

1
2 COUNCIL OF THE CITY OF PHILADELPHIA
3 PUBLIC HEARING BEFORE THE COUNCIL COMMITTEE ON
4 PARKS, RECREATION, AND CULTURAL AFFAIRS

5 - - -
6 Room 400, City Hall
7 Philadelphia, Pennsylvania
8 Tuesday, 12/18/01
9 3:02 p.m.
10 - - -

11 Continued hearing regarding:

12
13 RES. NO. 010533 - Re NeXturf procurement
14
15
16

17 COUNCILMEMBERS PRESENT:

18 Blondell Reynolds Brown, Chair
19 Frank Rizzo
20 Michael A. Nutter
21

22 - - -

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2 COUNCILWOMAN REYNOLDS BROWN: Good
3 afternoon, good afternoon. Welcome. This is the
4 meeting of the Committee on Parks, Recreation and
5 Cultural Affairs of the Philadelphia City Council,
6 and we are here to have a continuation of a hearing
7 on Resolution No. 010533, and we are going to try to
8 honor your clock and proceed immediately to the
9 first panel.

10 It goes without saying that this
11 resolution was introduced by my colleague
12 Councilman-at-large Frank Rizzo, and we're going to
13 ask that the following individuals please come
14 forward, and please -- if I butcher your last name,
15 my apologies.

16 Anthony Radwanski, Deputy Controller,
17 please come forward.

18 Michael Egan, Auditor Administrator,
19 please come forward.

20 Ashfaq Ahmad, Staff Engineer, please come
21 forward.

22 (Witnesses come forward.)

23 COUNCILWOMAN REYNOLDS BROWN: Welcome,
24 gentlemen. We want to ask that you please state
25 your full name for the record, the position and the

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2 office you represent, and proceed with your
3 testimony.

4 MR. RADWANSKI: Good afternoon, Madam
5 Chairperson and members of the Committee. I am Tony
6 Radwanski, Deputy City Controller. With me is
7 Michael Egan, Audit Administrator from the
8 Controller's Office, as you said; and also Ashfaq
9 Ahmad, our staff engineer. We're here at the
10 direction of City Controller Saidel to discuss the
11 installation and procurement of the playing field at
12 Veterans Stadium.

13 As you recall, the new playing fields
14 manufactured by Southwest Recreational Industries
15 Incorporated of Leander, Texas. This product is
16 known as "NeXturf." The turf that had existed at
17 Veterans Stadium prior to this year was known as
18 "Astroturf8," which was also manufactured by the
19 same company. It had been installed in 1995 and was
20 in the fifth year of an eight-year life. It also
21 had come under intense criticism by the athletes who
22 played on it as well as from commentators and others
23 in the sports community; some considered it the
24 worst playing field in professional sports.

25 NeXturf was installed at the stadium

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2 starting in January of this year, and the City
3 signed a certificate of substantial completion on
4 April 5th, one day before the Phillies home opener.
5 A controversy arose when a televised pre-season
6 football game between the Eagles and Baltimore
7 Ravens was forced to be cancelled on the night of
8 August 13th due to bad field conditions -- chiefly
9 spongy turf around the baseball cutouts following
10 rain.

11 The day after this cancellation,
12 Controller Saidel directed we begin an inquiry to
13 attempt to determine whether the use of the
14 sole-source bid process was justified in the
15 procurement of NeXturf, whether the product
16 installed at Veterans Stadium met the specifications
17 set forth in the installation contract, and whether
18 or not the cost of correcting the conditions giving
19 rise to the August 13th game cancellation should be
20 borne by the taxpayers or billed to the product
21 manufacturer.

22 We immediately began work monitoring the
23 events at the Vet where representatives of the City,
24 Ewing Cole Cherry Brott, the City's architectural
25 firm, Southwest Recreational Industries, and the

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2 sports teams were trying to devise a solution to the
3 problem. After our first attempt was found
4 unsuccessful, the City attempted to fill the cutouts
5 in with asphalt, a procedure that stadium staff
6 perform at the end of each baseball season. The
7 parties agreed, and the City, at its own expense,
8 installed and removed the asphalt for the next three
9 games, when a baseball-to-football conversion had to
10 be made. Unfortunately, the Phillies never made it
11 to the playoffs so the other conversions were found
12 to be unnecessary.

13 I'd like to provide the committee with a
14 brief summary -- as brief as possible -- of the six
15 major findings and eleven recommendations in our
16 report.

17 The Recreation Department, which has
18 responsibility for Veterans Stadium, had previously
19 retained the architectural firm of Ewing Cole Cherry
20 Brott to do an assessment of the stadium's capital
21 needs, including the playing surface. When the
22 decision was made to move ahead with the surface
23 replacement, Ewing Cole was asked to do product
24 evaluations, prepare bid documents, and oversee the
25 surface installation. It was at this point that the

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2 Mayor's Office requested that the City's Capital
3 Program Office assume administration for the turf
4 project and the contracts pertaining to it.

5 From mid-August to mid-October, a period
6 of only two months, Ewing Cole investigated various
7 turf products, natural as well as artificial. They
8 made field visits, met with product representatives,
9 and solicited feedback from the Eagles and the
10 Phillies. In mid-October, Ewing Cole issued a
11 report on their product's short list.

12 In four subsequent letters to the City --
13 November 7 and 10, 2000 to the Capital Program
14 Office on the subject of Sprinturf; November 15,
15 2000 to Procurement on the subject of products not
16 short-listed; and December 21, 2000 to Capital
17 Programs concerning the FieldTurf -- they provided
18 additional information on their product evaluations.

19 On October 17, 2000, representatives of
20 Capital Programs, the Office of the Director of
21 Finance, the Procurement Department, and the
22 Recreation Department met with Ewing Cole to discuss
23 this short list. It was at this meeting that it was
24 decided that the City would issue a sole-source bid
25 for the purchase of Southwest NeXturf. After this,

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2 a number of competitors protested the decision to
3 the City Administration and to City Council.

4 The bid opening took place on November 6,
5 2000, and the contract was awarded to Southwest on
6 November 13, 2000. Work started in January and
7 finished in April.

8 Our first finding is that we believe too
9 little time was allowed for the planning of a
10 project of this size. The decision to replace the
11 turf wasn't made until August of 2000, which left
12 only three months to research products, perform
13 field visits, solicit opinions from sports teams and
14 their respective leagues, draft bid documents,
15 conduct the bid process, evaluate proposals, and
16 make an award. Then the City had only five months
17 to design and construct the project before the
18 Phillies home opener on April 6, 2001, eight months
19 from conception to completion.

20 To put this into perspective, normally
21 capital programs of this nature are identified a
22 full six years in advance in order to ensure
23 adequate funding and planning. Several forces were
24 at work in this instance, however, that compelled
25 the City to act quickly, if it were to act at all.

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2 Because of the impending demise of Veterans Stadium,
3 once the City decided to replace the turf, time was
4 of the essence.

5 Our second finding was that the City's
6 architectural consulting firm was possibly not the
7 best choice to render a truly objective evaluation
8 of the various turf products, most of which were
9 newly on the market and not even in existence at the
10 time of the last turf replacement at the Vet in
11 1995.

12 The people at Ewing Cole had done business
13 with the City and Veterans Stadium ever since it was
14 built 30 years ago, had enjoyed a long-term
15 relationship with the Phillies, and had participated
16 in the installation of every playing field since the
17 construction of the stadium. This being the case,
18 they were the logical choice and probably best
19 qualified to act as the City's consultant to oversee
20 the installation of the new turf and all potential
21 technical problems associated with it. However, we
22 feel that Ewing Cole's history with the entity that
23 eventually became the sole bidder, Southwest
24 Recreational Industries, also suggested they were
25 possibly not the best choice to do an objective

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2 product evaluation.

3 As product evaluator, Ewing Cole was the
4 City's procurement gatekeeper. No manufacturer
5 could, for all intents and purposes, participate in
6 the process without passing Ewing Cole's muster.
7 Even those permitted to plead their case had their
8 message passed through Ewing Cole's evaluative
9 filter.

10 The perception created was that one firm,
11 Southwest, had a leg up on all the rest. Because in
12 the transaction of public business, perception is
13 often reality, we feel it is probably -- we feel it
14 was probably not a wise decision to appoint as judge
15 of a competitive process an entity with an extensive
16 history with one of the competitors.

17 Our third finding is that the product
18 presentations provided the City by Ewing Cole could
19 have been more balanced. A contributing factor,
20 again, could have been the unreasonable two-month
21 timetable for product evaluation and review of such
22 a large amount of technical and physical data. We
23 are concerned about whether the City and sports
24 teams received a balanced presentation of competing
25 products, most of which are relatively new to the

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2 marketplace in.

3 In carefully reviewing Ewing Cole's report
4 in subsequent letters and in conducting interviews
5 with unsuccessful competing firms, we can understand
6 how an aggrieved party might find shortcomings in
7 Ewing Cole's presentation of his or her product.
8 However, we want to make it clear in criticizing
9 representations by Ewing Cole to the City that we
10 are not implying malicious intent.

11 Many instances are cited in our report
12 where we feel Ewing Cole leveled criticisms at
13 rejected products that could just have well have
14 been leveled against the successful product,
15 NeXturf, but we're not.

16 At other times, Ewing Cole appears to
17 assume facts not in evidence, invalidating their
18 point. I refer you to Appendix B of our report
19 where we cite 22 separate instances in which we feel
20 Ewing Cole presented questionable or inaccurate
21 information, putting NeXturf in best its light while
22 showing competing products in an unflattering way.

23 We also believe that elements of the
24 City's oversight of the project were inadequate.
25 For example, the City had warnings far in advance

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2 about drainage problems, particularly at the infield
3 cutouts. As far as back as November 3, 2000,
4 minutes of a pre-bid meeting reflect that Southwest
5 knew that there may be non-draining areas of porous
6 asphalt around the dirt cutouts due to contamination
7 by clay infill. The City told them at that time
8 that a change order in the contract would be issued
9 if such areas were found.

10 We also cite three other times where this
11 same concern was repeated. Although Southwest
12 drilled some additional holes in the asphalt
13 surrounding the cutouts, the most important remedial
14 measure, power-washing the asphalt to free any
15 clogged dirt, was not performed before the August
16 13th game. But whether the actual power-washing
17 task was the responsibility of Southwest, the City,
18 or Phillies ground crews, Southwest had the final
19 responsibility to see that it was documented in the
20 maintenance regimen.

21 Even though the Southwest installation
22 contract calls for them to instruct City workers in
23 the maintenance of NeXturf, using maintenance
24 manuals prepared for that purpose, the contract does
25 not require these manuals until the end of the first

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2 \$354,000 maintenance year.

3 It should be noted that the agreement
4 included an option to extend Southwest's maintenance
5 of the product for two additional one-year terms.
6 Southwest did provide a set of conversion procedures
7 in its bid proposal. These describe a process that
8 employs over 100 people for a period of 16 hours.
9 After the August 13th debacle, Southwest provided a
10 longer series of directions that say nothing about
11 power-washing porous asphalt around the base cutouts
12 at all.

13 A mock conversion, called for in the
14 installation contract, was held in dry weather over
15 five days. That was on July 9th through the 13th.
16 It turned out to be only a partial conversion, and
17 it could not be satisfactorily completed in five
18 days' time. The real thing had to be done in 24
19 hours.

20 In the weeks following the August 13th
21 cancellation, there was a flurry of correspondence
22 among the turf project's principal players -- the
23 City's Capital Program Office, Ewing Cole, and
24 Southwest -- concerning issues, remedial measures,
25 and responsibility. The CPO severely castigated

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2 both Southwest and Ewing Cole for defects noted
3 during post-cancellation inspections.

4 We feel that although the questions asked
5 by the City after the incident were justified, a
6 more proactive monitoring by the City months before
7 might well have avoided the problem altogether.

8 In answer to the City's questions about
9 percolation tests conducted by Southwest to
10 determine how well the field would drain, Southwest
11 submitted a sketchy report three months after the
12 test was performed and two months after the City
13 signed a certificate of substantial completion,
14 paying Southwest \$822,000, which was 45 percent of
15 the contract amount.

16 We feel that Southwest and Ewing Cole were
17 primarily responsible for the successful completion
18 of the turf installation. The City did have a
19 responsibility to monitor them, to ask questions,
20 and to aggressively advocate for the project's
21 success, but this should not mitigate the primary
22 responsibility of these two vendors.

23 The Controller strongly believes that
24 Southwest Recreational Industries should be held
25 responsible for all remedial costs associated with

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2 this project. The turf installation contracts
3 states the following: "The contractor shall submit
4 its manufacturer's warranty which guarantees the
5 usability and playability of the synthetic turf
6 system for its intended uses for an eight-year
7 period commencing with date of substantial
8 completion."

9 Our understanding of this passage is that
10 Southwest is responsible for ensuring that the
11 condition of the turf is such that it can be used
12 for its intended purpose. Because on August 13th
13 the turf was not in a playable condition, we believe
14 Southwest was responsible for this defect and should
15 be held fully accountable.

16 To date, the City Administration has not
17 billed Southwest for these costs, and we urge them
18 to do so. Controller Saidel has indicated that he
19 will not approve payments concerning this project
20 until the matter is resolved. At the very least, we
21 feel that we are owed \$36,000 in added remedial
22 costs assumed by the City.

23 Finally, concerning the issue of
24 sole-sourcing the playing surface bid, Section 8-200
25 of the Home Rule Charter provides that "except in

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2 the purchase of unique articles, or articles which
3 for any other reason cannot be obtained in the open
4 market, competitive bids shall be secured."

5 The Procurement Commissioner is the
6 responsible officer of the government to make this
7 determination. In this instance, Procurement
8 Commissioner Applebaum told us that he relied on the
9 advice of Ewing Cole, which was paid by the City to
10 exercise its expertise. He had no special
11 independent method of making such a technical
12 judgment.

13 With the stadium turf replacement, the
14 City's case for sole-sourcing rests on two
15 arguments:

16 1. That only one firm had the right
17 product and sufficient experience to accomplish a
18 baseball-to-football conversion within the required
19 time frame; and

20 2. That only one product was thin enough
21 to fit under the Vet's telescopic bleachers without
22 causing serious damage to the bleacher assembly.

23 With the exception of Hummer Grasstiles,
24 no company excluded from the bidding was given
25 enough information and time to adequately understand

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2 the Vet's conversion process, and even they were not
3 afforded an opportunity to respond to what the City
4 believed to be shortcomings in the conversion
5 process.

6 If a manufacturer asserts that he can
7 accomplish a conversion within a stipulated
8 timeframe and he is willing to back it up with a
9 written guarantee, then the risk is entirely his.
10 The manufacturer is obligated to get the job done,
11 whatever it takes and whatever it costs.

12 FieldTurf told the City it was willing to
13 make such a guarantee; Hummer told the Controller's
14 Office it was willing to make such a guarantees. We
15 noted in our report that the justification for
16 accepting NeXturf, an untried and unproven product,
17 was the manufacturer's willingness to guarantees its
18 performance.

19 Veterans Stadium has telescopic bleachers
20 around two-thirds of the field which are pulled out
21 for football, they're pulled out manually. We went
22 down there and observed the process takes place;
23 it's an extremely labor-intensive process.

24 Ewing Cole and the bleacher manufacturer
25 take the position that deploying the bleachers over

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2 any product thicker than NeXturf, about 20 feet over
3 the artificial turf, could cause severe damage to
4 the bleacher assembly and possibly unsafe
5 conditions. Under this theory, the City could not
6 install a product thicker than one and a half
7 inches.

8 Although it appears to be a rock-solid
9 justification for sole-source bidding, we have
10 several questions:

11 1. If a physical impediment as critical
12 as bleacher accommodation existed, why was Ewing
13 Cole paid \$30,000 of its \$200,000 contract to
14 evaluate products, when this could have been reduced
15 to asking a single question, Is your product thicker
16 than one and a half inches?

17 2. If this physical impediment existed,
18 why is it not mentioned in Ewing Cole's October 2000
19 report, and why did the impediment not surface in
20 print until November 10, 2000 in a letter to the
21 City's Capital Program Office.

22 3. If this physical impediment existed,
23 why was there no correspondence with the bleacher
24 manufacturer concerning it until September 2001, two
25 weeks after the Controller's Office raised the

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2 issue? And why didn't the manufacturer tell the
3 Controller's Office it had not discussed the issue
4 with Ewing Cole before the turf replacement contract
5 was awarded?

6 Our fourth point is if the bleachers have
7 an accommodation limit, why is it that this limit
8 coincides exactly with the thickness of NeXturf?

9 And so the City's case for sole-source
10 bidding rests on two arguments: Conversion time and
11 bleacher accommodation. The first is easily
12 answered with the manufacturer's guarantee; the
13 second raises an endless series of questions.

14 There now are many manufacturers in the
15 playing turf field. We feel that they should have
16 been given a fair opportunity to present their
17 wares. The City should not have drafted bid
18 specifications so narrowly that they excluded all
19 but one product, and should instead have added the
20 words, quote, or equal, end quote, allowing
21 additional competition to emerge.

22 Our report contains 11 recommendations to
23 be considered by the City Administration and by City
24 Council. These, we believe, will strengthen checks
25 and balances concerning sole-source bidding and help

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2 ensure that capital projects are carefully planned
3 and better monitored.

4 We appreciate the chance to present this
5 report to you today and look forward to any
6 questions you have.

7 COUNCILWOMAN REYNOLDS BROWN: That was
8 quite comprehensive.

9 Colleague Councilman Rizzo.

10 COUNCILMAN RIZZO: Other than the
11 Controller's Office, as you know, there's been a lot
12 of hesitancy to discuss the problem that occurred on
13 game day. Could you just focus -- you did focus on
14 it, but I just want to make sure for the record that
15 it's very clear on your opinion what occurred on
16 game day when the game was cancelled.

17 MR. RADWANSKI: I think it's rather
18 simple: That there were problems at the base
19 cutouts the where product was not draining properly,
20 the City and the contractor knew well in advance
21 that those problems existed, and proper measures
22 were not taken to ensure that this would not occur.

23 COUNCILMAN RIZZO: And, again, who should
24 have the responsibility for any expenses associated
25 with the response that the City was required to

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2 perform?

3 MR. RADWANSKI: In the opinion of the
4 Controller's Office, the responsibility for any
5 problems that occurred at that time were solely the
6 responsibility of the contractor, Southwest.

7 COUNCILMAN RIZZO: Thank you.

8 COUNCILWOMAN REYNOLDS BROWN: Thank you.

9 And, therefore, they should bear the cost?

10 MR. RADWANSKI: That's correct.

11 COUNCILWOMAN REYNOLDS BROWN: What do you
12 believe is the lesson learned from where your office
13 sits as it relates to not having to cross this
14 bridge again?

15 MR. RADWANSKI: I think that one of the
16 lessons that we've learned is that additional time
17 is needed to do a project of this nature -- this is
18 not something that should come in -- a lot of
19 forethought should be exercised before a project of
20 this nature is undertaken.

21 Another lesson I think we learned is that
22 City contracts, including the contract that the City
23 entered in with its engineering firm, Ewing Cole,
24 should be better monitored to make sure that they're
25 doing what they're supposed to do within the text of

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2 the contract.

3 And a third lesson I think would be
4 that...uh, I'm trying to think what the third lesson
5 is.

6 COUNCILWOMAN REYNOLDS BROWN: You say
7 "better monitored." Define what you mean by that
8 because better monitored from the Controller's
9 Office may be entirely different from what's viewed
10 in the Procurement Office.

11 MR. RADWANSKI: I think that better
12 monitoring means that if product evaluations are
13 supposed to be conducted, that somebody from the
14 City take a look to see if the products were
15 properly evaluated, were they not, what measures did
16 they take to evaluate the products, and so forth

17 COUNCILWOMAN REYNOLDS BROWN: Is there any
18 latitude for the City Controller's Office to share
19 with any City agency recommendations like the one
20 you've just given, period, with hopes that it would
21 be strongly considered?

22 MR. RADWANSKI: Yeah, this is kind of a
23 theme of many of our audits. There's plenty of room
24 for that recommendation to be accepted in all areas
25 of City government, in my opinion.

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2 COUNCILWOMAN REYNOLDS BROWN: Councilman,
3 anything else?

4 Thank you, members of the panel from the
5 City's Controller's Office.

6 MR. RADWANSKI: Thank you very much.

7 COUNCILWOMAN REYNOLDS BROWN: You're very,
8 very welcome.

9 Next up, the procurement policy of the
10 City of Philadelphia and the procurement of NeXturf
11 for Veterans Stadium. We would like to invite up
12 Commissioner Louis Applebaum of the Procurement
13 Department; Veterans Stadium Director Greg Grillone
14 with the Recreation Department; and City Solicitor
15 Paul McCarthy, Divisional Deputy City Solicitor; as
16 well as Christopher McCabe, Deputy City Solicitor.

17 (Witnesses come forward.)

18 COUNCILWOMAN REYNOLDS BROWN: Good
19 afternoon, gentlemen. Welcome and proceed.

20 COMMISSIONER APPLEBAUM: Good afternoon.
21 Councilwoman and members. I am Louis Applebaum,
22 Procurement Commissioner of the City of
23 Philadelphia, and I am here to testify on a
24 resolution covering the NeXturf procurement for
25 Veterans Stadium and reviewing and evaluating the

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2 City's sole-source process and policy.

3 I have previously submitted to your
4 offices this printed testimony, along with two
5 binders of information concerning the above
6 subjects -- the two binders are here if you don't
7 have them, if you need them.

8 Binder No. 1 is the NeXturf procurement
9 and Binder No. 2 is the sole-source bids, fiscal
10 years '99, '00 and '01.

11 This is a summary of the procurement
12 process as it relates to the public works contract
13 awarded to Southwest Recreational Industries. This
14 contract for the playing field of Veterans Stadium
15 was a sole-source bid requiring a product
16 manufacturer by Southwest with the brand name of
17 "NeXturf."

18 Around the middle of the year 2000, a
19 determination was made to acquire a new playing
20 field for Veterans Stadium. The Capital Program
21 Office retained through a professional services
22 contract Ewing Cole Cherry Brott, Architects and
23 Engineers, headquartered in Philadelphia. They were
24 assigned the duty of evaluating all of the available
25 products and alternative to replace the AstroTurf at

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2 Veterans Stadium. They were charged with preparing
3 a complete survey and an analysis of all products
4 available at the time and making a final
5 recommendation to the City of Philadelphia for the
6 product we should procure.

7 Ewing Cole, after extensive field visits,
8 study, presentations, and testing, submitted to the
9 City their report entitled "Playing Field Surface
10 evaluation." This report was dated October 2000 and
11 detailed a short list of potential products. The
12 report is included in the binders.

13 On October 17, 2000, the Procurement
14 Department, the Capital Programs Office, Finance
15 Department, and the Recreation Department met with
16 representatives of Ewing Cole to review the report.
17 Questions were presented to Ewing Cole and
18 discussions were held.

19 I personally requested that Ewing Cole
20 provide, in addition to the report, the reasons that
21 certain products were not short-listed in their
22 report. Mr. Rick Tustin requested Ewing Cole to
23 summarize their original review of the SprinTurf
24 product, which was not included in the Ewing Cole
25 original short list.

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2 A letter dated November the 10th was
3 received from Ewing Cole detailing the requested
4 information. On November the 15th, Ewing Cole
5 presented a letter responding to my request from
6 October 17th. This letter identified all of the
7 products that were evaluated and specified why
8 certain products not short-listed.

9 At the conclusion of the City's meeting
10 with Ewing Cole on October 17th and after the City's
11 complete evaluation of the reports, a recommendation
12 was made by the Capital Program Office. The Capital
13 Program Office recommended that the City of
14 Philadelphia issue a sole-source bid for the
15 procurement of the NeXturf product. All in
16 attendance at the meeting concurred with the
17 recommendation.

18 A subsequent meeting was held with Ewing
19 Cole, City Representative, Philadelphia Eagles and
20 Philadelphia Phillies at which time the teams were
21 informed of the product selection.

22 The Philadelphia Home Rule Charter,
23 Chapter 8-2000, "Contracts," states that unique
24 articles and other articles which cannot be obtained
25 in the open market are not subject to the

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2 requirements of competitive bidding. The product
3 NeXturf was considered to be unique to the needs of
4 Veterans Stadium due to the conversion requirements
5 and the multipurpose use of the stadium.

6 The NeXturf product is only manufactured
7 by Southwest Industries and has many attributes that
8 are proprietary to that company; therefore, the
9 decision was made to consider this a sole-source
10 bid.

11 The Procurement Department, in conjunction
12 with the Capital Programs Office, issued the project
13 manual and related sole-source bid documents to
14 Southwest, with a bid opening date of November the
15 6th. The bid was open on that date, and Southwest
16 submitted a bid for 1.89 million, plus additional
17 funds for maintenance.

18 On November the 13th, the Procurement
19 Department issued an official award letter to
20 Southwest Industries for this procurement.
21 Installation of the product commenced the beginning
22 of calendar year 2001 and completed prior to the
23 start of the baseball season in April of that year.

24 I have enclosed for your review Binder No.
25 1, entitled "NeXturf Procurement," which includes

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2 all of the previously-mentioned documents, bids, and
3 contracts.

4 On the subject of sole-source bids, I
5 repeat that the Philadelphia Home Rule Charter
6 states that unique articles and other articles which
7 cannot be obtained in the open market are not
8 subject to the requirements of competitive bidding.

9 Enclosed in Binder No. 2 -- that's the
10 blue binder -- is a report of the last three fiscal
11 years of all sole-source bids awarded by the
12 Procurement Department. You will note that the
13 chart on Page 2 indicates that the sole-source award
14 dollars as a percentage of the total awards was
15 2.95 percent, 1.06 percent, and 2.94 percent in the
16 years '99, 2000 and 2001.

17 Each time an operating department requests
18 a sole-source bid to meet their requirements, the
19 policy and procedure of the Procurement Department
20 is for the requesting department to submit a
21 sole-source request justification memo to be
22 approved by the Procurement Department prior to the
23 issuance of any sole-source bids. The policy of the
24 Procurement Department is to have a deputy
25 procurement commissioner review these justification

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2 memos and to approve or reject, as the case may be.

3 Included in Binder 2 are all of the
4 sole-source recommendation memos that were received
5 on all approved sole-source bid requests for those
6 years. In every case, you will see the reason and
7 the justification for each request. You will also
8 note that each one has been approved by the Deputy
9 Commissioner.

10 This concludes my testimony. I will be
11 glad to answer any questions the Council may have
12 regarding my testimony this afternoon.

13 COUNCILWOMAN REYNOLDS BROWN: Councilman
14 Rizzo, would you like to?

15 COUNCILMAN RIZZO: Thank you, thank you,
16 Madam Chair.

17 Commissioner, you described the
18 sole-source procurement process, so let me confirm
19 it. Each time an operating department requests a
20 sole-source bid to meet their requirements, the
21 policy and procedures of the Procurement Department
22 is for the requesting department to submit a
23 sole-source request justification memo to be
24 approved by the Procurement Department prior -- I
25 repeat, prior -- to the issuance of any sole-source

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2 bids.

3 COMMISSIONER APPLEBAUM: That is correct.

4 COUNCILMAN RIZZO: Does the blue binder
5 contain all of the sole-source Procurement
6 Department approvals for fiscal year '99, '00, and
7 '01?

8 COMMISSIONER APPLEBAUM: That is correct.

9 Every sole-source request that was approved is in
10 the binder. It's the memo, the original memo that
11 was issued by the operating departments, all of
12 their reasons and justifications. Some have our
13 notes on them and a final stamp of approval with a
14 date. And based on that, a sole-source bid was
15 authorized.

16 COUNCILMAN RIZZO: For example, the
17 approval for the replacement of seat parts for
18 Veterans Stadium was such a prior approval, and it's
19 obviously in the blue binder.

20 COMMISSIONER APPLEBAUM: I assume so, yes.

21 COUNCILMAN RIZZO: The next document in
22 the blue binder is NeXturf sole-source procurement.
23 The NeXturf sole-source procurement was made
24 November the 13th.

25 COMMISSIONER APPLEBAUM: Correct.

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2 COUNCILMAN RIZZO: Okay. What was the
3 date of the approval?

4 COMMISSIONER APPLEBAUM: I don't have
5 that. Do you have it there or do you want to direct
6 me to where --

7 COUNCILMAN RIZZO: Yeah. Well, I think --

8

9 COMMISSIONER APPLEBAUM: Councilman, let
10 me explain on that particular --

11 COUNCILMAN RIZZO: Well, let me --

12 COUNCILWOMAN REYNOLDS BROWN: We need the
13 answer to the question first.

14 COUNCILMAN RIZZO: Yeah, please answer the
15 question, let's get the answer to the question. The
16 NeXturf sole-source procurement was made on November
17 the 13th?

18 COMMISSIONER APPLEBAUM: Correct.

19 COUNCILMAN RIZZO: We need you to answer
20 the question, please: What is the date of the
21 approval since prior-to is required according to the
22 policy that you just described?

23 COMMISSIONER APPLEBAUM: Can you direct me
24 to the -- is it in this book?

25 COUNCILMAN RIZZO: Yeah, it's in here.

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2 And to help you with that, the approval is dated
3 September 21, 2001.

4 Let me have the binder brought over to
5 you. I know it's difficult to locate that.

6 COMMISSIONER APPLEBAUM: Okay.

7 COUNCILMAN RIZZO: Let me have the binder
8 brought over to you.

9 (Staff person delivers blue
10 binder to Commissioner Applebaum.)

11 COMMISSIONER APPLEBAUM: Okay.

12 COUNCILMAN RIZZO: I know it's difficult
13 to locate that.

14 COMMISSIONER APPLEBAUM: This one is the
15 replacement parts for Vets Stadium.

16 COUNCILMAN RIZZO: The next page.

17 COMMISSIONER APPLEBAUM: The next page is
18 dated September 21st. It was a memo directed to me
19 by Harry Hillock, the Deputy Procurement
20 Commissioner. And the decision to award a
21 sole-source contract for Veterans Stadium playing
22 surface was made as a result of an engineering study
23 conducted by Ewing Cole on October 17th. A meeting
24 was held with the Capital Program, Recreation
25 Department. At that time, discussions were held on

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2 the engineering report, and it was concluded that
3 the only viable option for the playing field was the
4 NeXturf process. Based on that, the Capital
5 Programs Office prepared a sole-source bid to
6 purchase the playing surface from Southwest
7 Recreation Industries.

8 That happens to be dated September the
9 21st, that's correct.

10 COUNCILMAN RIZZO: What year, sir? What
11 year?

12 COMMISSIONER APPLEBAUM: 2001.

13 COUNCILMAN RIZZO: And the NeXturf
14 sole-source procurement was made when? November
15 13th, the year 2000. So obviously, this violates
16 your policy.

17 COMMISSIONER APPLEBAUM: Correct.

18 COUNCILMAN RIZZO: Could you explain?

19 COMMISSIONER APPLEBAUM: Sure.

20 The acquisition of the sole-source
21 procurement of NeXturf was one that the Procurement
22 Department and the Procurement Commissioner was
23 intimately involved in in making that decision. As
24 stated in my testimony, I met with the department on
25 October 17th, I met with Ewing Cole. I asked

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2 questions, I received additional information.

3 That was sort of -- much different than
4 our normal sole-source bid where the Procurement
5 Commissioner or the Procurement Department are not
6 intimately involved in it. I was intimately
7 involved totally in that process and concurred with
8 the recommendation of the Capital Programs Office.
9 Therefore, at that point in time, there was not a
10 document created.

11 When I was putting this program together,
12 I noted that we didn't issue a request document at
13 that time. The request document was actually me
14 personally being there to make sure the process was
15 going. I suggested to Mr. Hillock, the deputy
16 procurement commissioner, that to complete the
17 record, we should put a document in this book
18 referring to the sole source for NeXturf on why we
19 did it. I didn't have him back-date the document,
20 so I wouldn't do that, and we dated the document
21 when we actually talked about it.

22 COUNCILMAN RIZZ0: So because of your
23 personal involvement, there was either an
24 intentional oversight or just an oversight to not
25 follow the procurement process to the letter.

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2 COMMISSIONER APPLEBAUM: That's correct.

3 COUNCILMAN RIZZO: So a mistake was made?

4 COMMISSIONER APPLEBAUM: No, it was not a

5 mistake. It was because, as you stated, I was

6 personally involved in that decision. I worked with

7 Capital Programs Office and our consultant to concur

8 with their finding and, therefore, did not issue a

9 request, a written sole-source request to myself.

10 That's what it would have amounted to.

11 COUNCILMAN RIZZO: But doesn't that

12 document come from the operating department also

13 making the request?

14 COMMISSIONER APPLEBAUM: That is correct.

15 COUNCILMAN RIZZO: So It wouldn't have

16 been coming from you alone.

17 COMMISSIONER APPLEBAUM: Well, they made

18 their request verbally at the meeting. At that

19 meeting, October the 17th, when all people there, we

20 all concurred in the direction that we were going to

21 go.

22 So there was not a written document; there

23 was a meeting of the minds, a meeting held at that

24 time, and we came up with that decision to go with

25 the sole-source bid.

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2 COUNCILMAN RIZZO: Thank you.

3 COMMISSIONER APPLEBAUM: And later, in
4 order to complete the package, I suggested that we
5 write up a memo and include it in this book.

6 COUNCILMAN RIZZO: Just a minute,
7 Commissioner.

8 Commissioner, obviously, you have a paper
9 trail for a reason, for accountability. In this
10 case, there is not at least an appropriate -- and
11 again, you know, you're telling me because of your
12 personal involvement, that that didn't
13 necessitate -- the procedure on almost every other
14 sole-source item, you're telling me that in your
15 years as commissioner, this is the first time you
16 were ever totally involved in a procurement, a
17 sole-source procurement?

18 COMMISSIONER APPLEBAUM: I would believe
19 that in the last three years covered by these
20 documents, this is the first one of such a major
21 significance that I was personally involved in the
22 decision-making process.

23 COUNCILMAN RIZZO: But, again, to end this
24 conversation on this particular point, the policy
25 was not followed, you realized it wasn't, and you

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2 had a document prepared, dated in the next calendar
3 year to make the file complete.

4 COMMISSIONER APPLEBAUM: The date that I
5 came to the conclusion that it should have been
6 done, I did not back-date it; I did it based on what
7 had happened at that particular time. We were
8 putting to book together, I said, Hey, we don't have
9 a memo in here, let's put one in. And it was
10 prepared, dated September of 2001.

11 COUNCILMAN RIZZO: September 21st of 2001.

12 COMMISSIONER APPLEBAUM: Correct.

13 COUNCILMAN RIZZO: And the purchase,
14 again, was made November 13th of the year 2000.

15 COMMISSIONER APPLEBAUM: Correct.

16 COUNCILMAN RIZZO: Thank you, Madam Chair.

17 COUNCILWOMAN REYNOLDS BROWN: Certainly,
18 Councilman.

19 One follow-up question. On Page 3 next to
20 the last paragraph of your testimony, you quote the
21 Philadelphia Home Rule Charter Chapter 8-200, and
22 the bottom line is that you move to a sole source
23 when you cannot find the products on the open
24 market. What would be your response to those who
25 believe that certain products -- that like-products

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2 could be found on the open market? And more
3 specifically, what factors drove you to the decision
4 that the department had to sole-source?

5 COMMISSIONER APPLEBAUM: In this
6 particular case, our professional consultants that
7 we hired to help us come to this conclusion as to
8 what we should buy indicated to us that this product
9 was the only product, the sole product, that had the
10 attributes and was engineered to be able to be used
11 in a stadium, a multi-use stadium --
12 baseball-football conversions, and be able to safely
13 handle the temporary stands that sit out in the
14 outfield or around the stadium. And we were
15 concerned, and their concern was that those
16 temporary stands would ride safely over the surface
17 and not destroy the stands and not destroy the
18 surface.

19 One other thing I'd like to comment on.
20 We heard earlier today that if the company
21 guaranteed us and gave us a guarantee that the
22 conversion would work, we had nothing to worry
23 about, but in reality, if we were converting the
24 stadium at a particular time on a day before a
25 baseball game and it didn't work, the guarantee

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2 would not really help us get the baseball or
3 football game going, so where a guarantees is
4 somewhat useful, in this particular case, at a Vets
5 Stadium where you have an event day in and day out,
6 a guarantee would not let the baseball team play.

7 COUNCILWOMAN REYNOLDS BROWN: Councilman,
8 a follow-up?

9 COUNCILMAN RIZZO: Yes.

10 Commissioner, first of all, I want to
11 thank you for your service to the City of
12 Philadelphia. And even though this issue has been
13 very embarrassing to the City of Philadelphia, and I
14 know that we've had some other negative issues
15 surface, but I want to congratulate you because I
16 understand that the stadium has been very successful
17 in some other areas -- in the area of the food
18 services and -- but I'd just like you to take --
19 even though it's digressing for the moment, I'd like
20 you to have the opportunity -- and for the folks,
21 when I thank the Commissioner for his service to the
22 City, he'll be leaving sometime -- the 11th of
23 January.

24 COMMISSIONER APPLEBAUM: January, right.

25 COUNCILMAN RIZZO: And, again, I thank you

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2 for that, but I want you to maybe take the
3 opportunity just to talk about some of the successes
4 that you've had there, and we all ought to thank
5 Greg Grillone because he makes it all work down
6 there.

7 COMMISSIONER APPLEBAUM: Right, thank you,
8 thank you very much, Councilman.

9 As part of the Vets Stadium package, we're
10 proud of what occurred last year during the Phillies
11 baseball season and also the Eagles football season.
12 To date, we've had seven home games with the Eagles,
13 we had a whole baseball season, and this is the
14 first time that I can remember in history that we
15 have not had an unfavorable article in the
16 newspaper, the Inquirer or the Daily News,
17 particularly by Joe Six-pack, of a problem at the
18 stadium such as short beers or dirty food or
19 unclean. We have not had an article.
20 Unfortunately, we have not had a positive article,
21 but newspapers would rather write negatives and not
22 positives.

23 But in this particular baseball season,
24 based on the contract that we signed with Aramark
25 before the season started, our sales -- and the

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2 change in the contract with a different
3 configuration. Our sales increased \$3.9 million, or
4 35 percent, over the previous year.

5 The commission income, where the City of
6 Philadelphia benefits, increased by \$1.6 million, or
7 a 38 percent increase.

8 The attendance was up 26 percent because
9 they had a better season.

10 One of the key numbers is the
11 sales-per-capita -- that's the amount of money taken
12 in per each individual -- increased from \$8.53 to
13 \$9.14, or a 7.2 percent increase.

14 So all in all, the Aramark services with
15 the cooperation of Vets Stadium and Greg Grillone
16 and his folks did a wonderful job, and we're very
17 pleased that a contract that was issued to Aramark
18 that was somewhat contentious, as you recall, ended
19 up being very successful, and they did a real good
20 job.

21 And we hadn't really had a good year
22 there, and now the Phillies also had a good year
23 playing on NeXturf. They had a good season; they
24 had one problem.

25 And I don't have to mention that the

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2 Eagles are 9 and 4 this year, and they played many
3 games on NeXturf. After August 13th, there hasn't
4 been one specific problem that has arose.

5 But thank you very much, Councilman, for
6 allowing me to talk about that.

7 COUNCILMAN RIZZO: Thank you.

8 Madam Chair?

9 COUNCILWOMAN REYNOLDS BROWN: Surely.

10 One final question, Mr. Applebaum. I'm
11 just trying to recall testimony from the last
12 hearing. I believe it was indicated that the City
13 of Philadelphia paid over \$13 a square foot for the
14 NeXturf products, approximately?

15 COMMISSIONER APPLEBAUM: I -- I believe
16 that is correct. I don't have that figure here.

17 COUNCILWOMAN REYNOLDS BROWN: Okay. Well,
18 there is the fact that another user of NeXturf,
19 Wissahickon High School, played approximately \$8 per
20 square foot. Help us understand why there would be
21 that kind of discrepancy.

22 COMMISSIONER APPLEBAUM: I am not aware of
23 those facts. I don't know what the other school
24 paid, but I believe -- I believe that later today,
25 NeXturf is going to testify. I would ask them the

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2 question, and I'll be very anxious to hear their
3 question.

4 It could be because of the multi-use
5 stadium, I don't know, but why don't we kind of pass
6 to NeXturf. I'd like you to ask that question.

7 COUNCILWOMAN BROWN: For sure, we will do
8 that.

9 As a matter of procedure, when your office
10 reviews bids, do you look to see what their history,
11 track-record pricing is and other like-areas?

12 COMMISSIONER APPLEBAUM: Yes. We always
13 look for a track record and success. We look for
14 financial strength of the company, we look for their
15 references. And that's pretty much the way we
16 evaluate all of the vendors that we do business
17 with.

18 COUNCILWOMAN REYNOLDS BROWN: Okay then.

19 What is the Department's policy with
20 regards to sole-sourcing and allowing the minority
21 MBE/WBE community of the City to participate?

22 COMMISSIONER APPLEBAUM: The MBEC Minority
23 Business Enterprise Council headed up by Mr. Jim
24 Roundtree, Deputy Finance Commissioner, and
25 Procurement work very close together. A decision

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2 was made a few years ago that due to the small
3 amount of sole-source bids and the fact that the
4 bids are going to companies who are manufacturing a
5 product specifically, MBEC came to the conclusion
6 that there was not a potential for them in this
7 particular arena, and they have elected not to
8 receive from Procurement sole-source bids for
9 range-setting.

10 And that has been our policy. And to
11 date, we have not presented to MBEC sole-source bids
12 for range-settings, and that was based on their
13 request.

14 COUNCILWOMAN REYNOLDS BROWN: Very well.
15 Okay, then, Commissioner.

16 Any other members of the panel have
17 anything they care to share?

18 (No response.)

19 COUNCILWOMAN REYNOLDS BROWN: All right
20 then. Thank you very much, gentlemen.

21 COMMISSIONER APPLEBAUM: Thank you very
22 much.

23 COUNCILWOMAN REYNOLDS BROWN: You're
24 welcome.

25 We want to welcome Southwest Recreational

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2 Industries, Inc. to the podium: Reed Seaton,
3 President; and Jim Griffith, Attorney.
4 (Witnesses come forward.)
5 COUNCILWOMAN REYNOLDS BROWN: Welcome.
6 MR. GRIFFITH: Good afternoon, Madam Chair
7 and Councilman Rizzo.
8 COUNCILWOMAN REYNOLDS BROWN: Welcome.
9 Good afternoon.
10 COUNCILMAN RIZZO: Good afternoon.
11 COUNCILWOMAN BROWN: Please state your
12 full names for the record and proceed with your
13 testimony.
14 MR. GRIFFITH: My name is James Griffith,
15 Esquire, and I'm an attorney representing Southwest
16 Recreational Industries.
17 MR. SEATON: I'm Reed James Seaton,
18 President of Southwest Recreational Industries.
19 MR. GRIFFITH: Madam Chair, we have no
20 prepared remarks today, but we would like to make a
21 couple points at the beginning prior to any
22 questions that you may have.
23 The first thing is we note that my clients
24 did travel here voluntarily twice from Texas, and we
25 would like that to be noted by the Council.

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2 Second of all, as Councilman Rizzo has
3 noted before, there are some sensitive issues that
4 have arisen in prior meetings of this Council, and
5 we'd prefer not to get into those issues again;
6 namely, the conversion and August 13 and any other
7 issues that may arise in any potential litigation.
8 So we will defer any questions in that regard.

9 Third, we would like to reserve about five
10 minutes of our time at the end to respond to any
11 comments that our competitors may make about our
12 product, and we will be brief in those remarks and
13 we would hope that you would accommodate that
14 request.

15 COUNCILWOMAN REYNOLDS BROWN: The sponsor
16 of the bill -- I certainly have no problem with that
17 as Chair, but I'll leave that, however, to the
18 sponsor of the bill.

19 Councilman?

20 COUNCILMAN RIZZO: We'll accommodate you.

21 MR. GRIFFITH: Thank you very much. I
22 appreciate that.

23 A few comments on the auditor's report
24 first. We note that the City Controller does have a
25 stamp on the actual contract that was awarded that

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2 does say "verified one bid," so we're a little
3 puzzled as to why the controller at this point is
4 suddenly raising the issue of no knowledge of one
5 bid, but I guess that can be addressed at another
6 time.

7 We also note that the contract did go
8 through the Law Department and its procedures there.

9 The third thing we'd like to note about
10 the auditor's report is that you did not get the
11 complete report -- at least it does not appear that
12 way from the testimony of the auditor. We are aware
13 that there has been a subsequent testing done of our
14 product that shows that it did conform to all of the
15 specifications that were required, and we would just
16 like that noted for the record.

17 And at this time, if you have any
18 questions, again, subject to my earlier caution,
19 we'd be happy to try and address them.

20 COUNCILWOMAN REYNOLDS BROWN: Very well.

21 COUNCILMAN RIZZO: Could you explain why
22 your product was the -- what is different about your
23 product, in your own words, your description of your
24 product, versus anything else that's on this table?

25 MR. GRIFFITH: I'll let Mr. Seaton address

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2 that in a moment. I would like to note that we were
3 not asked to make any determination as to uniqueness
4 as to our product or why it might be a sole-source
5 bid, but I'm happy to allow Mr. Seaton to talk about
6 NeXturf in general.

7 MR. SEATON: The significant difference is
8 the product is designed to be convertible, it's
9 designed to be able to play multiple sports on. And
10 if you wish to take pieces of it up and roll it up
11 and put it away and bring back at a later day in a
12 relatively short period of time, you can do that
13 without damaging the product.

14 And if you allow me to approach, I might
15 be able to make a comparison.

16 COUNCILWOMAN REYNOLDS BROWN: Surely, sir.

17 MR. SEATON: So when you look at the other
18 products that are here today and if you were to --
19 which I won't, but if I was to tip this upside
20 (inaudible, off-mic).

21 COUNCILMAN RIZZO: Talk into the mic.

22 MR. SEATON: As an example, if you were to
23 take this field and to try to move it, pieces of
24 it -- so if I turned this upside down, which I won't
25 do, 'cause then someone will have to sweep the

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2 floor, every piece of rubber particulate and sand
3 will fall out. And you might feel how heavy it is.

4 COUNCILWOMAN REYNOLDS BROWN: Yes.

5 MR. SEATON: So when 30-some-odd percent
6 of the field has to be moved, it's a monumental
7 task. And that characteristic is the same with all
8 field systems. And likewise, we sell a tall-pile
9 fill artificial carpet also.

10 COUNCILMAN RIZZO: Could you -- I'll wait
11 till you return to the table.

12 After the first game was played -- we'll
13 get away from the day that the problem developed.
14 All of the controversy with the athletes about the
15 surface being slippery -- I think that they probably
16 spent more money on shoes on that particular game
17 day. There was all of this controversy about the
18 slipperiness of the playing surface. Did that have
19 anything to do with NeXturf or was that a different
20 issue?

21 MR. GRIFFITH: Councilman, are there
22 specific players that you're referring to? I mean,
23 it would help us answer the question if you could
24 identify them.

25 COUNCILMAN RIZZO: The entire -- in our

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2 immediate year on every sports show was a different
3 athlete from the Eagles and the visiting team
4 complaining about the slipperiness of the surface,
5 and that problem seemed to go away. What exactly --
6 are you aware of the complaints about the
7 slipperiness of the playing surface and why those --
8 do you have any information on why those accusations
9 were made? Did it have anything to do, in your
10 opinion, with NeXturf; or was there another issue
11 associated with that complaint?

12 MR. GRIFFITH: I'm sorry, Councilman, I
13 think there's a number of different questions there.
14 Maybe if you could help us focus on the one you want
15 us to answer.

16 COUNCILMAN RIZZO: What happened -- why
17 were there complaints about your product being too
18 slippery to play on and they were concerned that
19 there could be a career-ending injury associated
20 with NeXturf?

21 MR. GRIFFITH: I think you would have to
22 ask the player's opinion as to why.

23 COUNCILMAN RIZZO: Well, apparently there
24 was a response from Southwest when that question was
25 asked.

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2 MR. GRIFFITH: I'm not aware of that
3 prepared response, Councilman.

4 COUNCILMAN RIZZO: You're not?

5 MR. GRIFFITH: No, sir.

6 COUNCILMAN RIZZO: Are you aware of the
7 controversy about the slipperiness of the surface?

8 MR. GRIFFITH: Not from any specific
9 player, no, I'm not.

10 COUNCILMAN RIZZO: In general, are you
11 aware of it?

12 MR. GRIFFITH: I think Mr. Seaton can
13 address it.

14 MR. SEATON: The NeXturf is specifically
15 designed to replicate a tightly mowed natural-grass
16 field, and we believe that we've accomplished that
17 significantly.

18 And the fact is that we haven't had any
19 playing season-ending injuries on the field, and
20 that's what is most important to the players. And I
21 believe that as the players got used to the field,
22 as we look at the games that have been played very
23 successfully, and I think we could go back and look
24 at the Dallas Cowboys game where it rained almost 23
25 hours consecutively and they played the game in the

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2 rain and actually, there was very little, if any,
3 slippage related to the artificial grass NeXturf.

4 So we, quite frankly, are quite proud that
5 the field is playing basically up to our standards,
6 which means it's playing up to the specifications,
7 which is what we promised to the City and to the
8 players, and that we've had a great season and we
9 haven't had any bad injuries.

10 And that is what's unique about NeXturf is
11 that it allows you to play like natural grass but
12 it's artificial and it's convertible. And more
13 importantly, it's suitable not only for football but
14 it's also suitable for baseball. And you have a
15 dual-purpose stadium.

16 We certainly feel quite proud of the
17 NeXturf installation in Vets Stadium and that it has
18 performed exceedingly to our desires in this
19 environment.

20 COUNCILMAN RIZZO: Could you please
21 comment on that. This environment, this
22 application, is this the first type -- is this the
23 first time NeXturf was installed in a dual-purpose
24 facility and in this environment? Could you explain
25 the uniqueness of this installation of this product

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2 at this stadium?

3 MR. GRIFFITH: Again, Councilman, there
4 were two questions there, and I'm not sure which one
5 you want him to answer.

6 COUNCILWOMAN REYNOLDS BROWN: Could you
7 please answer them both.

8 COUNCILMAN RIZZO: Answer them both one at
9 a time.

10 MR. GRIFFITH: The first one again,
11 please, sir?

12 COUNCILMAN RIZZO: Your product, could you
13 describe the uniqueness of this particular
14 installation in this environment at this facility.
15 Has this type of installation ever occurred before
16 it came to Philadelphia?

17 MR. SEATON: Yes.

18 COUNCILMAN RIZZO: Where?

19 MR. SEATON: PGE Park, Portland --

20 COUNCILMAN RIZZO: Baseball, football?

21 MR. SEATON: Baseball, football, and
22 soccer.

23 COUNCILMAN RIZZO: Identical --
24 professional football?

25 MR. SEATON: College football.

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2 COUNCILMAN RIZZO: College football. Any
3 difference from college football?

4 MR. SEATON: The average NFL player, I
5 believe, is 24 years old; and in college, they're
6 22. So about two years.

7 COUNCILMAN RIZZO: So you equate that as
8 being a similar environment, a similar installation?

9 MR. SEATON: Yes.

10 COUNCILMAN RIZZO: Apples and apples?

11 MR. SEATON: That and the fact that the
12 Atlanta Falcons have a full-size 95,000 square foot
13 indoor practice facility that they're utilizing.

14 COUNCILMAN RIZZO: Indoor, big difference.
15 I mean, there's a big difference between being
16 outside and outside, you'd agree, right?

17 MR. SEATON: I don't necessarily
18 understand your statement, sir.

19 COUNCILMAN RIZZO: The question is that
20 there's a difference. You talked about the day of
21 the Dallas game when it rained, the results would
22 have been a lot different inside versus outside.

23 MR. GRIFFITH: Well, I guess there would
24 have been no rain.

25 COUNCILMAN RIZZO: Exactly, you got it.

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2 That's exactly the question.

3 Madam Chair?

4 COUNCILWOMAN REYNOLDS BROWN: Yes?

5 COUNCILMAN RIZZO: Anything?

6 COUNCILWOMAN REYNOLDS BROWN: Yes. I do
7 need to follow up with the question that was
8 proposed to the procurement commissioner. Our
9 records or homework reflects that the City of
10 Philadelphia paid over \$13 a square foot for the
11 NeXturf products here; however, at the Wissahickon
12 High School, who also purchased a football field,
13 NeXturf. Southwest information says that they paid
14 \$8 a square foot.

15 Help us understand the discrepancy.

16 MR. SEATON: Well, A, I'm not sure that
17 they paid \$8, but I can give you some significant
18 differences.

19 Your field was a complete removal and
20 replacement. The job was done in the winter. I
21 believe we paid \$70.72 per hour per labor dollar
22 that we paid inside the stadium. We had to build
23 the entire stadium, it's a custom fit. It also has
24 a running track, you know, which is the warning
25 track, and there are additional pieces. So the

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2 field is significantly larger, maybe almost twice as
3 big.

4 So you -- I mean, I'm not sure what square
5 footage basis you're using for the calculation.

6 We moved snow every single day, I believe,
7 in the first 45 days of the job to work, so we had a
8 snow piling contract to move the snow off the
9 worksite.

10 And at the Wissahickon facility, it is a
11 rectangular, 32 panels, American football, and it's
12 a very standard installation.

13 COUNCILWOMAN REYNOLDS BROWN: That helps
14 explain the discrepancy.

15 MR. SEATON: I would be happy to show you
16 the payroll records, which, I believe, are close to
17 \$800,000 for this installation.

18 COUNCILWOMAN REYNOLDS BROWN: Very well.

19 Councilman Rizzo, a follow-up?

20 COUNCILMAN RIZZO: What was the warranty
21 associated with Astroturf8 I believe it's referred
22 to, the original Astroturf that you ripped out.
23 What credit did we get because it was only in its
24 fifth year, and I believe there was a warranty or --
25 what credit did you give the City or what credit did

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2 the City receive as a result of the short life of
3 the system that was in there?

4 MR. SEATON: Can we narrow the question a
5 little bit?

6 COUNCILMAN RIZZO: How much money did the
7 City receive credit for the system that was only in
8 its fifth year of service when I believe it had a
9 few more years left to its life and possibly even a
10 warranty associated with it?

11 MR. GRIFFITH: Perhaps the Councilman
12 could explain the basis for the statement that there
13 were a few years left in the life of the carpet, and
14 then perhaps we can address the question.

15 COUNCILMAN RIZZO: That's the question.
16 The question is, what --

17 MR. GRIFFITH: Well, you're representing
18 that there was additional life left in the carpet,
19 and we're trying to find the basis for the
20 statement.

21 COUNCILMAN RIZZO: All right, the question
22 is -- again, I'll ask it this way: I understand
23 that the initial surface had some problems with the
24 seams. How much did you charge the City of
25 Philadelphia to repair the existing AstroTurf that

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2 was there? What was the charges -- explain the
3 business arrangement that you had with the
4 Recreation Department, the City, in repairing the
5 old surface so it could be used until the new
6 surface was installed? And since the existing
7 surface had, I believe, from my notes here, that it
8 still had a warranty period associated with it. Did
9 the City benefit, did the City get a credit for any
10 of the unused life of the existing surface?

11 MR. SEATON: I don't believe the City
12 asked for a credit.

13 COUNCILMAN RIZZ0: They didn't ask for a
14 credit.

15 COUNCILWOMAN REYNOLDS BROWN: Did not?

16 MR. SEATON: It did not, Madam.

17 COUNCILMAN RIZZ0: The City did not ask
18 for a credit?

19 MR. SEATON: That's my belief, yes.

20 COUNCILWOMAN REYNOLDS BROWN: And given
21 the circumstances as have been described by my
22 colleague, the City did not ask for a credit. Do
23 you believe the City deserves a credit?

24 MR. SEATON: I do not. I think we're
25 mixing -- you know, use and warranty are different

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2 issues. I mean, I'm not sure if you've ever
3 actually stayed the night and watched a conversion
4 process. I mean, have you ever spent the night out
5 there and watched the 100 people work 24 hours?

6 COUNCILMAN RIZZO: I've seen the
7 conversion process.

8 MR. SEATON: Well, unfortunately, I've --
9 or fortunately, I've had that opportunity numerous
10 times this year. And I think in order to shed light
11 on the field and maybe historical comments about the
12 Vet playing field, you would find that a lot of
13 those basically are based on the conversion process.
14 Forklifts and trucks and bleachers and buggies, and
15 a tremendous amount -- you know, up to maybe 30, 40
16 large vehicles driving all over the field and
17 dragging out huge bleacher sections and parking them
18 on the field.

19 And so I think that what you find is that
20 we build a field that would last eight years, but
21 you tend to put more use on the field and you
22 prematurely basically age the field. It's not that
23 the field is not playable; you basically are
24 damaging it at a more accelerated rate.

25 COUNCILWOMAN REYNOLDS BROWN: Is that

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2 factor or provision put in the language of the
3 contract, that if you use it more than --

4 MR. SEATON: It's not use, Madam, it's
5 basically damage, it's destruction of the product
6 basically, I think, would be a more appropriate
7 terminology.

8 COUNCILWOMAN REYNOLDS BROWN: Okay.

9 COUNCILMAN RIZZO: Let's go back to the
10 original playing surface. I understand that you
11 came and made some repairs -- the company came and
12 made some repairs to the original playing surface.
13 Now, I'm going back there because you're telling me
14 that the field was damaged, and I understand that
15 after the seams, the Velcro seams were repaired,
16 that playing surface, the Astroturf, met the terms
17 and conditions, and we have a matter of record. The
18 stadium manager said the field at that time met the
19 terms and conditions of the lease agreement that we
20 had with both of these franchises.

21 So I'm a little confused that you're
22 telling me that because of the way we treated the
23 surface that it was damaged but it met the terms and
24 conditions of the lease.

25 MR. GRIFFITH: Councilman, I don't think

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2 that's his testimony; I think that's another
3 gentleman's testimony.

4 COUNCILMAN RIZZO: But I'm asking you. At
5 the time you made -- when you made the repairs to --
6 and this is to you, this question. When you made
7 the repairs to the existing Astroturf, when you left
8 there, was that playing surface in good repair?

9 MR. GRIFFITH: Can you be more specific?

10 COUNCILMAN RIZZO: Was it damaged when you
11 left the stadium, after you made the repairs that
12 you made? And I believe that there was a purchase
13 order associated with those repairs. All I'm asking
14 you is when you finished those repairs before you
15 came back with your crew to rip out that existing
16 playing surface, what was the condition of it and
17 was it in good repair when you left there?

18 MR. GRIFFITH: Again, I'm having trouble
19 with "in good repair." I mean, you're asking, did
20 they make repairs?

21 COUNCILMAN RIZZO: Your client made a
22 statement that the field was damaged. After the
23 repairs were made, was it still damaged?

24 MR. SEATON: I actually think,
25 Councilmember, what I said is that due to the

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2 uniqueness of the stadium, you tend to destroy the
3 product at a more accelerated rate than other
4 stadiums due to the conversionability of the
5 facility.

6 Now, because you and I spoke on the
7 telephone, as you probably recall, I wasn't aware of
8 the repairs, so are we speaking of this \$25,000
9 repair job?

10 COUNCILMAN RIZZO: I'm talking about a
11 repair job.

12 MR. SEATON: That was the number that you
13 gave me.

14 COUNCILMAN RIZZO: Yeah, or somewhere
15 around there, that the repairs would be
16 approximately between approximately 25 and \$30,000.

17 MR. SEATON: Yeah. Well, actually I'm a
18 little lost still because I gained that information
19 from you, and I guess from our conversation sort of
20 my take-away was that we didn't bill you. If you
21 wish for us to bill you for that, I'd be happy to
22 send you an invoice.

23 COUNCILMAN RIZZO: If we deserve a bill,
24 you please do that. If you performed a service for
25 us and you didn't get paid, I think you should; the

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2 same way if the City Controller's Office says that
3 you have responsibility for what occurred on game
4 day and you're saying you don't.

5 If we owe you money, sir, send them the
6 bill.

7 MR. SEATON: Thank you.

8 COUNCILWOMAN REYNOLDS BROWN: Two final
9 questions. The square footage on the half field at
10 Jack Russell Stadium in Florida is approximately
11 27,000 square feet. There the arrangement, the
12 approximate per-square-foot cost is \$3.70. You
13 provided an explanation on why the -- "discrepancy"
14 may be an inappropriate word -- why the difference
15 between per square foot \$13 in Philadelphia and \$8
16 per square foot at Wissahickon High School.

17 Provide an explanation on why \$13 square a
18 square foot in Philadelphia for NeXturf and \$3.70
19 per square foot in Florida for the same product.

20 MR. SEATON: I'm not exactly, sure, Madam
21 Chair, how large the field is.

22 COUNCILWOMAN REYNOLDS BROWN: So is that a
23 factor in determining the bottom-line figure?

24 MR. SEATON: Yeah. It's, you know, the
25 delta, the field times, you know, multiplied by the

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2 value. And you have to take into consideration
3 inside the contract values, both yours, Wissahickon,
4 and the Jack Russell Stadium that there's also other
5 kinds of ancillary work that goes on -- excavation
6 concrete, track work -- so you have to have a full
7 breakdown. I don't know how big it is.

8 COUNCILWOMAN REYNOLDS BROWN: Are you
9 submitting a bid for consideration for the new
10 stadiums in the City of Philadelphia?

11 MR. SEATON: Yes, ma'am, I certainly hope
12 that we will because we also built the new NovaCare
13 Center for the practice field for the Eagles, the
14 natural grass, which has worked out tremendously
15 well for them. And I actually just came from New
16 York City where we're completing the Yankees'
17 baseball field today.

18 COUNCILWOMAN REYNOLDS BROWN: Thank you
19 very much. I have no further questions.

20 Councilman?

21 COUNCILMAN RIZZO: No.

22 COUNCILWOMAN REYNOLDS BROWN: Thank you
23 very much, gentleman.

24 (Councilman Nutter enters
25 Council chamber.)

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2 MR. GRIFFITH: Subject to our five minutes

3 later. Thank you.

4 COUNCILMAN NUTTER: Madam Chair.

5 COUNCILWOMAN REYNOLDS BROWN: Oh,

6 Councilman Nutter has joined us. Please forgive me.

7 (Messrs. Seaton and Griffith

8 leave witness table.)

9 COUNCILMAN RIZZO: Gentlemen.

10 COUNCILWOMAN REYNOLDS BROWN: Please

11 forgive me, gentlemen. I failed to recognize my

12 colleague Councilman Michael Nutter, who has joined

13 us for these proceedings.

14 Welcome.

15 COUNCILMAN NUTTER: Thank you, thank you,

16 Madam Chair.

17 Good afternoon, gentlemen. I'm sorry I

18 missed some of your opening statements. Could you

19 just tell me who you are.

20 MR. GRIFFITH: James Griffith, attorney

21 for Southwest.

22 MR. SEATON: Reed James Seaton, President,

23 Southwest Recreational Industries, Inc.

24 COUNCILMAN NUTTER: I'm sorry. I didn't

25 catch your name.

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2 MR. SEATON: Reed Seaton.
3 COUNCILMAN NUTTER: How do you spell your
4 last name?
5 MR. SEATON: S-E-A-T-O-N.
6 COUNCILMAN NUTTER: S-E-A-T-O-N, Seaton?
7 MR. SEATON: That's correct.
8 COUNCILMAN NUTTER: Okay, and you're the
9 president of Southwest?
10 MR. SEATON: I'm sorry, can you repeat
11 that question?
12 COUNCILMAN NUTTER: You're the president
13 of Southwest?
14 MR. SEATON: That's correct.
15 COUNCILMAN NUTTER: Okay, great.
16 When I came in, you were answering a
17 question, I think, from Councilman Rizzo with regard
18 to conversions of the field, and I heard you talking
19 about damage. What kind of damage was created at
20 Veterans Stadium or damage to the surface?
21 MR. GRIFFITH: At what point in time are
22 you talking about, sir?
23 COUNCILMAN NUTTER: I don't know, about 10
24 minutes ago, you were in a --
25 MR. GRIFFITH: I'm talking to you about

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2 damage to the field. At what point in time are you
3 talking about with respect to that field?

4 COUNCILMAN NUTTER: I'm not sure. I came
5 in while Mr. Seaton was talking, so it was about 10
6 minutes or so ago when you were responding to some
7 questions from Councilman Rizzo, and you were
8 talking about heavy equipment, maybe tractors, some
9 other stuff being on the fields, and that there was
10 damage. That's not so much that the field wore out
11 but that it had been damaged. Do you remember that
12 testimony?

13 MR. GRIFFITH: I believe he's since
14 explained to Councilman Rizzo that it was over --
15 well, I'll let you...

16 MR. SEATON: Do you remember the statement

17 MR. SEATON: Yes.

18 COUNCILMAN NUTTER: Okay, tell me a little
19 bit more about that, I'm sorry.

20 MR. SEATON: Well, I don't really know
21 that I have anything additional to add to that, sir.

22 COUNCILMAN NUTTER: Mr. Seaton, what I'm
23 trying to explain to you is, you were in the middle
24 of a conversation that I didn't have the benefit of
25 hearing the beginning of; all I heard you talking

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2 about was that the field had been damaged.

3 I'm trying to understand the nature of the
4 damage, who created the damage and what the damage
5 was. What were you talking about?

6 MR. SEATON: Councilman, have you had the
7 opportunity to spend the evening at a conversion
8 process?

9 COUNCILMAN NUTTER: I heard you ask my
10 colleague that question. I've done everything I can
11 in my public life not to spend the night at Veterans
12 Stadium, so the answer is no.

13 MR. SEATON: Okay. I'd love to answer
14 your question but I'm not real sure what exactly the
15 question is.

16 COUNCILMAN NUTTER: Did you say the field
17 had been damaged equipment outside of the normal-use
18 process?

19 MR. SEATON: I believe that what I said
20 was is that based on the unique environment of Vets
21 Stadium because of the convertibility and because
22 the bleachers retract and move across the field and
23 there's a tremendous amount of moving pieces, the
24 dugout and the pitcher mound, that you have lots of
25 vehicular traffic -- trucks and forklifts and

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2 buggies and etc. -- that drive on the turf.

3 COUNCILMAN NUTTER: Okay.

4 MR. SEATON: In most playing fields, you
5 will not see a pickup truck or bleachers or fork
6 trucks moving huge racks of very heavy iron and
7 steel driving on your playing field.

8 COUNCILMAN NUTTER: Okay, I understand
9 that. Now, you put the turf in -- this is the new
10 turf, right? You put the NeXturf in?

11 MR. SEATON: That's correct.

12 COUNCILMAN NUTTER: Okay. Did you know
13 that that's what we did when you made the
14 installation or when you made the pitch for the
15 business?

16 MR. GRIFFITH: Councilman, I believe you
17 were not here for the portion of my openings remarks
18 where I indicated that due to sensitivities, we were
19 not going to talk about the conversion process and
20 any issues related to that.

21 COUNCILMAN NUTTER: I didn't so much ask
22 you about the conversion process; I asked you, when
23 you bid for the job, did you know what was involved
24 or what was going to happen to the turf in the
25 course of the period of time that it was in place

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2 and that certain activities would take place? I'm
3 just asking you, were you aware much that

4 MR. GRIFFITH: I understood the question
5 and, again, in light of the sensitivities of this
6 issue, we're not going to get into that here today.

7 COUNCILMAN RIZZO: Okay. Mr. Seaton, you
8 said that the field was damaged, in response to
9 Councilman Rizzo's question, that there had been
10 damage to the field by all of this equipment going
11 over it?

12 MR. GRIFFITH: I believe he just clarified
13 his remarks and what he said -- what he just said
14 two minutes ago is his testimony, sir.

15 COUNCILMAN NUTTER: Well, I think I'd like
16 to hear from Mr. Seaton; is that possible?

17 MR. SEATON: Councilman, I believe that's
18 the second or third time that I've tried to answer
19 the question for you. Maybe if you can rephrase the
20 question.

21 COUNCILMAN NUTTER: So your testimony is
22 as a part of our process, we damage the field; is
23 that what you're saying?

24 MR. SEATON: Which field are you referring
25 to, sir?

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2 COUNCILMAN NUTTER: The current field.
3 MR. SEATON: I don't believe I was
4 testifying to the current field.
5 COUNCILMAN NUTTER: What field were you
6 talking about?
7 MR. SEATON: I believe the Councilmember
8 was referring to the previous field.
9 COUNCILMAN NUTTER: Did you do the
10 previous field?
11 MR. SEATON: Yes, our company did.
12 COUNCILMAN NUTTER: Okay, well then, let's
13 talk about that field. Who damaged that field?
14 MR. SEATON: That's the testimony that
15 I've given already twice, sir.
16 COUNCILMAN NUTTER: Okay.
17 MR. SEATON: I mean, that's why I really
18 started out by saying, Have you ever spent the night
19 to watch the environment? And it's very hard for me
20 to explain to you, you know, without maybe, you
21 know, being there once and understanding the
22 conversion process.
23 COUNCILMAN NUTTER: Okay, all right. Then
24 let me try to better understand your response to
25 Councilwoman Reynolds Brown's question with regard

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2 to the differing price levels of the varying fields.
3 I think there was some discussion at the last
4 hearing, and apparently there was more at this
5 hearing about Wissahickon, I think some work you did
6 in Florida maybe for the Phillies, and then the
7 price here in Philadelphia. Is it 5, 8 and 13; are
8 those the numbers per square foot?

9 MR. SEATON: I believe those were Madam's
10 numbers, yes.

11 COUNCILMAN NUTTER: Okay, are they
12 correct?

13 MR. SEATON: I couldn't tell you
14 specifically sitting here today.

15 COUNCILMAN NUTTER: You don't know what
16 you charged those various people per square foot,
17 including us, for your product?

18 MR. SEATON: I do not.

19 COUNCILWOMAN REYNOLDS BROWN: Do you have
20 a member of your team here who can answer the
21 question accurately?

22 MR. SEATON: Actually I do not, ma'am.

23 COUNCILMAN NUTTER: Well, who would know
24 the answer to the question? You're the president of
25 the company -- I'm sorry, did I take that down

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2 correctly?

3 MR. SEATON: That's correct.

4 COUNCILMAN NUTTER: Okay, you're the
5 president.

6 MR. GRIFFITH: That's the second time or
7 perhaps the third that you've asked that,
8 Councilman.

9 COUNCILMAN NUTTER: Well, Mr. Griffin --

10 MR. GRIFFITH: It's Griffith.

11 COUNCILMAN NUTTER: Griffith. Is that
12 G-R-I-F-F-I-T-H?

13 MR. GRIFFITH: Yes.

14 COUNCILMAN NUTTER: Okay. Mr. Griffth,
15 you've probably been through this a couple times in
16 your legal experience. We ask a lot of questions
17 here, as we are public officials. What you get in
18 court is, you get to say "asked and answered." You
19 don't get that here. So as many times as I ask the
20 question, I will expect an answer. And when I get
21 an answer that makes some sense, then we'll move on,
22 okay?

23 MR. GRIFFITH: We're trying to be helpful
24 and cooperative, sir.

25 COUNCILMAN NUTTER: Okay. So if I ask the

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2 president of a company how much his product costs, I
3 would reasonably expect an answer, 'cause he's the
4 president. And I think that's a reasonable
5 question.

6 MR. GRIFFITH: Fair enough. I believe --
7 and perhaps you weren't here for this part of the
8 testimony when he explained the different factors
9 that go into the pricing of the product.

10 COUNCILMAN NUTTER: I think it was size
11 and what else you have to do; were those some of
12 factors? Did I catch that part correct?

13 MR. SEATON: That's correct.

14 COUNCILMAN NUTTER: Okay. So did I also
15 understand you to say you didn't know how much
16 square footage there was at these varying fields?

17 MR. SEATON: I do not know exactly sitting
18 here. Wissahickon I don't believe was an issue at
19 the previous hearing.

20 COUNCILMAN NUTTER: Was there more turf at
21 Jack Russell Stadium than at the Vet or less?

22 MR. SEATON: Significantly less.

23 COUNCILMAN NUTTER: Significantly less.

24 MR. SEATON: Maybe six, seven times less.

25 COUNCILMAN NUTTER: Okay. Is it a fair

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2 assessment in business that the more you buy of
3 something, the cheaper the price is?

4 MR. GRIFFITH: You're asking him for an
5 opinion, and we're not here to offer opinions,
6 Councilman. We'll be glad to testify about the
7 facts but --

8 COUNCILMAN NUTTER: He can give an
9 opinion, he can give his business expertise.
10 You're in business, right? Generally if
11 someone buys more of a product from you, you give
12 them a cheaper price; is that true?

13 MR. SEATON: Maybe, Councilmember,
14 maybe --

15 COUNCILMAN NUTTER: That's kind of the
16 fundamentals of supply and demand, I think it's
17 Economics 101.

18 MR. SEATON: Maybe what we could do is
19 read the record back. I mean, I think I gave 15, 20
20 minutes of testimony on the price difference earlier
21 and, you know, if you want to go through that again,
22 I'm here for you. That's the --

23 COUNCILMAN NUTTER: I don't want to burden
24 the record if you gave the answer 15, 20 minutes
25 ago, you had a good 15, 20 minutes of testimony. I

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2 guess, again, being the reasonable person that I am
3 is that you might remember. I mean, the answers
4 don't change, do they?

5 MR. SEATON: Ask your question, sir. I'll
6 try to answer it for you.

7 COUNCILMAN NUTTER: Okay, you're saying
8 that there was six, maybe seven times less turf
9 at -- what is it, Jack Russell Stadium, is that what
10 it's called?

11 MR. SEATON: I believe that's correct.

12 COUNCILMAN NUTTER: Okay, six, seven times
13 less there than at the Vet.

14 MR. SEATON: And maybe even more.

15 COUNCILMAN NUTTER: All right, maybe more.
16 Was the price per square foot less at Russell or
17 more than Vets Stadium

18 MR. SEATON: It was less.

19 COUNCILMAN NUTTER: It was less. How much
20 less?

21 MR. SEATON: Specifically I'm not sure
22 that I could tell you that today.

23 COUNCILMAN NUTTER: Okay, let me ask this
24 question.

25 MR. SEATON: I thought you wanted my

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2 answer.

3 COUNCILMAN NUTTER: I do, but I have
4 another question. When did you find out about this
5 hearing?

6 MR. SEATON: Which hearing?

7 COUNCILMAN NUTTER: This hearing, the one
8 we're in right now.

9 MR. SEATON: Oh, I believe last week
10 sometime.

11 COUNCILMAN NUTTER: Last week?

12 MR. SEATON: I believe that's correct,
13 yes.

14 COUNCILMAN NUTTER: and what was your
15 anticipation upon coming to the hearing? because I'm
16 sure you had a good conversation with Mr. Griffith
17 about today's hearing, right?

18 MR. SEATON: Not necessarily. I came here
19 voluntarily to represent our product and our company
20 and what I think is an outstanding installation that
21 has played very well. Best, you know, fielding
22 season for the Phillies, they came in third; the
23 Eagles are number one in the division; we haven't
24 had any major injuries; the field's working great;
25 attendance is up; commissions are up.

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2 I really came to try to answer questions.

3 COUNCILMAN NUTTER: I actually live here,
4 I know most of those things, okay?

5 So in anticipation of today's hearing, did
6 you think we might ask you some questions about the
7 company, about prices, about things that you've done
8 in other places; was that your anticipation or were
9 you --

10 MR. GRIFFITH: We had no idea what you
11 were thinking, Councilman.

12 COUNCILMAN NUTTER: Okay, well, you
13 wouldn't know what I was thinking, but there was a
14 resolution that was introduced and someone must have
15 invited you and I'm sure, knowing Councilwoman
16 Reynolds Brown, that she would have --

17 MR. GRIFFITH: And I guess if we read the
18 resolution, we'd know that it didn't even mention
19 prices.

20 COUNCILMAN NUTTER: I'm sorry?

21 MR. GRIFFITH: If you read the resolution,
22 it certainly didn't mention prices.

23 COUNCILMAN NUTTER: Okay, well --

24 MR. SEATON: Actually, the resolution
25 mentioned nothing specific for me, sir. You didn't

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2 ask me --
3 COUNCILMAN NUTTER: I think it talked
4 about this situation though. I think it talked
5 about this situation. Did you have a representative
6 at the last hearing?
7 MR. SEATON: I was here.
8 COUNCILMAN NUTTER: You were here?
9 MR. SEATON: Yes.
10 COUNCILMAN NUTTER: I think we had some
11 discussion about price. I think, as a matter of
12 fact, I asked -- there was a gentleman sitting there
13 at the table, I think he works for the Phillies, and
14 I think I specifically asked him questions about the
15 stadium in Florida versus Veterans Stadium.
16 Do you know who that gentleman was? Who
17 was it?
18 MR. SEATON: I believe his last name is
19 Amaro.
20 COUNCILMAN NUTTER: It could have been,
21 yeah. I think he works for the Phillies, right?
22 MR. SEATON: He's the manager or
23 something. That was the first time I met him, at
24 the last hearing.
25 COUNCILMAN NUTTER: All right, okay. So

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2 we did actually talk about price and size and amount
3 at the last hearing, and you said you were here,
4 right?

5 MR. SEATON: Maybe if you could drill down
6 to the question, I'd be very happy to try to answer
7 it for you.

8 COUNCILMAN NUTTER: Okay. Well, I'd like
9 to talk about why there was such a seemingly -- for
10 the layperson, a seemingly drastic price difference
11 between the Jack Russell Stadium and the Phillies
12 stadium, or the Phillies and Eagles stadium or the
13 Veterans Stadium is actually our stadium.

14 MR. GRIFFITH: Mr. Seaton has testified to
15 the best of his ability and given lengthy testimony
16 concerning the pricing of his product.

17 COUNCILMAN NUTTER: Okay, that's your
18 answer and you're going to stick to that?

19 MR. SEATON: I believe it's in the
20 transcript.

21 COUNCILMAN NUTTER: Okay, all right.

22 COUNCILWOMAN REYNOLDS BROWN: For the
23 benefit of my colleague, please state again those
24 factors that arrive you to the decision on why
25 square footage in one location should be one price

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2 and square footage in another location should be
3 another. Cite those factors again for us for the
4 record.

5 MR. GRIFFITH: Councilwoman, Mr. Seaton
6 has already given extensive testimony about this. I
7 notice we've already gone over our allotted time of
8 20 minutes. I'm going to allow him to answer the
9 question again subject to the caution that, you
10 know, it's not a memory test, and he may not be able
11 to recite it exactly as before.

12 COUNCILWOMAN REYNOLDS BROWN: Well taken.

13 MR. SEATON: Size, wages, weather,
14 substrate, taxes, hotel, air fare, freight,
15 surcharge on freight, union dues and fees,
16 complexity of the installation, auxillary work,
17 additional end zones, additional base inserts,
18 warning tracks, goal post foundations, testing the
19 system, being onsite, removing snow all winter,
20 doing prototyping, doing mock fields, doing
21 demonstrations.

22 You know, basically, the Vet facility
23 probably encompassed the most complexed set of
24 conditions to meet the opening baseball day of the
25 contracts in the past.

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2 I mean, I would be quite happy, I think,
3 to answer the question. I mean, it is, you know --
4 why don't you ask me how much money we made on the
5 project. That's what you'd like to know, isn't it?

6 COUNCILMAN NUTTER: Well, I hadn't really
7 gotten around to that but, you know, quite frankly,
8 if you're offering it up, I'm sure you're going to
9 tell me some sad tale about how your kids don't have
10 shoes or nobody was able to have dinner the week
11 after you did the Vets Stadium installation or
12 something like that. So, I mean, I certainly
13 wouldn't in a public forum want to embarrass you.

14 But why don't I just kind of stick to the
15 questions that I'd like to ask you, and I appreciate
16 your offer of a question, but the one thing I have
17 been able to figure out in my time here is how to
18 ask the questions I want to ask, how to ask the
19 questions I want to ask. I got that part down.

20 Let me ask you this question: What's the
21 experience with this particular product in the
22 Northeast with our little unique four seasons of
23 weather, the NeXturf product?

24 MR. SEATON: I'm sorry, Councilman,
25 what --

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2 COUNCILMAN NUTTER: What's experience of
3 the product in the Northeast region of the United
4 States of America -- cold weather, rain, snow and
5 the like? What's the history of the product in that
6 environment?

7 MR. SEATON: I think we all know,
8 Councilmember, that it's a new product.

9 COUNCILMAN NUTTER: How new?

10 MR. SEATON: It's been in the market for
11 approximately about two years, two and a half years.

12 COUNCILMAN NUTTER: Okay. Has it snowed
13 in any of the environment in that two-year period
14 where it's currently installed?

15 MR. SEATON: Yes.

16 COUNCILMAN NUTTER: It has?

17 MR. SEATON: Yes.

18 COUNCILMAN NUTTER: Okay, so you might
19 have some experience in -- are they in the
20 Northeast?

21 MR. SEATON: Michigan.

22 COUNCILMAN NUTTER: Okay, that's pretty
23 north, not too east.

24 So tell me about the experience of the
25 product in cold-weather climates. How does it

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2 respond to rain, snow? I don't know, how do they
3 get the snow off the field in those places; do they
4 have tractors on them or -- I mean, do they have
5 people with brooms and shovels, or just how does it
6 react and respond in that environment?

7 MR. SEATON: You can use a rubber-tipped
8 snow plow and balloon tire vehicle to power the snow
9 plow to remove the snow.

10 COUNCILMAN NUTTER: How is the traction on
11 the field after it's experienced either snow or ice?
12 What's your experience?

13 MR. SEATON: How much ice? It's pretty
14 ambiguous. If the field's covered with ice, I would
15 imagine --

16 COUNCILMAN NUTTER: A six-inch snowstorm,
17 you take it all off, it froze overnight, you've got
18 a game at 1 o'clock the next day; what's the
19 experience?

20 MR. SEATON: To date, we haven't had any
21 problems.

22 COUNCILMAN NUTTER: What does that mean?

23 MR. SEATON: That the fields in Ohio and
24 Michigan where they've had light snow have not
25 experienced any problems.

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2 COUNCILMAN NUTTER: Okay, all right. So
3 you have had some experience. I mean, your initial
4 response was, It's a new product, we don't know.

5 MR. SEATON: Well, I think it was because
6 of the vagueness of the question, sir.

7 COUNCILMAN NUTTER: Okay, I'll try to be
8 more specific.

9 And what's your experience with the
10 product here in Philadelphia with regard to rain?
11 Has it rained on the product while the Eagles have
12 played on it?

13 MR. GRIFFITH: Is your question limited to
14 after the events of August 13th?

15 COUNCILMAN NUTTER: Well, I think August
16 13th was the first time the Eagles actually played a
17 game on it, isn't it? Or tried to play a game on it
18 or scheduled to play a game on it? Yeah, post
19 August 13th.

20 MR. SEATON: Yes.

21 COUNCILMAN NUTTER: Yes, what?

22 MR. SEATON: Yes to the answer [sic], sir.

23 COUNCILMAN NUTTER: Okay. Do you have any
24 information to report to us with regard to how the
25 surface reacted to rain?

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2 MR. SEATON: Yeah. I believe I testified
3 to that earlier, sir, but I think the game in
4 reference was --

5 COUNCILMAN NUTTER: I'm very sorry that I
6 missed the testimony.

7 MR. SEATON: Oh, I'm sorry.

8 COUNCILMAN NUTTER: Go ahead.

9 MR. SEATON: What I testified to was the
10 Dallas Cowboy game against the Eagles in which it
11 rained 23, 24 hours before the game and rained all
12 through the game, and the game played extremely
13 well.

14 So I would use that as probably a good
15 example that the field plays very well wet.

16 COUNCILMAN NUTTER: Okay, good. Thank
17 you.

18 MR. SEATON: Thank you very much.

19 COUNCILMAN NUTTER: I appreciate your
20 responsiveness.

21 MR. GRIFFITH: You're welcome.

22 MR. SEATON: Thank you.

23 COUNCILWOMAN REYNOLDS BROWN: Thank you,
24 Councilman Nutter. I appreciate your contribution.

25 COUNCILMAN NUTTER: Thank you.

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2 COUNCILWOMAN REYNOLDS BROWN: Thank you,
3 gentlemen from Southwest Recreational Industries,
4 Inc.

5 We will now invite up the following:
6 SprinTurf Inc., Bruce Cheskin, Vice President of
7 Construction. Join us, Mr. Robert Rooney, Director
8 of Marketing.

9 FieldTurf, Inc., John Gilman, CEO.

10 And Hummer Turfgrass Systems Inc., Web
11 Cook, Vice President of Sales and Marketing.

12 (Witnesses come forward.)

13 COUNCILWOMAN REYNOLDS BROWN: Welcome,
14 gentlemen. Please state your full names for the
15 record, and if you have any written formal
16 testimony, you're welcome to share it with us at
17 this time. If not, you -- whatever you're prepared
18 to do.

19 MR. CHESKIN: My name is Bruce Cheskin,
20 I'm with SprinTurf, and what I would like to don't
21 have is the unfairness of --

22 COUNCILWOMAN REYNOLDS BROWN: Please speak
23 directly into the mic.

24 MR. CHESKIN: I'd like to speak to the
25 unfairness of the procedure to select a product. We

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2 are a local company, and we did not have a fair
3 opportunity to bid on this job. We were never
4 allowed to come in, although many requests were made
5 to Ewing Cole to come in and give a presentation.
6 We were never afforded that opportunity.

7 We were never told of any specifics about
8 the Vet's surface, which we would need to know, such
9 as the bleachers or the substrate.

10 We have several different products that
11 are available. The product you have there is a
12 rubber infill, which is about two inches. I have
13 here a product that is not a rubber infill. And we
14 have at least six other products in our product
15 line, which, given the opportunity, we would have
16 shown at a presentation.

17 We also have recently, during the time
18 that the process was taking place for selection, put
19 a 50,000 square foot field on the roof of Friends
20 Select School, which is less than three blocks from
21 here. So right in the center of Philadelphia, we
22 put a field with a rubber infill. It shows our
23 capability of doing a tough job in a tough
24 environment.

25 We are local. I grew up in Philadelphia

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2 and I'm a seasoned ticket-holder of the Eagles.

3 Essentially that's my testimony. It was a
4 very unfair practice, and I believe that Ewing Cole
5 did not serve the City well and provide the
6 procurement office the necessary information to make
7 a sole-source bid.

8 Thank you for your time.

9 COUNCILWOMAN REYNOLDS BROWN: I need to
10 make sure I heard you correctly. You're saying that
11 in the documentation you received from Ewing Cole,
12 there was nothing specific about the specifications
13 that would be considered and used really as a
14 measure for the ultimate award. Is that what I'm
15 hearing you say?

16 MR. CHESKIN: Correct. All we were asked
17 to do is send in our product information. Our main
18 product is Sprinturf, which is the product in the
19 box on your table. We were never afforded the
20 opportunity to know what the City was looking for
21 and what the ramifications of the conversions and
22 such were.

23 Had we been afforded the opportunity, we
24 would have been able to provide a product that would
25 be an inch and a half product that would work for

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2 conversions. Being a local company, we would have
3 been here all of the time.

4 COUNCILWOMAN REYNOLDS BROWN: You have
5 experience, then, in conversions?

6 MR. CHESKIN: We have never done any
7 conversions; however, we have done baseball and
8 football fields, and our employees are capable of
9 doing what needs to be done along with the City
10 helpers. As I understand the conversions, many of
11 the City helpers are involved in the conversion.

12 COUNCILWOMAN REYNOLDS BROWN: Thank you,
13 sir.

14 Councilman Rizzo?

15 COUNCILMAN RIZZO: You heard the testimony
16 of the City Controller's Office

17 MR. CHESKIN: Yes.

18 COUNCILMAN RIZZO: And you are able to
19 speak about the day that the game was cancelled
20 because of the problems associated with the flooding
21 and -- could you comment on what you believe
22 occurred that day from your professional -- if you
23 have the professional expertise at least to comment
24 for the record on what you believe occurred there
25 that day.

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2 MR. CHESKIN: I don't believe that it
3 would be wise for me to do that at this time. I was
4 on the field at one point and was escorted off the
5 field when I tried to offer my advice to the stadium
6 management.

7 COUNCILMAN RIZZO: Thank you.

8 COUNCILWOMAN REYNOLDS BROWN: Please, any
9 other formal testimony. Please state your name for
10 the record.

11 MR. FINEMAN: Madam Chairman, my name is
12 David Fineman. I'm an attorney here in the City of
13 Philadelphia. And thank you for holding these
14 hearings. I'm here to represent John Gilman from
15 FieldTurf, and Mr. Gilman is going to testify and
16 answer any questions that you may have.

17 We have and we would like to give to you
18 copies of what are pictures of the installations of
19 FieldTurf throughout the United States actually, and
20 we've installed fields that have been convertible --
21 not necessarily baseball or football, but soccer all
22 over the world.

23 We also have the diagrams just on our
24 2000-2001 fields, about 25 fields. We have the
25 fields and you'll hear from Mr. Gilman that Seattle

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2 place on the Seattle team, that down in Tampa Bay,
3 the Tampa Bay team that I've been there to watch a
4 couple baseball games -- actually, there's some
5 representatives of the Phillies who actually came
6 down.

7 And I would say that the other thing that
8 I think -- we have no intention of criticizing
9 somebody else's product. On the other hand, if you
10 have any questions of us -- Mr. Gilman's been in the
11 business for some time -- we'll be more than happy
12 to answer them for you.

13 We would -- I think Mr. Gilman would like
14 to comment since I did see Mr. Seaton come up and
15 kind of turn that tray upside down and kind of say
16 how difficult this conversion this process was, and
17 I got a little chuckle about it in the back since I
18 understand how we do do the conversion, and Mr.
19 Gilman can explain it.

20 Nor do we have any intention of going into
21 the history of what happened on August 13th.

22 I would say that when we were asked to bid
23 on this product, on this installation, we indicated
24 that we would warn and that there would be a warning
25 put up by Lloyds of London -- and I think Mr. Gilman

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2 will say that -- that if there had been a problem
3 and we were to be sued, the City of Philadelphia
4 would know that there was a deep pocket to pay for
5 any damages.

6 I mean, let's be realistic here; nobody
7 wants to talk about this lawsuit. I happen to be a
8 lawyer. I mean, there might be a lawsuit.
9 Mr. Applebaum was quoted in the newspapers
10 throughout the United States, some of which I have
11 here, in which he indicates that there might be a
12 lawsuit.

13 The only question is, who's going to bring
14 it and when is going to happen? And if there is a
15 lawsuit, as a lifelong of the City of Philadelphia,
16 proud -- a person who's a products of the public
17 schools in Philadelphia, I'd like to know who's
18 going to pay, and is there somebody there that's
19 going to pay at the end of the day? That's the only
20 question that I have to ask.

21 I don't even ask that as a question that I
22 necessarily need an answer for, but it is something
23 that the City officials have brought up and
24 something which obviously the people from NeXturf
25 brought up.

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2 But I'll let Mr. Gilman testify about the
3 product, and we thank you for the opportunity to
4 come here. He's come here from Montreal, Canada, to
5 be with you.

6 And obviously if there's any questions
7 that you feel you'd like to ask, we're here to
8 answer them for you.

9 COUNCILWOMAN REYNOLDS BROWN: Thank you,
10 Mr. Fineman.

11 Mr. Gilman, welcome.

12 MR. GILMAN: Thank you.

13 COUNCILWOMAN REYNOLDS BROWN: Please offer
14 your thoughts.

15 MR. GILMAN: We too were not given all of
16 the information to properly bid or offer our product
17 by Ewing Cole and the consultants.

18 I've sat here through now two hearings and
19 I've heard a lot of comments about how the process
20 went on. I would like to state that only in these
21 hearings did I hear the fact that a product that
22 didn't meet a one-and-a-half-inch height for the
23 bleachers was the first time that I heard it here.

24 In the previous hearing, a gentleman from
25 Ewing Cole was asked, What was the height of

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2 FieldTurf? And he responded, "two and a half
3 inches." And he was asked the follow-up question, I
4 believe, by Councilor Rizzo, Where did you get that
5 information? And he responded, "From our Web site."
6 How ridiculous, how unbelievably ridiculous.

7 Because I think, Councilmembers, if you
8 take a look at our product that Mr. Seaton almost
9 tipped over, you will note that the grass, the
10 artificial grass, is two and a half inches high,
11 only that. The infill that makes up the actual
12 playing surface, which we say simulates earth, the
13 infill normally is about an inch and three quarters
14 from the bottom of the carpet. Therefore, we would
15 have been one quarter of an inch outside this new
16 comment of an inch and a half being the requirement
17 for the bleachers.

18 That being the case, all of the other
19 testimony aside about the need for conversion and
20 rolling out a carpet and unrolling a carpet and all
21 of the rest of it, quite frankly, all we would have
22 had to do is remove a quarter inch of infill, and it
23 would have met the inch-and-a-half requirement.

24 It wouldn't have required cutouts, it
25 wouldn't have required any rolling out of turf all

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2 over the place. It would merely meant, at the clay
3 areas around the bases, the removal of the clay and
4 the installation of FieldTurf at the clay bases, as
5 simple as that.

6 And it's quite astounding that I heard
7 about that here for the first time.

8 Some other comments. Mr. Nutter,
9 Councilor Nutter got to the nub of the question as
10 to in general business, the more you buy, the
11 cheaper the price. Interesting comment about -- and
12 I hope I pronounce it correctly with all of these
13 Philadelphians around me -- Wissahickon. It's noted
14 in a newspaper article, and that's for the record,
15 how the number was derived. It's noted in the
16 newspaper record that the superintendent of the
17 school district is quoted saying how much he paid
18 for a full-size football field, and that's how the
19 \$8 figure is. That's a full-size NeXturf field.

20 Ruben Amaro stated at the other hearing
21 that he paid \$100,000 for basically an infield in
22 Florida. And I'd like to state for the record, and
23 for Mr. Seaton, who's not aware of it, that it is
24 not in Jack Russell Stadium; it's outside Jack
25 Russell Stadium. It's just an infill field where

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2 the infielders take some grounders and probably
3 fungo hitting. It is not an installation inside of
4 a stadium.

5 And that number of \$100,000 that Ruben
6 Amaro testified that it was installed for, in our
7 meetings -- and there are many, many people who sat
8 in on that meeting -- we were asked -- FieldTurf was
9 asked, Would you put in an infield outside of Jack
10 Russell Stadium for free so that if we chose
11 FieldTurf, we'd be able to have our infielders get
12 used to the surface before opening game on April
13 6th? It was one of the requirements of us getting
14 the job.

15 We were not asked -- we were -- we never
16 under any thought believed that we would be paid for
17 it because it was asked specifically on the record,
18 Would we put it in for free? We agreed to put it in
19 for free. So let's -- talking about fairness in the
20 process, one company got paid for it, another
21 company was asked to put it in for free.

22 In terms of cost for the actual project,
23 in terms of a mockup conversion, we were also told
24 that we would have to conduct, I believe, three
25 mockups for the City to conclude that they could do

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2 the conversions properly. We agreed to do that, we
3 agreed to do that for free. Mr. Seaton is saying
4 that was a consideration in his price on how he got
5 to \$13.

6 We were also not required to make a
7 prototype or do anything of that nature, and we
8 weren't asked to do anything because FieldTurf is
9 FieldTurf. It's been on the market now for five,
10 six years. We started off small, like the fellows
11 from SprinTurf, and we've grown, and we're putting
12 in fields and major installations and winning most
13 of the large contracts.

14 There are contracts that are being given
15 out by other professional teams and FieldTurf is
16 winning those contracts, not NeXturf, not AstroTurf.
17 Not any of the other products that the AstroTurf
18 companies make. It's because FieldTurf has become
19 the leader in the industry.

20 In terms of warranty and in terms of
21 financial strength, when we got the same short
22 shrift as SprinTurf and Hummer Turf from the people
23 at Ewing Cole, FieldTurf has the strongest balance
24 sheet in the marketplace. FieldTurf offered, as
25 David Fineman stated, a warranty backed by Lloyds of

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2 London.

3 We also said that we would house people
4 right near the stadium -- it's in one of my
5 documents given to the City -- to conduct and do all
6 of the conversions, all of the mockups, all of the
7 conversions and everything, we would keep people
8 here throughout season, using the general available
9 staff that I believe the stadium uses to do those
10 type of things, but the key elements of it, we would
11 do that portion of the conversions.

12 And I just -- I just am kind of shocked at
13 some of things I've heard over the last couple of
14 hearings, and sometimes you win some and sometimes
15 you lose some, but in a case like this, it's really
16 a doggone shame as to what happened.

17 And that's basically my statement.

18 COUNCILWOMAN REYNOLDS BROWN: Thank you
19 very, very much, Mr. Gilman.

20 And we have another testifier?

21 (Witnesses come forward.)

22 COUNCILWOMAN REYNOLDS BROWN: Please state
23 your name for the record and who you represent.

24 MR. COOK: Yes, ma'am. My name is Web
25 Cook. I'm vice president of sales and marketing for

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2 Hummer Turfgrass Systems, out of Lancaster,
3 Pennsylvania. I don't have a prepared statement but
4 had submitted an outline of events earlier to the
5 Council -- I'm not sure whether you have reviewed
6 it.

7 In essence, we were probably more involved
8 from a company's standpoint than anybody else in the
9 procurement process, so we worked at length with
10 Ewing Cole. It actually was not our synthetic
11 product they considered; it was our natural-grass,
12 it's a product called "the grass tile system," and
13 it's a modular natural-grass system.

14 So if any of the Councilmembers have
15 questions about the process itself, I'll be happy to
16 answer them, 'cause we worked pretty closely with
17 Ewing Cole during the fall, and we do have some
18 comments about, you know, the process itself.

19 Well, I would say this to you: The
20 process was very informal. I mean, all of the
21 companies that you've heard from today deal with
22 architects, deal with specifications, deal with the,
23 you know, analytical process of selecting a surface.
24 And our feeling on this was that this process was
25 very informal.

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2 We did work with -- we did work with the
3 architects. We came down and made a presentation,
4 brought some of the tiles and the equipment down to
5 Veterans Stadium, put on a demonstration, put on a
6 full-blown demonstration of the system up at Hershey
7 Park Stadium where we have 'em installed.

8 I spent the night at Veterans Stadium,
9 unfortunately, but I did, on a Sunday evening to
10 watch the conversion. We also sat down with
11 representatives from the architects, representatives
12 from the City, and we went to great lengths to put
13 together a full-conversion schedule if they were to
14 use the grass tile system.

15 In the very end, we never saw any type of
16 specification, what they were looking for. I mean,
17 the fact of the matter is, we read about, you know,
18 the award of the project to Southwest in the paper.

19 So, you know, in the end, the informality
20 of it all probably bothered us a little bit. You
21 know, sometimes that's the way processes work.

22 But I'm happy to answer any questions that
23 you may have regarding it.

24 COUNCILWOMAN REYNOLDS BROWN: Please do.

25 COUNCILMAN RIZZO: You claim that this

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2 significant transaction that was accelerated to just
3 months was an informal process as far as you're
4 concerned?

5 MR. COOK: Well, I would say informal. As
6 these gentlemen have testified, we never saw a
7 specification as to what the project called for.
8 Usually in these types of projects, you'll be
9 provided with some type of specification as to the
10 system they're looking for, what's required, you
11 know what's required of change-outs, etc.

12 COUNCILMAN RIZZO: At the moment, did you
13 think that every one, all of the vendors who had a
14 shot at this were being treated similarly?

15 MR. COOK: I really wasn't aware of it. I
16 mean, I can't say that I didn't know how FieldTurf
17 and Sprinturf -- I didn't know the extent to which
18 they were involved, so I can't comment on that.

19 COUNCILMAN RIZZO: Wouldn't you think the
20 natural -- you've done this before, and working
21 without a specification is quite difficult. Did you
22 ever ask for a specification? I can't imagine you
23 not.

24 MR. COOK: Oh, we asked for
25 specifications. I mean, to go back to your previous

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2 question, if you talk about all of the different
3 companies, I mean, you know, the definition of "due
4 diligence," if that's what it is, is to investigate
5 all of the possible solutions to the problem that
6 exists. In that sense, you would have thought that
7 the architects, engineers would have looked at every
8 possible solution.

9 COUNCILMAN RIZZO: When the Procurement
10 Department spoke with you, did you ever ask for a
11 specification so you would be prepared when an
12 opportunity possibly to bid on this project so you
13 could come up with numbers? I can't imagine -- we
14 buy a police car and we have four pages of
15 specifications from what kind of bulbs are in the
16 stoplights.

17 MR. COOK: Right.

18 COUNCILMAN RIZZO: I can't imagine a
19 project like this and no specification?

20 MR. COOK: Well, this is probably a good
21 example of what I referred to as the informality of
22 the project. We never met with Procurement Office;
23 we met with always were representatives of Ewing
24 Cole and then actually the operations people at
25 Veterans Stadium along with representatives of the

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2 Eagles and the Phillies.

3 COUNCILMAN RIZZO: The commissioner said
4 that this was his project, that he -- you heard him
5 say that, where he didn't do a letter to the file
6 because he personally handled this. Did you ever
7 have a conversation with the Procurement
8 Commissioner?

9 MR. COOK: No, and that's my understanding
10 that -- I've seen the report from Ewing Cole. I
11 mean, as I understand it, you know, the
12 investigation that they performed, you know, they
13 completed that investigation and made the
14 recommendation, and they acted on that.

15 COUNCILMAN RIZZO: Rizzo can I switch to
16 making this comment to any other members of this
17 panel. Have you also experienced a similar
18 situation and have any of you had any personal
19 contact with the Procurement Commissioner in
20 reference to this project?

21 MR. GILMAN: No.

22 MR. CHESKIN: No.

23 COUNCILMAN RIZZO: Is that no from
24 everyone?

25 MR. GILMAN: It's a no from FieldTurf.

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2 MR. COOK: I think everybody would agree
3 that the primary contact was Ewing Cole, at least
4 from our standpoint it was. And they asked, you
5 know, they asked us for pricing and we provided them
6 pricing; they asked us for a specific, you know,
7 rotation conversion schedule and we provided that to
8 them.

9 COUNCILMAN RIZZO: You heard about the
10 pricing? Do you have a comment on \$13 a square?

11 MR. COOK: No, I really don't.

12 COUNCILMAN RIZZO: You don't?

13 MR. COOK: No, sir.

14 COUNCILMAN RIZZO: Thank you, Madam Chair.

15 COUNCILWOMAN REYNOLDS BROWN: In terms of
16 process, you received something in writing opening
17 up the bid process.

18 MR. COOK: We received a phone call from
19 the architectural firm.

20 COUNCILWOMAN REYNOLDS BROWN: You received
21 a phone call; you never received anything in
22 writing.

23 MR. COOK: No.

24 COUNCILWOMAN REYNOLDS BROWN: And
25 consequently, you never received any information

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2 about the specs in writing.

3 MR. COOK: No.

4 COUNCILWOMAN REYNOLDS BROWN: At the end
5 of, I will now say, "the alleged process," did you
6 receive anything in writing indicating that you were
7 not the awardee?

8 MR. COOK: No. It was probably the single
9 thing that bothered us the most because we did put a
10 lot of time into it, and I actually had to call
11 Ewing Cole to find out who was awarded the job. We
12 heard, but I wanted to confirm it with them.

13 COUNCILWOMAN REYNOLDS BROWN: Did any of
14 you receive anything in writing indicating that the
15 process had reached closure and a judgment had been
16 reached on who the awardee would be? How were the
17 other testifiers informed?

18 MR. GILMAN: Councilor Brown, last year,
19 leading up to approximately this time in the year,
20 we attempted to contact City Council. We were doing
21 everything we could, 'cause we also had heard that
22 an award or a contract was going to be issued, and I
23 believe there were quite a few letters sent by
24 Mr. Fineman's office about it.

25 And, again, this is quite astonishing to

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2 me to hear today that while we were going through
3 that effort to try and to find out what was going on
4 'cause we couldn't get any calls back from Ewing
5 Cole, not in writing, not voicemail or anything,
6 it's astonishing to hear that, in fact, the contract
7 had been let and have to hear about it here. One
8 year later.

9 MR. FINEMAN: And just so the record is
10 clear, there was a period of time, so I don't know
11 want -- Mr. McCabe's probably back there chomping at
12 the bit since he and I have been adversaries on
13 other occasions, but he's a good lawyer.

14 There was a period of time where I was
15 retained by Mr. Gilman's firm, and we did find out
16 that the City had put out a no-bid contract, and we
17 did make an objection to the City of Philadelphia
18 that we thought that that was an inappropriate
19 procedure. And we did receive a response from the
20 City. And that all is part, I believe, of the City
21 Controller's report, but it is certainly part of the
22 public record.

23 COUNCILMAN RIZZO: Madam Chair.

24 I'd like to follow up. You described a
25 process where your primary contact back and forth

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2 for all of you appeared to be Ewing Cole. In your
3 business experience -- since the City of
4 Philadelphia was your customer, is it the norm that
5 the engineering firm be that contact, or would
6 normally a procurement department somehow be
7 involved?

8 MR. GILMAN: Yes. Very often, you will
9 deal with an architectural firm as your primary
10 contact. You normally have some contact with the
11 purchaser. In this case, both the Eagles and the
12 Phillies were not the purchasers; they were the
13 users. So it was quite unique that there was no
14 contact with the purchaser.

15 COUNCILMAN RIZZO: And we all heard that
16 the Procurement Department -- basically the
17 Commissioner said that he handled this personally
18 but had never had any direct contact with any of
19 you; you already answered that for the record.

20 MR. COOK: All of the information that we
21 have provided on both pricing, you know, conversion
22 schedules, I ultimately saw that information, or
23 portions of that information, had been taken and
24 worked into Ewing Cole's report to the City.

25 COUNCILMAN RIZZO: You all did -- you did

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2 submit a price?
3 MR. COOK: Yes.
4 MR. CHESKIN: (Shakes head.)
5 COUNCILMAN RIZZO: Would you care to share
6 that with us?
7 MR. COOK: I believe it's in the packet of
8 information that we provided previously. I don't
9 have it in front of me but I want to tell you that
10 it was somewhere in the \$3 million range.
11 COUNCILMAN RIZZO: What is that figure per
12 square foot?
13 MR. COOK: Well, understand, that was a
14 price to install the field and then do all of the
15 conversions during the course of, you know, the
16 season.
17 COUNCILMAN RIZZO: FieldTurf, can you
18 share a price with us? How much was it a square
19 foot? Pull out all the extras and get right to the
20 square foot.
21 MR. GILMAN: Well, all right. Thank you,
22 Councilor Rizzo, for asking that specific question.
23 And, Councilor Nutter, I think you'll be glad to
24 hear that this leader of the company, I do know my
25 prices and I know my prices on every single deal

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2 just about.

3 We sell and install product for \$5 a
4 square foot, give or take 25 to 50 cents. And that
5 25 to 50 cents a square foot sometimes is made up of
6 increases or decreases, depending on the user of
7 whether they want hash marks inlaid, logos in the
8 end zones, logos at center field, things of that
9 nature. That's what changes the price.

10 But the price for FieldTurf is
11 approximately \$5 a square foot. The Seattle
12 Seahawks are paying approximately \$5 a square foot
13 for their new stadium that they're in the middle of
14 construction right now. And that will be a
15 convertible field because they'll have Major League
16 soccer playing in that stadium along with the
17 Seahawks.

18 The Detroit Lions will be playing on
19 FieldTurf next year, and that is at \$5 a square
20 foot. They are also attempting to get a Major
21 League soccer team in there and that will be a
22 convertible system, one that we have guaranteed that
23 they will convert within eight hours from football
24 to soccer.

25 I'll grant you, converting to baseball

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2 with baseball dirt cutouts is a little bit more
3 difficult and a little bit more expensive, but our
4 price is essentially \$5.

5 We bid somewhere in the range of
6 \$1.4 million.

7 Now, \$5 a square foot times about 135 or
8 145,000 square feet doesn't get you to 1.4, but you
9 have a problem here. We're not competing apples to
10 apples or anything even near. We weren't told
11 exactly what had to be done, we weren't told what we
12 read later on about the limited amount of work that
13 the Southwest Recreational people would actually be
14 doing.

15 In our \$1.4 million bid, it included all
16 of the conversion, as I stated before, with almost
17 all of the people and all of the labor being our
18 people, just using some extra labor to do some of
19 the heavy grunt work, but not to do any of the
20 technical work. All the technical staff for each of
21 the conversions would be done by FieldTurf.

22 Another factor in our 1.4 million, and
23 somebody can do the math. I believe that we were
24 asked to do 12 conversions a year. Now, I can't
25 remember specifically how much we factored in the 12

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2 conversions a year, but I can tell you that if you
3 take the amount of square footage and multiply it by
4 \$5, and it's 135, 145,000 square feet, I believe,
5 inside the stadium and you're up to about \$700,000,
6 a little less, the balance of it was made up to do
7 12 conversions -- not 3, 12. And that's how our
8 price got to be what it was, with us doing it all,
9 not apples to apples.

10 COUNCILMAN RIZZO: And you did not have
11 the information to do -- you didn't know we didn't
12 truly need 12 conversions or -- in other words, you
13 didn't have the data that the other companies didn't
14 have either, right?

15 MR. GILMAN: We didn't have a full
16 package, that's for sure

17 COUNCILMAN RIZZO: Right

18 MR. GILMAN: We were summarily thrown out
19 of the process. And when I did get the opportunity
20 to read the Ewing Cole report and listen to the
21 testimony last time, again, I would say it's
22 astonishing and I could use words like "it's a joke"
23 to have our product, which has gained the kind of
24 worldwide acceptance around the world to be
25 summarily thrown out as something just like that

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2 when the NeXturf product had not been on the market.

3 Mr. Seaton stated that PGE Park in
4 Portland, Oregon had been done and he left the
5 impression that it had been done prior to the
6 Phillies. No. They got the contract for PGE Park
7 in Portland, Oregon after Veterans Stadium was
8 issued to them. They used the Veterans Stadium
9 contract as a selling tool to get other contracts
10 for NeXturf. The same goes for the University of
11 Oregon Odeson (ph) Stadium. Based on the fact that
12 the Veterans Stadium people issued a contract for
13 NeXturf, they were given the contract for Odeson
14 Stadium and they were given the contract for PGE
15 Park.

16 And by the way, I have newspaper articles
17 here. Guess what? PGA Park had a problem with its
18 drainage.

19 COUNCILMAN RIZZO: Before you finish your
20 testimony, I would like you to go back and just make
21 sure that I'm understanding clearly about whose turf
22 and what turf is in Jack Russell Stadium, 'cause I
23 believe I heard today, and I'm going to check my
24 notes, that another product --

25 MR. FINEMAN: Councilman, Jack Russell

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2 Stadium is a grass field. Jack Russell Stadium has
3 been there for, I don't know, as long as -- you
4 know, I'm about 50-some years old now. You know,
5 the Phillies have been playing at Jack Russell
6 Stadium for some period of time. It's a grass
7 field.

8 What was constructed, having been there,
9 seen it with my eyes, walked on the field, what was
10 constructed is outside of Jack Russell field, in
11 essence, in the back of Jack Russell field, is an
12 infield, just an infield. You couldn't play
13 baseball on there, you couldn't play a little league
14 game in that area -- maybe you could play a little
15 league game. There is a small area that is an
16 infield. The infield is constructed from NeXturf.

17 MR. GILMAN: I wish to expand on that, on
18 Jack Russell Stadium.

19 It is -- as David Fineman said, it isn't a
20 stadium, it's just an infield. Ruben Amaro
21 requested the need to have the same product put down
22 at Clearwater so that their infielders could get
23 used to playing on the field that would be chosen to
24 be put into Veterans Stadium. There was also a need
25 to make people like Scott Rollin happy. Scott

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2 Rollin was very unhappy playing on the old Astro turf
3 field; he stated it many times in newspaper reports
4 over and over again. So there was a need by the
5 Phillies to have the field that would be in Veterans
6 Stadium in the practice area down in Clearwater.

7 There was also -- it was also told to me
8 that the exact same surface had to be put in to
9 Clearwater, and I'm segregating Clearwater from Jack
10 Russell, so that they could make sure that it's the
11 exact same field.

12 There's a little bit of three-card Monte
13 going on here. What's in Veterans Stadium is not
14 the same product that is outside of Jack Russell
15 Stadium. I went there myself, the morning after the
16 Super Bowl, when this infield outside the stadium
17 was being installed.

18 What the vendor did, what Southwest
19 Recreational did to satisfy Ruben Amaro's needs and
20 the Phillies' needs to have an infield was, they
21 went to this infield outside of Jack Russell
22 Stadium, it had Astro turf. They removed the old
23 Astro turf on top of a big, thick pad -- a big, thick
24 pad -- and they put down NeXturf. I was there. I
25 watched them do it.

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2 And you know what else I did? They threw
3 samples in a waste bin, and I took the cuts out of
4 the waste bin, and I took them back with me, and I
5 sent them to a lab in Dalton, Georgia, and you know
6 what? The carpet outside the stadium at Jack
7 Russell is a different carpet than what you got in
8 Veterans Stadium. Maybe that's the reason it's all
9 bleached out. It's a different carpet, different
10 fiber.

11 COUNCILMAN RIZZO: Are you suggesting that
12 we got something differently than we specked?

13 MR. GILMAN: That's speculation. All I
14 can state is what I saw. We were told that we had
15 to put in the same carpet outside of Jack Russell
16 Stadium as what would go into the Vet, and what you
17 have is different.

18 COUNCILMAN RIZZO: We'll check on that.

19 Thank you.

20 Thank you, Madam Chair.

21 COUNCILWOMAN REYNOLDS BROWN: Thank you
22 very much.

23 I would like to check with my colleague
24 Councilman Michael Nutter. Do you have any
25 questions for this panel?

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2 COUNCILMAN NUTTER: Madam Chair, I think
3 given the nature of some of the testimony that we've
4 heard, my questions at the moment would probably be
5 for, at a minimum, Ewing Cole, possibly the City.
6 I'd like to better understand, as you've
7 characterized it, Madam Chair, as "the alleged
8 process" and get some clarity on some of the issues
9 that have been raised.

10 I don't have any questions for the moment
11 of the current panel.

12 COUNCILWOMAN REYNOLDS BROWN: Sure.

13 COUNCILMAN NUTTER: And depending on what
14 comes out of the next group. I may need to have
15 them back.

16 COUNCILWOMAN REYNOLDS BROWN: Very well.

17 Gentlemen, if you would please recess to
18 your chairs, we would like to invite up
19 representatives of Ewing Cole. I too have questions
20 for our procurement commissioner, Mr. Applebaum. If
21 you would please report to the panel, please.

22 Yes, sir, Mr. Griffith.

23 MR. GRIFFITH: Pardon me, Madam Chair.

24 Jim Griffith for Southwest Recreational.

25 You did offer us five minutes to follow

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2 up. We are not going to have any follow-up
3 questions.

4 COUNCILWOMAN REYNOLDS BROWN: We'll be
5 pleased to do that after we've heard from Ewing Cole
6 and Mr. Applebaum.

7 MR. GRIFFITH: I appreciate it, but we
8 don't have any follow-up. My clients, however, do
9 have a plane to catch so they will be leaving and we
10 thank you for your time today.

11 COUNCILWOMAN REYNOLDS BROWN: Forgive me?

12 MR. GRIFFITH: My clients have a plane to
13 catch and we thank you for your time here today.

14 COUNCILWOMAN REYNOLDS BROWN: Very well.

15 MR. FINEMAN: Excuse me, Councilwoman,
16 there was another chart that we wanted to make as
17 part of the record. These are the projects for
18 2000-2001 FieldTurf.

19 COUNCILWOMAN REYNOLDS BROWN: We will
20 accept that for the record.

21 And Councilman Rizzo, do you have
22 follow-up questions for this panel?

23 COUNCILMAN RIZZO: I'm fine. I'll wait
24 until Councilman Nutter's done.

25 COUNCILWOMAN REYNOLDS BROWN: So we'll ask

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2 Councilman Nutter to proceed with questions for this
3 panel.
4 Thank you, sir.
5 COUNCILMAN NUTTER: Thank you, thank you
6 Madam Chair.
7 Gentlemen, let me try to keep some of the
8 players straight here and also refresh my
9 recollection from the last time that we had the
10 pleasure of your company. Tell me your name again.
11 MR. PATEL: Pradeep Patel from Ewing Cole
12 Cherry Brott.
13 COUNCILMAN NUTTER: I know you're from
14 Ewing Cole. Patel?
15 MR. PATEL: P-R-A-D-E-E-P, P-A-T-E-L.
16 COUNCILMAN NUTTER: P-R-A-D-E-E-P.
17 Pradeep?
18 MR. PATEL: Pradeep.
19 COUNCILMAN NUTTER: Okay. With a last
20 name like mine, I'm very sensitive to, you know,
21 saying other people's names correctly.
22 Now, last time you were here Mr. Pradeep,
23 I did ask you some questions with regard to your
24 role in all of this. Just very quickly refresh my
25 memory.

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2 You were the consultant for Ewing Cole on
3 behalf of the City to oversee who the contractor was
4 going to be on the installation of the turf; is that
5 correct?

6 MR. PATEL: We had a contract with the
7 Capital Program Office to do two-phase work related
8 to Veterans Stadium playing field surface. The
9 first phase was playing surface investigation,
10 review and recommendation. And the second phase was
11 preparing the construction documents and observation
12 during the installation.

13 COUNCILMAN NUTTER: Okay. Now, my other
14 recollection is that your firm has consulted on
15 behalf of the City for previous conversions? Did
16 you do work on a conversion project maybe in the
17 '80s or in the early '90s?

18 MR. PATEL: We were involved in the
19 conversion of the -- in the Astroturf8 installation,
20 at the previous installation at the Veterans
21 Stadium.

22 COUNCILMAN NUTTER: Okay. Now, Astroturf8
23 was put in when?

24 MR. PATEL: '95.

25 COUNCILMAN NUTTER: '95. And is that the

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2 one that we were supposed to get seven years out of
3 but it started showing wear and tear about Years 4
4 and 5?

5 MR. PATEL: Approximately six to seven
6 years.

7 COUNCILMAN NUTTER: Okay. So we went from
8 Astroturf8 to NeXturf.

9 MR. PATEL: To NeXturf.

10 COUNCILMAN NUTTER: Gotcha. Okay.

11 Now, were you involved in the
12 much-discussed -- I think we've now figured out it's
13 not in Jack Russell Stadium, it's actually outside
14 Jack Russel Stadium or near Jack Russell Stadium and
15 the infield and any of that.

16 MR. PATEL: I had no involvement
17 whatsoever with Jack Russell Stadium.

18 COUNCILMAN NUTTER: In addition to your
19 work for the City, do you do work for the Phillies?

20 MR. PATEL: Yes, we are consultants for
21 the Phillies for the new stadium. We are
22 architectural consult for the Phillies for the new
23 stadium.

24 COUNCILMAN NUTTER: For the new stadium,
25 all right. And that will be grass; is that right?

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2 That will be grass?

3 MR. PATEL: That will be grass.

4 COUNCILMAN NUTTER: That will be grass,
5 okay. Real grass.

6 MR. PATEL: Pardon me?

7 COUNCILMAN NUTTER: Real grass.

8 MR. PATEL: Real grass, right.

9 COUNCILMAN NUTTER: Now, you heard some of
10 the testimony earlier. Is it true that there was
11 virtually no contact with the other firms about the
12 process that was going to be utilized to go through
13 the bidding and the review? And did you actually
14 interview all of the various firms that may have
15 expressed an interest in this project?

16 MR. PATEL: Well, let me start with the
17 process we went through, Councilman.

18 As we had as we have stated in our
19 proposal to the Capital Program Office, we say we
20 will review several hard data from different
21 suppliers. We will meet the representatives of
22 several systems, natural grass as well as artificial
23 turf. We will conduct the site visits
24 (indiscernible) of some of the products which we
25 believe we need to look at more. We will share

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2 information with the City as well as the teams. And
3 prepare a report of our finding for the Capital
4 Program Office.

5 COUNCILMAN NUTTER: Okay.

6 MR. PATEL: We did look at several
7 products, and from there --

8 COUNCILMAN NUTTER: Where did you get the
9 products?

10 MR. PATEL: We looked at natural-grass
11 products, we looked at combination of natural grass
12 and artificial products.

13 COUNCILMAN NUTTER: I understand that.
14 Where did you get the products, where did you get
15 them from? Did you go to the people who make them
16 or supply them?

17 MR. PATEL: We called the representatives,
18 we had the product library in our office of several
19 products.

20 COUNCILMAN NUTTER: You had the what?

21 MR. PATEL: Of the natural-grass product
22 as well as the artificial product.

23 COUNCILMAN NUTTER: They sent the products
24 to you?

25 MR. PATEL: They sent the product

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2 information to us. We talked on telephone to
3 several of them.

4 We also invited other product suppliers
5 where we felt that it was a way to find out more
6 information about the products in our office.

7 COUNCILMAN NUTTER: Right.

8 MR. PATEL: And we did go through the
9 process. In our opinion, a very balanced process.

10 COUNCILMAN NUTTER: Okay. Answer this
11 question: Did you meet with the principals or
12 designated representatives in person of the various
13 companies that supply the wide variety of products
14 that may be applicable to this situation?

15 MR. PATEL: I did meet some of them, and
16 my colleagues met some of them. I did meet the
17 principal of FieldTurf, I did meet principal of
18 Hummer Grass, I did meet with the principal of
19 NeXturf.

20 COUNCILMAN NUTTER: Mm-hmm.

21 MR. PATEL: And AstroTurf.

22 COUNCILMAN NUTTER: Okay. And at what
23 point did you decide that there was no reason to
24 have either further meetings or discussions or get
25 any additional information from any of the other

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2 firms, with the exception of NeXturf?

3 MR. PATEL: We did meet FieldTurf on two
4 occasions.

5 COUNCILMAN NUTTER: Mm-hmm.

6 MR. PATEL: And we got information from
7 them. We met with Hummer Grass on several, more
8 than one. We also visited their facility in
9 Hershey.

10 COUNCILMAN NUTTER: Mm-hmm.

11 MR. PATEL: So based on all of the product
12 information we had and more questions asked from the
13 teams -- we were not the only people involved. The
14 team representatives from Eagles and Phillies --

15 COUNCILMAN NUTTER: Mm-hmm

16 MR. PATEL: -- as well as representative
17 from stadium director office and Capital Program
18 Office were working with us and in concert.

19 COUNCILMAN NUTTER: What did you tell them
20 the process was going to be that would lead to a
21 successful bid?

22 MR. PATEL: The first phase we were
23 conducting, Councilman, is, we were looking at all
24 of the product, compiling all the data, and our
25 professional knowledge of Veterans Stadium facility

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2 for a long time, we were determining the
3 appropriateness of our product, which could be
4 installed in the time schedule we had and all the
5 other restraints of Veterans Stadium conditions we
6 had and preparing a report following that.

7 COUNCILMAN NUTTER: And did you explain
8 all of those items in details and what the
9 components of your decision-making process and all
10 of the elements that you would take in consideration
11 to each of the firms when you met with them?

12 MR. PATEL: To the best of my knowledge,
13 in the meetings we had specifically with FieldTurf
14 as well as NeXturf, AstroTurf, and Hummer Grass, we
15 did explain that.

16 COUNCILMAN NUTTER: And did you do it in
17 writing?

18 MR. PATEL: We -- we had --

19 COUNCILMAN NUTTER: Did they have
20 documents that laid out what the process is and what
21 the expectation is and those kind of issues?

22 MR. PATEL: Our first phase was limited,
23 Councilman, to the preparation of the report, and we
24 were not going any further than the preparation of
25 the report and making our recommendations with the

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2 Capital Program Office.

3 COUNCILMAN NUTTER: I understand that;
4 that's as it relates to the City.

5 I'm asking you, what letter, document,
6 memo, or any other form of communication was written
7 out that said, It's nice to meet you, we have your
8 product, this is the process that the City is going
9 through in order to reach a conclusion that is good
10 for the City and good for the teams. Tell me about
11 that.

12 MR. PATEL: I -- We did -- we did not have
13 any formal notification given to each supplier, if
14 that's what the question is.

15 COUNCILMAN NUTTER: Why?

16 MR. PATEL: We were in an
17 information-gathering mode and compiling and
18 preparing our report, and that's what we did.

19 COUNCILMAN NUTTER: Let me say, with every
20 respect, because, you know, unlike other people that
21 have been at the table, you, I think, do
22 legitimately try to answer questions and have a
23 reasonable exchange. I mean, it's not like we were
24 out buying peaches. This is a fairly large purchase
25 for the City.

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2 MR. PATEL: That is correct.

3 COUNCILMAN NUTTER: What was the total
4 price on this? What was the total price?

5 COMMISSIONER APPLEBAUM: It was
6 approximately \$1.8 million.

7 COUNCILMAN NUTTER: Okay. And I guess
8 from my perspective, I mean, I've never obviously
9 bought anything through the City system. I think
10 the last thing I ever got was probably some business
11 cards, and I talked to Mr. Applebaum about that many
12 years ago and I haven't had a problem with that ever
13 since.

14 I mean, I guess it's just a little
15 astounding that for a \$1.8 million purchase, we
16 wouldn't have the most detailed of documents and
17 information to be handed to someone at a moment's
18 notice to say, This is everything we expect from
19 you, this is a process that we're going through.

20 Were the potential bidders aware of
21 exactly what your role was and what you would be
22 doing in Phase 1 and Phase 2, and if there was a
23 Phase 3 or anything? I mean, I guess I'm trying to
24 understand for such a not only a large purchase but,
25 quite frankly, a very controversial purchase. I

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2 mean, if you are rated as having the worst stadium
3 in the United States of America for the National
4 Football League, if you have the owner of the team,
5 who at a previous point in time when, you know,
6 maybe things weren't kind of going so well, with
7 some of comments about the stadium, I mean, wouldn't
8 you want to exercise the most incredible amount of
9 caution and almost over-information about something
10 like this?

11 MR. PATEL: Councilman, in our opinion, we
12 did a thorough investigation, and our report, which
13 you probably should have, in our opinion, was a very
14 though report.

15 COUNCILMAN NUTTER: Well, then I guess I'm
16 only left at the end to ask, if that's your view and
17 you think you did everything you possibly could, and
18 if we put aside for the moment any perspective that
19 someone might have that -- the panel that was up at
20 the table earlier, which I do not believe is just
21 about, well, we didn't get the job so we're upset
22 about it. I'm really more concerned about the
23 legitimate process issues, not just for this, but
24 anything that we might do going forward.

25 I mean, what is your response to the

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2 statements that were made earlier about who knew
3 what when and when they were informed of it? And,
4 for instance, did anyone call the unsuccessful
5 bidders directly and tell them that they were
6 unsuccessful?

7 MR. PATEL: Well, I -- that was the next
8 phase of the issue, and to the best of my knowledge,
9 I believe it was the responsibility of the CPO to
10 inform people formally.

11 COUNCILWOMAN REYNOLDS BROWN: It was the
12 responsibility of whom?

13 MR. PATEL: The Capital Program Office who
14 (indiscernible) from the successful bidders because
15 we were only receiving information, we were
16 receiving the -- we were responding to the
17 questions, but all of the decision-making, the final
18 decision-making, was really at the Capital Program
19 Office and Procurement.

20 COUNCILWOMAN REYNOLDS BROWN: Who made the
21 recommendation?

22 MR. PATEL: That's why I did not call
23 anybody directly.

24 COUNCILWOMAN REYNOLDS BROWN: Who made the
25 recommendation to the Capital Program Office?

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2 MR. PATEL: We made the professional
3 recommendation to the Capital Program Office for the
4 product and final determination of who the contract
5 was going to be awarded to was made in the Capital
6 Program Office and the Procurement Office.

7 COUNCILWOMAN REYNOLDS BROWN: Okay. I am
8 compelled to follow up on Councilman Nutter's
9 questioning around process.

10 What is the procedure in your office? How
11 do you notify prospective awardees that a bid is up
12 for consideration? What's your SOP, standard
13 operating procedure?

14 MR. PATEL: We did not notify the other
15 product suppliers because this was -- this was a
16 process which was a special process selected by the
17 City and they were the one who were going to advise
18 the successful or other people.

19 COUNCILWOMAN REYNOLDS BROWN: Recognizing
20 that your office made the ultimate recommendation,
21 what practices or provisions or contingencies do you
22 put in place to ensure that the dissemination of
23 information is pure and void of inconsistencies?

24 MR. PATEL: Are you asking that we had a
25 process by which we had reviewed all of the product,

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2 conducted with a fairness --

3 COUNCILWOMAN REYNOLDS BROWN: What I heard
4 from those who were before you was that, A, phone
5 calls were given -- phone calls were used as a means
6 of communication versus what seems to be the
7 practice of the department's prospective vendors get
8 something in writing so that everyone is reading
9 from the same sheet of music with regards to what
10 the expectation and specs are.

11 So again I ask the question, do you have
12 in place in your practice when you're dealing with
13 several different vendors, what do you do to ensure
14 that all vendors are reading from the same sheet of
15 music at the same time?

16 MR. FOX: I'm Reeder Fox, counsel for
17 Ewing Cole.

18 I think we're perhaps getting mixed up
19 between a request of Ewing Cole as a consultant to
20 the City to go out and learn as much as they can
21 about products that are available that could be used
22 as a playing surface at the Vet versus a bid.

23 Now, we're talking about going out and
24 getting product information. That's what Ewing Cole
25 did, and they submitted a report, and they submitted

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2 a short list.

3 After that, the City decides, are we going
4 to send out requests for bid to those two firms?
5 Are we going to single-source it? What are we going
6 to do?

7 Many of the questions you're both asking
8 assume that they're bids, and I don't think that
9 there's anything that really says that they were
10 going out getting bids. Specifications relate
11 really to bids.

12 COUNCILWOMAN REYNOLDS BROWN: All right.

13 And --

14 (Unintelligible, parties
15 talking over each other.)

16 MR. FOX: ... and submit a report for the
17 benefit of the City.

18 COUNCILWOMAN REYNOLDS BROWN: Yes.

19 MR. FOX: This, in our view, is the best
20 product, knowing what we know about the Vet and
21 knowing what we found out about the product.

22 COUNCILWOMAN REYNOLDS BROWN: Allow me to
23 redirect the question to the Procurement
24 Commissioner.

25 What practices or procedures do you have

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2 in place to ensure that there is some consistency in
3 information that's disseminated to those that want
4 to do so business with the City of Philadelphia?

5 COMMISSIONER APPLEBAUM: Well, obviously,
6 you're speaking about our normal bid process. Under
7 a normal bid process, specifications are put
8 together in a bid package. They're advertised on
9 the Web and they're mailed to various potential
10 bidders.

11 COUNCILWOMAN REYNOLDS BROWN: Was that
12 done with this?

13 COMMISSIONER APPLEBAUM: That was not done
14 with this, but this is not a normal, regular
15 competitive bid process. This was a -- they use the
16 term "sole-source bid"; it was a sole-source
17 procurement. We, the Procurement Department, the
18 Capital Programs Office, the Recreation Department,
19 and the teams relied upon a very complete and what
20 we consider accurate report prepared by Ewing Cole.
21 That was their program to report to us in details as
22 to what their recommendation is as far as a new turf
23 for Veterans Stadium.

24 COUNCILWOMAN REYNOLDS BROWN: Okay.

25 COMMISSIONER APPLEBAUM: They issued their

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2 report and we asked additional questions, we had
3 follow-up. And at the end of the day, the report
4 and Ewing Cole recommended that we provide and we
5 procure NeXturf for Vets Stadium. And that's what
6 we did.

7 COUNCILWOMAN REYNOLDS BROWN: Can someone
8 help me understand why -- when we heard from the
9 others who were a part of the conversation that this
10 was a business opportunity, they were not informed
11 of the specs.

12 Whose lap does that sit in to ensure that
13 prospective individuals doing business with the City
14 all receive consistent information on the specs?
15 Whose responsibilities is that?

16 COMMISSIONER APPLEBAUM: This is the
17 responsibility of our consultant who we hired to
18 select for us the best possible product. They went
19 out and they notified and spoke to all of these
20 companies in their style, in their form, and they
21 came back and reevaluated, visited. We had
22 demonstrations of some of these products at Vets
23 Stadium. And they put this all together and they
24 studied it and made recommendations.

25 You must recognize one important thing:

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2 We're dealing in a situation where we might have
3 disappointed bidders or disappointed companies.
4 Everybody cannot come to the table and be awarded --
5 not everyone can be awarded the same project.

6 We made a decision based on Ewing Cole's
7 recommendation and we awarded the contract to
8 NeXturf.

9 COUNCILWOMAN REYNOLDS BROWN: Was your
10 recommendation one company, or was it a -- you said
11 it was a short list. Define "short list."

12 COMMISSIONER APPLEBAUM: There was many
13 companies that they looked at, and they ended up
14 putting in their report specifics about what they
15 would consider the short list, but even with the
16 short list, there was one product that they
17 recommended for Vets Stadium, and that was NeXturf.
18 And we acted on their report.

19 COUNCILWOMAN REYNOLDS BROWN: Then my
20 question is --

21 COMMISSIONER APPLEBAUM: Being in a
22 position in the City, I would assume that all of us
23 as professionals, if we spend money, we hire
24 professional talent, and ask for professional
25 services, and they do what we consider a thorough,

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2 good job and report back to us. We would be
3 negligent in our duties if we didn't study that
4 report, question the report, and if we found nothing
5 wrong with it, act on the recommendations. That's
6 what we did. And I believe as responsible citizens,
7 we did the right thing by acting on their
8 recommendations.

9 COUNCILWOMAN REYNOLDS BROWN: I don't
10 question at all the importance and value of bringing
11 on experts around a particular matter. Again, I ask
12 the question, when you presented your
13 recommendation, was it one vendor or -- I need you
14 to define "short list" separate from the product.

15 COMMISSIONER APPLEBAUM: It's in the
16 report. It was one vendor.

17 COUNCILWOMAN REYNOLDS BROWN: It was one
18 vendor.

19 COMMISSIONER APPLEBAUM: It was one make.
20 The one vendor, Southwest, has two products:
21 Astroturf12 and NeXturf. But it was -- so it was
22 not Southwest, it was NeXturf.

23 COUNCILWOMAN REYNOLDS BROWN: Okay. What
24 credit, what provisions, what considerations are
25 given -- currently in the City of Philadelphia, what

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2 provisions, what considerations are given to local
3 companies, local businesses here is in the City of
4 Philadelphia in the review or assessment process?

5 COMMISSIONER APPLEBAUM: We are, under the
6 law, precluded from making particular provisions for
7 local companies.

8 COUNCILWOMAN REYNOLDS BROWN: I see.

9 COMMISSIONER APPLEBAUM: Of course, we
10 look to see local companies win. And in my mind
11 local companies are Philadelphia companies that pay
12 Philadelphia taxes, not Conshohocken or out-of-town
13 companies.

14 COUNCILWOMAN REYNOLDS BROWN: Sure.

15 COMMISSIONER APPLEBAUM: But we are not
16 permitted to allow that to enter into the decision
17 under the current City Charter, under the current
18 laws.

19 COUNCILWOMAN REYNOLDS BROWN: Councilman
20 Rizzo, a follow-up?

21 COUNCILMAN RIZZO: Commissioner, you heard
22 the President of Southwest say that no one in this
23 government asked them for any consideration for a
24 credit towards the short life, and then he blamed
25 the fact that we abused the playing surface by

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2 pulling bleachers, running trucks over that playing
3 surface. I can't imagine that we didn't ask for
4 some consideration and defended the accusation that
5 our maintenance people had some fault in the short
6 life of that playing surface.

7 COMMISSIONER APPLEBAUM: It was my
8 understanding on that issue that the original
9 Astroturf8 that was installed had an estimated life,
10 an estimated life warranty of seven years. I
11 believe we got six years' use out of that. And when
12 NeXturf presented their price to us for their
13 product, they were to include and factor in a
14 differential or a reduction due to that loss of
15 year.

16 But there was no credit asked for. It was
17 a credit, it was my understanding, that was embedded
18 in their price.

19 COUNCILMAN RIZZO: I did not detect that
20 tonight in NeXturf's testimony.

21 COMMISSIONER APPLEBAUM: In discussing
22 that with the Vets Stadium, with Greg Grillone,
23 that's what we sort of come out of that.

24 COUNCILMAN RIZZO: Well, I think that that
25 really needed to be spelled out in language that

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2 there was some consideration given for that because
3 the taxpayers of this city are certainly -- I think
4 it would be interesting to know that that initial
5 expenditure they made for an Astroturf8, that they
6 deserve some consideration, whether it was a credit
7 towards the new job, and tonight we're hearing from
8 you that that is the case.

9 COMMISSIONER APPLEBAUM: It was my
10 understanding that it was a slight reduction in
11 their bottom price. Realize it might have been
12 somewhat unfair, looking at it from the competitors'
13 standpoint, if we would have favored them because of
14 that one-year product, so that's the other edge of
15 that.

16 COUNCILMAN RIZZO: Commissioner, I come
17 from these hearings tonight with the distinct
18 impression that SprinTurf, FieldTurf, and Hummer
19 weren't treated very well, I'll be real candid with
20 you. I heard tonight that there could have been a
21 an adjustment made to their product to do exactly
22 what NeXturf could have required.

23 I didn't see any effort from Ewing Cole to
24 try to work with these people and say, Look, here's
25 what we need, can you provide us the -- can you come

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2 up -- can you meet this specification? I heard
3 three companies tonight tell me, tell this panel
4 that they basically had nothing to work with, no
5 information. They were asked by Ewing Cole to --
6 and I almost chuckled when I heard "mail us your
7 product." We're talking about close to a \$2 million
8 purchase and you think you're shopping at QVC. You
9 know, the UPS guy shows up with the samples of the
10 product.

11 I don't believe Ewing Cole -- and, again,
12 this is my impression, that they really worked hard
13 with these other companies that weren't allowed to
14 present their product to try to bring them on. I
15 think that is also -- if we're paying a consultant,
16 they also have a responsibility to try to get the
17 City of Philadelphia the best buy and try to tweak a
18 particular product to work. And what I'm hearing
19 here from these three companies is that they
20 possibly could have worked with Ewing Cole -- forget
21 Ewing Cole for a moment -- worked with our
22 consultant to make their products work.

23 You heard about -- again, some of the
24 vendors chuckled when they talked about the stands,
25 that you couldn't roll the bleachers out over the

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2 stands. When I saw the expression on their faces, I
3 got the distinct impression that they could have
4 dealt with that issue.

5 So I'm coming from this hearing tonight
6 thinking that these folks weren't treated very, very
7 well. And I think that, unfortunately, our
8 consultant didn't really try hard enough, in my
9 opinion -- this is my opinion -- to get the best
10 value for the taxpayers of the City of Philadelphia.

11 And I'm hoping, going forward, that this
12 whole process of sole-source changes in the City of
13 Philadelphia and the way -- if we're focused on one
14 particular product and exclude other people, these
15 people spent a lot of money in trying to do business
16 with the City of Philadelphia, and I think they got
17 treated terribly.

18 COMMISSIONER APPLEBAUM: Could I respond,
19 Councilman?

20 COUNCILMAN RIZZO: Sure.

21 COMMISSIONER APPLEBAUM: I and you were
22 not there or were not privy to what occurred during
23 the presentations. If you read the report and look
24 at it in detail that we received, there's
25 indications in here that the companies -- particular

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2 FieldTurf, Hummer Tiles -- were brought to Vets
3 Stadium. We have pictures and you have it in your
4 book, pictures of their product at Vets Stadium that
5 worked, that they were working with Ewing Cole and
6 other representatives to work on the product. So
7 they were there.

8 I and you were not privy to the
9 conversations and what occurred there, but I know
10 that we have bleachers that come out of the stadium,
11 I'm familiar with that 'cause we just had to
12 reinforce them and put in a lot of money to
13 strengthen them. Those bleachers were there. The
14 representatives from the various competitors, the
15 companies that we saw today, were at Vets Stadium,
16 and they saw the bleachers; it's not that they
17 didn't see it. They knew the requirements. 'Cause
18 they're in the business, they know more about it
19 than you and I know.

20 They were given every opportunity to meet
21 the requirements, and in the report. All of the
22 details are there, plus pictures. Here's a picture
23 of the FieldTurf product laying at Vets Stadium.

24 So they're acting and talking that they
25 didn't have a shot. The reality is I think they

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2 were there and --

3 COUNCILMAN RIZZO: That may have been the
4 one that was received by UPS, I don't know that.
5 I'm not sure how that sample got there.

6 Commissioner, all I'm telling you is my
7 impression of what I heard here today. I think
8 Councilman Nutter made a comment -- and I don't mean
9 to quote the Councilman, but I don't think this is
10 all about sour grapes, I don't think this is
11 entirely about losing.

12 I think that from what I heard here at our
13 first hearing and this hearing that this doesn't
14 smell good.

15 Thank you.

16 COUNCILWOMAN REYNOLDS BROWN: And I must
17 admit that the crux of the problem is that there was
18 conversation and discussion versus, again, at the
19 very outset, what is provided to prospective vendors
20 in writing with regards to specifics around a
21 particular bid, contract, whatever. What is
22 provided in writing so that we all start out at the
23 same place on the same page. I haven't heard an
24 answer to that question.

25 MR. PATEL: Well, the information for each

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2 product is different. There was no uniform thing
3 which you can give out to four different
4 (indiscernible) that this is what is required.

5 That is why we made sure we looked at the
6 product information. We invited them to the field.
7 They looked at the condition. We had meetings with
8 them. We did review the information.

9 If they -- if they believed that they did
10 not have specific information, I have a tough time
11 to understand that. But they were there, we have
12 samples rolled out. Team officials were there from
13 both teams, Eagles and Phillies. And we had very
14 clearly explained, This is the field playing
15 surface, this is where the existing substrate, which
16 is porous asphalt, which is the drainage barrier in
17 the Veterans Stadium, and these are the existing
18 stands which we pull out in a football mode and
19 which has to be pulled back in the baseball mode.

20 These conditions were explained to each of
21 the suppliers that their product is unique to
22 different requirement. Like, for example, Hummer
23 Grass, Hummer Grass's requirement -- before I try
24 spell out the synthetic turf requirement of Hummer
25 Grass, most of them are not applicable to them,

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2 which means they (indiscernible) they can do the job
3 at the Veterans Stadium complying with the existing
4 restraint, which they did. They said now they can
5 provide (indiscernible) which can only weigh so many
6 pounds. You can lift it, we can remove it when we
7 put the stands out. So Hummer was very clearly
8 understanding all of the requirements. They knew
9 how many panels they had to remove when the stands
10 are moved out. So they clearly knew about it, and
11 we did the same thing as everybody else.

12 There are other conditions at the stadium
13 regarding the football-to-baseball conversion where
14 teams had input. We tried very hard to see whether
15 natural grass like Hummel Grass could be installed
16 at the Veterans Stadium, considering all of the
17 conversion aspect.

18 When we did approach the teams, Eagles
19 clearly said, Well, we cannot budge on the
20 conversion time. That's in the report. We say, if
21 Hummer Grass system could be used and it is a viable
22 system, but you definitely need 48 hours because we
23 cannot control rain or bad weather, and that is
24 essential.

25 We also asked permission from Eagles, can

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2 they play on the clay infield during the pre-season
3 till Phillies season is over before we can convert
4 to a full Hummer Grass field, and Eagles responded
5 to us they will not waive that requirement.

6 COUNCILWOMAN REYNOLDS BROWN: Okay. It's
7 clearly obvious we will not fix the past. As we
8 move forward, what is the lesson? I will pose to
9 you the same question I posed to the Office of the
10 City Comptroller. What are the lessons learned?
11 Given where we have ended up, what are the lesson in
12 this experience? What needs to be done differently
13 and/or better as we go forward with a next
14 sole-source contract?

15 COMMISSIONER APPLEBAUM: We'll probably
16 never have a sole-source contract again, but that's
17 probably not the viable solution.

18 What I have learned is that prior to going
19 out -- the first job that we would have our
20 consultant do, whoever that might be able, is to
21 write up a very complete, detailed specification and
22 requirements and that package be delivered to the
23 various vendors, because that is something we do in
24 a formal, competitive bid; I didn't see that here.

25 So in the future as a minimum, I think the

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2 consultant, whoever it may be, that goes out to
3 study the marketplace or study a product should have
4 very detailed specifications to the best of their
5 ability so that we can try to create a level playing
6 field.

7 COUNCILWOMAN REYNOLDS BROWN: Is that a
8 recommendation you would be willing to not only
9 share but to put in place for your successor at the
10 Procurement Department, given this experience?

11 COMMISSIONER APPLEBAUM: Absolutely, but I
12 realize that the hiring and the retaining of the
13 consultants happens in the operating departments,
14 Capital Programs, Public Property, or whatever. But
15 I certainly would endorse that, and I think that
16 going forward, those departments should look at
17 that. And in all professional service contracts for
18 professionals that we bring in, there should be good
19 specifications of what we expect them to do and what
20 we expect the result to be. There's no question
21 about that.

22 COUNCILWOMAN REYNOLDS BROWN: Very well.

23 COUNCILMAN RIZZO: And just to add to
24 that, we as members of Council, we're also going to
25 look at legislative what we can do to prevent

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2 something like this from occurring again.

3 COUNCILWOMAN REYNOLDS BROWN: That's part
4 of the purpose for these hearings.

5 Councilman Nutter, please.

6 COUNCILMAN NUTTER: Thank you.

7 Okay, let me ask this question. Tell me
8 about the -- I had asked the gentleman -- what was
9 his name, Mr. Seaton? I had asked him about the
10 experience with the product in the northeastern, I
11 think the word is "climes"? And he said that, you
12 know, it was relatively new, a couple years, but
13 it's in Michigan, you know, somewhere, and I think
14 it actually snows in Michigan.

15 Tell me about snow removal. He talked
16 about, I think, a rubber-tipped shovel or something
17 like that. In your research, what did you find
18 about the characteristics of this particular product
19 in rain and snow, in Northeast-type weather,
20 freezing? Is there a proper way to treat the
21 product in terms of snow removal or ice removal?
22 Are there inappropriate ways to conduct those same
23 activities?

24 What testing did you do about this product
25 given the Northeastern United States installation?

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2 MR. PATEL: Well, Councilman, the
3 product -- most of the product has a couple of
4 playing characteristics.

5 COUNCILMAN NUTTER: A couple of what?

6 MR. PATEL: Field playing characteristics

7 COUNCILMAN NUTTER: Okay.

8 MR. PATEL: For baseball, (indiscernible),
9 roller ball. That is normally played not in snowing
10 conditions so therefore, it is no to your question.
11 As far as the other characteristics which are
12 important are whether they're resistant to sliding.

13 COUNCILMAN NUTTER: Sure.

14 MR. PATEL: And we did look at those
15 qualities based on the information we had for all of
16 the products, just not only for NeXturf.

17 We also had an opinion from the Eagles'
18 consultant, which I mentioned last time, a professor
19 from Penn State University, Professor McNate (ph).
20 And he also had his opinion about it based on the
21 tests he has conducted. And all of the friction
22 resistance of the product for NeXturf or Hummer
23 Grass or FieldTurf, they would -- they were all --
24 they would comply with the bad condition of the
25 field.

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2 As far as (indiscernible) is concerned, by
3 the league rules --

4 COUNCILMAN NUTTER: I'm sorry?

5 MR. PATEL: By the league rules, they are
6 supposed to cover the field overnight and not leave
7 it open before the game. And that's what they are
8 supposed to do in bad weather or {indiscernible}.

9 COUNCILMAN NUTTER: Well, wait a minute,
10 Mr. Pradeep. Now, you know, I don't get to see as
11 much football as I'd like, but I guess I have these
12 images dancing in my mind, and they're not sugar
13 plums, of Green Bay Packers, Minnesota Vikings, you
14 know, snow all over the place, running up and down,
15 you know you can't figure out where the sideline is.
16 I mean, are these fantasies of my childhood or from
17 old John Facenda tapes or something that I saw?

18 (Laughter.)

19 COUNCILMAN NUTTER: I mean, when did that
20 happen?

21 MR. PATEL: I think maybe I misunderstood
22 your question, Councilman. What I answered is, what
23 are the things which teams must do to make sure that
24 the effect of snow or ice are taken care of before
25 the game.

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2 COUNCILMAN NUTTER: Okay.

3 MR. PATEL: During the game, if it snows
4 or ices, as far as I can see, this product or other
5 product or natural grass will have similar issues
6 that are no different.

7 COMMISSIONER APPLEBAUM: Councilman, I --

8 MR. PATEL: If it ices up, it's going to
9 ice the field.

10 COUNCILMAN NUTTER: Hold on for a second.
11 I deeply appreciate the response, but it did not
12 answer my question.

13 The question was: What tests were
14 conducted to determine the reaction and response,
15 behavior of this particular product in a Northeast
16 United States environment subjected to rain, ice,
17 and snow in anticipation a game being played on the
18 turf?

19 MR. PATEL: This product in rain, ice, and
20 snow has been tested in some respect in Philadelphia
21 because it's a synthetic turf and --

22 COUNCILMAN NUTTER: Now, Mr. Pradeep,
23 you're going to cause me to step outside of myself
24 and disrupt our very nice relationship. I am asking
25 you, what tests were conducted specifically on this

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2 particular product in a Northeastern United States
3 environment subject to rain, ice, and snow, with the
4 anticipation of a game being played on that surface?
5 Were there any tests conducted or not? And if they
6 were, tell me who conducted them?

7 MR. FOX: You're asking for tests
8 performed before his report was submitted?

9 COUNCILMAN NUTTER: I'm asking for tests
10 conducted either before he submitted his report,
11 during the time he was conducting his report, or any
12 time after his report. I mean, I think I've covered
13 the full circle.

14 MR. PATEL: The test -- this is what I'll
15 repeat again, Councilman. The test are
16 traditionally conducted for traction and wet
17 traction, and those tests are in the report and
18 that's what --

19 COUNCILMAN NUTTER: Were they conducted on
20 this product?

21 MR. PATEL: They were conducted on this
22 product.

23 COUNCILMAN NUTTER: By whom?

24 MR. PATEL: Dry traction and wet traction.

25 COUNCILMAN NUTTER: By whom?

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2 MR. PATEL: By Southwest.

3 COUNCILMAN NUTTER: By Southwest.

4 MR. PATEL: Yeah. And as I said before --

5 COUNCILMAN NUTTER: When were they
6 conducted and where were they conducted?

7 MR. PATEL: They were conducted in their
8 facility in Georgia.

9 COUNCILMAN NUTTER: (Laughs.)

10 MR. PATEL: And also, Councilman, there
11 was testing done --

12 COUNCILMAN NUTTER: And next you're going
13 to tell me that they have an isochamber in Georgia
14 that simulates 27-degree weather in Philadelphia in
15 December. What do you mean they conducted in their
16 facility in Georgia? What was the temperature when
17 they conducted it in Georgia?

18 MR. PATEL: It's a wet and dry traction
19 test. There are no specific tests for any product
20 you will see for snow and ice condition, even if
21 it's natural grass or --

22 COUNCILMAN NUTTER: No, I think if you
23 want to test a product for snow and ice conditions,
24 you do it in a place that has snow and ice.

25 What was the temperature in the room when

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2 they conducted the test?
3 MR. PATEL: I -- I do not -- I would say
4 it would be ambient temperature.
5 COUNCILMAN NUTTER: I'm sorry?
6 MR. PATEL: Ambient temperature.
7 COUNCILMAN NUTTER: Oh, come on,
8 Mr. Pradeep. Look, I had biology and I had
9 chemistry in high school and college. What is an
10 ambient temperature. Is that Celsius or is that
11 Fahrenheit? That's all I know.
12 What was the temperature in the room
13 Fahrenheit when they conducted those tests? And when
14 were they conducted?
15 MR. PATEL: I would not know the
16 temperature, but I would say it should be 0around 70
17 degrees.
18 COUNCILMAN NUTTER: 70?
19 MR. PATEL: Yes.
20 COUNCILMAN NUTTER: Okay. Last I checked,
21 the freezing temperature of water was 32 degrees
22 Fahrenheit; is that correct? Right?
23 MR. PATEL: Yes.
24 COUNCILMAN NUTTER: Okay. I mean, I want
25 to make sure they hadn't changed it.

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2 Now, if you're trying to test a substance
3 or a surface for similar conditions to where it is
4 actually going to be installed, in your engineering
5 opinion -- because I know that you're an expert and
6 you've been qualified that way at the last
7 hearing -- is it a fair test of a product that is
8 going to be installed in a Northeast environment to
9 test it at 70 degrees in a warehouse in Georgia or
10 out in the open in a like or similar place where the
11 temperature and the average daily temperature by the
12 time you get to, with the exception of this winter,
13 is probably somewhere between 30 and 45 degrees?

14 MR. PATEL: At --

15 COUNCILMAN NUTTER: I mean, how do you
16 know how a product's going to react in a warehouse
17 in Georgia when people are going to be playing on it
18 in Philadelphia? How do you know?

19 MR. PATEL: Anytime that water melts is a
20 bad condition. Anytime ice melts, it's a
21 bad-condition test and it doesn't really matter
22 where it's conducted.

23 COUNCILMAN NUTTER: Are you telling me
24 that there is no difference in the reaction of this
25 product to people running on it, balls bouncing

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2 around, cleats -- depending on which ones you use,
3 'cause apparently it took them a long time to figure
4 out which cleats to use -- and you're telling me
5 that if you run on that surface in a warehouse in
6 Georgia at an ambient temperature of 70 degrees,
7 that there is no difference between that person
8 running on that and the same person running on it in
9 late December in Philadelphia when it's 42 degrees
10 outside and it rained the night before and there was
11 ice on that particular field?

12 Are you telling me that you can make the
13 same runs, the same cuts, and do everything the same
14 in Philadelphia that you can do in a warehouse in
15 Georgia at 70 degrees? Is that your testimony?

16 MR. FOX: Councilman, I think getting
17 we're getting confused between what are the
18 available standard tests and --

19 COUNCILMAN NUTTER: Sir, I'm sorry, I
20 didn't catch your name.

21 MR. FOX: My name is Reader Fox. I'm the
22 attorney for --

23 COUNCILMAN NUTTER: Mr. Fox, let me make
24 sure we're real clear. I am not confused at all.
25 You may be confused, but I'm not confused.

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2 MR. FOX: I apologize, but let me finish
3 my statement.

4 COUNCILMAN NUTTER: Go ahead.

5 MR. FOX: There are available standard
6 tests for all products, including the competing
7 products we heard from today, such as wet traction
8 and dry traction, which go to the performance of the
9 surface. To my knowledge, there is no ice and snow
10 test and, therefore, unless you would expect the
11 consultant to go out and hire a stadium in a
12 blizzard or in an ice storm, there's no way he could
13 perform that.

14 He does is what is reasonable. He looks
15 at the performance test, the bounce test, the slide
16 test --

17 COUNCILMAN NUTTER: All right.

18 MR. FOX: -- all the things that everybody
19 has for their product.

20 And you're asking him a question of
21 whether this stadium surface is going to perform. I
22 think the only way he can look at that is to look at
23 the performance of artificial turf at the Vets
24 Stadium since it's been there, which has been a long
25 time, in all kinds of weather.

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2 COUNCILMAN NUTTER: Okay.
3 MR. FOX: But I don't think you can ask
4 him about tests that no one performs.
5 COUNCILMAN NUTTER: Well, Mr. Fox, excuse
6 me, I appreciate your response. You will recall
7 that this question started out -- the original
8 question was, were there any tests? Mr. Pradeep
9 went to the big book and told me about tests.
10 MR. FOX: Okay, his name is Mr. Patel.
11 COUNCILMAN NUTTER: I'm sorry. I took it
12 down as --
13 MR. FOX: His first name is Pradeep and
14 his last name is Patel.
15 COUNCILMAN NUTTER: Oh, I'm sorry, I
16 apologize.
17 Mr. Patel respond to do a question telling
18 me about tests that had been conducted. I then
19 asked more questions about those tests, but let's
20 move on.
21 Lastly, let me say about the tests. All I
22 would say, with every respect to you and a little
23 bit of humor, I am quite glad that the folks at
24 Consumer Reports do their tests a little different
25 than what you're laying out for us here today,

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2 'cause they do actually do them in the conditions in
3 which they expect people to buy the product, not in
4 a warehouse in Georgia at 70 degrees under those
5 conditions. And we can move on

6 Mr. McCabe, I want to just cut right to
7 the chase with you.

8 COMMISSIONER APPLEBAUM: Did you say
9 "Commissioner McCabe"?

10 COUNCILMAN NUTTER: No, Mr. McCabe, my
11 good friend Mr. McCabe.

12 What do we know about finances of the
13 company involved in the installation? And in the
14 event of any suit or judgment or anything like that,
15 what's their capacity or ability to pay? And have
16 they held the City harmless in the contract with
17 regard to any claims related to this installation?

18 MR. MCCABE: Councilman, I don't have the
19 answer to that question.

20 COUNCILMAN NUTTER: Okay. Mr. Applebaum,
21 do you know?

22 COMMISSIONER APPLEBAUM: All I can comment
23 is I know that there was a performance bond. I'm
24 not exactly sure of the amount without searching it.
25 There was a performance bond and --

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2 COUNCILMAN NUTTER: The performance bond
3 is for the actual installation, though, isn't it?

4 COMMISSIONER APPLEBAUM: The performance
5 bond is for the performance of the whole project,
6 the product and installation.

7 COUNCILMAN NUTTER: Okay.

8 COMMISSIONER APPLEBAUM: Also, they signed
9 the normal terms and conditions of the City
10 contract, which has all of the indemnifications and
11 etc. and etc.

12 Also, there's an additional clause in the
13 contract that indicates within the first year for
14 any reason whatsoever if City of Philadelphia elects
15 to have them remove that product, they have to
16 remove it and replace it at no additional cost.

17 COUNCILMAN NUTTER: Really? That's
18 interesting. Have you decided to exercise that
19 option?

20 COMMISSIONER APPLEBAUM: We have no reason
21 to exercise that option. The turf has been very
22 successful.

23 (Inaudible.)

24 COUNCILMAN NUTTER: I've heard that a
25 couple times. I mean, is the field now being

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2 credited with the performance of the Phillies?

3 COMMISSIONER APPLEBAUM: Absolutely not,
4 it's the players.

5 COUNCILMAN NUTTER: And when the rooster
6 does his thing.

7 COMMISSIONER APPLEBAUM: Or is it Donovan.

8 COUNCILMAN NUTTER: Their performance is
9 much better when they're away than at home.

10 How many times was the field converted
11 prior to -- what was that, August 13th?

12 COMMISSIONER APPLEBAUM: Prior to August
13 the 13th, I think there was one done in July, just
14 one in July

15 COUNCILMAN NUTTER: Okay.

16 COMMISSIONER APPLEBAUM: That was the
17 test, I believe.

18 COUNCILMAN NUTTER: Let's go back to the
19 cost issue. Now, does Southwest have enough
20 insurance to cover any potential losses that might
21 come out of this situation? I know there's been a
22 potential of lawsuits. Are they holding us harmless
23 in this?

24 COMMISSIONER APPLEBAUM: All I'll mention
25 is that they signed the City's standard terms and

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2 conditions. Under the standard terms and
3 conditions, we have full indemnification and we are
4 held harmless.

5 COUNCILMAN NUTTER: Lastly, it's
6 unfortunate, but I don't think that he was enjoying
7 my company too much. Tell me about the finances of
8 the company. How big are they, what are their
9 annual revenues? That kind of stuff.

10 COMMISSIONER APPLEBAUM: I can get you a
11 copy of their financial statement. And it was a
12 strong company and I can get you the latest figures
13 on it, I can send it to you.

14 COUNCILMAN NUTTER: All right.

15 Thank you, Madam Chair.

16 COUNCILWOMAN REYNOLDS BROWN: I want to
17 thank Councilman Rizzo for simply raising this issue
18 and putting it on the radar screen. And we want to
19 say thank you to all of those who participated in
20 the proceedings. Have confidence in knowing that a
21 formal report will be issued with recommendations to
22 the sponsor on what we need to do differently in
23 this city with regard to sole-source contracts.

24 With that, this concludes the testimony on
25 Resolution No. 010533 and these hearings are

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2 recessed to the call of the Chair.

3 Thank you and have a good evening.

4 COMMISSIONER APPLEBAUM: Thank you.

5 (Proceedings end at 6:21.)

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CERTIFICATE

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I HEREBY CERTIFY that the foregoing
proceedings of the Council of the City of
Philadelphia's meeting of the Council Committee on
Parks, Recreation and Cultural Affairs of Tuesday,
December 18, 2001, are contained fully and
accurately in the stenographic notes taken by me
upon, and that this is a true and correct transcript
of same.

12

13 RE: Resolution No.010533

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Josephine Cardillo

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Registered Professional Reporter
and Notary Public

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