleven-one and twelve-three  
19 with respect to the steel structure.

20                   And again, you've indicated there was  
21 some discussion about those numbers, and that range at  
22 the meeting of 8:30 on that particular morning with  
23 the EMC and others?

24                   MR. ED HOUGHTON: That's correct, and  
25 I put in that, Estimates provided by WGD, because I

1 was -- again, my impression at the time, not -- not  
2 having full understanding of what WGD was doing, but I  
3 thought that -- that's where these numbers were coming  
4 from. Whether -- again, David added the numbers that  
5 were, you know, to -- to get it to that LEED silver,  
6 but I -- I put that in there.

7 MR. FREDERICK CHENOWETH: Thank you.

8 And the numbers that were spoken of, are those numbers  
9 that -- that were spoken of at the 8:30 --

10 MR. ED HOUGHTON: That's correct.

11 MR. FREDERICK CHENOWETH: -- on that  
12 morning?

13 MR. ED HOUGHTON: Sorry, I -- yes,  
14 that's correct.

15 MR. FREDERICK CHENOWETH: Thank you.  
16 And I notice a -- a final sentence in that paragraph.  
17 The cost of the second-floor improvements within the  
18 architectural membrane area is included in the above  
19 estimate, whereas a similar addition to the pre-eng  
20 steel arena would add up to \$1 million -- would add  
21 about \$1 million to the investment.

22 Can you tell me what's your  
23 understanding, having looked at this documentation, as  
24 to how that sentence -- it could be argued as somewhat  
25 confusing -- got into the report and into this

1 paragraph?

2 MR. ED HOUGHTON: I -- I believe that  
3 what had happened, through the different iterations of  
4 the -- of the trying to determine what the costs are,  
5 David had determined that -- that a mezzanine in the -  
6 - in the steel fabricated building would be about nine  
7 hundred and ninety-five thousand dollars (\$995,000).

8 So he had just put up the line item, at  
9 the million dollars. And it -- and where it talks  
10 about as compared to eleven point one (11.1) to twelve  
11 point three (12.3), that would have been a different  
12 number. So this -- this last part of this sentence  
13 should have -- should have either been removed, or it  
14 should have said that the cost of second-floor  
15 improvements are -- are included in both estimates.

16 MR. FREDERICK CHENOWETH: Are you able  
17 to -- do you know whether in the -- this -- was this  
18 at all blacklined in the previous Dave McNalty  
19 document that was sent to you at 11:44 in the evening  
20 of the 23rd?

21 MR. ED HOUGHTON: All the other -- all  
22 the other -- the beg -- at the beginning, the -- the  
23 documents, the staff reports were all tracked. I -- I  
24 believe that when Dave did the different -- the  
25 different format, the, you know, sort of same

1 information, he -- he stopped tracking at that point  
2 in time.

3                   And typically when I receive it, the  
4 tracking -- I -- I would either see the tracking or  
5 not see the tracking. I -- I didn't even think  
6 anything of it. I -- I was making the additions and -  
7 - and I should have rem -- I should have removed that  
8 line.

9                   MR. FREDERICK CHENOWETH: Thank you.  
10 Now, I notice under the next paragraph, if you'd pull  
11 up the next paragraph on the document, please. Thank  
12 you.

13                   I notice there is an allowance of five  
14 hundred dollars (\$500) with respect to site servicing  
15 for the arena. And can you tell me whether that  
16 number was discussed in the meeting at 8:30 on that  
17 morning?

18                   MR. ED HOUGHTON: Yes. We -- we -- at  
19 this point in time, we'd already -- at the 8:30  
20 meeting, we'd already determined that there was two  
21 hundred thousand (200,000) and five hundred thousand  
22 (500,000). But this is a number that we had been  
23 talking about.

24                   MR. FREDERICK CHENOWETH: I take it  
25 that's the number you used in this report that you

1 sent out at 12:05?

2 MR. ED HOUGHTON: That's correct. I  
3 don't know whether I added it, but it was -- if -- or  
4 -- if -- or if it was already there, but yes, that's  
5 the number.

6 MR. FREDERICK CHENOWETH: Thank you.  
7 And going over the next page, I see there are again  
8 some further numbers. And the accessories are  
9 indicated there. And was that a number that was  
10 discussed or known at the meeting at 8:30 on that  
11 morning?

12 MR. ED HOUGHTON: The seven three nine  
13 two (7,392) number was the known number. The seven  
14 four seven six (7,476) number, I don't know where that  
15 came from. It should be seven three nine two (7,392),  
16 it's -- so it's overstated by eighty-some thousand  
17 dollars (\$80,000).

18 The accessories are the -- a hundred  
19 percent of the accessories, save and except for the  
20 electric Zamboni, at three hundred and sixteen  
21 thousand (316,000), and again, the site servicing,  
22 which I was saying for small -- same for all options,  
23 is there at five hundred thousand (500,000).

24 MR. FREDERICK CHENOWETH: And if we  
25 look further down, I see there is some -- some

1 comments with respect to the Eddie Bush Memorial  
2 arena.

3 Had these -- had some thoughts with  
4 respect to Eddie Bush been requested by Council when  
5 they put you to this task on July 16th?

6 MR. ED HOUGHTON: In -- in Council's  
7 direction to us, there was no mention of Eddie Bush.  
8 The only thing that was sort of -- this project was  
9 hinging on was the fact that if we were to get -- once  
10 we got this project completed, if there was the  
11 ability to finance the Eddie Bush and -- and put it  
12 into the -- the shape it is today, then that arena,  
13 the -- the second ice arena at Central Park, would be  
14 able to allow Eddie Bush to be taken out of operation  
15 to do the -- the repairs.

16 But there was no direction on Council  
17 to -- to provide any information for Eddie Bush at  
18 that -- at the July 16th meeting. But -- but staff  
19 wanted to have this in there, and so I was -- I was  
20 comfortable to do that.

21 MR. FREDERICK CHENOWETH: If we look  
22 under the discussion section, please.

23

24

(BRIEF PAUSE)

25

1 MR. FREDERICK CHENOWETH: And go down  
2 a little further, so we can see the whole section.

3 Thank you. And go back to the top of  
4 it again. Thank you very much.

5 Can you tell me, does this -- does this  
6 section that exists in this copy of the report, is  
7 that in keeping with paragraph 413 that was circulated  
8 by Marjory Leonard and amended by Dave McNalty?

9 MR. ED HOUGHTON: Correct.

10 MR. FREDERICK CHENOWETH: Go down  
11 further to the department head section, please.

12

13 (BRIEF PAUSE)

14

15 MR. FREDERICK CHENOWETH: Now, the  
16 report seems to say that report was circulated to  
17 department heads for comment on August 23rd.

18 Did that, in fact, take place?

19 MR. ED HOUGHTON: Not fully, no.

20 MR. FREDERICK CHENOWETH: All right.  
21 And I take it that's because the reports weren't  
22 prepared fully by the August 23rd date?

23 MR. ED HOUGHTON: We -- we were  
24 scrambling to meet the -- the August 27th date, and  
25 this section, I -- I would expect, was kind of like a

1 -- it's been cut and paste since the original  
2 iterations kind of thing and it never got changed.

3 MR. FREDERICK CHENOWETH: All right.

4 It was a -- over the period, be a bit of a boilerplate  
5 section that had appeared in all copies of the report?

6 MR. ED HOUGHTON: That's correct.

7 MR. FREDERICK CHENOWETH: Now, I have  
8 a sense that -- you did these -- you did these  
9 amendments at 12:05 on that morning, did you?

10 MR. ED HOUGHTON: I did, yes.

11 MR. FREDERICK CHENOWETH: All right.

12 And I have a sense that you sent them out to the EMC  
13 and to members of staff with an email, TOC0204146.

14 Could we pull up that document, please?

15

16 (BRIEF PAUSE)

17

18 MR. FREDERICK CHENOWETH: Is this the  
19 email that you sent to staff at 12:05 on that morning?

20 MR. ED HOUGHTON: Yes, it is.

21 MR. FREDERICK CHENOWETH: And I -- I  
22 see you say here:

23 "Hey gang, please take a look and  
24 adopt (sic) if needed."

25 MR. ED HOUGHTON: Adapt.



1 MR. FREDERICK CHENOWETH:

2 "Adapt if needed. Call my cell if  
3 you need me."

4 And you were proffering an invitation  
5 for -- I take it, for any comment or required  
6 amendment with respect to the document you did --  
7 you'd done at 12:05?

8 MR. ED HOUGHTON: Yeah. I was hoping  
9 that they would -- like again I was -- I said I will  
10 cut and paste and put those things in. I sent it to  
11 everybody. It's kind of what happens when you --  
12 there's a number of people trying to put a staff  
13 report together.

14 There's -- there's -- there's errors  
15 that were made and that's the -- we overstated on the  
16 arena for the Sprung. We made a mistake on the -- the  
17 mezzanine for the steel fabricated. We should have  
18 caught those.

19 MR. FREDERICK CHENOWETH: Could we  
20 look at document TOC0202991?

21

22 (BRIEF PAUSE)

23

24 MR. FREDERICK CHENOWETH: Are you  
25 familiar with this document?

1 MR. ED HOUGHTON: Yes, I am.

2 MR. FREDERICK CHENOWETH: And can you  
3 tell me -- can we maybe move up so we can see a little  
4 more of the document, if we could, please?

5 And can you tell me what this document  
6 represents?

7 MR. ED HOUGHTON: This is the -- the  
8 budget that we received from Sprung/BLT for the -- the  
9 outdoor pool.

10 MR. FREDERICK CHENOWETH: All right.  
11 And were the numbers in this document in keeping with  
12 the numbers that were placed in the staff report at  
13 12:05 on the 24th?

14 MR. ED HOUGHTON: Yeah. If we scroll  
15 down, I believe it'll show the -- the number of 3.225,  
16 I believe, on page 5 or something like that. Maybe 6.

17 Yeah. There's a -- there's the number,  
18 3.225, and then there is \$508,000 worth of options  
19 which was -- at first blush, we thought that was for  
20 the mezzanine, but then we realized that there was  
21 some items in there like grass and emergency lighting  
22 and drywall for the first floor and a couple other  
23 items in there that are required to be in this item,  
24 which I think equated to about 37 or \$38,000.

25 MR. FREDERICK CHENOWETH: So it

1 reduced the -- that number in the report?

2 MR. ED HOUGHTON: It increased the  
3 three two two five, up -- thirty -- thirty some  
4 thousand dollars, so it was \$35,000. It should be  
5 three two six.

6 MR. FREDERICK CHENOWETH: All right.  
7 Thank you. Could you take a moment to look at  
8 document TOC0218803?

9

10 (BRIEF PAUSE)

11

12 MR. FREDERICK CHENOWETH: Do you know  
13 what this document is?

14 MR. ED HOUGHTON: This is a document  
15 that Dave -- Dave had been using or -- in -- I guess  
16 he had several revisions. I think this -- this  
17 document was where the \$12.3 million came from.

18 MR. FREDERICK CHENOWETH: All right.  
19 It seems to have two (2) pages. Is that correct?

20 MR. ED HOUGHTON: Yes. The second  
21 page is the mezzanine costs.

22 MR. FREDERICK CHENOWETH: Thank you.  
23 And can you tell me whether this or a similar document  
24 would have been at the meeting on the 24th at 8:30 on  
25 that morning?

1 MR. ED HOUGHTON: Yes. That's where I  
2 would have got the 12.3 to put into the budget.

3 MR. FREDERICK CHENOWETH: And again,  
4 that was discussed at the time of that meeting, was  
5 it?

6 MR. ED HOUGHTON: That's correct.

7 MR. FREDERICK CHENOWETH: Thank you.

8 MR. ED HOUGHTON: I was just going to  
9 say, when I look at this and I -- you know, I've heard  
10 the discussion about this and -- and, you know, how --  
11 how Dave -- his -- you know, his budgeting was -- has  
12 been somewhat besmirched in a whole bunch of ways, but  
13 I think that -- I think Dave was trying to do an  
14 honest job of this thing.

15 Where he looked at the 7.6 million,  
16 which was the one (1) line item that we got from --  
17 from WGD. He even -- because I -- and I've reviewed  
18 that document. I can't see where he felt that it  
19 needed to remove the contingencies, the 5 percent and  
20 the 5 percent, but he did that anyway, but it  
21 certainly doesn't show that.

22 And if you look at the -- the Central  
23 Park Committee, it shows a -- one (1) line item like  
24 that for the building and then shows the contingencies  
25 on top of it. But irrespective, he -- he had removed

1 the contingencies.

2                   And even if you look at the -- the --  
3 the costing that -- for the -- the recommended  
4 upgrades, I mean, the green roof would have been  
5 difficult -- the green roof was only going to be for  
6 the flat portion of the -- of the -- basically the  
7 lobby area, but if you look and took just the six  
8 hundred thousand (600,000) for the radiant heating,  
9 and -- and even the building automation of 200 -- and  
10 so he removed -- reduced that 1.15 million down to  
11 800,000 and -- and started using same -- the same kind  
12 of logic.

13                   And I think what Dave was trying to do  
14 was get to the fact that -- that in the WGD report,  
15 they're only talking about R-19 in the ceiling, R-15  
16 in the -- in the walls, and there's -- and it actually  
17 has two (2) different numbers for both the -- the roof  
18 and the walls, so I'm not sure which one he would have  
19 taken, but where -- where the enclosure itself had R-  
20 30 and because of the airtightness, there would've had  
21 to be something that you had used to get the same  
22 numbers, if you're looking just enclosure to just  
23 enclosure, irrespective of what you put within the  
24 building.

25                   And if you could just scroll down a

1 little bit.

2                   If you took that -- and then -- and  
3 then I think -- I think we can -- we can agree that  
4 the second-floor mezzanine was pretty accurate. Even  
5 if it's only 4,500 square feet, at 200, just for round  
6 numbers, that's 900,000. There was \$83,000 alone just  
7 for the elevator.

8                   Now, I heard the question about, well,  
9 wouldn't an elevator not -- elevator would not be an  
10 option. The only reason it was an option was because  
11 the mezzanine was an option, so it was noted in that -  
12 - in that.

13                   But -- and then Dave didn't show any  
14 kind of an upgraded insulation, and -- and if you --  
15 if you think about trying to do a wall that had nine  
16 (9) inches of insulation and it would be pretty  
17 difficult to do. So, I think that's what David was --  
18 was giving an honest effort at doing that.

19                   And even if you scroll down even  
20 further the -- the contingencies that are noted as  
21 design fees, permits and miscellaneous are definitely  
22 in the Sprung BLT numbers. It shows the permits, the  
23 numbers and those things. It shows paying the Town of  
24 Collingwood for the permit fees, et cetera.

25                   But -- so if -- if you -- it's not in

1 this one. You may be able to reduce this down by a  
2 million dollars. So the range is now, if you want to  
3 do the same thing, it's now, you know -- you know,  
4 eleven -- you know, ten and change to twelve -- twelve  
5 -- or to eleven three. It's still significantly  
6 greater than -- than what -- what the Sprung fabric  
7 building was going to be, and I think Dave just really  
8 tried to do an honest effort of trying to -- to  
9 compare apples to apples based on a report from WGD  
10 that -- I've had more -- I've had time to look at it  
11 now. I didn't have time at the -- at the time to look  
12 at it, and didn't really know very much about what WGD  
13 was doing, but it's -- it's -- it's -- it's -- it's  
14 minimal at best.

15 MR. FREDERICK CHENOWETH: Help me  
16 again with respect to the -- go back up, if you would,  
17 please, in that document. Thank you.

18 Help me with respect to the recommended  
19 upgrades. Why was it necessary to -- to consider the  
20 necessity of some upgrades if you were going to do an  
21 apples-to-apples comparison between the Sprung  
22 building and the -- and the engineered building --  
23 pre-engineered building?

24 MR. ED HOUGHTON: Yeah. And I -- and  
25 I -- I need to -- need to start by saying that -- that

1 I didn't have a full appreciation of what David did at  
2 the beginning because even in a later email when I'm  
3 trying to better understand this, when people are  
4 asking the questions, I even say -- I noted that these  
5 things are -- are shown on the -- on the prefabricated  
6 steel, were we intending to do that in the Sprung.

7                   So -- but when I've -- when I've  
8 reviewed this -- again, what we were always told was  
9 the enclosure, by its nature, provided a -- enough  
10 points to start moving towards LEED silver  
11 certification.

12                   We -- even -- even at the staff report  
13 -- or even at the department heads meeting, I said  
14 it's not our intent to certify, it's not our intent to  
15 do anything inside the building, but if you look at  
16 the enclosure, the enclosure of the Sprung facility is  
17 R-30 ceiling and walls because of its nature. It has  
18 -- it's more airtight than -- than regular buildings  
19 because of its nature. Because of the -- the membrane  
20 inside, and its -- its reflective ability, it's  
21 greater than -- like a normal type building.

22                   I think that's why in the Eddie Bush  
23 they've done a similar kind of a membrane in there to  
24 get that reflectiveness.

25                   That -- that -- that the -- the -- the



1 aluminum has -- has a -- a -- a number for it, as I  
2 understand. The fact that in construction, rather  
3 than regular construction, you can get a number for  
4 that.

5                   So we were always told that -- that by  
6 its nature, the enclosure was LEED silver ready  
7 equivalent, being able to be certified.

8                   Dave heard the same things I heard  
9 because he attended -- he actually attended one (1)  
10 more meeting or two (2) more meetings with them than I  
11 did. He heard the same things that I heard, so if he  
12 was trying in his mind to do a apples-to-apples  
13 comparison, he has a number that's given to him in the  
14 WGD report that again shows two (2) different numbers,  
15 R-21 to R-15, R-19 to R-15 for the ceiling and walls.  
16 He felt -- and they said to -- to move towards LEED  
17 silver certification, you may need to consider these.

18                   David took all of them and put them  
19 into this report. He may not have needed to do all of  
20 those, and that's where I was saying let's suggest  
21 just two (2) of them out of those five (5) or six (6)  
22 items.

23                   He was doing his best with the  
24 information he had to try to give us the apples-to-  
25 apples comparison, and he wasn't trying to up it.

1 He's not that kind of person. He would never do that.  
2 He was actually just trying to do the best job he  
3 could.

4 And again, he -- I wouldn't even have  
5 thought about removing the 5 percent contingency for  
6 permits and 5 percent contingency out of the original  
7 7.63, which amounts almost to three-quarters of a  
8 million dollars, or more than three-quarters of a  
9 million dollars, so.

10 MR. FREDERICK CHENOWETH: Do you have  
11 any understanding as to why he removed the 5 percent  
12 contingencies and replaced the contingency numbers  
13 with a higher number?

14 MR. ED HOUGHTON: The only -- the only  
15 --

16 THE HONOURABLE FRANK MARROCCO: Didn't  
17 Mr. McNalty testify concerning why he did that?

18 MR. FREDERICK CHENOWETH: He did, Your  
19 Honour. I'm content to leave it at that if you're --  
20 if you're content with that.

21 THE HONOURABLE FRANK MARROCCO: Does -  
22 - does -- does Mr. Houghton's appreciation for that or  
23 understanding of why he did that, does that matter?

24 MR. FREDERICK CHENOWETH: Your Honour,  
25 I'm prepared to move on and -- and leave it with the

1 evidence we have from Mr. McNalty with respect to why  
2 he made those changes.

3 THE HONOURABLE FRANK MARROCCO: All  
4 right.

5 MR. FREDERICK CHENOWETH: Thank you.

6 THE HONOURABLE FRANK MARROCCO: How  
7 much longer do you think you'll be?

8 MR. FREDERICK CHENOWETH: I'll be a  
9 little while yet, Your Honour.

10 THE HONOURABLE FRANK MARROCCO: Well  
11 then, maybe -- now we've been at this since nine  
12 o'clock. Maybe nine o'clock tomorrow night -- are you  
13 finished with this partic -- do you want to finish  
14 this --

15 MR. FREDERICK CHENOWETH: I'm content  
16 to move to nine o'clock tomorrow morning. I think  
17 that would be an efficient way of doing it.

18 MR. WILLIAM MCDOWELL: Could we --  
19 just a couple points of clarification. One (1), if we  
20 could -- if we're proceeding on Tuesday with Mr.  
21 Bonwick's evidence, I guess we should address that,  
22 but if we're proceeding on Tuesday, I wonder if we  
23 could start at 10:00 because, to be candid, I probably  
24 would like to be in Toronto for election night.

25 THE HONOURABLE FRANK MARROCCO: All

1 right. I was planning -- I was planning to sit on  
2 Monday, but I -- I will -- but I recognize it's  
3 election.

4 I'm willing to give everybody an  
5 opportunity, and I'm prepared to sit at 10:00 on  
6 Tuesday to give everybody a chance to come back, but  
7 while we're doing that, what time do you want to stop  
8 on Monday?

9 MR. WILLIAM MCDOWELL: Well, it -- I  
10 mean, I've already voted, so I'm personally content to  
11 sit whenever we're going to sit and then I'll go down  
12 after the traffic and come back early in the morning,  
13 but --

14 THE HONOURABLE FRANK MARROCCO: Well,  
15 I just --

16 MR. WILLIAM MCDOWELL: -- others may  
17 have a different view.

18 THE HONOURABLE FRANK MARROCCO: -- do  
19 -- do you have a consensus -- why don't we -- why don't  
20 you just talk about this and address it in the morning  
21 when we start? Let me know what -- if you've reached  
22 a consensus about -- about that, when -- when do we  
23 stop on Monday and I'm prepared to start Tuesday at  
24 ten o'clock. So maybe you can just let me know.

25 MR. WILLIAM MCDOWELL: Is it a Council

1 meeting on Monday in any event? So we'd have to stop  
2 --

3 THE HONOURABLE FRANK MARROCCO: the  
4 Council meeting is probably Tuesday, isn't it?

5 MS. KATE MCGRANN: It's on Tuesday.

6 MR. WILLIAM MCDOWELL: It's on  
7 Tuesday, okay.

8 THE HONOURABLE FRANK MARROCCO:  
9 Because of election day. So, all right -- so let me  
10 know in the morning.

11 Mr. Houghton, I'm -- I think it's  
12 probably a good time to stop for the -- for the day  
13 unless there's -- that's -- everybody's okay with  
14 that.

15 MR. FREDERICK CHENOWETH: I'm content.  
16 Are we talking about nine o'clock tomorrow morning?  
17 Is that what I understood from your earlier remarks?

18 THE HONOURABLE FRANK MARROCCO: I'd  
19 like to start -- I'd like to start at 9:00, subject to  
20 hearing from the organized --

21 MR. WILLIAM MCDOWELL: No, that's --  
22 that's fine with the membership, but the remaining  
23 question, I just may have missed it, is whether Mr.  
24 Bonwick re-arranged things so he could be here on  
25 Tuesday.

1 THE HONOURABLE FRANK MARROCCO: Ah,  
2 yes. Well, you -- you mean in the event --

3 MR. JOHN MATHER: Mr. Bonwick has  
4 advised that he's been able to make arrangements.

5 MR. WILLIAM MCDOWELL: Okay. I -- I  
6 had missed that.

7 THE HONOURABLE FRANK MARROCCO: Oh.  
8 Oh, thank you very much for doing that, Mr. Bonwick.  
9 And we will stick -- you won't have to do that twice.

10 MR. PAUL BONWICK: It's the following  
11 week, so I'm good that week.

12 THE HONOURABLE FRANK MARROCCO: All  
13 right, good. Tomorrow, nine o'clock.

14 MR. FREDERICK CHENOWETH: Thank you,  
15 Your Honour.

16  
17 --- Upon adjourning at 5:00 p.m.

18  
19 Certified Correct,

20  
21 \_\_\_\_\_  
22 Wendy Woodworth, Ms.

23  
24  
25

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