

Wallingford Planning & Zoning Commission
Special Meeting
Thursday, April 7, 2022
7:00pm
Robert F. Parisi Council Chambers – Town Hall
45 South Main Street
MINUTES

Chairman Seichter called the meeting to order at approximately 7:05 p.m.

Pledge of Allegiance was recited by all.

Roll Call: Present: James Seichter, Chairman; James Fitzsimmons, Regular Member; Steven Allinson, Regular Member; Jeff Kohan, Regular Member; James Hine, Alternate; David Parent, Alternate; Kevin Pagini, Town Planner. Also in attendance were Janis Small, Corporation Counsel, and Alison Kapushinski, Town Engineer.

Absent: Armand Menard, Alternate

PUBLIC HEARING

1. Zoning Text Amendment/PZC/Data Centers by Special Permit in IXand WI Zones #903-21

Commissioner Allinson noted the correspondence for the record. Correspondence from Andrew & Eugenia Mays to Commission Members dated September 9, 2021; correspondence from Kevin Pagini, Town Planner to City Clerk, City of Meriden, mailed September 9, 2021; correspondence from Kevin Pagini, Town Planner, to Eugene Livshits, South Central Regional Council of Governments, mailed September 8, 2021; Inter-Departmental Referral from the Fire Marshal, received September 13, 2021; Inter-Departmental Referral from the Town Engineer, received September 13, 2021; revised text amendment draft dated October 12, 2021; packet entitled Chicago, IL Data Center; correspondence from Richard L’Heureaux, Wallingford Land Trust to Kevin Pagini, dated November 3, 2021; correspondence from Gregory Tocci, Cavanaugh Tocci, consultants in acoustics, to Janis Small, Corporation Counsel dated January 25, 2022; Correspondence from Andrew & Eugenia Mays to Commission Members dated February 26, 2022; Correspondence from Thomas Quinn dated April 4, 2022; correspondence and photos from Rita dated April 6, 2022; email from Kevin Pagini, Town Planner dated April 7, 2022; email from the Economic Development Commission dated April 7, 2022, clean draft text amendment revision date April 6, 2022; correspondence from Eva Massimino, dated April 7, 2022; correspondence from Jessica Wysocki dated April 7, 2022; correspondence from Dennis Ceneviva dated April 7, 2022; correspondence from Jessica Wysocki dated April 7, 2022; revised text amendment with revision date of March 17, 2022 revised to April 6, 2022.

Commissioner Hine referred to exhibit 903-21 M, an email from Mr. Pagini to the Commission shows their personal email addresses. He asked if the email addresses could be redacted. Atty. Small replied that it is not as simple as that. If emails are sent to any town department, they become a public record. She will look into it.

Commissioner Kohan noted that a former member of the Commission was included in that email distribution and should be removed from that distribution list.

Chairman Seichter asked the Town Planner and Town Engineer to review the recent changes.

Kevin Pagini stated that the task of town staff was to objectively evaluate the data center use throughout two industrial zoning districts, the Industrial Expansion District and the newly created Watershed Interchange District. The varying nature, intensity, and different scales of the proposed use require a structural approval mechanism and the special permit process is that very mechanism. Data centers in our opinion are not a one-size-fits-all use and therefore we have not treated them as such. We have given the Commission our input and proposed restrictions that we believe, based on our research and coordination with our hired consultant will be protective of all surrounding properties. The special permit process also gives the Commission the flexibility to impose further restrictions as they see fit. In conclusion, the Commission now has the opportunity to evaluate all of the available information and make a determination as to whether or not Data Centers are a proper use for either of these Zoning Districts.

Kevin Pagini, Town Planner, and Alison Kapushinski, Town Engineer reviewed the recent changes to the proposed regulations. Mr. Pagini reviewed the major changes since January. Specifically, in subsection A in 4.9.C.5, regarding special permits and conditions of approval. The section specified conditions relating to noise, vibration and emissions, and other items. They added language related to generator testing and requirements for documentation on generator usage as well as a cooling plan under subsection H.

Commissioner Hine asked about subsection 2.25.A, where it says conditions of approval may include a periodic certification by an Institute of Noise Control Engineering Board Certified Engineer. He asked why it was included. He stated that we don't need to suggest what the conditions could be. It seems to say the applicant could hire an engineer and submit the certification. Commissioner Hine stated that he would rather have monitoring as a condition of approval. Atty. Small replied that the Commission can say how often they have to provide certification from the appropriate engineer, which shows they comply. Commissioner Hine suggested taking it out as the first sentence is enough. It is stronger to require the applicant to pay for an engineer of the town's choosing to do the monitoring. It reads as if the Data Center owner can choose the engineer and just submit a certification. Atty. Small replied that a very specific kind of engineer is required. She stated that she wasn't certain of our ability to dictate who it is going to be after the approval. Commissioner Hine stated that we have a lot of leeway in special permits and conditions of approval. We do it for the traffic studies. Atty. Small replied if you want it post-approval, that's a problem. She will need to look into that. Commissioner Hine asked if the sound and vibration impact analysis in 5B includes generators. Mr. Pagini replied yes, all aspects of the proposed development. Commissioner Hine quoted from 5D, "all testing must be performed during the time of day with the loudest ambient noise levels." He asked if this is so it doesn't disrupt the surrounding area. Then if the generators cause that much disruption, how do they fit in the requirement to not increase the existing background sound levels by 5dBs. Atty. Small clarified that the testing referred to in that section is functionally done routinely once it's in operation, not sound testing.

Commissioner Hine referred to 5B, in the requirements of the sound and impact vibration analysis that requires the applicant to show none of the equipment increases the sound level by 5 dB. How can they meet that requirement? In 5D, that paragraph should say all testing of 'generators' must be performed. Atty. Small and Mr. Pagini agreed to incorporate that change. Commissioner Hine noted the use of the term 'perceptible' in 5B, "or create vibration levels to a degree perceptible to the neighboring properties" and stated that a better description is needed.

Commissioner Fitzsimmons asked if the proposed language is calling for a 3rd party peer review of the application process or are we doing our own analysis as it seems to imply in #2. How would we do a peer review of an application? Mr. Pagini replied that another engineer would do a peer review of the sound analysis to ensure everything is done correctly. Commissioner Fitzsimmons asked if there is a manual for sound engineers like there is for traffic engineers.

Commissioner Kohan thanked Mr. Pagini and Ms. Kapushinski for all their work. He stated that his concern is that the regulations are fairly generic in scope. They state any data center will be a special permit which gives us a lot of leeway. His concern is with specifying conditions of approval vs. writing them into the regulations. He stated that he would rather see them specifically stated in the regulations. For monitoring, we need a regulation that says there has to be a 24/7/365 monitoring plan and activity in place for the operation of a Data Center. It needs to be constant, not occasional. That should be reviewed by the owner of the data center or periodic review by someone paid by the applicant. This gives the regulation more teeth and the applicant knows the expectations. He mentioned several other things to incorporate into the regulations rather than include as conditions.

- Generators, Air Conditioners, and Chillers are produced and built to specifications and are not hearable off-site.
- Specify some reasonable times of day for testing generators or state that cant' be done on weekends.
- Give specifics about peak shaving during summer and the impact on Wallingford Electric. Require them to run on battery or diesel at times not impacting the neighbors.
- Require purchasing of carbon credits due to the significant impact on the environment.
- Green data center design and building requirements.
- The existing Ordinance on construction times needs to change to be more reasonable. It is now 5am to 10pm on weekdays and 7am to 7pm on weekends and holidays. Atty. Small offered to bring that suggestion to the Ordinance Committee.

Commissioner Hine thanked Mr. Pagini and Ms. Kapushinski for all their work on the many revisions.

Commissioner Parent referred to exhibit 903-21A regarding construction build-out. The regulation doesn't seem feasible. Before a permit is granted we need to know how much construction time is going to be involved. He also mentioned exhibit 903-21 regarding tax abatement and encouraged considering industry standards. Industry standards require tax abatement. He is bothered by the fact that we are granting tax abatement. He understands that that might be out of the scope of this discussion. Chairman

Seichter stated that this has nothing to do with the regulations. He noted that the host agreement allows the owner to not pay property tax but there is a payment in place of taxes to the Town.

Commissioner Hine thanked the staff for all their work and stated that the regulations have come a long way. He noted that there is no express provision that says an increase in existing background sound by more than 5dB would be a violation. His concern is that the applicant can present an analysis showing their data center will not increase the existing background sound level by more than 5dBs. Construction is completed and when it is up and running they find that the analysis is wrong and the sound level is higher. They can argue that they met the regulations. We need to clearly state that it is a violation to go over the 5dBs. Commissioner Hine also noted that the data centers will not all be built at once. He asked if each new data center would add the existing centers to the background noise and then add the 5dBs. We can't assume that we will only get one application.

Commissioner Kohan agreed and asked what we do if they exceed the limit. How is it enforced? He would like to see that spelled out in the regulations.

Chairman Seichter noted that section 5B1, at the bottom, reads "the Commission determines the peer review of the applicant's noise and vibration impact", and should state "sound and vibration" to be consistent. He asked for a better explanation in 5G which talks about the 100 ft. natural open space buffer or a landscape buffer of natural vegetation. He asked what a natural open space buffer is. He asked if it is 'this or that' or both. Mr. Pagini noted that they will always need the berm. The intent is if there is no natural open space buffer they would have to plant landscaping. Chairman Seichter asked Mr. Pagini to review the wording.

Gregory Tocci, P.E., with Cavanaugh Tocci, consultants on acoustics, located at 327 Boston Post Road, Sudbury, MA, explained his experience in environmental acoustics, sound design, and data centers. He explained the main sources of noise from Data Centers and how they are controlled. He explained that how noisy something is can depend on how the noise compares to the preexisting background noise. The key is setting the existing background noise as the benchmark baseline. That background baseline is the quietest time. He explained how they quantify it. He stated that the proposed regulation allows an increase of 5dB which is conservative. He noted that data centers have a lot of HVAC units and emergency generators which are tested weekly. He explained that Peak Shaving typically runs from 4 – 7pm. If Peak Shaving is permitted, he didn't know how the limits would be written into the regulations. He explained how they monitor sound. He gave examples of sound controls and barriers. He explained options for keeping chillers, compressors, and generators quiet. He explained how the acoustical study would be conducted and stated that the peer reviewer is not responsible for the design, but to make sure that due care has been undertaken by the facility design team. There would be agreed-to windows for maintenance and peak shaving. Regarding the concern with the escalation of noise due to additional facilities, he agreed that this is a concern. He stated that the town can set limits based on the existing ambient sound level as the baseline, before the construction of any data center. Regarding the comments on landscaping and the berm, he noted that these are aesthetic, not noise control or sound reduction. Regarding permanent sound monitoring, he stated that he has seen it set up but not looked

at by towns or communities. It is also difficult to do well and meaningfully. He stated that it is best to have the design determine the sound level close to the facility and compare it to the sound level at residences nearby. 3dB above the background is not even audible. Regarding enforcement, if they exceed the limit, he stated that it is not practical to shut them down. He suggested a provision in the design for further sound reduction be added if it's problematic and that controls must be part of the design. He added that green design is an interesting concept. In acoustics, it means efficient equipment that generates little noise and uses little electricity.

Commissioner Kohan asked about his experience with Data Centers. Mr. Tocci replied that they worked on one near Dulles airport with five buildings. Commissioner Kohan stated that he would rather see something on the noise reduction equipment written into the regulations than as a condition. Regarding constant monitoring, he suggested equipment that constantly records sound levels and sends it to the Data Center and the Town Engineer when it exceeds limits. Mr. Tocci replied that they set up a website so anyone can go in and see the sound levels and history. Monitoring is useful and could be done for a year or two.

Commissioner Fitzsimmons asked how long Mr. Tocci has worked with data centers. Mr. Tocci replied that they did some work 10 years ago and recently started again. Commissioner Fitzsimmons asked which side Mr. Tocci represents. Mr. Tocci replied they are more often on the industry side than the municipality side but as professional engineers, they have an obligation to protect the community. Commissioner Fitzsimmons asked how many certified acoustical engineers are in the US. Mr. Tocci replied that it is a growing field and there are about 200 firms in the US with half doing environmental acoustics. In reply to a question on whether any municipalities have their own sound engineer on staff, he replied that he is aware of one in New York City and one in Chicago. Commissioner Fitzsimmons asked if the 3rd party reviewer would review the design plans. Mr. Tocci replied yes. Commissioner Fitzsimmons asked if they would look at the full blueprints or just the sound information. Mr. Tocci replied that they would look at all of it but just for acoustics. Commissioner Fitzsimmons stated that the regulations should say 'plans' instead of 'sound'. He asked if enforcement would be an independent test or a test a peer review of the owner's information. Mr. Tocci replied it would be an independent test. Commissioner Fitzsimmons clarified that to protect the town it would make sense to pre-fund for a potential need for an individual independent sound study. Mr. Tocci agreed.

Commissioner Parent asked what the sound levels would be if we had an emergency and all generators were on. Mr. Tocci replied when all emergency generators operate together there would be a lot of noise. It is customary that the consideration for controls is for maintenance purposes. If peak shaving is likely, that puts a great demand on the noise control designs. Commissioner Parent asked if that much noisier operation would comply with the 5dB increase. Mr. Tocci replied yes.

Commissioner Hine asked how many data centers Mr. Tocci worked with 10 years ago. Mr. Tocci replied 5 or 6 including hospitals with emergency generators and rooftop HVAC systems. Commissioner Hine asked if data centers are unique because they run 24/7. Mr. Tocci replied yes. Commissioner Hine asked how often Mr. Tocci has been asked to help formulate zoning regulations for data centers. Mr. Tocci

replied that this is the first time but has helped with zoning regulations for other uses. It would use the same design approach. Commissioner Hine asked if he knows the topography in the affected zones. Mr. Tocci replied no, that has to be included in the analysis. Commissioner Hine asked if weather or season changes are taken into account. Mr. Tocci replied yes, it is taken into account in the engineering work in the design. They use the sound propagation law standard of ISO9613 for evaluating sound transmitted from environmental sources to receptors. That standard is to give the worst-case propagation. Commissioner Hine noted that there is potential for the data centers to be built in stages and asked how the baseline would be affected. Mr. Tocci replied that the same baseline before construction should be used for all data center development. That should prevent escalating sound. Mr. Tocci noted that he is not here to provide an opinion on whether this is an appropriate use for these zones but to help make the regulations reasonably protective of the community. If the data center meets the code for noise and other aspects of land planning, then it should be acceptable. He agreed that the topography would affect the noise controls.

Commissioner Kohan stated that we are working with a limit of a 5dB increase over existing conditions. He asked how many HVAC, chillers, generators, etc. will impact the 5dB limit and impact the size of the building. Mr. Tocci replied that it would be a lot of equipment depending on the size of the building. A mechanical engineer would provide this for the design team. He noted that meeting this code will be a concern. Commissioner Kohan asked if technical specifications can be built into the regulations. Mr. Tocci replied that there are a lot of other ways to achieve cooling. He doesn't recommend including it. They need to demonstrate that they meet the regulation. They may need to reduce services to cut back sound.

PUBLIC COMMENT

Chairman Seichter noted that prior comments from the community are part of the public record and asked speakers to be concise and limit comments to the regulation being discussed.

Diane Cwirka, 150 High Hill Road and 1017 Northrop Road stated that there are a lot of unanswered questions and that she is not comfortable with the proposed monitoring. She is concerned with the quality of life. The town will not be able to control it once it's built. We need to understand exactly what Data Centers are. This is not appropriate for Wallingford.

Bruce Cwirka, 1043 Northrop Road thanked the Commission for their concern for their neighborhoods. He asked for an explanation of Peak Shaving and what it would be like around those buildings. Mr. Tocci explained that it would be a lot noisier than the design unless it is designed for that purpose. There are other ways of doing Peak Shaving other than running emergency generators. This is determined in the design. Mr. Cwirka asked if all the generators were running would buildings vibrate. Mr. Tocci replied that the probable maximum would be 40-50dB if all generators were running. Mr. Cwirka asked about the difference on a cold, clear day. Mr. Tocci replied that the worst situation would be on a warm humid day but that the swing in sound levels doesn't change that much. Mr. Cwirka asked why green design can't be required. He noted in regulation 5.6.1 "notwithstanding the requirements of 6-24, there shall be no limit to the amount of roof area occupied by HVAC equipment." He asked about the sound from

all those units on the rooftop. Mr. Tocci replied that the building needs to have a parapet and adequate screening to protect second-floor residents. Mr. Cwirka noted that the data centers of 10 years ago were very different. Mr. Tocci replied that the current buildings are much larger. Mr. Cwirka asked what the life expectancy of the data centers is and what happens when technology replaces them in 6 – 10 years. He stated that we need to set the bar high, but the regulations still have a long way to go. He noted that we need to encourage green design and limit the roof area. He knows that the state put in the tax exemption, but when the company ownership changes we won't get the stipend anymore.

Ken Lloyd, 110 Washington Street, President, Wallingford Community Farmers, asked why the company proposing the data centers (GotSpace) is not here. He asked who is paying Mr. Tocci. Chairman Seichter replied that the town is paying Mr. Tocci. Atty. Small replied that Mr. Tocci represents the town, not someone proposing something to the town. His practice represents both proponents and municipalities. Mr. White asked if Mr. Tocci has visited the area or members of the community. Mr. Tocci replied that he is concerned with what best protects the residents, no matter who hires him. He agreed that this area is much different than the airport example he gave, but it is the same equipment. Mr. White stated that this development will destroy the environment and harm wildlife, farms, and families. He recommended the Commission vote no and stop considering the use.

Stephanie Massimino, 1043 North Farms Road, asked if the town can shut down the business if they exceed the limit and how easy would it be for them to reduce the noise. Mr. Tocci replied that they should have a program of curtailment to reduce the load on mechanical equipment. He couldn't say if they would be able or willing to do so. Ms. Massimino noted that this is a very rural setting and asked if this would impact them negatively. Mr. Tocci replied that he agrees with her concerns, but if designed correctly it would be acceptable. He stated that it's not easy to design but could be done if there was a clear requirement. Ms. Massimino asked about the natural barrier. Mr. Tocci replied that the natural barrier would not be enough since most of the noise would be coming from the roof. Walls and other controls would be needed.

Kathy Palmer, 18 Tankwood Road noted that the Town Council entered into an agreement with a company that is now a new company. She noted that there is no industry standard and that the Town is trying to make it work in an area where it shouldn't be. This should not be in the middle of a residential area. She asked why we are doing this experiment here. She noted that this company has never built a data center. The town needs to take several steps back.

Debbie Dillon, 22 Tankwood Road, stated that she is impressed with the questions being asked. She asked if it was just this one company interested in a data center. Chairman Seichter replied that we don't know if other companies are interested. The host agreement was done with this entity. Ms. Dillon noted that with the technology changes, these will become obsolete in a few years. She shared letters from neighbors who could not attend. She stated that this was pushed through the State, which failed the people of the state. It has cost the Town Planner and the Town Engineer a lot of time. The Town hired a sound engineer. This has to stop. She asked the Commission to vote no and thanked the Commission for their efforts.

Jeffrey Seeling, 21 Anthony Terrace, Meriden, stated that there is a bald eagle nest within a quarter-mile of the proposed location of this data center. This will displace wildlife. He is concerned with pollution from stormwater. He asked where the fences would be installed. Mr. Tocci replied that there would be one set around the perimeter of the roof of the building and one around the generators, but not on the property line.

Jessica Polansky, 1039 North Farms Road, quoted news articles from Chandler, AZ where the industry standards didn't work to protect the residents and they experienced serious health problems caused by the data centers. The centers were built in 2012 and 2014 in compliance with standards. If the standards are failing the people, what can we do to protect ourselves? Mr. Tocci replied that there are no industry standards for data centers. You have to depend on local regulations. He added that he is against an industry-standard because the data centers need to be tailored to the individual communities. The proposed regulations are very protective. Ms. Polansky stated that the topography is very flat and peaceful. She asked what scientific evidence can prove that the quality of life will not be impacted. Mr. Tocci replied that the most widely used standard for sound levels is ISO9613. The purpose of that code is to measure the level of noise that will happen at quiet times. It will be audible but not objectionable. Ms. Polansky asked if people with medical issues are taken into consideration. Although the data center doesn't cause the problem, the wavelengths and decibels will affect a plethora of medical issues. She asked if a cardiologist or neurologist had been consulted. Mr. Pagini replied no because they consulted with Mr. Tocci. Mr. Tocci replied that he knows of no incidence that would cause those circumstances at the sound levels being proposed. Mr. Pagini reported that he talked to the Town Planners in Chandler, AZ, and Loudon, VA. He noted that he never stated that he is a proponent of data centers in residential areas; he is looking at the entirety of the zone. The regulation is being written for the entirety of the zone. Atty. Small noted that there is no intention of seeking input from medical professionals. She stated that they are creating regulations for the entire zone. Ms. Polansky noted that they can't ensure the health of residents and that the residents have received disingenuous information. There is no scientific evidence. She stated that this is not acceptable. The Commission needs to consider the effect of heavy construction over potentially 10 years on the wells and aquifers. She asked who would be responsible for damage to the wells or the aquifer. Mr. Pagini replied, the developer. Ms. Polansky noted that Bristol Myers was not held responsible. She stated that she is not anti-progress but just anti-progress that will negatively affect their lives. The elected town officials pushed this through and Commission was left to clean it up. She asked for a pause to gather information. She stated that this should not be built in this town. She encouraged the Commission to vote no.

Kelly Watrous, 183 Pinehurst Drive, asked how vibrations will be monitored. Mr. Tocci replied that there was a discussion of a standard base limit on vibrations at residences and that it is tricky. That's why we used the term 'perceptible'. It is controlled at the source by vibration insulators and the enclosures for the generators are beefed up. Ms. Watrous asked how they are defining perceptible. Mr. Tocci replied that vibration is easy to control in the design process.

Jason Zandri, 35 Lincoln Drive, stated that he is on the Town Council and voted against this. He stated that generators at any data center are to make sure the facility never goes dark and for peak shaving. Peak shaving is bringing down the demand level charge for a building. The maximum demand level for a building is the rate they pay for that billing cycle. Peak shaving is averaging down the cost. He stated that Data Centers have been around for a long time. He gave the example that the old ones are like Meriden airport and the new hyper-scale ones are like JFK. The business is growing as companies move their data storage to data centers. He stated that when decibel levels are exceeded the company is fined. Mr. Zandri stated that he looked at the ambient sound levels in that area a year ago and measured 35-45dB that peaked at 48dB with cars going by. He noted that during the presentation tonight his meter went up to 51dB and averaged 35dB. The presentation tonight was louder than the ambient sound in that area. He stated that he hopes the Commission, with all the information they have, does the right thing.

Mike Glidden, 29 Pomeroy Avenue, stated that he is Vice President of the CT Association of Zoning Enforcement Officials. He verified that this is application 903-21 filed in October and asked when the legal notice ran and the effective date for the new WI zone. Mr. Pagini replied on April 12, 2022. Mr. Glidden stated that the agenda is technically flawed because the application advertised is different from the one listed on the agenda. Mr. Pagini replied that he consulted with the Law Department and it was determined that no more notice was required. Mr. Glidden stated that this is a new application and suggested they close the public hearing, deny the application and start all over again. He commented on the lack of consistency with the Plan of Conservation and Development. He indicated it is an issue because the two properties (Northrop Road and Tankwood) in Wallingford's future land use map, this property is identified as agriculture. When you change the zoning district and add a new use, you have to look at your POCD. He referred to page 20 of the regulations which reads, 'promote agriculture businesses and support industries that are vital to the local or regional economy while simultaneously preserving farmland through acquisition development rights or to the extent practical, the avoidance and minimizing or mitigation of loss and conversion of agricultural lands associated with development actions.' He continued, if you go to state mapping for this area, it is comprised of prime farmland soil, which is a scarce resource. The POCD says it's important to protect. This is not consistent with your POCD. Lastly, he stated that this is a special permit use if violated, can't be taken away. He recommended a reset and come up with a better plan. Atty. Small noted that the notifications were fine.

David Ellis, 56 Old Maid Road, stated that he is a member of the Wallingford Land Trust, which abuts these zones. He asked at how many points the baseline measurements is taken. Mr. Tocci replied that they typically post at several locations to get a representative sample of all the areas of concern. The number is a judgment call. He added that the background level is fairly uniform over a wide area. Mr. Ellis noted that the noise needs to be monitored near the open space to make sure the regulations equally apply.

Tony Hayes, 1083 North Farms Road, referred to the problems with noise experienced in Chandler, AZ. He reported that Arizona did not have noise ordinances that stood up to the challenge, and the data centers ignored requests for action. The police were tasked with taking complaints without the ability to

do anything meaningful to the owner. The situation was declared that data centers are not sustainable in 2020 and the zoning was changed to prohibit future data centers. He explained that in Louden, VA they are a data center alley and they taxed the centers. The data centers also challenged the noise ordinances which were struck down. The state of Virginia created a new noise ordinance but the data centers are exempt. The Town of Wallingford didn't give the people the opportunity to have dialog. He stated that the Commission is dealing with a bad situation presented by the Town Council and urged the Commission to pause it.

Ed Bradley, 2 Hampton Trail, stated that this started when the Governor passed exemptions for Data Centers and the Town Council failed taxpayers by pushing this through. He stated that he hoped that we can get out of the host agreement. He explained his experience with Disaster Recovery plans for hospitals and the deafening sound of generators. He asked if the commissioners had walked the WI district to understand the topography. He asked how close to the property line the sound measurement instrument would be. Mr. Tocci replied that background sound varies little over a wide area, so it depends on the location. Mr. Bradley noted that this area is loaded with wildlife. He asked when the Wallingford Aquifer Protection Agency last met. Mr. Pagini replied that they met last October and that the minutes were filed with the Town Clerk. He offered to send Mr. Bradley a copy of the agenda and stated that he assumed the minutes were posted.

Atty. Donald Gustafson, with Shipman and Goodwin, spoke on behalf of the GotSpace Partners and pointed out that there are some design criteria in the existing host agreement. He stated that they would like to reserve the right to see if there are any differences between the regulations and the agreement. He agreed that the best view is when a site plan permit is applied. At that time everyone should review the plans for sound, vibrations, etc. He has no problem addressing these issues at the proper time. He asked the Commission to keep the application open. They would like to engage their own acoustical engineer. He stated that they are willing to live with reasonable standards. He provided a letter of notification to the Town Planner. He noted that Thomas Quinn is not part of GotSpace Data Partners. Mr. Gustafson noted that they are in the process of recapitalizing the company. He has a letter from the COO of GotSpace partners, Michael Grella, who was appointed a couple of months ago that he will give to Mr. Pagini. He asked for more time and stated that they could come back in 60 days with recommendations and comments on Mr. Tocci's presentation.

Tom Blair, Hudson Partners, a broker-dealer, and investment bank in Stamford, CT, stated that he represents GotSpace. He stated that they are very aware of the concerns with the environment and the potential impact on the neighbors and they don't take those concerns lightly. He noted that the management of the organization has changed. The new COO has developed many other data centers. They intend to be transparent with the Commission and develop a strategy that makes sense. He stated that design-wise, Mr. Tocci's comments make sense. He stated that they appreciate the consideration. There is going to be growth in this business and data centers, in general, are not a negative thing. It will bring a lot of value to the city.

Mike Brodinsky, 45 Valley View Drive, asked what the margin of error is in predictions by the sound engineer. Mr. Tocci replied +/-2dB or 3dB in the ISO9613 and stated that the design team accommodates the error. Mr. Brodinsky asked what the remedial measures would be if required. Mr. Tocci replied that they do a lot of environmental design of machinery like this and have never been called back with complaints. Mr. Brodinsky asked if someone can become a board-certified engineer without a track record of accurately predicting noise with data centers. Mr. Tocci replied that they need the experience to get through the exam, but not necessarily with data centers. Mr. Brodinsky stated that it is unrealistic to shut down a business if things don't turn out as predicted. Most businesses just pay the fines. The regulations say 'at no time should any facility or group of facilities emit more than 5dBs' and the absence of that means you don't have legal leverage to get your remedy. He suggested the remedy be revoking the permit and getting an injunction. This should have been in the host agreement.

Representative Mary Mushinski, 188 South Cherry Street, stated that when the state passed the Data Center bill (#6551) last year, the air pollution standards were stripped out. She reported that the bill is back (Senate Bill #236) regarding the backup diesel generators for purposes of peak shaving. It will regulate peak shaving of data centers and will be acted on by May 4th. It is needed to protect residents from air pollution. She stated that she looked at the regulatory options in other states. She found a bill in Washington State (#1846) to mitigate the negative impact of data centers, but found nothing on noise. She also checked for noise legislation and found nothing. Mr. Pagine stated that he asked Rep. Mushinski to look at land use guidance for towns.

Jessica Polansky, 1039 North Farms Road asked the representatives of GotSpace if they have acquired all the land. Mr. Gustafson replied that they are still in discussion with the sellers. He stated that they intend to continue to pursue the purchases.

Ed Bradley, 2 Hampton Trail, stated that the Town would be well served to acquire the land in the WI zone for open space.

Ken Lloyd, 110 Washington Street, suggested a motion that we vote no tonight. Chairman Seichter stated that this is a public hearing.

Commissioner Allinson asked how perceptible vibration in IX subsection 5B and WI subsection 2B is determined. Mr. Tocci replied that they tried to draft a threshold in an ANSI standard. He stated that you can measure vibration in the ground but once it makes it into a building it is amplified. You can say that you can't exceed a certain limit but it would vary from place to place. It's not realistic to measure everywhere. Commissioner Allinson stated that we've been discussing regulation changes for IX and WI Districts, not specific projects. He asked if we are making a regulation that makes Data Centers feasible. Mr. Tocci replied that he can't answer that. The proponents would have to determine that. Commissioner Allinson clarified that there are measures to mitigate sound and vibration-based to match these regulations. Mr. Tocci confirmed but added that his direction was focused on what regulation would protect the neighbors, not what's feasible for the proponent.

Chairman Seichter thanked Mr. Tocci and asked the Commission members how they would like to proceed with the regulation.

Commissioner Kohan stated that he is ready to vote.

Commissioner Hine stated that he wants to hear all views, but this has been dragging on. He is leaning toward voting.

Commissioner Allinson stated that he is ready to vote.

Commissioner Fitzsimmons stated that this situation is unique because it's our own application. The proposal to change our own regulations was at the Town's request. We still need more information. The regulation is not ready for prime time. He is ready to vote.

Chairman Seichter noted that the first workshop was held in September of 2021 and since then many hours have been spent by town staff and much research has been done. He agreed that there are still questions. Good issues have been raised by the public. He stated that we need to take action and that he can't support this.

Commissioner Fitzsimmons asked that since it's our own regulation can we simply withdraw it or should we vote the change down. Atty. Small said it could be shelved or voted down. Chairman Seichter stated he would rather vote on it.

Commissioner Fitzsimmons: Motion to close the Public Hearing #903-21 for Zoning Text Amendment/PZC/ Data Centers by Special Permit in IX and WI Zones.

Commissioner Kohan: Second

Vote: Kohan – yes; Fitzsimmons – yes; Allinson – yes; Hine – yes; Chairman Seichter – yes.

Commissioner Fitzsimmons: Motion to deny Zoning Text Amendment to add Sections 4.9.C.5, 4.10.C.2, definitions to Section 2.2, and parking requirements to Section 6.11.C to the Wallingford Zoning Regulations to allow Data Centers as a Special Permit use in the IX and WI Zoning Districts as proposed in language entitled "Proposed Text Amendment to the Town of Wallingford Zoning Regulations to add Data Centers as an allowed use by Special Permit in the Industrial Expansion (IX) and Watershed Interchange (WI) Districts" dated 9/8/2021 and revised to 4/6/2022, because the proposed regulation was not in conformance with the requirements of the Commission as well as based upon the totality of the record.

Commissioner Kohan: Second

Commissioner Kohan noted that fines were never an option as it doesn't help residents. GotSpace asked for more time when they've had six months to weigh in. He noted that he looked at the POCD and thinks this is something that other Wallingford bodies should have taken into account.

Vote: Kohan – yes; Fitzsimmons – yes; Allinson – yes; Hine – yes; Chairman Seichter – yes.

The text amendments are denied.

**Commissioner Fitzsimmons: Motion to Adjourn the Wallingford Planning and Zoning
Thursday, April 7, 2022, special meeting at 11:10 pm.**

Commissioner Kohan: Second

Vote: Unanimous

Respectfully Submitted

Cheryl-Ann Tubby

Recording Secretary