

TOWN OF NEWTOWN  
Board of Finance:  
Joint Board of Education, Board of Finance & Legislative Council Work Group

Meeting Minutes

Monday, September 27, 2021 Virtual Regular Meeting

*These minutes are subject to approval by the Joint Non-Lapsing Work Group*

Present: Chris Eide, Cathy Reiss, Ned Simpson, Debbie Leidlein and John Madzula II  
Two members of the public, on phone access

Absent: Dan Delia

Chair Ned Simpson called the meeting to order at 7:34 p.m. Attendees saluted the American Flag.

**VOTER COMMENTS** - None

**APPROVAL OF MINUTES**

John Madzula moved approval of June 28, 2021 Minutes. Cathy Reiss seconded.  
Motion passed unanimously

**COMMUNICATIONS** - None

**NEW BUSINESS:** - None

**OLD BUSINESS:**

- Entire Agreement Clauses  
John Madzula discussed the standard use of Entire Agreement Clauses in contracts/agreements and how it relates to the Work Group's efforts.
- Discussion: Policy related to a Newtown Non-Lapsing Educational Fund  
Work Group discussion involved two documents. Attachment A is the document that was marked-up during the July 1 meeting of the Work Group. Attachment B uses the July 1 document and adds items from the August 26, 2021 meeting Board of Finance discussion. Chris E shared screen and made changes for the Work Group to follow
  - Motion by Chris E to consider the document that was in use at the last meeting attached to the July 1, 2021 meeting minutes. Seconded by Cath R. Motion passed unanimously
  - Discussion of Section 4. Educational Purposes last sentence "The Board of Education shall not consider the Non-Lapsing Fund as a source of funding which may be used to reduce the annual appropriation for education by the Town" Agreed to unanimously.
  - Motion by John M. to add "Section 5 Entirety of Agreement with text from Attachment B Section 5. Seconded by Ned S. Motion failed 2 yes to 3 no
  - Motion by John M. to disband the Joint Non-Lapsing Work Group. Second by Ned S. Motion failed unanimously
  - Discussed expanding Section 1. Preamble. Motion by John M to replace Section 1 Preamble with the Section 1 Preamble with Seconded by Ned s. Ned S. pointed out that only John M and Ned S are running for re-election which creates a continuity challenge. He indicated that in his discussion with candidates there is uneven and, in some cases, inaccurate understanding of the Non-Lapsing issue.

- Motion by Chris E t to replace Section 1 Preamble with the Section 1 Preamble in Attachment B as circulated September 23 excluding text related to the BOE discussion with Attorney Ritter removed to an attachment. Seconded by John M. Motion passed 3 yes to 2 no
- Cathy R related a conversation she had with Newtown Finance Director Robert Tait. In this conversations, two additions for the Work Group’s agreement were suggested.
  - Regarding designating usage within the Non-Lapsing Fund. Motion by Cathy R to add a Section 2.B “Within the transfer request the Board of Education may designate specific amount(s) for specific use(s). And to add a Section 3.B “Expenditures related to a designated specific use under Section 2.b above do not require approval from Legislative Council. Seconded by Debbie L. Motion failed 2 yes, 3 no
  - Regarding use of Non-Lapsing Fund for Capital Improvement Plan (CIP.) Motion by Cathy R to add to Section 3 “B. If the Board of Education requests an expenditure from this account to be used to help pay for an approved Capital Improvement Plan (CIP) project, then such request is approved when the Legislative Council approves the CIP. Seconded by Ned S. Motion passed unanimously
  - Regarding a request Robert T made at the August 26, 2021 Board of Finance meeting. Motion by Ned S to add to Section 2, “Board of Finance and Legislative Council will consider the Town’s overall financial picture in making the determination to transfer funds to Non-Lapsing. No second
  - Motion by John M to remove Section 3.B “Each such expenditure from the Non-Lapsing Fund shall be authorized by the Board of Education. Seconded by Debbie L. Passed unanimously
  - Discussion went back to the concept of an Entirety of Agreement clause. This produced wording for the transmittal letter to the three boards accompanying our agreement.
 

This agreement constitutes the entire agreement between the BOE, BoF, and LC members of the 2021 Joint Committee on the Non-Lapsing Fund with respect to the subject matter hereof. Such agreement was made notwithstanding any existing agreements, policies, and understandings, both written and oral, between the parties and policies of the parties with respect to the subject matter hereof regarding the roles, flows, and approvals for funds going into the Non-Lapsing Fund and expenditures from the Non-Lapsing Fund
- Next Steps
  - Chris E will forward his mark-up to Ned S who will make a final draft of the Work Group’s agreement. Ned S will also draft a brief cover letter to the three chairs.
  - Debbie L with check with Dan Delia regarding the checking with Tanja V on report timing.
  - The final drafts will be circulated to the Work Group by October 1.
  - Work Group will have a virtual meeting October 7, 2021 at 7:30 to approve the documents.

**VOTER COMMENTS** - None

#### **ANNOUNCEMENTS –**

Cathy Reiss made a motion to adjourn. Debbie Leidlein seconded. All members were in favor and the meeting was adjourned at 10:07 pm.

Respectfully submitted,

Ned Simpson, Chair

# Attachment A

## Joint Group Working Draft July 1, 2021

Version attached to July 1, 2021 minutes

### Business and Non-Instructional Operations

#### Non-Lapsing Education Fund

##### Section 1. Preamble

The Board of Finance of the Town of Newtown established a Non-Lapsing Fund (the “Non-Lapsing Fund”) in accordance with Connecticut General Statutes 10-248a<sup>1</sup> on May 12, 2014.

The purpose of this policy is to work within the spirit of cooperation and the law. This policy works conjointly with any Board of Education, Board of Finance and Legislative Council practices and does not supersede them.

##### Section 2. Deposits into Non-Lapsing

The Board of Education may, subject to the approval of the **Legislative Council considering recommendation from the Board of Finance**, deposit into the Non-Lapsing Fund all or a portion of any unexpended funds from the prior fiscal year from the budgeted appropriation for education for the Town, provided that the amount deposited into the Non-Lapsing Fund shall not exceed the amount set forth in Section 10-248a of the Connecticut General Statutes. The **Legislative Council considering recommendation from the Board of Finance** may authorize deposits into the Non-Lapsing Fund in each fiscal year such that the total amount in the Non-Lapsing Fund may accumulate without limitation over time if not expended.

- A. The Board of Education will send notice to the Legislative Council of their desire to present their request to a joint meeting of the Board of Finance and the Legislative Council to be held no later than the first week of September.

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<sup>1</sup> Sec. 10-248a. Unexpended education funds account. For the fiscal year ending June 30, 2020, and each fiscal year thereafter, notwithstanding any provision of the general statutes or any special act, municipal charter, home rule ordinance or other ordinance, the board of finance in each town having a board of finance, the board of selectman in each town having no board of finance or the authority making appropriations for the school district for each town may deposit into a nonlapsing account any unexpended funds from the prior fiscal year from the budgeted appropriation for education for the town, provided (1) such deposited amount does not exceed two per cent of the total budgeted appropriation for education for such prior fiscal year, (2) each expenditure from such account shall be made only for educational purposes, and (3) each such expenditure shall be authorized by the local board of education for such town.

### **Section 3. Use of Funds**

A. The Board of Education shall, subject to the approval of the **Legislative Council considering recommendation from the Board of Finance**, authorize expenditures from the Non-Lapsing Fund for any expenses that the Board of Education determines are necessary to support students or that are in the best interests of the Newtown Public Schools.

B. Each such expenditure from the Non-Lapsing Fund shall be authorized by The Board of Education.

C. As part of the communication in Section 2. A. above, the Board of Education will provide a written summary of the Non-Lapsing Fund's balance and expenditures for the prior fiscal year. (Note: add timing – Dan will check with Tanya).

### **Section 4. Educational Purposes**

The Non-Lapsing Fund balance comes from an appropriation that was approved by the voters of the Town for educational purposes and the Board of Education shall use the Non-Lapsing Fund for educational purposes. The Board of Education shall not consider the Non-Lapsing Fund as a source of funding which may be used to reduce the annual appropriation for education by the Town.

Approved by Board of Education: \_\_\_\_\_.

Adopted by Board of Finance: \_\_\_\_\_.

Approved by Legislative Council: \_\_\_\_\_

# Attachment B

## Joint Group Working Draft September 27, 2021

Version with Ned S suggested changes to the July 1, 2021 version circulated to Work Group  
September 23, 2021

### **Section 1. Preamble**

In 2010, the Connecticut Legislature passed a law, Connecticut General Statutes 10-248a, establishing a mechanism for unexpended funds from the prior fiscal year from the budgeted appropriation for education to be transferred to a fund for expenditure in future years. The intent was to avoid “spend it or lose it” transactions and reward school administration for budget management. Such a fund is called “Non-Lapsing” The Board of Finance (BoF) of the Town of Newtown established such a non-lapsing Education Fund (the “Non-Lapsing Fund”) in May 12, 2014.

The statute was amended in 2019. (Text of current statute Attachment A) This change increased the not to exceed deposit amount to two percent and gave authority to a board of education authority to spend from their nonlapsing account without review/approval from any other town body.

The BOE changed their policy and procedures to reflect the revised statute. During preliminary discussions between the BoF raised concerns regarding the proposed BOE drafts. The BOE sought advice from their counsel.

The following is excerpt from a 2020 Board of Education (BOE) committee meeting where Matthew Ritter, Shipman & Goodwin the school district’s attorney discussed the revised statute:

“Best advice I can give you regarding 10-248a, is that it is meant to be a mutually cooperative relationship. The statute involves board of education powers and town powers. If one side thinks they can do whatever they want it’s going to mess up the whole concept. It really does rely on cooperation between the two sides.

Money gets deposited into the account. Expenditures get approved by the board of education for educational purposes. The language in 10-248a has some notwithstanding language regarding general statutes and local charters. It talks about how money gets deposited, expenditures from the account are approved by the board of education for educational purposes.

Question: Does this mean the local board of education can use the funds for items, including capital expenses, without going through the appropriation process set forth in the town charter as long as it is for educational purposes? The answer is Yes.

The statute overrides a town charter. Best way to look at it is this. When the money is in the account, unless you have a policy to the contrary, which is a negotiation, the fall back is 10-222. The local board’s discretion on how to spend that money as long as it’s for educational purposes. Could be capital, could be non-capital.

So, your reaction might be, well that’s great the board of education has complete control. No. Here is the problem. If you spend money on projects the board of finance or the town council hate, they will not agree to put money into the account in the future. That goes back to my initial comment: you’ve got to get along to make this work. The answer is unless there is a policy that talks about how you spend money from that fund, all the statute requires is that board of education approve the project that it goes for educational purposes.”

Since 2014 the BOE submitted Non-Lapsing deposit and expenditure transactions to the BoF for approval. At their September 14, 2020 meeting the BoF did not approve the requested deposit of a \$1.3 million BOE appropriations surplus into the Non-Lapsing Fund. There was significant public criticism of

# Attachment B

the BoF action. LC discussed the Non-Lapsing Fund. The Town's attorney issued an opinion that it should be Legislative Council (LC) that approves BOE requests for Non-Lapsing transactions.

The purpose of this policy is to work within the spirit of cooperation and the law to establish a three way agreement between ~~This policy works conjointly with any~~ Board of Education, Board of Finance and Legislative Council to define roles, responsibilities and process for Non-Lapsing Fund deposits and expenditures.

## **Section 2. Deposits into Non-Lapsing**

The Board of Education may, subject to the approval of the Legislative Council considering recommendation from the Board of Finance, deposit into the Non-Lapsing Fund all or a portion of any unexpended funds from the prior fiscal year from the budgeted appropriation for education for the Town, provided that the amount deposited into the Non-Lapsing Fund shall not exceed the amount set forth in Section 10-248a of the Connecticut General Statutes.

- A. The Board of Education will send notice to the Legislative Council of their desire to present their request to a joint meeting of the Board of Finance and the Legislative Council to be held no later than the first week of September.
- B. Within the transfer request the Board of Education may designate specific amount(s) for specific use(s).
- C. The Legislative Council considering recommendation from the Board of Finance may authorize deposits into the Non-Lapsing Fund in each fiscal year.
- D. BoF and LC will consider the Town's overall picture in making this determination.
- E. The total amount in the Non-Lapsing Fund may accumulate without limitation over time if not expended. Designated funds will be held at less than \$200,000 unless approved by Legislative Council considering recommendation from the Board of Finance,

## **Section 3. Use of Funds**

- A. The Board of Education shall, subject to the approval of the Legislative Council considering recommendation from the Board of Finance, authorize expenditures from the Non-Lapsing Fund for any expenses that the Board of Education determines are necessary to support students or that are in the best interests of the Newtown Public Schools.
- B. Expenditures related to a designated specific use under Section 3.B above do not require approval from LC,
  - a. Such expenditures will be included in reporting described in Section 3.E below
  - b. BOE may ask the Legislative Council considering recommendation from the Board of Finance, authorize a designation change.
- ~~i. Any Capital expenditures which have been previously approved in the five year Capital Improvement Plan;~~
- ~~ii. Emergency conditions or replacements to capital items not previously included in the five year Capital Improvement Plan;~~
- ~~iii. Special Education expenses in accordance with the March 20, 2018 Board of Education resolution establishing a Special Education Contingency line item; and~~

# Attachment B

- C. Expenditures for Capital Asset Projects, if any, will be for projects approved for Year 1.
- D. Each such expenditure from the Non-Lapsing Fund shall be authorized by The Board of Education.
- E. As part of the communication in Section 2. A. above, the Board of Education will provide a written summary of the Non-Lapsing Fund's balance and expenditures for the prior fiscal year.  
(Note: add timing – Dan will check with Tanya).

## **Section 4. Educational Purposes**

The Non-Lapsing Fund balance comes from an appropriation that was approved by the voters of the Town for educational purposes and the Board of Education shall use the Non-Lapsing Fund for educational purposes. The Board of Education shall not consider the Non-Lapsing Fund as a source of funding which may be used to reduce the annual appropriation for education by the Town.

## **Section 5. Entirety of Agreement**

This Agreement constitutes the entire agreement between the BOE, BoF and LC with respect to the subject matter hereof and supersedes all other prior agreements, policies and understandings, both written and oral, between the parties and policies of the parties with respect to the subject matter hereof: regarding the roles, flows and approvals for funds going into the Non-Lapsing Fund and expenditures from the Non-Lapsing Fund.

Approved by Board of Education: \_\_\_\_\_.

Adopted by Board of Finance: \_\_\_\_\_.

Approved by Legislative Council: \_\_\_\_\_