

**LEGISLATIVE COUNCIL REGULAR MEETING
COUNCIL CHAMBERS, 3 PRIMROSE STREET, NEWTOWN, CT
WEDNESDAY, SEPTEMBER 16, 2020**

MINUTES

PRESENT: Jordana Bloom, Alison Plante, Chris Smith, Phil Carroll, Ryan Knapp, Paul Lundquist, Chris Eide, Dan Wiedemann, Andy Clure, Dan Honan, Judit DeStefano (7:43 pm)

PRESENT VIA TELECONFERENCE: Cathy Reiss

ALSO PRESENT: First Selectman Dan Rosenthal, Finance Director Bob Tait, Superintendent Dr. Lorie Rodrigue (via teleconference), BOE Chair Michelle Embree Ku, BOE Member Dan Delia, BOE member Deborra Zukowski; 0 public, 0 press.

CALL TO ORDER: Mr. Lundquist called the meeting to order with the Pledge of Allegiance at 7:31 pm.

VOTER COMMENT: None

MINUTES: Mr. Eide moved to accept the minutes of the September 2, 2020 Legislative Council Regular Meeting. Seconded by Mr. Carroll. Mr. Clure abstained. Motion passes (11-1).

COMMUNICATIONS: Letter received from Sandy Roussas from BOF stating their support for any future appropriations the Council might consider regarding funding for the BOE's Covid-related expenses should the need arise; Letter received from a voter about the BOF action on the BOE's non-lapsing account; Letter received from Newtown Allies for Change asking to address the Council. *See attachment A.*

Mr. Wiedemann gave a brief update on the administrator's contract – they have been unable to reach an agreement and will go to mediation on September 22nd.

COMMITTEE REPORTS:

Education Committee – None

Finance Committee – Mr. Eide reported that they had two major items on their agenda which included the CIP policy which was pushed off for the BOF to consider, and spent most of their time speaking of fund and balance policy. The focus of their discussion was mostly on grammatical issues, the Finance Committee review and their role at looking at it again. At their next meeting they will go more in depth regarding the incorporation of the language changes.

Municipal Operations Committee – None

Ordinance Committee – Mr. Knapp reported that the Ordinance Committee is in research phase on respective charters.

FIRST SELECTMAN'S REPORT: First Selectman Dan Rosenthal reported that the police project continues to move along – the landscaping is in, grass is growing, paving will start next week. They will be substantially done by the end of this month. Police ability to move in will be ahead of schedule. Dispatch is a little bit behind which is a matter of the appropriations done back in May towards the communications upgrade. Mr. Wiedemann asked on how this project stands as far as budget. The First Selectman stated that we are under budget right now and we anticipate, possibly, a few hundred thousand dollars leftover once the project is completed.

From a storm debris cleanup standpoint, per DPW, they plan to be complete well by the end of September. We did augment with some contracted crews to help finish it off and will try to deal with it in this budget. We don't see costs for this exceeding \$200,000, and some could be filed for a FEMA reimbursement.

Regarding Fairfield Hills, we have held three public meetings so far, and a fourth meeting is targeted for October 5th that would involve potential developers. We will appoint the Newtown Bee as a third party moderator and it will be held as a virtual event with a recording made available.

NEW BUSINESS

Discussion and Possible Action

- 2019-2020 Fiscal Year End Budget Transfer Request: Interdepartmental \$4,000 Selectman Other and \$6,000 Fire

Ms. DeStefano moved to approve the 2019-2020 fiscal year end budget transfer request: Interdepartmental from Selectmen-Other to Selectmen-Other for \$4,000; and from Fire to Fire in the amount of \$6,000. Seconded by Mr. Honan. All in favor, Motion passes (12-0).

Mr. Tait confirmed that there are two transfers, one for \$4,000 from Selectmen-Other/Copier Leasing to Selectmen-Other/Postage, and the other is \$6,000 between Fire Department accounts and the reasoning for that is that the last large transfer from last year, there were some late invoices that came in which knocked them off the accounts. *See attachment B.*

- RESOLUTION TO AUTHORIZE THE PREPARATION AND PRINTING OF NON-ADVOCACY MATERIALS RELATED TO A LOCAL QUESTION TO CONSIDER ALLOWING HOUSING WITHIN EXISTING BUILDINGS AT THE FAIRFIELD HILLS CAMPUS SCHEDULED FOR NOVEMBER 16, 2020. SUCH MATERIALS TO INCLUDE MAILINGS, FLIERS, AND POSTERS AS WELL AS EXPLANATORY TEXT ON THE BALLOT. CONTENT OF THESE MATERIALS TO BE APPROVED BY THE TOWN ATTORNEY, SUBJECT TO CGS 9-369B (A).

Ms. DeStefano moved to approve the resolution to authorize the preparation and printing of non-advocacy materials related to a local question to consider allowing housing within existing buildings at the Fairfield Hills campus scheduled for November 3, 2020. Such materials to include mailings, fliers, and posters as well as explanatory text on the ballot. Content of these materials to be approved by the town attorney, subject to CGS 9-369B (A). Seconded by Ms. Plante. All in favor. Motion passes (12-0).

Mr. Lundquist clarified that we are not involved in the explanatory text itself, and there is a typo in the original resolution – correct date is November 3rd. He also confirmed that this motion, per State Statute is only stating that this material can be created. The First Selectman explained that this is basically a poll which adds weight on where the public stands on this. In speaking with Council, this is required around appropriations where you are binding taxpayers to something. We felt that we should treat it just like we treat everything else and authorize the creation of it. From a financial standpoint, all that involves is text being prepared, review of it by Attorney Grogans and then the text goes with the ballots. In reality we will not actually produce mailings or other print material, it will be the text only.

Discussion Only

- Discussion of Board of Education Non-Lapsing Account

Mr. Lundquist clarified that this is a forward-looking discussion only and this is not meant to rehash the specific action of the BOF from Monday night's meeting. Mr. Wiedemann had asked for this to be added to tonight's agenda. He feels the process for the BOE should be no different than the process of the BOS – it should go from BOE to BOF to LC for approvals. He also feels uneasy about the requested amount of \$1.3 million because it would bring their non-lapsing amount to more than what the LC is

authorized to approve which is \$1.5 million. These are taxpayers funds, not funds of the BOE. Whatever is not spent at the end of the season, should go back to taxpayer funds.

Mr. Knapp also feels that a lot of people are not on the same page, and there is room and need for a joint policy and we should work these things out ahead of time in an objective way. He is not sure of the interpretation that this should go to the BOF, for example, in state statute section 10-248(a) says "...the BOF or the authority making the appropriation for each town...". Everything about the BOF is a recommendation, they only advise on appropriations, not authorize them. This is something he'd like to discuss further. Mr. Lundquist responded that as far as policy goes, much of this is up for debate and what will serve this particular process of getting money to a non-lapsing account is a narrow use of policy that doesn't have to replicate the BOS process. He feels there is room for debate, and doesn't feel it is beneficial to do that in this case.

In response to Mr. Wiedemann's comment, Ms. Bloom doesn't feel the amount of money should be a factor and feels this is being brought forward because of that which should not make a difference in their decision. She'd like a better understanding of these accounts, how this could happen, what's the remedy and when will they need these funds. Mr. Lundquist thinks it will be helpful if we think of this as a hypothetical – the amount of money is irrelevant, and our discussion should only be about a more structured process.

Mr. Knapp believes what's important to discuss is that we have a mechanism currently that is not the non-lapsing account for getting funds when needed or when there is a shortfall. We've always had the incentive to save, and we are able to appropriate resources. He wanted to make it clear that there is a process in place that if we needed to get to those resources, we can still get to them. Instances of a storm or pandemic are justifiable reasons of doing so.

Mr. Wiedemann stated as far as including or not including the BOF, he feels strongly that they should be included because the more eyes you have on something is beneficial. Secondly, as far as why put the money here instead of there - we are elected to be the final fiscal authority for the Town – it is the Legislative Council's responsibility to look at the whole picture and how all of our funds are spent, not just one section. It is not to say that anyone will spend their money frivolously, it is just to say that is our responsibility.

Mr. Smith questioned whether we are making more out of this than we need to – are we discussing the 2% that is already built in to that statute. It seems like we already have the process in place. It's still the BOF's discretion each year on where the surplus is placed. Mr. Lundquist responded that the statute does not force the money to be returned, it says that it "may" be returned up to 2%. Mr. Wiedemann replied that what started this off for him was not the number, simply that there is no process in place.

Ms. Bloom commented that we do vote separately, our budgets are split, so she'd like clarification.

Ms. DeStefano spoke on the fact that we've been doing it this way for years, and never come up as an issue which makes it hard to look at it objectively and say that it's not about the fact that's a bigger number than we're used to. If you're looking to change the cap beyond what the state statute limits is one factor. Another for consideration is what justification is there to deposit money into that fund as opposed to fund balance. Most years there hasn't been such a need. Are we going to review this for further review and is there a desire to do so. Mr. Lundquist replied that we can get legal council if need be. This can lead to a coordinated cooperative discussion on policy between us and BOF and BOE depending on whether we even have a role in it. He believes there is desire for clear policy as it relates to allocation of unspent funds and where it ends up at the end of the year. There is some policy in place now but it seems there could be a more detailed policy possibly on the BOF side, but it would really depend on what the LC's role would be in this. As far as the BOE being its own entity, it is conceptually two different operations. Part of the debate is whether the BOE has it's own line item on the Town budget or is it really its own thing that gets its own consideration and its own control. It might make sense to get legal perspective. It's important because, should schools shut down again, this will happen again. This is really theoretical based on the fund itself and not only driven by the money.

Ms. Plante commented that she feels there is a process in place, but feels there is ambiguity on how our Charter and Town government works with state statute, and agrees that it makes sense to have legal counsel so we can have a healthy discussion with the BOE and BOF.

Ms. Reiss understands there is a non-lapsing account because it is what the Town wanted. On the topic of process, is there a streamlined process for schools to get that money in case something like a time-sensitive issue were to happen.

The First Selectman responded to Mr. Knapp's point, the charter revision fund was rejected back in 2001 for not having a date. The Charter revision commission petitioned to get it onto the ballot at the time. The way it was created is that it is a shared responsibility between the BOF and the Council. It is worth having counsel take a look. In response to Ms. Bloom's comments, the BOF did struggle to come to a decision. Functionally, the First Selectman views this as a transfer – the Municipal budget, the BOE budget are approved spending plans before they go to referendum. When the spending plan is not met, that creates budget variance which stays in the general fund, or fund balance. The action that the BOF is being asked to take is will you transfer the money into the non-lapsing account. What he intends to do is to start with the BOS and appropriate by moving some money out of fund balance and put it into capital and non-recurring, designate some for Covid-related expenses, leave some undesignated. There are a number of measures that are defined in the Charter that can all be used to handle this situation. He certainly understands that the BOE is left to feel unsupported, and we now have an obligation to work through this together and to make sure we are not leaving our schools unfunded. When a budget plan expires at the end of the year, it gets moved back into the general fund and reappropriated which is how a municipal budget works.

Ms. Zukowski from the BOE shared a letter which she wrote to the Legislative Council. *See attachment C.* The question she posed is how does the BOF make the decision to be appropriated. For example, how come the appropriation for Hawley HVAC was left off. It would be good to have funds already pre-designated in a place that is easily accessible, in case of emergency, within the administrative control of the BOE. Right now the process is solely with the BOF, but to be clear, there is now a process.

Mr. Knapp is glad that Mr. Wiedemann asked for this discussion to happen, and this discussion was requested prior to Monday's inaction. To the comments of the urgency and special appropriation, we should not necessarily worry about that – we deal with these situations often. One thing to point out is the word “or” in the statute, we are not mandated to go to the BOF, and as it is written in the charter, they could come directly to us. The BOF as it was 10 years ago has a very different dynamic than it does today. Our role is to approve budgets, to set the mill rate, we review revenues every year. There is also a collection side to this and the area where we need more clarity. These funds are per the statute when we are going through our process, that budget is supposed to be what we need for the year. In a normal year, that should be what is needed for education. To come in just as school is starting, to transfer a surplus for educational purposes, this is where he'd like more of a mutual understanding. There was discussion that if this was to be used as capital, it would still go through the CIP process. From a budgeting standpoint, how does this fit in.

Mr. Delia from the BOE shared that as Chair of the CIP, this process has been exhausting – he has been in countless meetings since April and believes we need to come up with a process that is clear, clean and agreed upon. He feels that he needs to put it on the LC as to how this works. He's worked tirelessly on policies and regulations, multiple meetings with attorneys, answered every question the BOF had. He believes the BOF could have approved a lesser amount, instead of approving nothing. If we can address this properly, it could be a benefit for all. Mr. Wiedemann responded that the BOE wanted these funds to start working towards the future, and something on the CIP that can be done, that is subverting the process of the Town's CIP. He asked why would the BOE be included on the Town's CIP if they would just pull items off the CIP, then why is the BOE included on the Town's budget. Mr. Delia stated that the expenses presented to the BOF were strictly Covid related expenses beyond the budget. They did not go down speaking on future projects. Going forward, will there be a clear process so they know exactly

what they have to do in case it does happen again.

Ms. Zukowski spoke on clarifying that there was a need for a special education teacher for the middle school. In terms of educational purposes, we say transfer this money for this particular project. We had 28 families move in this year and the mediator now decides what happens to that student. We budget to the best faith that we can. We know that we cannot justify if we want to do long-term planning, what we actually expect to spend then something has to be done that is not in our control.

Mr. Knapp asked how we're going to use this fund in future years when hopefully, are we going to use it as capital non-recurring, but as this is a conversation that we need to have. Because of the way we budget as a Town, as this fund grows, we need to continue discussions on policy.

Mr. Clure commented that this is extremely unfortunate that we are having this conversation. In his opinion, we should fully support these extra things because of the pandemic. Could we appoint a sub-committee that can present this all to an attorney, because he feels we will not get anywhere with it.

Mr. Eide spoke on the idea that the BOE being just another department. The right to a free and appropriate public education is established by state law – it's enshrined in our state constitution. To compare it to another department like Parks and Rec for example is not a fair comparison. Mr. Eide also pushed back on the assertion that not putting money into the non-lapsing account would be anti-education. It is a possibility that someone could oppose putting that money in while supporting the idea of the money being appropriated eventually and want to have that oversight as the financial body which the LC is. He does not feel the problem is in the process. The vaguery comes in when it comes down to purpose – why does that fund exist, etc. The current existing policy does not make that argument for you so that could be more explicit.

BOE Chair Ms. Ku stated that the LC is bringing up some good points and to have legal counsel is a good idea. In terms of the process, she also stated that the current process has been in place for years without issue. She's not sure the idea of having more boards involved is actually beneficial. She noted that the BOE has a lot on its plate, and to have the BOE keep coming back to more meetings for more oversight is not necessarily beneficial. The piece on the process, that there are two parts, the BOE budget separating that from the Town, as Mr. Eide pointed out it is different than a Town department. The non-lapsing account was created by the state for the BOE to use specifically because there wasn't any other way to save money throughout the year. Clearly the budget is going to change. The surplus from the last two years was 0.37% and 0.43% of the total budget which is minuscule. We do not want to have any surplus at the end of the year because that may be a signal that we gave too much in the beginning of the year, or we encourage the BOE to save more money during the year.

Dr. Rodrigue responded that there is a process. Her point that of all the years when the support was truly needed, it is this year. She believes there should be a process on both sides. The BOE spent an exorbitant number of hours going over numbers and details. Of all the years that we'd look at a practice that isn't perfect, this is not the year to do so. She asked that we wait a year to pick this up again.

Mr. Carroll pointed out that the BOE has the leftover funds that was in the non-lapsing account from the buildings not being used and other savings they were able to procure. For this school year, they still have their full funding – so people don't get mixed up and think that the BOE will be over a million dollars short this year. We don't know if the schools will shut down again – whether we will continue to have savings or have to spend more, but he wanted to make sure the public doesn't mistakenly think the BOE got cut in funds. This can be done, we've found ways to do it in the past.

Mr. Knapp said its worth noting the authorization to spend is for the fiscal year, and we are mechanically one Town. He asked Ms. Ku to clarify her comments regarding the non-lapsing account. She stated that before the non-lapsing account existed, there was a time when the BOE was using money at the end of the year to buy supplies because there was no other means for the BOE to use that money, otherwise it got turned over to the Town. The non-lapsing was approved by the state legislature with that in mind.

Mr. Wiedemann wanted to end his discussion with the fact that should the BOE come to us with Covid related needs, they can count on his vote, and not what his intent is. His idea is just to create a good solid

process, nothing more.

Mr. Delia concluded that they are exhausted. The burden of the work load is incredible and asked for the LC to possibly exercise some patience. Lorie and her team are working night and day and that we need to respect them.

VOTER COMMENT: None

ANNOUNCEMENTS: None

ADJOURNMENT: There being no further business, Mr. Eide moved to adjourn the meeting at 9:17 pm. Seconded by Mr. Wiedemann. All in favor.

*Respectfully submitted,
Rina Quijano, Clerk*

**THESE MINUTES ARE SUBJECT TO APPROVAL BY THE LEGISLATIVE COUNCIL
AT THE NEXT MEETING.**

Attachment A

From: Sandy Roussas <sandyroussasbof@gmail.com>
Date: Wed, Sep 16, 2020 at 10:25 AM
Subject: Board of Education Non-Lapsing Account
To: Paul Lundquist <plundquist.newtown@gmail.com>
Cc: Alexander, Keith <alexanderk.bof@gmail.com>, Ned Simpson <neds2124@gmail.com>, Christopher Gardner <cgardner4242@gmail.com>, John Madzula 2nd <jsmadzula2@gmail.com>, mattmihalcik@gmail.com <mattmihalcik@gmail.com>, Kiley Gottschalk <kjmg11@gmail.com>, Dan Rosenthal <dan.rosenthal@newtown-ct.gov>, Robert Tait <robert.tait@newtown-ct.gov>, Ku, Michelle <kum_boe@newtown.k12.ct.us>, Dan Delia <deliad_boe@newtown.k12.ct.us>, Lorrie Rodrigue <rodriguel@newtown.k12.ct.us>

Dear Paul,

On Monday night, the Board of Finance was asked to consider a request to transfer approximately \$1.3 million to the Board of Education's Non-Lapsing Account. As you know this budget surplus came about because of the pandemic and the closure of schools last spring. The primary justification provided for the purpose of the funds was to cover potential ongoing expenses related to Covid. We debated the motion and its many failed amendments for over two hours and we still could not reach a consensus. Three members supported the transfer of the funds to the Non-Lapsing Account, which would have given the Board of Education the most ready access to the funds. Three members, including myself, voted no for different reasons. I invite all LC members to read minutes or watch the video to fully understand those reasons, as they are too involved to discuss here. After the motion failed, there was unanimous support for the action to send a formal communication to the Legislative Council expressing our collective sentiment. All Board of Finance members agree with the need for and importance of ensuring that the Board of Education has available to it all the funds necessary in FY20-21 to keep schools safe for children to attend--whether it's in the hybrid or full-time, in-person model. You may be called upon to initiate a special appropriation to transfer money from the general fund to the Board of Education in order to cover these expenses at some point during the year if the current year's available funds are insufficient. If and when that occurs, please understand that the Board of Finance fully supports that action. Kindly share this communication with the Council.

I remain available to you for any additional questions that may come up about the action.

Thank you, Sandy

Submitted on Wednesday, September 16, 2020 - 3:32pm

Your name: Kathryn Burke

Your e-mail address: kburke0905@gmail.com

Subject: BOF decision regarding BOE non-lapsing account

Message: To the members of the Legislative Council,

I hope this email finds all of you and your families well during this unprecedented time. Unfortunately I am unable to dial in to the LC meeting tonight, but wanted to share some thoughts as a taxpayer and mother of three in our school systems.

I am beyond disappointed that the BOF denied the BOE's request to move the surplus from last year's budget into the BOE non-lapsing account. I realize there was a lengthy discussion and many amendments made to try and make a motion pass, but it is extremely disappointing that money the taxpayers voted on in prior years to appropriate to the BOE are now being denied when our school systems are facing their most challenging school year ever. If the BOE had a crystal ball, I can almost assume they would have looked ahead and purchased whatever was needed for this upcoming school year back in the spring and used the funds appropriately. However, with no crystal ball to see what is coming or around the corner for the school system, they cannot make these predictions. Now the BOE will be at the mercy of the LC and BOF for the additional funds needed.

I can honestly say I am not an expertise on how all these funds work and what type of hoops the BOE will now need to jump through to properly fund our schools and safety measures needed; but I hope our town does not make it difficult for the BOE. As stated earlier these funds were already allocated to the BOE and voted on by the town for the purpose of the BOE and our schools. They should continue to be used as such.

Thank you all for your hard work during these times.

All the best,

Katie Burke

Submitted on Wednesday, September 9, 2020 - 10:34am

Your name: Newtown Allies For Change

Your e-mail address: newtownallies@gmail.com

Subject: An invitation to meet with Newtown Allies For Change

Message: Dear Newtown Legislative Council,

We are Newtown Allies For Change. We are a local movement of people dedicated to racial equity in Newtown. We organized the June 20th event for racial understanding and justice, to which you were invited. At the June 20th event, people were able to listen to the trials of our community. Nearly every speaker, all Newtown residents, courageously related their experiences of racism and discrimination. Newtown Allies For Change believes there is no space for racism and discrimination in Newtown. The success of our event on June 20th served to highlight some of the problems that we have in our community and to begin our community on a path forward in correcting the systemic racism in Newtown. This is the start of a transformation Newtown needs to undertake to create a community that is equitable and equal.

Newtown Allies For Change, as well as many individuals in town, and hopefully yourselves, recognize the need for changes in Newtown to create a more diverse and inclusive community. That is why since our June 20th event we have been collecting signatures on our petition to present to the major boards in Newtown. We would like the opportunity to present our petition to the Legislative Council. We would also like to discuss our additional ideas and concerns about creating a more open and equitable community. Newtown Allies For Change would like to collaborate with the town of Newtown to lead our community into a more inclusive future.

Please let us know of your earliest convenience to meet and discuss ways to improve Newtown.

Thank you for your time,
Newtown Allies For Change, Executive Committee

Jennine Banks
Clinton DePaolo
Kendall Euler
Nicole Maddox
Leah Mayor
Kimberlee Rackley
David Weiss
Christine Wilford

Attachment C

Submitted on Wednesday, September 16, 2020 - 9:39pm

Your name: Deborra Zukowski

Your e-mail address: deborraz@gmail.com

Subject: My statement

Message: Here is the statement I read from (minus the notes specific to the conversation).

The following is a personal statement and does not necessarily reflect the views or positions of the Newtown Board of Education.

Since joining the Board of Education last December, there has been active discussion and action by the board concerning the Non-Lapsing Education Account. Early in that discussion, the role of the account seemed quite vague to me. There was clear justification about its purpose as a place to put year-end unexpended funds, but not so much clarity regarding what those funds could be used for, other the broadly defined "Educational Expenses." The policy creating the account simply states that funds could be used for "extraordinary or emergency expenditures."

As money began to accumulate in the account, it became clear to district leaders that it could become a longer-term planning tool. The Board of Education updated the policy to also include "planned" expenses. This amendment resulted in both positive and negative consequences. On the positive side, it allowed the board to offload some taxpayer burden related to bonding the Hawley HVAC Engineering Study. Without it, the funds could likely not have been used. However, it raised concerns about the oversight of town-wide projects currently managed by charter-based appropriations processes.

Given these concerns, the board modified a related policy to more rigorously provide for multi-board review prior to spending. As the Chair publicly stated, the policy does not explicitly require approval from the Board of Finance because the board did not wish to encroach on the authority of the Board of Finance to design their own processes. However, members of the Board of Education were in agreement with the long-held practice of requesting approval from the Board of Finance prior to withdrawing funds. As part of the policy amendment, the administration developed a companion administrative regulation that codified this long-held practice.

The amendments in the board's policies along with the new administrative regulation, now explicitly require approval from the Board of Finance to access funds from the Non-Lapsing Education Account for specified uses. If funds are no longer needed for such use, those funds can be undesignated - meaning that the funds cannot be used until a subsequent approval for specified use(s) is provided by the Board of Finance.

Given all of the discussion and work that was done by the Board of Education and administration to use the account to improve district planning and provide taxpayer relief, it was very disappointing to hear the lack of trust that seemed to permeate the discussion at the Board of Finance meeting on Monday.

I fully understand and share the consternation of my fellow board members. It is time to fix this problem of trust, or lack thereof, in a way that respects the authorities and responsibilities of each government body and that also provides the tools and processes for, and effective access to, the Non-Lapsing Education Account. Doing so would help us all more effectively provide for our students and community.

Deborra Zukowski
September 16, 2020