

EAST LYME BOARD OF SELECTMEN
SPECIAL MEETING OF MARCH 11, 2024
MINUTES

PRESENT: Dan Cunningham, Ann Cicchiello, Rose Ann Hardy, Candice Carlson, Don MacKenzie and Jason Deeble

ALSO PRESENT: Finance Director Kevin Gervais

Mr. Cunningham called the special meeting to order at 5:00 p.m. and led the Pledge of Allegiance.

1b. Approval of Minutes

MOTION (1)

Ms. Cicchiello MOVED to approve the Public Hearing Minutes of February 21, 2024, as submitted.

Seconded by Mr. Deeble. Motion passed 6-0

2a. Budget Discussion / Deliberations and Adoption of the 2024/2025 Town Budget

418 Commission on Aging

MOTION (2)

Ms. Cicchiello MOVED to transfer \$15,064 from line 311 to Budget 425 Youth Family and Human Services line 311.

Seconded by Mr. Deeble. Motion passed 6-0.

MOTION (3)

Ms. Cicchiello MOVED to reduce line 213 by \$9,063 for a total of \$59,873.

Seconded by Ms. Carlson. Motion passed 6-0.

MOTION (4)

Ms. Cicchiello MOVED to reduce line 311 by \$15,017 for a total of \$160,053.

Seconded by Ms. Hardy. Motion passed 6-0.

MOTION (5)

Ms. Cicchiello MOVED to increase line 239 by \$520 for a total of \$520.

Seconded by Ms. Hardy. Motion passed 6-0.

MOTION (6)

Ms. Cicchiello MOVED to increase line 240 by \$140 for a total of \$680.

Seconded by Ms. Hardy. Motion passed 6-0.

MOTION (7)

Ms. Cicchiello MOVED to increase line 241 by \$313 for a total of \$836.

Seconded by Mr. Deeble. Motion passed 6-0.

MOTION (8)

Ms. Cicchiello MOVED to reduce line 215 by \$2,600 for a total of \$0.

Seconded by Mr. Deeble. Motion passed 6-0.

RECEIVED FOR RECORD
EAST LYME, CT
2024 MAR 15 A 9:04
TOWN CLERK
(Signature)

MOTION (9)

Ms. Cicchiello MOVED to reduce line 321 by \$2,200 for a total of \$0.
Seconded by Ms. Carlson. Motion passed 6-0.

MOTION (10)

Ms. Cicchiello MOVED to reduce line 506 by \$2,000 for a total of \$0.
Seconded by Mr. MacKenzie. Motion passed 6-0.

999 Capital

MOTION (11)

Ms. Cicchiello MOVED that under General Government reduce line item for Land Use Map Digitization Project by \$65,000 for a total of \$10,000.
Seconded by Ms. Carlson. Motion passed 6-0.

MOTION (12)

Ms. Cicchiello MOVED that under General Government reduce line item for IT Conference Room AV Upgrade by \$10,000 for a total of \$15,000.
Seconded by Ms. Carlson. Motion passed 6-0.

MOTION (13)

Ms. Cicchiello MOVED that under Public Works Building and Infrastructure reduce line item for NFD Station 2 Roof by \$200,000 for a total of \$200,000.
Seconded by Ms. Carlson. Motion passed 6-0.

MOTION (14)

Ms. Cicchiello MOVED that under Public Works Building and Infrastructure increase line item for Plants Dam Repair by \$95,000 for a total of \$95,000.
Seconded by Mr. MacKenzie. Motion passed 6-0.

MOTION (15)

Ms. Cicchiello MOVED that under Culture and Recreation Parks Maintenance increase line item for McCooks Sea Wall Repair and Replace by \$100,000 for a total of \$400,000.
Seconded by Mr. MacKenzie. Motion passed 6-0.

The following items are being removed from Capital and will be paid for out of ARPA funding.

MOTION (16)

Ms. Cicchiello MOVED that under Culture and Recreation Parks Maintenance reduce line item for Restroom Improvements by \$50,000 for a total of \$0.
Seconded by Mr. Deeble. Motion passed 6-0.

MOTION (17)

Ms. Cicchiello MOVED that under Culture and Recreation Parks Maintenance reduce line item for Field Renovations by \$75,000 for a total of \$0.

Seconded by Mr. Deeble. Motion passed 6-0.

MOTION (18)

Ms. Cicchiello MOVED that under Culture and Recreation Parks Maintenance reduce line item for Basketball/Pickleball Lights by \$100,000 for a total of \$0.

Seconded by Ms. Hardy. Motion passed 6-0.

MOTION (19)

Ms. Cicchiello MOVED to take a recess at 5:45 p.m.

Seconded by Ms. Carlson. Motion passed 6-0.

They returned at 5:54 p.m. and the meeting resumed.

Board of Education Capital

Mr. Cunningham reviewed the legal opinion received from the Town Attorney that the Board of Selectman has the authority to adjust the Board of Education Capital budget. The legal opinion is attached hereto as Exhibit #1. It was decided to take a recess and try to contact Mr. Newton or Ms. Stevens to discuss the priority of the capital projects.

MOTION (20)

Ms. Carlson MOVED to take a recess at 5:58 p.m.

Seconded by Mr. MacKenzie. Motion passed 6-0.

They returned at 6:10 p.m. and the meeting resumed.

The three priority projects for the Board of Education are renovations to the library, the lockers and the auditorium; these are not capital projects. The one capital project that might be able to be held back a year is the Artificial Turf Replacement w/Track Recapitalization; Superintendent Newton was in attendance and stated that the turf replacement project can be held off for another year, but not longer than that.

MOTION (21)

Ms. Cicchiello MOVED that under Public Safety East Lyme Fire Service reduce line item for Apparatus Reserve by \$25,000 for a total of \$75,000.

Seconded by Ms. Carlson. Motion passed 6-0.

Board of Education Capital

MOTION (22)

Ms. Cicchiello MOVED that under Board of Education District Wide reduce line item for Artificial Turf Replacement w/Track Recapitalization by \$1,250,000 for a total of \$0.

Seconded by Ms. Carlson. Motion passed 6-0.

115 Services to Community

The Board discussed that this list of community scholarships has grown exponentially over the years, and they will work to create a process for requesting these funds in future budget years. Ms. Hardy noted that two of the new requests are related to Town departments, Youth Coalition Scholarship and East Lyme Police Cadets, and asked if these should be funded out of the appropriate department and not services to community. It was explained that the East Lyme Police Cadets are a 501(c)3 so not a town department. Mr. Deeble noted that we are required to contribute to some of these programs so we cannot just not fund them this year. It was decided that they will create a process for requesting these funds and put that process in place before next budget season.

MOTION (23)

Ms. Cicchiello MOVED that under Services to Community line item 934 Youth Coalition Scholarship transfer \$2,000 to Department 525 Youth & Family Services line item Youth Programs Supplies and Services.

Seconded by Ms. Carlson. ABSTAINED; Cicchiello. Motion passed 5-0-1.

MOTION (24)

Ms. Hardy MOVED that under Services to Community reduce line item 935 East Lyme Police Cadets by \$2,000 for a total of \$500.

Seconded by Ms. Cicchiello. OPPOSED; Cunningham, Deeble, Carlson and MacKenzie. ABSTAINED; Hardy and Cicchiello. Motion Failed 0-4-2.

MOTION (25)

Ms. Hardy MOVED that under Services to Community reduce line item 935 East Lyme Police Cadets by \$1,500 for a total of \$1,000.

Seconded by Ms. Cicchiello. IN FAVOR; Hardy. OPPOSED; Cunningham, Deeble, Carlson and MacKenzie. ABSTAINED; Cicchiello. Motion Failed 1-4-1.

Adopt 2024/2025 Annual Budget

MOTION (26)

Ms. Cicchiello MOVED to adopt the proposed 2024/2025 Town Budget in the amount of \$91,927,662 for a net increase of 6.88% consisting of the following, and to forward to the Board of Finance for approval:

General Government	\$23,048,735
Debt Service	\$ 6,754,252
Capital	\$ 1,000,000
Board of Education	\$61,124,675

Seconded by Ms. Carlson. Motion passed 6-0.

3. Adjourn

MOTION (27)

Ms. Cicchiello MOVED to adjourn the March 11, 2024, special budget meeting of the Board of Selectmen at 7:30 p.m.

Seconded by Ms. Carlson. Motion passed 6-0.

Respectfully Submitted By:

Sandra Anderson
Recording Secretary

Exhibit #1



EDWARD B. O'CONNELL
TRACY M. COLLINS*
PHILIP M. JOHNSTONE+*
CHARLES C. ANDERSON
KERIN M. WOODS+
ELLEN C. BROWN*
MARK S. ZAMARKA
CATHERINE A. MARRION
TIMOTHY D. BLEASDALE

March 11, 2024
Via Email

OF COUNSEL:
ROBERT W. MARRION
ROBERT P. ANDERSON, JR.
FREDERICK B. GAHAGAN

Daniel Cunningham, First Selectman
Town of East Lyme
P.O. Box 519
Niantic, CT 06357

+ ALSO ADMITTED IN RI
*ALSO ADMITTED IN MA

RE: Board of Selectmen Authority to Modify Proposed Capital Expenditures
in Board of Education Budget

Dear Mr. Cunningham:

You have inquired whether the Board of Selectmen (the "BOS") may reduce or modify line items in the capital expenditures budget proposed by the Board of Education (the "BOE"). You have reported to us that the BOE prepares two separate budgets – an operating budget and a capital expenditures budget. As explained herein, the answer is, under certain circumstances, yes.

Whether the BOS may reduce or modify a line item in a budget proposed by the BOE depends on the type of expenditure at issue. Generally, the BOE proposes two types of budgets – an operating budget and a capital expenditures budget. The BOE's authority to propose each of these budgets derives from separate statutory authorities as explained below.


Authority for the operating budget is derived from General Statutes § 10-222. This statute charges the BOE with an obligation to provide for the "maintenance of the public schools." "Maintenance of the public schools" is understood to mean "general maintenance, such as the daily upkeep of school facilities and equipment" and educational programming and staff. See *Board of Education v. New Haven*, 237 Conn. 169, 178-80 (1996). The State has delegated these responsibilities to local BOEs in order to satisfy the State's obligation to provide a free public education as set forth in Article 8, § of the Constitution of the State of Connecticut. In carrying out these statutory duties, the BOE acts as an agent of the State. Connecticut Courts have held that where an expenditure is related to this delegation of State authority, the Town does not have the power to modify the BOE budget, except in very limited circumstances not addressed here. See *Board of Education v. Ellington*, 151 Conn. 1 (1963).

Authority for the capital expenditures budget is derived from General Statutes §§ 10-240 and 10-241. Through these statutes, the State has delegated to towns the obligation to provide for the capital expenses necessary to support the BOE's operation of the public schools. Section 10-241 provides that these capital expenditures include expenses such as "purchase . . . real and personal property for school purposes; to build, equip, purchase and rent schoolhouses and make major repairs thereto and to supply them with fuel, furniture, and other appendages and accommodations" Because responsibility for these capital expenditures ultimately rests within the authority and discretion of the Town, Connecticut Courts have held that the Town retains its authority to, at its discretion, make changes to the capital expenditure budget because "a local board of education must comply with the charter, ordinances and established procedures of its respective municipality when expending capital funds that have been appropriated to it for the accomplishment of the municipality's statutory education duties." *Board of Education v. New Haven*, 237 Conn. 169, 183 (1996). East Lyme, like many towns, has delegated the responsibility for proposing a capital budget to the BOE by ordinance and customary practice. See e.g., East Lyme Code of Ordinances § 31.04. When the BOE exercises these statutory authorities, it is an agent of the Town. The Town's established procedures, consistent with the above-cited Court decisions, has been for the BOE to distinguish between these various types of expenses by proposing an operating budget and a separate capital expenditures budget. When the Town is reviewing proposed expenditures in the capital budget, it retains its statutory authority to make changes in that budget.

To summarize, the BOS may reduce or modify line items in the BOE's capital expenditure budget, but not in the BOE's operating budget. The reason for this is that the BOE's budget making authority derives from multiple statutory sources, and the Town retains authority over only the capital expenditure budget and generally has no authority to modify the operating budget, except in very limited circumstances beyond the scope of this opinion.

If you have any questions or need any further information, I would be pleased to respond.

Very truly yours,



Tracy M. Collins, of
Waller, Smith & Palmer, P.C.

Cc: Kevin Gervais, Finance Director
Encl.

§ 31.04 TOWN BUILDING COMMITTEE.

(A) There is constituted a seven member Town Building Committee which, as instructed and to the extent authorized by the Board of Selectmen, is empowered to obtain plans and cost estimates for new town buildings and additions to existing town buildings, other than school buildings, including such furnishings and equipment as may be required, and to enter into such contracts and expend such funds as may be hereafter authorized and appropriated for such purposes.

(1) As instructed and to the extent authorized by the Board of Education, the committee is empowered to obtain plans and cost estimates for new school facilities, and additions, alterations and major repairs to existing school facilities, including such furnishings and equipment as may be required, and to enter into such contracts and expend such funds as may be authorized and appropriated for such purposes. The Superintendent of Schools shall be an ex officio member without vote of the Committee when it is acting under the instructions and with the authorization of the Board of Education.

(2) Two residents of the Town of Salem, appointed by the Salem Board of Selectmen, shall be ex officio members without vote of the Committee when it is acting under the instructions and with the authorization of the Board of Education on the East Lyme High School expansion and improvement project.

(B) Members of the Committee shall be appointed by the Board of Selectmen in the following manner.

(1) All seven terms shall be filled by appointment within 30 days from the effective date hereof, four terms to expire on the first Monday of January, 1970 and three terms to expire on the first Monday of January, 1972.

(2) All said terms shall be filled upon their expiration for four years.

(Ord. passed 7-2-1968; Ord. passed 7-1-1977; Ord. passed 4-2-1997)

Editor's note:

TM Volume 10, page 40, 59; TM Volume 12, page 341, Amended; TM Volume 21, page 376, Amended

SCHOOL BUILDING COMMITTEES

§ 31.25 SCHOOL BUILDING COMMITTEE (EAST LYME ELEMENTARY SCHOOLS).

(A) There is constituted a nine-member School Building Committee for alterations and upgrades to the Niantic Center School, Lillie B. Haynes School and Flanders Elementary School. Said School Building Committee shall consist of the seven-member Town Building Committee and two members of the Board of Education appointed to the School Building Committee by the Board of Selectmen.

(B) The Superintendent of Schools and the Elementary School Principals for each of the schools shall be ex officio members of the Committee without vote, and shall not be counted in determining a quorum.

(Ord. passed 6-21-2017)

§ 31.26 SCHOOL BUILDING COMMITTEE (EAST LYME MIDDLE SCHOOL).

(A) The Town Board of Education shall act as the town's School Building Committee, during the design phase of the project to construct a new middle school and convert the existing middle school to an elementary school, and the Town Building Committee shall act as the town's School Building Committee during the construction phase of the project.

(B) The Superintendent of schools shall be an ex officio member without vote of the committee during the design phase and the construction phase of the project.

(Ord. passed 2-10-2000)

Editor's note:

TM Volume 21, page 752; TM Volume 21, page 752

Connecticut General Statutes Annotated
Title 10. Education and Culture (Refs & Annos)
Chapter 170. Boards of Education (Refs & Annos)

C.G.S.A. § 10-222

§ 10-222. Appropriations and budget

Effective: October 1, 2013

Currentness

Each local board of education shall prepare an itemized estimate of the cost of maintenance of public schools for the ensuing year and shall submit such estimate to the board of finance in each town or city having a board of finance, to the board of selectmen in each town having no board of finance or otherwise to the authority making appropriations for the school district, not later than two months preceding the annual meeting at which appropriations are to be made. The board or authority that receives such estimate shall, not later than ten days after the date the board of education submits such estimate, make spending recommendations and suggestions to such board of education as to how such board of education may consolidate noneducational services and realize financial efficiencies. Such board of education may accept or reject the suggestions of the board of finance, board of selectmen or appropriating authority and shall provide the board of finance, board of selectmen or appropriating authority with a written explanation of the reason for any rejection. The money appropriated by any municipality for the maintenance of public schools shall be expended by and in the discretion of the board of education. Except as provided in this subsection,¹ any such board may transfer any unexpended or uncontracted-for portion of any appropriation for school purposes to any other item of such itemized estimate. Boards may, by adopting policies and procedures, authorize designated personnel to make limited transfers under emergency circumstances if the urgent need for the transfer prevents the board from meeting in a timely fashion to consider such transfer. All transfers made in such instances shall be announced at the next regularly scheduled meeting of the board and a written explanation of such transfer shall be provided to the legislative body of the municipality or, in a municipality where the legislative body is a town meeting, to the board of selectmen. Expenditures by the board of education shall not exceed the appropriation made by the municipality, with such money as may be received from other sources for school purposes. If any occasion arises whereby additional funds are needed by such board, the chairman of such board shall notify the board of finance, board of selectmen or appropriating authority, as the case may be, and shall submit a request for additional funds in the same manner as is provided for departments, boards or agencies of the municipality and no additional funds shall be expended unless such supplemental appropriation shall be granted and no supplemental expenditures shall be made in excess of those granted through the appropriating authority. The annual report of the board of education shall, in accordance with section 10-224, include a summary showing (1) the total cost of the maintenance of schools, (2) the amount received from the state and other sources for the maintenance of schools, and (3) the net cost to the municipality of the maintenance of schools. For purposes of this subsection, "meeting" means a meeting, as defined in section 1-200, and "itemized estimate" means an estimate in which broad budgetary categories including, but not limited to, salaries, fringe benefits, utilities, supplies and grounds maintenance are divided into one or more line items.

Credits

(1949 Rev., § 1480; 1978, P.A. 78-218, § 147; 1982, P.A. 82-217; 1984, P.A. 84-484, § 1, eff. July 1, 1984; 1998, P.A. 98-141, § 1, eff. July 1, 1998; 2012, P.A. 12-116, § 16, eff. May 14, 2012; 2013, P.A. 13-60, § 1.)

Notes of Decisions (46)

Footnotes

1 So in enrolled bill; paragraph was formerly designated as subsection (a).

C. G. S. A. § 10-222, CT ST § 10-222

The statutes and Constitution are current with all enactments of the 2023 Regular Session and the 2023 September Special Session.

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§ 10-240. Control of schools, CT ST § 10-240

 KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Prior Version Recognized as Unconstitutional by Connecticut Coalition for Justice in Educ. Funding, Inc. v. Reli, Conn., Mar. 30, 2010

Connecticut General Statutes Annotated
Title 10. Education and Culture (Refs & Annos)
Chapter 171. Town Management (Refs & Annos)

C.G.S.A. § 10-240

§ 10-240. Control of schools

Currentness

Each town shall through its board of education maintain the control of all the public schools within its limits and for this purpose shall be a school district and shall have all the powers and duties of school districts, except so far as such powers and duties are inconsistent with the provisions of this chapter.

Credits

(1949 Rev., § 1497; 1978, P.A. 78-218, § 175.)

Notes of Decisions (26)

C. G. S. A. § 10-240, CT ST § 10-240

The statutes and Constitution are current with all enactments of the 2023 Regular Session and the 2023 September Special Session.

End of Document

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Connecticut General Statutes Annotated
Title 10. Education and Culture (Refs & Annos)
Chapter 171. Town Management (Refs & Annos)

C.G.S.A. § 10-241

§ 10-241. Powers of school districts

Currentness

Each school district shall be a body corporate and shall have power to sue and be sued; to purchase, receive, hold and convey real and personal property for school purposes; to build, equip, purchase and rent schoolhouses and make major repairs thereto and to supply them with fuel, furniture and other appendages and accommodations; to establish and maintain schools of different grades; to establish and maintain a school library; to lay taxes and to borrow money for the purposes herein set forth; to make agreements and regulations for the establishing and conducting of schools not inconsistent with the regulations of the town having jurisdiction of the schools in such district; and to employ teachers, in accordance with the provisions of section 10-151, and pay their salaries. When such board appoints a superintendent, such superintendent may, with the approval of such board, employ the teachers.

Credits

(1949 Rev., §§ 1498, 1507; 1953, Supp. § 778c; 1955, Supp. § 955d.)

Notes of Decisions (43)

C. G. S. A. § 10-241, CT ST § 10-241

The statutes and Constitution are current with all enactments of the 2023 Regular Session and the 2023 September Special Session.