

MEETING  
OF  
THE BOARD OF TRUSTEES  
VILLAGE OF HEAD OF THE HARBOR

September 2, 2026

7:02 p.m.

P R E S E N T:

MICHAEL UTEVSKY, MAYOR

JEFFREY D. FISCHER, DEPUTY MAYOR

KATHLEEN DIANA

ROBERT E. KENT

BRIAN T. EGAN, VILLAGE ATTORNEY

MARGARET O'KEEFE, VILLAGE CLERK

APPLICATION BY NISSEQUOGUE FARM LLC

DEBORAH KNIESSER, STENOGRAPHER

1 NISSEQUOGUE FARM LLC

2 THE MAYOR: Welcome to the Board  
3 of Trustees meeting, Head of the  
4 Harbor, September 2.

5 We've got an interesting agenda.  
6 We're going to start with the  
7 special-event application for Thatch  
8 Meadow Farm, a special-use permit for  
9 Nissequogue Farm to follow, a code  
10 amendment to follow that, and then 57  
11 Fifty Acre Road lot line modification  
12 after that, and then the normal  
13 business.

14 Let's start with the Pledge of  
15 Allegiance first.

16 (Pledge of Allegiance.)

17 (Off the stenographic record.)

18 THE MAYOR: The next order of  
19 business is the public hearing of the  
20 special-use permit for Nissequogue  
21 Farms.

22 Mr. Bergsen, do you want to make  
23 your presentation?

24 MR. BERGSON: Yes, I would very  
25 much.

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1 NISSEQUOGUE FARM LLC

2 THE MAYOR: Please, please.

3 MR. BERGSON: Good evening,  
4 everyone. My name is Howard Bergson,  
5 and I'm an attorney. My office is at  
6 194 Main Street in East Setauket. I'm  
7 here representing Ms. Ogden in her  
8 capacity as the owner of the applicant  
9 here, Nissequogue Farms.

10 Nissequogue Farms is a wholesale  
11 nursery business that operates at 654  
12 North Country Road in -- in -- within  
13 the Head of the Harbor. It is -- it  
14 is, as I said, a wholesale retail  
15 operation with a component -- a  
16 landscape -- a landscape component  
17 accessory to that wholesale operation.  
18 It's not -- there's no retail  
19 operation. There's no retail sales.  
20 It's operated, again, as a wholesale  
21 nursery. It's directly across the  
22 street from a large retail farm stand  
23 and nursery, BB&G -- BB&GG across the  
24 street.

25 Ms. Ogden d/b/a Ogden St. James

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1                   NISSEQUOGUE FARM LLC  
2                   Holding Company LLC purchased the  
3                   property in 2006, 2007. She purchased  
4                   it from the Kusick family who were  
5                   operating a nursery and a landscaping  
6                   business from that location for years.

7                   We -- we're making this  
8                   application for the special permit  
9                   pursuant to Village Code Section  
10                  165-23B4. There are specific  
11                  requirements within -- within that  
12                  code, and we'll get to that in a  
13                  minute. Before -- yesterday a  
14                  submittal was delivered to the clerk's  
15                  office. And I'd just like to run --  
16                  I'd like to make that part of the  
17                  record and just run through it very  
18                  briefly.

19                  The first -- the first section of  
20                  it is a copy of it -- the full Section  
21                  163-23 of the code. The second is  
22                  the -- is a November 23rd Statement of  
23                  Operation which was prepared as part of  
24                  the original application for this  
25                  special permit when we submitted it in

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## NISSEQUOGUE FARM LLC

2023. And in it, it goes through the nature of the operation, the type of service -- the type of operation it is, how the wholesale nursery operates, and how the -- the landscaping portion or accessory entity operates in conjunction with that.

Moving on through the submittal is a copy of a portion of the -- of a publication of "Head of the Harbor, A Journey Through Time." It's actually a Village publication. And if you look through it, you'll see that it makes mention of the Nissequogue Farms and Kusick operation including a significant composting operation that was there for years and years.

Turn the page further, turning the document -- the submittal to the next document is a -- is a copy of a business card for Nissequogue Farms. It's operated by the Kusicks. And at the bottom of the card you can clearly see -- maybe not so clearly, but it's

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## 1 NISSEQUOGUE FARM LLC

2 definitely legible, but you can see  
3 nursery and landscape contractors. So  
4 this property has a history of -- of  
5 the same use that we're discussing now  
6 and which has and provided for  
7 specifically by the code section that I  
8 made reference to previously.

9 The next -- the next portion --  
10 the next document is an October 7, 2024  
11 memorandum to the Village trustees from  
12 the Planning Board -- from the Village  
13 Planning Board which concludes -- and  
14 I'll just read the last portion -- I'll  
15 just read the last portion of it, "The  
16 Planning Board thus recommends the  
17 approval of this application as  
18 currently proposed without condition."

19 That's the -- that's the finding  
20 of the -- the initial finding of the  
21 Planning Board.

22 The next document is a Report of  
23 Engineers, a traffic study. It's  
24 addressed to the Village attorney, Mr.  
25 Egan, and it's dated August 1, 2025.

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And again, without reading entire the document, the last page of it -- the last page paragraph it says, "Based upon the above, it is our opinion that the operation of the existing nursery does not result in any deleterious impacts to area traffic conditions and this element is not -- and this element is not an impediment to the issuance of a special-use permit."

Turning next to a September 9, 2025 letter to the trustees, and that is -- is from the -- from the Chairman of the -- it's from the Chairman of the Planning Board having received a copy of the traffic report, again, recommending to the trustees of the Village that the permit be granted.

And the final document that's part of this exhibit is -- this is a letter -- there's a letter from the chairman stating -- from the chairman of the Planning Board confirming -- confirming that.

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2 And the last -- the last document  
3 is the opinion and the decision of the  
4 finding of the Zoning Board -- of the  
5 Zoning Board of Appeals. Now, what  
6 happened here was that we were able to  
7 make the application to the Zoning  
8 Board for, what I consider, a minor  
9 variance so that when we proceeded  
10 through this application, okay, that  
11 this board and then again the Planning  
12 Board when we go back for our final  
13 site plan approval would have an entire  
14 approved -- from a zoning point of  
15 view -- document to work from.

16 So there wouldn't be a question  
17 what if the Zoning Board doesn't grant  
18 the application. If -- if in this case  
19 the Zoning Board had denied one or some  
20 of the -- of the variance applications,  
21 the applicant would have complied. But  
22 we thought that they were reasonable  
23 requests for the Zoning Board to  
24 consider, and they apparently agreed.

25 With respect to the section

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2 itself, the Section Subdivision E of --  
3 of 163-A4 reads, "An accessory use as  
4 landscaping services and the display of  
5 sample landscaping materials are  
6 permitted provided the landscaping  
7 service shall be entered both component  
8 of and not dependent on the nursery --  
9 and not independent of the nursery  
10 business shall be owned and operated by  
11 the same person or persons as operating  
12 the nursery and shall employ no more  
13 than five persons on site exclusive --  
14 exclusive of no more than three  
15 part-time people -- I'm sorry, three  
16 part-time employees on site and  
17 exclusive of seasonal workers whose  
18 primary location is off site."

19 And from an employment point of  
20 view, that's exactly what we have.  
21 Right now we have one full-time  
22 employee, two part-time employees, and  
23 we have several -- 10 to 13 -- seasonal  
24 employees; okay? Occasionally some of  
25 those seasonal employees are doing work

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2 on -- on the property. But again,  
3 under the code, we're allowed five  
4 full-time employees in any event.

5 So we feel that we're complying  
6 with the requirements of the code in  
7 this respect and in other respects.  
8 The application has gone through a lot  
9 of stages so far. We intend at every  
10 stage to comply with the Village code  
11 requirements.

12 The property -- this property is  
13 property where Ms. Ogden lives. This  
14 is not some absentee landlord or  
15 absentee owner who shows up at this  
16 location. She lives on the property.  
17 The property has two -- two homes on  
18 it. Both have appropriate certificates  
19 of occupancy. Both will be used and  
20 comply with the code in terms of as one  
21 family -- as one-family dwellings in  
22 conformity with the code.

23 We believe that it is appropriate  
24 to -- to grant this application. I  
25 understand that there's a desire of

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1                   NISSEQUOGUE FARM LLC  
2                   some of the trustees to actually visit  
3                   this property. We're more than happy  
4                   to try to arrange that. There are  
5                   currently some logistic issues in terms  
6                   of quorum and because of Ms. Ogden's  
7                   position on it as a trustee. But we've  
8                   tried to work through that. Ms. Ogden  
9                   is willing to spend -- to meet with one  
10                  trustee at a time so there's not a  
11                  question about it.

12                 THE MAYOR: I would refer this to  
13                  counsel, but since Ms. Ogden has  
14                  recused herself from these  
15                  deliberations I'm not sure she should  
16                  be speaking one on one with the  
17                  trustees either.

18                 THE VILLAGE ATTORNEY: I agree.  
19                  We'll sort out the logistics.

20                 MR. BERGSON: Well, all right, but  
21                  the logistics, you know, turn into an  
22                  expense. And as familiar as I am with  
23                  this application generally, me being on  
24                  the site and explaining things is not  
25                  something that anyone would consider

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2 much, so there is some logistical  
3 questions about all of that.

4 The architect and consultant, Mr.  
5 John Cunniffe, is here. He has a full  
6 display of this site plan, and this  
7 includes the items that were approved  
8 by the Zoning Board pursuant to the  
9 variance applications. And we are open  
10 to any questions from the Board or to  
11 adjourn and arrange for the -- for  
12 the -- I'm sorry, the site visit, the  
13 site inspections.

14 THE MAYOR: If Mr. Cunniffe has  
15 anything -- any presentations to make,  
16 please go ahead. And after that, I  
17 would invite public comment before the  
18 trustees ask questions.

19 MR. CUNNIFFE: My name is John  
20 Cunniffe. I'm an architect from Stony  
21 Brook. Ms. Ogden owns this property  
22 and asked me to join to review and  
23 organize the site itself.

24 I've played a pivotal role in  
25 demonstrating the proper variances.

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2 There were eight altogether. They were  
3 all fairly minor in nature. But  
4 this -- there are one large five-acre  
5 site. There's actually three  
6 individual lots that are subdivided --  
7 not subdivided but they are plotted.  
8 And so this is -- and myself and Mr.  
9 O'Shea have all agreed that they're  
10 looking at this as one large property.

11 We have a tremendous buffer from  
12 North Country Road which, you know,  
13 inherently I think one of the points  
14 I've always made to the public here is  
15 that the nature of the plantings and --  
16 and the in-ground storage of the  
17 plantings and some of the plantings  
18 that Ms. Ogden --

19 (Reporter clarification.)

20 MR. CUNNIFFE: The nature and  
21 staging of them and storage of them has  
22 this incredible buffering and obviously  
23 artfully done, and I think everybody  
24 enjoys the corridors as they pass by  
25 the premise by automobile. And it also

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1                   NISSEQUOGUE FARM LLC  
2                   provides a natural and artificial  
3                   buffer on the perimeter.

4                   And Ms. Ogden has done a great job  
5                   at concealing and -- in bringing drive  
6                   aisles and roads inward and into the  
7                   interior and looping around some of the  
8                   functions of the site. It's very  
9                   intentional to bring that. There is a  
10                  number -- as it's stated in the  
11                  operation's statement, there are some  
12                  vehicles and some utility tools that  
13                  are being stored and those are done  
14                  very carefully and concealed sort of on  
15                  the interior of all the plantings.

16                  Ms. Ogden's residence is in the  
17                  lower-east corner, southeast corner.  
18                  And then there's another residence here  
19                  that has a home office that operates  
20                  some of the books for the business. A  
21                  storage shed here.

22                  One of the variances was a -- was  
23                  for a refuse dumpster which is screened  
24                  very artfully with existing cedars just  
25                  outside of the 200-foot buffer that's

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2 required there. It's completely  
3 invisible. And again, it's smack dab  
4 in the interior of the site. Again,  
5 very intentional with respect to  
6 planting on the property.

7 So personally, obviously I'm  
8 representing Ms. Ogden. But as an  
9 architect, I do a bunch of site  
10 planning for a lot of commercial  
11 applications. It's a well done, well  
12 thought out property in regard to  
13 screening and operations.

14 So I don't have anything more to  
15 add unless any of the trustees have any  
16 questions in regard to the site plan.

17 MR. BERGSON: Can I just add one  
18 thing?

19 All that John has just said will  
20 become very obvious to the trustees  
21 upon the site visit. But in addition  
22 to that, this application, assuming  
23 it's approved, will go back to the  
24 Planning Department for final site-plan  
25 approval. As part of that process, we

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1                   NISSEQUOGUE FARM LLC  
2           are certainly willing to discuss the  
3           issue of screening various sections of  
4           the perimeter of this so -- and that --  
5           if that is going to be the  
6           recommendation of the Planning Board.

7                   So it's not only that the interior  
8           operation is well screened but that  
9           it -- the Planning Department or the  
10          Planning Board believes that additional  
11          screening once you really get on the  
12          ground and look and see what's there  
13          and the type of vegetation, what's  
14          appropriate and what's not appropriate,  
15          we're certainly willing to discuss and  
16          do the reasonable thing with respect  
17          to -- with respect to those issues.

18                   THE MAYOR: Thank you.

19                   I have questions. Other trustees  
20          may have. But I would like to hear  
21          from members of the public first.

22                   Mr. Hartman?

23                   THE VILLAGE CLERK: Bob Hartman,  
24          please.

25                   MR. HARTMAN: I'm going to try

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2 without the mic so I'll do my best.

3 My name is Robert Hartman. I live  
4 at 50 Harbor Hill Road, and I'm here  
5 both as a resident and as co-chair of  
6 Preservation Head of the Harbor.

7 Preservation Head of the Harbor is  
8 a 501(c)(3) organization. We promote  
9 awareness, appreciation, and  
10 preservation of the history,  
11 architecture, landscape, and cultural  
12 heritage of our village through  
13 education, community and engagement  
14 initiatives, and advocacy. We are not  
15 part of the local government of Head of  
16 the Harbor.

17 I'm here tonight because of my  
18 concern about the variances proposed as  
19 part of the application for a  
20 special-use permit by Nissequogue Farm  
21 LLC. This property is part of the  
22 Mills Pond Historic District which was  
23 created in 1973. The special-use  
24 permit would grant nine variances and  
25 they concern the placement of hoop

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1                   NISSEQUOGUE FARM LLC  
2           houses, dumpsters, a concrete  
3           foundation, and existing and proposed  
4           driveways which encroach on  
5           conservation easements or buffers. I'm  
6           especially concerned with those  
7           encroachments close to -- close to  
8           Mills Pond Cemetery which is a key  
9           component of the historic district.

10                   The property was formally the  
11           Kusick Farm. And when the subdivision  
12           was issued in 1993, there are two notes  
13           on the subdivision map that are  
14           applicable here. Note 12, appropriate  
15           screening adjacent to historic areas  
16           which are provided, Note 18, a  
17           conservation easement or buffer shall  
18           be provided between the private road  
19           and the historic cemetery particularly  
20           in the area west of the 170-acre  
21           (inaudible). The conservation easement  
22           or buffer shall be shown on the final  
23           map.

24                   I'm concerned because the hoop  
25           houses extend into the conservation

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2 easement. They are not conforming to  
3 Village code and they are not screened  
4 at all which you can see in this  
5 picture. Also the area within the  
6 conservation easement should not be a  
7 maintained landscape as it is now but  
8 left naturally screened.

9 And before we go any further, I  
10 want to acknowledge my appreciation for  
11 the applicant, the trustees, the Zoning  
12 Board of Appeals, the Planning Board,  
13 and eventually the Architectural Review  
14 Board. I know that they are all  
15 preservation advocates. We are all in  
16 agreement on the importance of  
17 preserving our historic and cultural  
18 assets. Where we may not be in  
19 agreement is the best way to achieve  
20 that goal.

21 Our codes and regulations were  
22 written to protect the characteristics  
23 of our village identity. Our village  
24 does not have a preservation ordinance  
25 and depends on those codes and

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regulations to protect our historic properties and landscapes, especially the ones that are as fragile as the Mills Pond Cemetery which is why, in this case, I believe the code should be enforced and the special-use permit should not be granted in its current form.

Here's the thing about the cemetery. It holds people who have made great contributions on local, state, and national level. There are at least two Revolutionary War soldiers here, one who was a participant in the Culper Spy Ring. Several members of founding families, many from the Mills family which was one of the most prominent families in the area, are buried here.

Also Tamer Wren is here. Tamer Wren is in the upper corner over there. Her portrait by Shepard Alonzo Mount is part of the exhibition around you right over there. And she was first a slave

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1                   NISSEQUOGUE FARM LLC  
2                   belonging to the Mills family and then  
3                   a servant and is now buried here.

4                   Behind me -- right here is a  
5                   picture of her grave which has recently  
6                   been restored and right in front of the  
7                   hoop houses which are part of the  
8                   (inaudible) and are highly visible from  
9                   all parts of the cemetery. In addition  
10                  to Tamer, there are graves of many  
11                  people who are no longer known to us as  
12                  well as unmarked graves of people who  
13                  were slaves and people who are of mixed  
14                  race.

15                  We talk about -- we talked about  
16                  the importance of historic structures  
17                  but also take into consideration the  
18                  importance of landscape. Buildings  
19                  don't exist in isolation. The  
20                  landscape that surrounds is an equally  
21                  important component creating a sense of  
22                  place. What you see from your window  
23                  is as important as the house you live  
24                  in.

25                  Our houses, their relationship to

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2 the outbuildings and the landscaping,

3 all form our sense of place.

4 Especially important and usually the

5 most tenuous are features like

6 cemeteries, stone walls, all tree

7 lines, pathways, open fields, and new

8 sheds. Preserving these landscapes is

9 as important as preserving buildings.

10 What I'm requesting tonight is

11 that this application for a special-use

12 permit not be approved in its current

13 form, that the application be revisited

14 so that the Village code is enforced

15 and that you take into consideration

16 the historic and cultural assets that

17 are being threatened here while at the

18 same time determining the way the

19 applicant can achieve their goals. I

20 believe the two can coexist.

21 Thank you.

22 THE MAYOR: Thank you.

23 THE VILLAGE CLERK: Mr. Von

24 Bernewitz.

25 MR. VON BERNEWITZ: Hello,

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2 everybody. My name is Robert Von  
3 Bernewitz. I am the president of the  
4 Long Island Cemetery Preservation  
5 Group. I have with me tonight three  
6 board members and some volunteers.

7 Our mission is to preserve  
8 historic graveyards in the area. We've  
9 already done Smithtown Cemetery on Main  
10 Street, Smithtown Landing, and many in  
11 the Three Village area. And cemeteries  
12 that are at risk or need love and  
13 restoration, that's what we do. And  
14 we're a non-for-profit company.

15 I just want to talk a little bit  
16 about this -- the importance of the  
17 Mills Pond Cemetery. Some of it was  
18 already said. And as was said, Tamer  
19 which is one of the ones that our group  
20 just cleaned and restored, we put this  
21 nice brick around -- around it and it  
22 used to have flowers. And the  
23 Setalcott Nation was right alongside  
24 with us. Very, very important group,  
25 Indigenous people to Long Island. This

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2 is what it used to look like.

3 That's -- that's the transformation  
4 that we did.

5 Another important person I want to  
6 talk about and what we restored is  
7 Jonas Hawkins. Now, this cemetery has  
8 local history, state history, and  
9 national history as well. Jonas  
10 Hawkins was a Culper spy, the Culper  
11 Spy Ring Network that helped with the  
12 Revolution. He is buried here, and  
13 this was laying on its back. Our group  
14 uprighted it and cleaned it and gave it  
15 the respect that it deserves.

16 His father was Eleazer Hawkins.  
17 Eleazer Hawkins was around during the  
18 time of pirates. The story about  
19 Eleazer Hawkins is he found a ghost  
20 ship floating around Long Island Sound  
21 full of gold, took the gold, and built  
22 Stony Brook and the Hawkins House  
23 that's on the corner of Stony Brook  
24 Road. Extremely important to Long  
25 Island. His father, Zachariah Hawkins,

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2 was one the first trustees ever in the  
3 Town of Brookhaven.

4 Not only do we have very important  
5 people buried there, there is a section  
6 in the southwest full of fieldstones.  
7 Most likely, they're African-American  
8 and Native American people that were  
9 employed at the Mills House. Extremely  
10 rare on Long Island. There are some  
11 sites, but they're rare. So that's  
12 very, very important for this wonderful  
13 cemetery that we have here.

14 And then the symbolism that  
15 started out when the Puritans came to  
16 America, they were allowed to carve  
17 gravestones. And this is essentially  
18 America's first folk art ever, these  
19 gravestone carvings. So we have  
20 wonderful examples of symbolism in the  
21 cemetery.

22 And this particular stone is rare  
23 because it has a symbolism crossover.  
24 You don't see many of these in New  
25 England let alone Long Island. They

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1                   NISSEQUOGUE FARM LLC  
2                   have two (inaudible) with the  
3                   changeover to the urn during the 1800s.

4                   What I'm trying to get at is it's  
5                   a very important cemetery, and it  
6                   should be respected that way. That's  
7                   all I have to say.

8                   THE MAYOR: Thank you.

9                   THE VILLAGE CLERK: Collette  
10                  Porciello, please.

11                  MS. PORCIELLO: I'd just want to  
12                  approach with some photos for the  
13                  trustees.

14                  Hopefully you're enjoying your  
15                  last legs of summer. You still have a  
16                  little time.

17                  The Village of Head of the Harbor  
18                  has existed for 98 years, 98 years  
19                  without a commercial operation. I'm  
20                  here as a neighboring homeowner of 26  
21                  years that is directly affected by this  
22                  application. My concerns extend beyond  
23                  my own property. They concern the  
24                  character of this village and the  
25                  protections provided by our residential

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1 NISSEQUOGUE FARM LLC

2 zoning and the precedent this board may  
3 establish by approving the special-use  
4 permit.

5 I want to be clear about what I'm  
6 asking of this board. Does this  
7 application meet the standards required  
8 for a special-use permit in a  
9 residential village? I respectfully  
10 submit that it does not.

11 I'm not here to negotiate buffers,  
12 screening, noise controls, or other  
13 conditions that might make this  
14 operation more tolerable. Those issues  
15 are extremely important, particularly  
16 to those of us who live immediately  
17 alongside the property, but they should  
18 not become substitute for the threshold  
19 question before you.

20 Has this applicant demonstrated  
21 that this operation meets the standards  
22 necessary to receive a special-use  
23 permit in this residential village?  
24 Head of the Harbor is fundamentally a  
25 residential community. People chose to

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2 live here because of its rural  
3 character, historic surroundings,  
4 privacy and peace. What is being  
5 considered here is not normal  
6 residential improvement or modest  
7 accessory use. This is an established  
8 commercial operation seeking  
9 authorization for a substantial  
10 collection of structures and activities  
11 associated with that operation.

12 The scale matters. The number of  
13 structures matter. The machinery,  
14 employes, trucks, deliveries, noise.  
15 traffic, storage, utilities, and  
16 continued physical expansion matter.  
17 The cumulative effect of all these  
18 things on neighboring residential  
19 properties matter.

20 The question should not be simply  
21 whether each individual component can  
22 somehow be accommodated thought another  
23 variance, another exception, or another  
24 condition. The question is whether the  
25 operation as a whole is appropriate for

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2 this location.

3 The need for so many variances  
4 should give this board pause. The  
5 applicant has already required numerous  
6 variances in order to accommodate this  
7 operation, and it's asking for more.  
8 More structures, more development, and  
9 removal of natural landscape. Setback  
10 and buffers exist for a reason. They  
11 protect neighboring properties and  
12 preserve appropriate separation between  
13 incompatible uses.

14 When an operation cannot fit  
15 within those requirements without  
16 repeatedly seeking relief from them, I  
17 believe that raises a larger question,  
18 has the operation outgrown what this  
19 residential property can reasonably  
20 accommodate without negative impact on  
21 surrounding residents and the Village  
22 as a whole? Because the operation  
23 existed for some years with many code  
24 violations, it doesn't become  
25 compatible with the neighborhood.

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2 A special-use permit should not  
3 become a mechanism for reshaping a  
4 residential property around an  
5 operation that does not otherwise fit  
6 the standards intended to protect its  
7 neighbors. The existing conditions  
8 already demonstrate the impact for us  
9 who live beside the property. These  
10 impacts are not theoretical.

11 We already experience substantial  
12 machinery noise. Frequently when my  
13 family sits outside our own deck, we  
14 have to scream to hear one another over  
15 the equipment noise. This is not the  
16 peaceful residential environment we  
17 should reasonably expect to enjoy on  
18 our property.

19 The visual impact is substantial.  
20 Large areas of white plastic-covered  
21 structures create what is a sea of  
22 white plastic where there was otherwise  
23 a green residential landscape.  
24 Additional structures will only  
25 intensify that visual impact.

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2 Existing deciduous vegetation  
3 cannot reasonably be regarded as a  
4 permanent screening. Leaves fall,  
5 screening disappears, and neighboring  
6 properties are left exposed to the  
7 structures and activity, and yet again,  
8 white tarps as far as the eye can see.  
9 There are existing structures and some  
10 safety concerns.

11 I'm also asking the Board to  
12 carefully examine the existing  
13 structures and their approved use  
14 before considering any permitting.  
15 There's a two-story structure being  
16 used in connection with the operation  
17 and there are numerous individuals  
18 living, working, and occupying areas of  
19 the structure and property. I believe  
20 the Village should establish clearly  
21 that all existing structures and uses  
22 have the required approvals,  
23 certificates, applicable fire and  
24 safety compliances, as well as the  
25 Suffolk County Department of Health

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2 Services septic approval. Expansion  
3 should not proceed compliance and  
4 safety.

5 The surrounding historic and  
6 residential character deserves  
7 protection. This property sits among  
8 residences and near historically  
9 significant properties and features of  
10 this village including the cemetery and  
11 the Mills Pond House. The character of  
12 Head of the Harbor was created over  
13 generations. Once commercial intensity  
14 becomes normalized in a residential  
15 area, the character is extraordinarily  
16 difficult to restore.

17 So consider the precedent this  
18 proposed approval communicates to every  
19 other resident in the Village or  
20 someone who specifically moves here to  
21 set up camp. If a commercial operation  
22 can expand to this degree within a  
23 residential district through a  
24 special-use permit accompanied by  
25 numerous variances, what principle

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2 prevents to next property owner from  
3 requesting some similar.

4 Please view this from the  
5 neighboring properties. I respectfully  
6 request that the trustees visit the  
7 neighboring properties most directly  
8 affected by this application. Plans  
9 and surveys cannot demonstrate what  
10 this operation actually looks like and  
11 sounds like from the other side of the  
12 property line.

13 THE VILLAGE CLERK: We are over  
14 five minutes.

15 MS. PORCIELLO: My request to this  
16 board not to grant the special-use  
17 permit as the applicant has not  
18 demonstrated that the operation as a  
19 whole satisfies the standards required  
20 for such a permit and is genuinely  
21 incompatible with this residential  
22 location. The burden should not be  
23 placed upon neighboring homeowners to  
24 continually determine what combination  
25 of screening, buffers, fencing, or

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2 restrictions might make an incompatible  
3 use tolerable. The first  
4 responsibility is to determine whether  
5 use should be permitted. Only if this  
6 board determines that the applicant has  
7 somehow met that burden should  
8 conditions even become a discussion,  
9 then the protection of neighboring  
10 properties must be meaningful and  
11 enforceable, not merely promises on  
12 paper.

13 Full buffers, substantial  
14 year-round evergreen screening,  
15 meaningful noise controls, appropriate  
16 setback limits on expansion and  
17 activity, and verified compliance with  
18 all building and safety requirements  
19 would be essential. Those are  
20 secondary protections though. They do  
21 not answer the fundamental question of  
22 whether this operation belongs here  
23 this scale at all.

24 In closing, Head of the Harbor is  
25 not a commercial district. It's a

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2           residential village where people have  
3           invested in their homes and chose to  
4           raise their families, enjoy their  
5           properties, and live among open spaces  
6           and quiet surroundings that make this  
7           village unique.

8                   Zoning protections mean very  
9           little if whenever a proposed use  
10          cannot meet them the solution is simply  
11          to remove those protections  
12          one variance at a time. The inability  
13          of a use to conform to the standards of  
14          a property is not a reason to change  
15          the standards. It is evidence that the  
16          use has become too large, too  
17          intensive, or simply inappropriate for  
18          that location.

19                   THE MAYOR: Collette, please  
20          finish up.

21                   MS. PORCIELLO: Okay. I'm asking  
22          the Board to protect the residential  
23          character it was entrusted to preserve  
24          and to determine first not how this  
25          operation can be made to fit but

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2           whether it should be permitted here at  
3           all.

4           Thank you so much.

5           THE MAYOR: Thank you.

6           THE VILLAGE CLERK: Vincent  
7           Porciello, please.

8           THE MAYOR: I think it's best to  
9           finish all --

10          MR. BERGSON: Yes, I agree.

11          THE MAYOR: -- and then you'll  
12          have an opportunity to respond.

13          Mr. Porciello?

14          MR. PORCIELLO: Yes. I'm glad I'm  
15          finally here. I'll certainly keep it  
16          under five minutes.

17                I've become pretty passionate with  
18          words and things. But well done to the  
19          architect and the attorney in your  
20          words, but your words do not really  
21          portray what goes on. To say that  
22          these variances are minimal is really  
23          just -- it's just hard to explain.

24                I've worked, lived in the area my  
25          entire life. For 20 years I've watched

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2           this property exponentially start to  
3           grow. But what does that mean for a  
4           homeowner in the area? What that means  
5           is on a Saturday -- I have a few days  
6           off. We all work very hard. I work  
7           close to 70 hours a week. So when I do  
8           get a Saturday or a Sunday and I'm  
9           outside -- the length of time I  
10          couldn't even record on my phone -- you  
11          will hear continuous chainsaws for a  
12          half hour to an hour to a full day of  
13          work back there.

14                 You'll hear blowers time and time  
15          and time again to the point where we'll  
16          be screaming at times. You have to  
17          come inside. You have to shut your own  
18          windows and doors. It has become  
19          just -- it's grown.

20                 To point out the two houses, you  
21          folks don't know what it looks when the  
22          trees drop. Our property is right on  
23          the foothold of what these proposals  
24          are trying to do. When the trees are  
25          gone, to say that this is beautifully

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2                   camouflaged and screened is absurdity.  
3                   When the trees drop, you can see  
4                   everything. You can see full  
5                   operation. You can see multiple  
6                   people. There are multiple people  
7                   living there whether legal or illegal,  
8                   I don't know.

9                   MS. PORCIELLO: We need to know.

10                  MR. PORCIELLO: We need to know  
11                  though. The Board has a responsibility  
12                  to know.

13                  What's crazy to me and why I get  
14                  so passionate is the business that's  
15                  operating, did we even have permits all  
16                  these years? I don't know. But to sit  
17                  on a board and know that your blowers  
18                  are going nonstop, you should have the  
19                  number one power to stop that but it  
20                  never stopped.

21                  That's why I got involved. I'm  
22                  not one to call on the phone and bother  
23                  the local police who don't need more to  
24                  do, but I will start picking up the  
25                  phone.

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2 We have to become advocates to  
3 product this area. My yard -- I go  
4 into that cemetery to help clean it. I  
5 respect everything that this group has  
6 done. I applaud that. The community  
7 should be able to see what's done. But  
8 to have to live it every day, 1,500  
9 residents in Head of the Harbor don't  
10 have to live it, don't have to hear the  
11 noise, don't have to see the hoop  
12 houses. But if this board approves  
13 this, anyone in Head of the Harbor can  
14 now proceed.

15 The Kusicks were wonderful. Yes,  
16 they were landscapers. Turning point  
17 that little card to try to justify  
18 what's going on now is not. They came  
19 and went peacefully and did nothing  
20 literally to the property. This  
21 property has been torn down and grown  
22 to multiply into a wholesale that's for  
23 someone's own personal use.

24 I applaud if you want to be a  
25 strong businesswoman, but you also --

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2                   we're in a residential community.  
3                   There are people behind us that are St.  
4                   James. I don't know if they're here.  
5                   They probably can't speak. Their  
6                   houses are affected also. They walk  
7                   into their houses. I've had  
8                   discussions with them.

9                   Some of my neighbors probably are  
10                  not probably as affected noise-wise as  
11                  we are. But trust me, if metal fencing  
12                  goes up and these small variances  
13                  expand to multiple use, the sky's the  
14                  limit for people coming into Head of  
15                  the Harbor.

16                 I've lived here my whole life.  
17                 It's a beautiful area. It's well  
18                 respected. I hope it passes as a  
19                 generational to my daughters and  
20                 family. This is not what's happening.  
21                 This is not just a simple let's make an  
22                 agreement and put up trees. That's not  
23                 what's happening. This -- this  
24                 property has now expanded beyond its  
25                 use for -- for a personal business

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2 thing.

3 So folks, just -- just -- I  
4 wish -- to see it now is not justice.  
5 We have trees everywhere, thank god.  
6 But when the -- when the leaves fall,  
7 it's -- it's such -- such a site.

8 They -- they have protected the  
9 front 25A side, but what about the  
10 neighbors? What about us that have to  
11 live year round and look at it? Not  
12 very appealing. And that just opens  
13 the door to anything.

14 They're right on top of -- of  
15 Mills Pond House. Their trucks are  
16 almost on the property. It's  
17 absolutely insane what's going on right  
18 now.

19 Open your eyes. Open your eyes.  
20 Please see what we see and do the right  
21 thing. Prior boards probably didn't,  
22 but this board, you're entrusted to  
23 amalgamate a strong decision on this,  
24 and hopefully it's reflected to what  
25 the neighbors see and hopefully what

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2 the rest of Head of the Harbor sees.

3 Thank you for your time.

4 THE MAYOR: Thank you.

5 THE VILLAGE CLERK: Gerald

6 Hartman.

7 MR. HARTMAN: Good evening. My  
8 name is Dr. Gerald Hartman. I'm a  
9 retired pediatrician who has lived and  
10 raised my family at 30 Great Oak Road,  
11 St. James for the past 52 years.

12 The northwest corner of my  
13 property borders on Head of the Harbor  
14 with the closest corner of my house  
15 situated 300 to 600 feet from the  
16 building to other structures on the  
17 subject property at 650-654 North  
18 Country Road.

19 At 82 years of age I enjoy simple  
20 pleasures such as sitting on my rear  
21 patio listening to quiet music,  
22 enjoying natural beauty, and searching  
23 for quiet solitude and tranquility.  
24 Unfortunately, finding quiet solitude  
25 and tranquility in my backyard has been

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2 more difficult in the past few years.  
3 Often instead of quiet solitude, my  
4 ears are greeted by the loud sound of  
5 gas engines and heavy equipment through  
6 the north and west corners of my  
7 property where my property shares a  
8 border with the subject property.

9 While I suspect that -- while I  
10 suspect many of these noises are coming  
11 from 650-654 North Country Road, I'm  
12 not certain of this. Therefore, I will  
13 leave it to my neighbors whose property  
14 share a larger common border with them  
15 and more direct views of the subject  
16 property to discuss matters of noise  
17 emanating from the subject property  
18 with you.

19 For about 98 years, the Village of  
20 Head of the Harbor has protected the  
21 privacy, solitude, and pristine beauty  
22 of its land for its residents and  
23 neighbors alike. This has worked well  
24 and withstood the test of time.

25 There's a heavy burden that's laid

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on you, the trustees of Head of the Harbor, to continue to protect these values which have brought people to your village for 98 years. I hope you will agree with me and if you owe it to the trustees who came before to your residents and to your neighbors alike to continue to protect your village from commercial intrusion. Doing less would be an insult to the trustees who came before you, to your residents, and to your neighbors. This is not a difficult choice, and I'm sure that you will choose wisely.

I have one other question and I'm going to direct it to the Board because that's -- I'm supposed to direct it to them, not to the attorney.

Has there been any submission to Suffolk County Department of Health regarding the septic tanks on these buildings?

THE VILLAGE ATTORNEY: We usually don't take questions and answers during

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2 the presentation, but if you want to  
3 allow Mr. Bergson to answer that?

4 THE MAYOR: As long as the  
5 question came up, if you could, Mr.  
6 Bergson?

7 MR. BERGSON: There had been --  
8 and I can be corrected in terms of the  
9 exact nature of the inquiry.

10 There's been requests from the  
11 Suffolk County Health Department with  
12 respect to these -- these issues.  
13 Their response to that is going to be  
14 expensive. The engineering on it,  
15 the -- the administrative aspect of it,  
16 this application cannot go to final  
17 form until that is resolved.

18 In other words, no permit -- no  
19 special permit that this board would  
20 issue, could issue, even would let this  
21 board issue, would be effective without  
22 having gotten clearance from the  
23 Suffolk County Health Department. But  
24 because of the nature of the  
25 engineering and the expense involved,

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2 okay, it was requested that we could  
3 proceed through this application, okay,  
4 and if -- if -- if for within this  
5 board's discretion or it's not  
6 approved, that would be what it will  
7 be. But -- and then -- but if it is  
8 approved, we will have to participate  
9 in the process and comply with their  
10 requirements.

11 There's no question about that.  
12 There has never been a question about  
13 that. Proceeding at this point has  
14 only been a reasonable accommodation in  
15 terms of the process, not an avoidance  
16 of the obligation.

17 THE MAYOR: So Mr. Bergsen,  
18 there's a letter we saw in the file  
19 from January of this year from Suffolk  
20 County that says the wastewater  
21 application remains open.

22 Has there been any -- that's still  
23 the status?

24 MR. BERGSON: That's the status.  
25 And until that's resolved, there's

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2 no -- no -- no permit by this board  
3 would be effective because it wouldn't  
4 be -- it wouldn't be final.

5 MR. HARTMAN: Thank you very much.

6 THE VILLAGE CLERK: Steven Ochs,  
7 please.

8 MR. OCHS: Good evening,  
9 everybody. Steven Ochs. I live at 22  
10 Great Oak Road in St. James.

11 My property is directly south of  
12 Judy's property. And my concern like  
13 several of my neighbors is the amount  
14 of noise that comes out of that  
15 property.

16 My son was home last week, was  
17 working on -- remotely and was using  
18 his computer on our back deck. And he  
19 told me that for five, six hours there  
20 was an engine running. And that was a  
21 Tuesday or Wednesday in the middle of  
22 the week. The next day, the same  
23 thing.

24 My concern is how is that going be  
25 policed, you know? We live on an acre

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2 of property. It's pristine otherwise.  
3 But to hear that noise consistently is  
4 really not fair.

5 My other question is, there  
6 appears on the survey a fence around  
7 the property. I don't know the  
8 ownership of that fence. But it hasn't  
9 been maintained. So certainly the  
10 North Country Road part of the property  
11 is beautifully maintained. The back of  
12 the property where there's residences  
13 doesn't have the same type of  
14 treatment. So as a homeowner, that's a  
15 concern.

16 I thank you for your time.

17 THE MAYOR: Thank you.

18 Anyone else?

19 THE VILLAGE CLERK: That's all  
20 that signed in.

21 THE MAYOR: Is there anyone who  
22 would like to speak briefly, please?

23 MS. CUCCINIELLO: I do.

24 My name is Diane Cucciniello. I  
25 also live directly behind Ogden Farms,

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2 the nursery, on 24 Great Oak Road.

3 And yes, the noise is a problem.

4 Again, I understand there are  
5 requirements. And I remember when Judy  
6 first started years ago. We were  
7 told -- Marty Thompson at that meeting  
8 said just call me and we'll take care  
9 of it. I don't know if reports were  
10 ever made. He never took my name,  
11 never took my number. How many times  
12 have reports been made? I know I'm not  
13 the only one who's called.

14 I also have a problem with the  
15 times that she's extended when she's  
16 loading trucks, unloading trucks. The  
17 beginning of the day at 7:15 in the  
18 morning, 7:45 in the morning. If her  
19 hours are from 8 to 6 or 8 to 8,  
20 whatever it is, then that's what she  
21 should be sticking to. I shouldn't  
22 have to worry about that.

23 I'm a single mother. I worked  
24 nights and I worked days. And when I  
25 had to come home and listen to this

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2           truck start at 7:15 in the morning when  
3           all I wanted to do was sleep, it's  
4           annoying. I pay a lot of money in  
5           taxes. I should expect and should be  
6           able to expect some degree of  
7           peacefulness when I come home.

8                   When we first moved here in 1991,  
9           yes, I had Mr. Kusick's farm. And I  
10          called the Health Department on him  
11          because of the garbage along the fence  
12          and we had a rat problem. I had to  
13          remove a quarter acre of underbrush and  
14          trees to make sure the house was safe  
15          for my four children. I was told I  
16          can't eat outside, I can't feed the  
17          wildlife, I can't do anything. So it's  
18          like why did I buy a house here when I  
19          can't enjoy my own backyard? And then  
20          he leaves, now I get this. So instead  
21          it's the same thing. Now we can be  
22          outside but you can't talk to anybody.

23                   So I would like to think that you  
24          would finally consider that this is  
25          really not the place for her business

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2           to be operating or be more stringent  
3           about the rule that we can call  
4           somebody and this stuff is taken care  
5           of, that I don't have to listen to an  
6           engine or a log splitter or anybody  
7           doing anything for eight hours out of  
8           the day. I deserve better than that.  
9           I pay more in taxes for that.

10                  Thank you.

11                  THE MAYOR: Thank you.

12                  THE VILLAGE CLERK: Erica Rinear,  
13           please.

14                  MS. RINEAR: Good evening,  
15           everyone. I'm Erica Rinear, and I live  
16           on 25A.

17                  And I grew up in Nissequogue and  
18           Head of the Harbor. And Mr. Kusick was  
19           my science teacher, and the first time  
20           I learned about the cemetery was from  
21           his son Michael. And I'm not going to  
22           go any further into it.

23                  The cemetery is a historic,  
24           wonderful place, and it does hold a lot  
25           of our history. And I think that it

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2 really needs to be protected.

3 And Judy, I have to say I've seen  
4 your work all through the Three  
5 Villages. You do beautiful planting  
6 and landscaping.

7 And I'm kind of hopeful that at  
8 the very least that maybe Judy can do  
9 some sort of welcome trail into the  
10 cemetery to help us out because it  
11 really is gorgeous.

12 I'm really just adding in my two  
13 cents here, but with inflation now it's  
14 50 cents. So I would like to say that  
15 Mr. Kusick's farm, his nursery, back in  
16 1960 I guess it was when I first went  
17 there was pretty dumpy. It really was.  
18 He had a little pickup truck, and  
19 occasionally you would see him driving  
20 around our area with a tree in the back  
21 of it to plant in somebody's yard.

22 It is quite a bigger enterprise  
23 now. It was quiet here in the '60s.  
24 It was quiet in the '70s. Now we have  
25 a lot of traffic and we have a lot of

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2 noise. And the people who are living  
3 in the area really -- who have been  
4 here for many, many years are just not  
5 accustomed to it, and I get it.

6 I really came on behalf of the  
7 cemetery, but my heart goes out to  
8 those people who want to sit in their  
9 yards and enjoy their backyard as well.

10 So that's Hobson's choice and I  
11 don't envy you, and thank you for your  
12 volunteerism all of you. Enjoy your  
13 evening.

14 THE MAYOR: Thank you.

15 Anyone else from the public?

16 Mr. Bergsen, if you would like to  
17 respond. We do have some other things  
18 scheduled, I'm sorry.

19 MR. BERGSON: So I'll try to be  
20 brief.

21 THE MAYOR: Thank you.

22 MR. BERGSON: Obviously the  
23 community has concerns. We have  
24 concerns. Judy's work is a testament  
25 to the kind of -- how she feels about

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2 the environment, how she approaches the  
3 environment. There are issues that  
4 have been raised here that are  
5 interesting and -- and appropriately --  
6 are appropriate concerns to have.

7 The town -- I'm sorry, the Village  
8 code specifically provides for this  
9 type of use in this residential  
10 district; okay? The hoop houses with  
11 the plastic are specifically --  
12 specifically provided for in the code.  
13 And so it's greenhouses, plastic -- it  
14 talks about greenhouses except for  
15 plastic removal and -- I'm not going to  
16 read the whole thing, but it's  
17 Subdivision 4 -- I'm sorry, D of -- of  
18 that section. The town -- the Village  
19 code specifically provides for this  
20 type of use.

21 Now in terms of the screening --  
22 in terms of the cemetery, I don't think  
23 that either of these gentlemen said  
24 anything that I would disagree with.  
25 The only thing that I can tell you

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2 about that picture is that the variance  
3 that we received with respect to that  
4 would not have prevented you being able  
5 to see that. But that could very well  
6 be part of the screening that -- that I  
7 mentioned and that I'm sure the  
8 Planning Board and Department will be  
9 discussing as well as other screening.

10 This is -- 25A is a significant  
11 commercial corridor that the use across  
12 the street is a significant commercial  
13 operation with -- with many more of the  
14 same type of equipment and machinery  
15 than is operating here.

16 The variances that we asked for  
17 and received from the Zoning Board,  
18 okay, this is not -- we're not here  
19 asking for a variance. We're asking  
20 for a permit after the Planning Board  
21 and the Zoning Board have approved this  
22 application. Ultimately it's your  
23 decision.

24 But the -- the variances that we  
25 asked for, if anyone is familiar with

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2           the zoning process and the variance  
3           process and looking at those -- those  
4           variances would have to conclude that  
5           those specific variances are relatively  
6           minor. I mean, the hoop houses to the  
7           extent -- the hoop houses extended to  
8           the buffer, the variances granted  
9           was -- was relatively minimal. But  
10          those have been -- those are finished.

11                 We have -- we're here to ask for  
12          the permit subject to the Health  
13          Department, subject to the further  
14          recommendations of the Planning  
15          Department and the Planning Board in  
16          terms of screening -- in terms of  
17          screening.

18                 You know, I'm not going to get  
19          into an argument or dispute with  
20          respect to the residents' concerns.  
21          But the code provides for this --  
22          this -- this type of use in the  
23          residential district.

24                 Mr. Chairman, you have questions?

25                 THE MAYOR: I do, but I'd like to

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2 defer to the other trustees if they  
3 have any questions first.

4 MR. BERGSON: Also could I see  
5 those pictures that were handed up?

6 THE MAYOR: Sure.

7 MR. FISCHER: I'm -- just a  
8 question.

9 You didn't feel as though any of  
10 those were significant, yet to me  
11 17 feet of relief for a 72 by -- by 15  
12 greenhouse structure on a side-yard  
13 setback, that's significant relieve  
14 from the code. 17 feet is significant  
15 of a 50-foot setback.

16 And -- and, you know, it's -- it's  
17 having an effect on that particular --  
18 you know, that particular variance is  
19 definitely going to have a profound  
20 impact on the people on the western  
21 border.

22 MR. BERGSON: You're talking about  
23 hoop houses. Even with the  
24 screening --

25 MR. FISCHER: Again, you said it

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1. NISSEQUOGUE FARM LLC  
2 was insignificant. I beg to differ  
3 with you because I think it is  
4 significant having sat on the zoning  
5 board for 18 years. 17 feet is  
6 significant.

7 MR. BERGSON: I understand that,  
8 and I've sat on the zoning board and I  
9 understand your point. But this  
10 variance was granted and it is -- it  
11 is -- to say that it's insignificant  
12 now is interesting, how do we resolve  
13 the concern that -- that -- that may be  
14 raised by it is -- seems to be the  
15 appropriate way to go.

16 MR. FISCHER: Also as far as  
17 the -- our Village code -- Counsel, you  
18 can jump in -- it does allow for this  
19 use?

20 THE VILLAGE ATTORNEY: It does  
21 allow this use as a special-use permit  
22 under -- a permitted use in this  
23 district upon a special-use permit  
24 being granted by the Zoning Board.

25 MR. FISCHER: Correct.

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2 THE VILLAGE ATTORNEY: And there  
3 are specific conditions under D  
4 referenced in the code, and one of  
5 those is that buffer. That buffer is  
6 significantly pulled out and would be  
7 addressed on the plan. Mr. Bergsen I  
8 know is aware of that section on --  
9 "Any such use shall maintain a  
10 vegetative buffer of no less than  
11 50 feet on all boundaries."

12 MR. BERGSON: Right, but to the  
13 extent -- and Mr. Cunniffe can respond  
14 to the specific ones -- but to the  
15 extent that anything has impeded or  
16 entered the buffer area. Those are --  
17 that's been made part of the variance  
18 application which has been granted. If  
19 it wasn't granted we wouldn't be here  
20 showing -- showing this Board that --  
21 that -- that impact on the buffer  
22 because we would have eliminated it.

23 THE VILLAGE ATTORNEY: I  
24 believe -- I don't want to speak for  
25 everyone on the Board -- I do believe

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2 Mr. Bergsen is correct in regard to the  
3 variance from the Zoning Board.

4 However, to the extent that the  
5 special permit still requires the  
6 50-foot boundary buffer all the way  
7 around, the applicant should address  
8 that because that is one of the  
9 significant concerns that have been  
10 addressed by the public concerning  
11 around that.

12 MR. BERGSON: And my response to  
13 that is we are willing -- and this  
14 Board may have the authority to make  
15 some additional conditions or  
16 requirements, whether it's this board  
17 or the -- or the Planning Board, we're  
18 prepared to do what's reasonable and  
19 what's right conforming with the --  
20 with the provisions and the -- the  
21 creation of the special permit  
22 application in the Village code for  
23 which we complied without any variances  
24 almost exclusively.

25 MS. PORCIELLO: For 20 years. For

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1 NISSEQUOGUE FARM LLC

2 20 years.

3 MR. BERGSON: Thank you.

4 THE MAYOR: I have a few  
5 questions.

6 That new greenhouse that the  
7 petition is asking about, that didn't  
8 appear on the earlier plans. There  
9 were Mr. Kusick's single greenhouse.  
10 There were seven new greenhouses. And  
11 then in the most recent iteration of  
12 the plans that were submitted is a  
13 76-foot long greenhouse running  
14 alongside -- smack alongside a  
15 residential property.

16 Why was that proposed? It hasn't  
17 been built yet, but why was that  
18 proposed in addition to all the others?  
19 It just seems like it's -- it's kind of  
20 out of place with respect to the -- to  
21 the nearby residents.

22 MR. BERGSON: Okay. So I'm going  
23 to defer to Mr. Cunniffe to respond to  
24 that in terms of the status of that and  
25 whether or not it's formally part of

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2 this application.

3 MR. CUNNIFFE: It is -- it is  
4 shown as proposed. It doesn't have to  
5 exist. I have discussed it with --  
6 with Ms. Ogden some time ago. It was  
7 not completely looked at carefully I  
8 will agree, and we left it in the plan.

9 Again, with respect to compliance  
10 and with respect to understanding the  
11 concerns, it can come off the table  
12 immediately.

13 MS. OGDEN: It was with the rest  
14 of the other greenhouses, but this is  
15 set within the 50-foot buffer. It's  
16 outside -- more outside of the 50-foot  
17 buffer. It would make up the  
18 difference.

19 If you pull back the other  
20 greenhouses, that creates square  
21 footage. So the idea of putting them  
22 on the other side wouldn't allow to  
23 make up that square footage.

24 MR. CUNNIFFE: But again, it is  
25 conceptual.

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2 THE MAYOR: Another question here.

3 Your drawing shows a wooden  
4 stockade fence which apparently is  
5 slightly over the property line onto  
6 Ms. Ogden's property to be torn down  
7 and replaced by a chain-link fence  
8 which is really disfavored in our code.

9 I'm wonder why -- why a wood fence  
10 is proposed to be replaced with a  
11 chain-link metal fence?

12 MR. CUNNIFFE: Well, you know  
13 what? I actually proposed it. I -- in  
14 my community in Sound View in Stony  
15 Brook, we're not -- we don't have an  
16 HOA. We're not exactly pro-fence  
17 either although there are many  
18 stipulations necessarily.

19 So those that -- folks that do put  
20 up fences, we do -- in my area whether  
21 it's deer fencing or just property  
22 boundary fending for dogs and such, it  
23 usually comes up as not an offensive  
24 object and it sort of blends in with --  
25 it just sort of fades away into the

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2 landscape. Again, so that was the  
3 reasoning.

4 MS. OGDEN: There is a chain-link  
5 fence that runs across the back of the  
6 south side of the property. That's  
7 part of the Oak -- Great Oak community.  
8 That's their chain-link fence.

9 My idea was that the chain-link  
10 just carries and continues from the  
11 existing chain-link fence that sits  
12 from the other community.

13 THE MAYOR: You know, the code  
14 disfavors chain-link in favor of other  
15 material.

16 MR. CUNNIFFE: We'd be happy to  
17 take the comments and suggestions.

18 THE MAYOR: Another question.

19 At the last -- last meeting we  
20 discussed this. Ms. Ogden had said  
21 there were approximately 15 seasonal  
22 employees living in the -- above the  
23 office.

24 What kind of permits or  
25 certificate of occupancy are you

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1                   NISSEQUOGUE FARM LLC  
2                   intending to get to legalize that  
3                   residence?

4                   MR. BERGSON: We have a  
5                   certificate of occupancy for an  
6                   existing use for a one-family dwelling.  
7                   It will be used as a one-family  
8                   dwelling as that term is defined in  
9                   the code.

10                  THE MAYOR: 15 seasonal employees  
11                  are legal for a one-family dwelling?

12                  MR. BERGSON: I said will be used  
13                  in conformity with the code.

14                  15 -- the code -- the way the code  
15                  reads is that any number of --  
16                  potentially any number of people who  
17                  are related by blood or those people  
18                  living in -- in -- as a  
19                  single-occupancy dwelling is the  
20                  term -- again, there are limits on  
21                  that. But -- but people who are living  
22                  together as a single-house unit is  
23                  authorized and it doesn't necessarily  
24                  have to be mom and pop, the  
25                  grandparents, and the children.

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2 THE MAYOR: I'm not so concerned  
3 about the definition of a family. I'm  
4 more concerned about fire codes, health  
5 codes, and septic systems for 15 people.

6 MR. BERGSON: As I said, this has  
7 to comply with the Suffolk County  
8 Health Department. It has to comply --  
9 it will have to comply with the fire  
10 codes and occupancy limits under the  
11 state and building code.

12 MR. CUNNIFFE: I can speak a  
13 little bit to the septic and with  
14 relationship to the building code and  
15 county codes in respect to bedroom  
16 count.

17 First off, there's a couple of  
18 different codes that we're going to be  
19 looking at following this. There's a  
20 property maintenance code in the State  
21 of New York. There's a New York State  
22 residential building code. There's a  
23 New York State existing building code  
24 and a New York State building code.

25 So aside from that, there's also

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2           the matter of Suffolk County's  
3           interpretation of bedrooms and a  
4           bedroom count. What their assumption  
5           of the number of occupants per bedroom  
6           which yields the usage on septic,  
7           beyond that there are codes within the  
8           New York State -- in the relative part  
9           of the property and maintenance code  
10          and New York State building code and  
11          residential building code.

12                 There are some statements, and  
13          we're going to have to look at them  
14          with Mr. O'Shea and also the  
15          interpretation at the county level for  
16          the interpretation of system size. And  
17          I'm saying the system size because it's  
18          likely a system size. And it seems to  
19          be favorable in our community to  
20          continue to support them more than  
21          other systems, but the system size will  
22          be determined by the bedroom count as  
23          well as the stewardship of the engineer  
24          and myself in terms of the support of  
25          the occupants for the building.

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2 But we are going, again, to have  
3 to comply with New York State building  
4 code, and we're going to have to review  
5 this with Mr. O'Shea. What's  
6 presumptuous to me is there's movement  
7 to accept this application for a  
8 special-use permit. And if it is,  
9 again, contingent upon review by Mr.  
10 O'Shea and within the confines of the  
11 New York State building code, we would  
12 go ahead and design this in an  
13 appropriate way. It's going to have to  
14 be.

15 THE VILLAGE ATTORNEY: Can I just  
16 be real simple? That's a single-family  
17 house.

18 MR. CUNNIFFE: It is.

19 THE VILLAGE ATTORNEY: Mr. Bergsen  
20 represented that that house will be in  
21 compliance with the definition of  
22 family. That's all the Board asked.  
23 That's not going to be a -- that can't  
24 be a dormitory. That can't be a  
25 bunkhouse. That is a single-family

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2 CO'd house. It has to remain a  
3 single-family.

4 Definition of family is what we  
5 wouldn't get into, but there's criteria  
6 of what counts as a single family,  
7 bedrooms and such, have to fit the  
8 definition of a family.

9 MR. CUNNIFFE: It will.

10 THE VILLAGE ATTORNEY: That's --  
11 that's -- that's the bottom line. And  
12 if we do -- if that's going to stay and  
13 remain an operation of a single family,  
14 that dovetails in with the concern  
15 about what the septic system capacity  
16 is. That's all.

17 So if the capacity is going to be  
18 single family, that has to be designed  
19 as a single family. It has to be  
20 occupied by a single family.

21 MR. CUNNIFFE: Interestingly,  
22 there is a CO --

23 (Simultaneous speakers.)

24 MR. CUNNIFFE: And I fully agree  
25 as well. As a single-family residence

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2 with a CO and no expansion, there's  
3 actually no requirement in the county  
4 code to upgrade the system.

5 THE VILLAGE ATTORNEY: We'll cross  
6 that bridge when we get to it because  
7 if there's any (inaudible) will be  
8 subject to, as Mr. Bergsen wrote in the  
9 report, Suffolk County Department of  
10 Health Services in compliance which is,  
11 again, why the occupancy of that  
12 building is important.

13 MR. CUNNIFFE: Exactly.

14 THE MAYOR: In our code it says  
15 seasonable workers have to be primarily  
16 located off site.

17 What does that mean?

18 MR. BERGSON: To me, it means  
19 that's from where their work is.  
20 Whether or not who's occupying that  
21 house is not -- the code -- the code  
22 itself talks about the number of  
23 employees working there, and that's why  
24 they're talking about seasonable  
25 employees. Essentially the landscaping

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1                   NISSEQUOGUE FARM LLC  
2                   component being essentially doing most  
3                   of their work off site.

4                   THE MAYOR: So they can live on  
5                   site as long as they go off to  
6                   somebody's -- do landscaping during the  
7                   day? Is that what that section means?

8                   MR. BERGSON: Yes, that's what I  
9                   believe -- that's how I believe -- I  
10                  read it. And I think -- I don't think  
11                  reading that code, that provision,  
12                  impacts the use of that house. Where  
13                  it impacts the use of that house is the  
14                  code -- is the definition of family as  
15                  per the Suffolk County Health  
16                  Department. Those kind of items. And  
17                  that's where I -- I don't think that  
18                  that code talks about where these  
19                  people live. I think it talks about  
20                  where they work.

21                  THE MAYOR: That's an interesting  
22                  issue that we need to explore. One  
23                  final little question.

24                  Did you -- in the SEQRA  
25                  compliance, did you notify the SHPO --

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2 New York SHPO office?

3 MR. CUNNIFFE: No, we haven't yet.

4 THE MAYOR: So how did you get a  
5 negative declaration without any reply  
6 from SHPO?

7 MR. CUNNIFFE: I don't know. Good  
8 question.

9 THE MAYOR: I mean, normally if  
10 it's a Type 1 action I believe you are  
11 in compliance with Type 1. You're  
12 required for the Mills Pond Historic  
13 District. You would normally by law  
14 have to notify to SHPO of what you're  
15 doing.

16 MR. CUNNIFFE: It certainly didn't  
17 arise during our review -- our  
18 preliminary review of the plan. If it  
19 had, I would have gone -- I just did  
20 one for Head of the Harbor for a lot  
21 line moved. I would have certainly  
22 complied. I don't know exactly how to  
23 file that.

24 THE MAYOR: That's -- that's water  
25 under the bridge, but I would -- it

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2 should not have had gone to another  
3 agency but that's gone.

4 MR. BERGSON: It's an issue that  
5 can be resolved. We'll resolve it.  
6 We'll do the investigation. We'll get  
7 the report. They'll have the report.

8 There's no intention -- I think in  
9 accommodating some reasonable -- what  
10 we consider a reasonable request as  
11 terms of -- of a cycle and programming  
12 of the steps, I think it might have had  
13 a step by going to the BZA first, and  
14 that's where the confusion came. It's  
15 natural -- as you recall, it's a  
16 natural thing for the BZA as part of  
17 its final decision on any application,  
18 whether it's Type 2, Type 1, you know,  
19 and that's -- that's done. And I think  
20 that's what happened here.

21 And the issue with the information  
22 and report wasn't dealt with. And I  
23 think that's something that we are more  
24 than willing to remedy. Again, there's  
25 no intention to avoid any disclosure

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2 or -- or investigation.

3 THE MAYOR: I think it's -- it may  
4 just be a foreground, but it would be  
5 good to comply.

6 MR. BERGSON: We have no problem  
7 with that.

8 MR. CUNNIFFE: I can do it as  
9 early as tomorrow morning. I know Mrs.  
10 Moriarity [phonetic] in Albany. I will  
11 make that application.

12 MR. BERGSON: Great.

13 THE VILLAGE ATTORNEY: Good.

14 THE MAYOR: Has anyone --

15 MR. KENT: More for clarification,  
16 so I know our code uses the term one  
17 family, not single family.

18 Is there a distinction? I feel  
19 there's a distinction. Our code uses a  
20 one-family house, not single-family  
21 house.

22 THE VILLAGE ATTORNEY: So the code  
23 definition under 165-5 -- Article 2,  
24 165-5 just says family.

25 MR. KENT: I'm looking at the Code

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2 162-5, it says "permitted use, a  
3 one-family dwelling."

4 I just want to know if there's a  
5 difference, if you see a difference. I  
6 see a difference. Before making a  
7 decision, I'd like to know.

8 The other thing is, one of the  
9 speakers -- forgive me for not writing  
10 the name down -- someone mentioned that  
11 25A Historic District.

12 Is this in it?

13 THE MAYOR: Yes.

14 THE VILLAGE CLERK: Yes.

15 THE MAYOR: And it's also in the  
16 Mills Pond Historic District.

17 MR. KENT: So there looks like  
18 there's a larger setback in F. It  
19 says, "In an historic district, so you  
20 just maintain a buffer of 200 feet and  
21 historic buffer of 500 feet."

22 So if this is in an historic  
23 district, are we not using the right  
24 number? Should it be 500 instead of  
25 50?

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2 MR. CUNNIFFE: Again, I can't  
3 disagree with that.

4 (Simultaneous speakers.)

5 MR. KENT: And then is this  
6 considered -- when I looked at this --  
7 I haven't been on site yet, but I  
8 consider this an agricultural use.

9 Is this an agricultural use?

10 THE VILLAGE ATTORNEY: It may be  
11 considered that.

12 MS. OGDEN: Yes. I'm registered  
13 with the Town of Smithtown for ag use.

14 MR. KENT: So in addition to what  
15 we were talking about with buffers,  
16 there's a code above this, 3, that  
17 says, "The operations are combined to  
18 farm under cultivation or are conducted  
19 in such a manner as to not cause harm  
20 or annoyance to residents or adjacent  
21 properties."

22 MR. BERGSON: I'm sorry, what are  
23 you reading?

24 MR. KENT: 165-23 --

25 MR. BERGSON: 165?

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2 THE MAYOR: B3.

3 MR. KENT: This says, "The  
4 operations are combined to farm under  
5 cultivation or are conducted in such a  
6 manner as not to cause harm or  
7 annoyance to residents or adjacent  
8 properties."

9 So I think that's the noise.  
10 We're talking about the noise. I  
11 think, to me, vision can be blocked.  
12 We do it all the time. We're  
13 developers. You put up a fence. But  
14 noise is a harder issue. And I'm  
15 looking forward to the tour to see  
16 what's happening.

17 MR. BERGSON: This is the first  
18 time that anyone has brought up that  
19 subsequent section. We've been dealing  
20 with this particular code section, this  
21 particular special-use permit under  
22 this code; okay?

23 If we were applying as an  
24 agricultural use, it's -- it's a  
25 different -- it's a different

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2                   situation. There may be state -- there  
3                   may be a state exemption on it as well.  
4                   We're not here for that. We're here  
5                   because the Village trustees back in  
6                   the early part of this century adopted  
7                   this code. And it -- it fits some --  
8                   and I guess the argument is it more or  
9                   less, but it fits this type of  
10                  operation, this kind of business that  
11                  Ms. Ogden is operating.

12                 MR. KENT: I appreciate that.

13                 The other question I have was when  
14                 the application was made to the Health  
15                 Department for the septic, were they  
16                 notified that there's at times 15  
17                 people living in the house?

18                 MR. CUNNIFFE: There was not an  
19                 application. There was a referral.  
20                 There wasn't an application made by us.  
21                 There was a referral by Head of the  
22                 Harbor to -- to the County at this  
23                 juncture.

24                 MR. BERGSON: And again, we will  
25                 have to comply with the -- as you well

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2 know, we're going to have to comply  
3 with their requirement.

4 MR. KENT: I well know. Thank  
5 you.

6 MR. BERGSON: Thank you.

7 THE MAYOR: Thank you for your  
8 patience.

9 We are going to adjourn -- we'll  
10 close out this hearing. We are going  
11 to have a site visit and then I guess  
12 we will resume the public hearing,  
13 whether it's -- we'll figure it out.

14 THE VILLAGE ATTORNEY: We'll make  
15 a motion to adjourn the hearing for 60  
16 days.

17 THE MAYOR: Okay. I'll request a  
18 motion -- I'll request a motion to  
19 adjourn this hearing for 60 days until  
20 the November --

21 THE VILLAGE CLERK: November 4th  
22 is the board meeting.

23 THE MAYOR: November 4th. I think  
24 maybe we should -- I don't know.

25 (Discussion between the Board

DEBORAH KNIESSER, STENOGRAPHER

1                   NISSEQUOGUE FARM LLC  
2           smaller board because Judy Ogden has  
3           recused herself, it's really important  
4           that we have all hands here and January  
5           seems to be the -- the next date. I  
6           apologize for the delay.

7           MR. FISCHER: So I'll make a  
8           motion that we adjourn the hearing  
9           until January 6th, the public hearing  
10          to January 6th.

11          THE MAYOR: Is there a second?

12          MR. KENT: I'll second.

13          THE MAYOR: All in favor?

14          MR. FISCHER: Aye.

15          MS. DIANA: Aye.

16          MR. KENT: Aye.

17          THE MAYOR: Thank you.

18                 (Whereupon, at 8:32 P.M., this  
19          hearing was adjourned.)

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## C E R T I F I C A T E

STATE OF NEW YORK)  
: SS.:  
COUNTY OF SUFFOLK)

I, DEBORAH C. KNIESSER, Court Reporter  
and Notary Public for and within the State  
of New York, do hereby certify:

That the within transcript was prepared  
by me and is a true and accurate record of  
this hearing to the best of my ability.

I further certify that I am not related  
to any of the parties to this matter by  
blood or by marriage and that I am in no way  
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set  
my hand this 2nd day of September, 2026.

*Deborah C. Kniesser*

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DEBORAH C. KNIESSER

DEBORAH KNIESSER, STENOGRAPHER