

# TOWN OF WELLESLEY



## SUPPLEMENTAL REPORT TO THE ANNUAL TOWN MEETING

MONDAY, APRIL 26, 2021  
7:00 P.M.

by the  
ADVISORY COMMITTEE

Please read this Report and bring it with you to Town Meeting.

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# TOWN OF WELLESLEY



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To the Town Meeting Members of the Town of Wellesley:

April 19, 2021

The material on the following pages reflects new information and/or updates relating to the 2021 Annual Town Meeting, including votes by the Advisory Committee, which have occurred since the printing of the Advisory Report. This supplemental report should be read in conjunction with the main Advisory Report. Please note also that in the Chair letter in the Advisory Report, I referred to the Guidelines for Conduct at the Annual Town Meeting as appearing immediately after the Chair letter, when it actually can be found at page 143 of the Advisory Report. I again encourage everyone to read these Guidelines and the entire Advisory Report in advance of ATM.

There are five articles covered in this Supplemental Report:

1: Article 7, Motion 9: This is a request to transfer \$35,000 to ensure that three insurance claims and their deductibles are being billed to Risk Management.

2: Updates in Article 13 (Water Enterprise Fund) and Article 14 (Sewer Enterprise Fund): The Water and Sewer Division (W&S) of the Department of Public Works received updated assessments from the Massachusetts Water Resources Authority (MWRA), which resulted in modifications to the Motions under those Articles. Because the modifications did not result in any additional funds being requested of Town Meeting, Advisory did not re-vote the Articles.

3: Articles 26 and 27: These articles are a request from the Select Board to create an Affordable Housing Trust to replace the current Wellesley Housing Development Corporation, including the terms of the Trust, the makeup and oversight of the Board, and changes to the Town Bylaws as required.

Julie Bryan, Chair  
Advisory Committee

**ARTICLE 7.** To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money to supplement or reduce appropriations approved by the 2020 Annual Town Meeting, or to take any other action in relation thereto.

**(Select Board)**

**ARTICLE 7, MOTION 9**

This motion seeks to transfer \$35,000 in unused funds from Employee Benefits - Group Insurance to Select Board Shared Services - Risk Management for insurance claim costs.

This transfer is in service of three insurance claims and their deductibles being billed to Risk Management. Advisory believes this is an appropriate transfer of funds to cover these expenditures.

**Advisory recommends favorable action, 13 to 0.**

**Article 13 and Article 14: Water Enterprise Fund and Sewer Enterprise Fund Appropriations:**

Subsequent to the publishing of the Advisory Committee’s Report to Annual Town Meeting, the Water and Sewer Division (W&S) of the Department of Public Works received updated assessments from the Massachusetts Water Resources Authority (MWRA). The updated assessments were fairly significant and it was determined that the Motions under the respective Articles should be modified to reflect the revised assessments. The information below is focused on the revised assessments. You are encouraged to review the Article 13 and Article 14 write-ups in the Advisory Report (pages 82 and 85 respectively) for a broader discussion of the proposed appropriations.

**Article 13 – Water Enterprise Fund**

The revised assessment from the MWRA reflects a \$109,489 (5.0%) increase from the previous FY22 assessment to \$2,311,780. The revised assessment is a 17% increase over the FY21 MWRA Water Assessment. The increases can largely be attributed to a greater reliance on MWRA water this past year due to residents being at home more during the pandemic, combined with the impact of a drought this past summer.

W&S has determined that they can offset the impact of the revised assessment by reducing the Emergency Reserve. This contingency in the appropriation, which provides flexibility in the event of a significant unanticipated failure in the water infrastructure, has rarely been used. As a result, the Board of Public Works is comfortable in taking this approach. The overall appropriation for the Water Enterprise Fund appropriation remains unchanged at \$9,867,360.

Please see revised Water Enterprise Fund Sources and Uses of Funds Table below. Line items that have been adjusted are shaded.

<b>Water Enterprise Fund</b>	<b>FY21</b>	<b>FY22</b>	<b>\$ Change</b>	<b>% Change</b>
<b>Sources of Funds</b>				
Water Fund Receipts				

Water Use Charges	5,655,736	6,517,806	862,070	15.2%
Non-Operating Income	458,585	447,841	(10,744)	(2.3%)
Non-Operating Contribution to Capital	0	0	0	0.0%
Loan Proceeds	350,000	1,834,823	1,484,823	424.2%
<b>Total Receipts</b>	<b>6,464,321</b>	<b>8,800,470</b>	<b>2,336,149</b>	<b>36.1%</b>
Depreciation	975,330	1,025,253	49,923	5.1%
Retained Earnings	2,638,708	41,637	(2,597,071)	(98.4)%
<b>Total Sources of Funds</b>	<b><u>\$10,078,359</u></b>	<b><u>\$9,867,360</u></b>	<b><u>(\$210,999)</u></b>	<b><u>(-2.1)%</u></b>
<b>Uses of Funds</b>				
Salaries	1,953,039	1,928,980	(24,059)	(1.2%)
Expenses				
MWRA Water	1,882,300	2,311,780	429,480	22.8%
Health Insurance/Retirement/Risk Management	736,263	755,152	18,889	2.6%
All Other Operating Expenses	1,307,745	1,294,665	(13,080)	(1.0%)
Subtotal - Expenses	3,926,308	4,361,597	435,289	11.1%
OPEB (Other post-employment benefits)	38,500	38,500	0	0.0%
Depreciation	975,300	1,025,253	49,953	5.1%
<b>Total Personal Services and Expenses</b>	<b>6,893,147</b>	<b>7,354,330</b>	<b>461,183</b>	<b>6.7%</b>
Non-Operating Expenses	548,695	494,800	(53,895)	(9.8%)
Non-Operating Expenses (Interest)	102,436	86,236	(16,200)	(15.8)%
Capital Outlay	1,260,000	1,080,000	(180,000)	(14.3%)
Non-Operating Capital Expenditures	0	0	0	0.0%
Debt	801,432	518,932	282,500	(35.3%)
Emergency Reserve	472,649	333,062	(139,587)	(29.5%)
<b>Total Uses of Funds</b>	<b><u>\$10,078,359</u></b>	<b><u>\$9,867,360</u></b>	<b><u>(\$210,999)</u></b>	<b><u>(2.1)%</u></b>

#### **Article 14 – Sewer Enterprise Fund**

The revised assessment from the MWRA represents a \$368,367 (5.7%) decline from the original projected assessment to \$6,126,433. The MWRA decided to reduce its assessments due to the economic uncertainties resulting from the pandemic. The revised sewer assessment is \$118,567 (1.9%) below FY21. W&S has adjusted the overall Sewer Enterprise Fund proposed appropriation down to \$10,200,313, a 4.5% increase over the FY21 approved appropriation. Of note, W&S had originally projected a 2% sewer rate increase in FY22. With the revised assessment, W&S is no longer projecting a rate increase for Wellesley property owners.

Please see revised Sewer Enterprise Fund Sources and Uses of Funds Table below. Line items that have been adjusted are shaded.

<b>Sewer Enterprise Fund</b>	<b>FY21</b>	<b>FY22</b>	<b>\$ Change</b>	<b>% Change</b>
<b>Sources of Funds</b>				
Sewer Fund Receipts				
Sewer Charges	\$8,242,438	\$8,260,424	\$17,986	0.2%
Non-Operating Income	65,750	68,424	2,674	4.1%
Grant/Loan Proceeds	485,000	1,385,000	900,000	185.6%
Total Receipts	8,793,188	9,713,847	920,660	10.5%
Depreciation	458,179	486,465	28,286	6.2%
Retained Earnings	514,171	0	(514,171)	(100)%
<b>Total Sources of Funds</b>	<b><u>\$9,765,538</u></b>	<b><u>\$10,200,313</u></b>	<b><u>\$434,775</u></b>	<b>4.5%</b>
<b>Uses of Funds</b>				
Salaries	\$893,891	\$878,530	( \$15,361)	(1.8%)
Expenses				
MWRA Sewer	6,245,000	6,126,433	(118,567)	(1.9%)
Health Insurance/Retirement/Risk Management	350,930	350,930	0	0.0%
All Other Operating Expenses	283,801	322,068	38,267	13.5%
Subtotal - Expenses	6,879,731	6,799,431	(80,300)	(1.2%)
OPEB (Other post-employment benefits)	16,500	16,500	0	0.0%
Depreciation	458,179	486,465	28,286	6.2%
Total Personal Services and Expenses	8,248,301	8,180,926	(67,375)	(0.8%)
Non-Operating Expenses	50,000	50,000	0	0.0%
Non-Operating Expense (Interest)	59,586	45,086	(14,500)	(24.3%)
Capital Outlay	620,000	1,140,500	520,500	84.0%
Debt	314,207	267,482	(46,725)	(14.9%)
Emergency Reserve	473,444	516,319	42,875	9.1%
<b>Total Uses of Funds</b>	<b><u>\$9,765,538</u></b>	<b><u>\$10,200,313</u></b>	<b><u>\$434,775</u></b>	<b>4.5%</b>

**Advisory Considerations**

The Advisory Committee, after reviewing and discussing the revised MWRA assessments with the DPW Director, determined an Advisory Committee re-vote was not necessary as the appropriation amounts either remained the same (Water) or declined (Sewer). The original unanimous favorable vote for each Article stands.

**ARTICLE 26.** To see if the Town will take the following actions:

1. Vote to accept the provisions of Chapter 44, Section 55C of the Massachusetts General Laws to establish a trust to be known as the Wellesley Affordable Housing Trust Fund, whose purpose shall be to provide for the creation and preservation of housing that is affordable in the Town of Wellesley for the benefit of low and moderate income households;
2. Amend the General Bylaws of the Town by inserting a new Article 20 to be entitled "Wellesley Affordable Housing Trust Fund," as follows:

**WELLESLEY AFFORDABLE HOUSING TRUST FUND**

20.1 There shall be a Board of Trustees of the Wellesley Affordable Housing Trust Fund, composed of members of whom at least one shall be a member of the Select Board, and at least one shall be the Executive Director. The Executive Director shall have the power to vote. The Select Board shall appoint the Trustees for terms not to exceed two years, except that two of the initial trustee appointments shall be for a term of one year, provided said Trustees may be re-appointed at the discretion of the Select Board. Vacancies shall be filled by the Select Board for the remainder of the unexpired term. Any member of the Board of Trustees may be removed by the Select Board for cause after the opportunity of a hearing.

20.2 The Trustees are hereby authorized to execute a Declaration of Trust and Certificate of Trust for the Wellesley Affordable Housing Trust to be recorded with the Norfolk Registry of Deeds and filed with the Norfolk Registry District of the Land Court.

20.3 The powers of the Board of Trustees, all of which shall be carried on in furtherance of the purposes set forth in G. L. c. 44, § 55C, shall include the following:

- a. To accept and receive real property, personal property or money, by gift, grant, contribution, devise or transfer from any person, firm, corporation or other public or private entity, including but not limited to money, grants of funds or other property tendered to the trust in connection with any ordinance or by-law or any general or special law or any other source, including money from G. L. c. 44B;
- b. To purchase and retain real or personal property, including without restriction investments that yield a high rate of income or no income;
- c. To sell, lease, exchange, transfer or convey any personal, mixed, or real property at public auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertaking relative to trust property as the Board deems advisable notwithstanding the length of any such lease or contract;
- d. To execute, acknowledge and deliver deeds, assignments, transfers, pledges, leases, covenants, contracts, promissory notes, releases, grant agreements and other instruments sealed or unsealed, necessary, proper or incident to any transaction in which the Board engages for the accomplishment of the purposes of the Trust;
- e. To employ advisors and agents, such as accountants, appraisers and lawyers as the Board deems necessary;

- f. To pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the Board deems advisable;
- g. To apportion receipts and charges between incomes and principal as the Board deems advisable, to amortize premiums and establish sinking funds for such purpose, and to create reserves for depreciation depletion or otherwise;
- h. To participate in any reorganization, recapitalization, merger or similar transactions; and to give proxies or powers of attorney with or without power of substitution to vote any securities or certificates of interest; and to consent to any contract, lease, mortgage, purchase or sale of property, by or between any corporation and any other corporation or person;
- i. To deposit any security with any protective reorganization committee, and to delegate to such committee such powers and authority with relation thereto as the Board may deem proper and to pay, out of Trust property, such portion of expenses and compensation of such committee as the Board may deem necessary and appropriate;
- j. To carry property for accounting purposes other than acquisition date values;
- k. To borrow money on such terms and conditions and from such sources as the Board deems advisable, to mortgage and pledge Trust assets as collateral;
- l. To make distributions or divisions of principal in kind;
- m. To comprise, attribute, defend, enforce, release, settle or otherwise adjust claims in favor or against the Trust, including claims for taxes, and to accept any property, either in total or partial satisfaction of any indebtedness or other obligation, and subject to the provisions of this act, to continue to hold the same for such period of time as the Board may deem appropriate;
- n. To manage or improve real property; and to abandon any property which the Board determined not to be worth retaining;
- o. To hold all or part of the trust property uninvested for such purposes and for such time as the Board may deem appropriate; and
- p. To extend the time for payment of any obligation to the Trust.

20.4 The Board of Trustees shall provide for an annual audit of the books and records of the Trust. Such audit shall be performed by an independent auditor in accordance with accepted accounting practices. Upon receipt of the audit by the Board of Trustees, a copy shall be provided forthwith to the Select Board.

And

Deleting all instances of the term “Wellesley Development Corporation” from any amendment to the General Bylaws approved at the Annual Town Meeting

- 3. beginning April 26, 2021, and inserting, in place thereof, the term “Affordable Housing Trust” or “Board of Trustee”, as applicable;

or to take any other action in relation thereto.

**(Select Board)**



## Overview

Under Article 26, the Select Board (SB) proposes to change the Town's General Bylaw to establish an affordable housing trust (AHT) to replace the existing Wellesley Housing Development Corporation (WHDC), for the purpose of creating and preserving affordable housing for low- and moderate-income households. Specifically, Town Meeting (TM) is asked to accept the provisions of Chapter 44, Section 55C of the Massachusetts General Laws with certain modifications (described below), and to replace any references to the WHDC with references to the AHT. If the motion under Article 26 is approved, TM will be asked under Article 27 to amend the Zoning Bylaw to replace any references to the WHDC with references to the AHT.

## Background

The SB views the adoption of an AHT as a logical next step in the Town's support for affordable housing (AH). That history includes these key actions:

1. an **AH Policy** was adopted by the Town in 1989;
2. the Town created the **WHDC**, approved by the State Legislature in 1998, to increase housing options in the town;
3. working with the SB and Planning Board, the WHDC provided **AH goals** for the 2007-17 Comprehensive Plan, and for the Wellesley Unified Plan in 2019; and
4. the Select Board, Planning Board, and WHDC commissioned Wellesley's first five-year **Housing Production Plan (HPP)**, issued in 2018.

One of the recommendations in the HPP was to revisit the powers of the WHDC and consider transitioning to a more autonomous entity such as an affordable housing trust, as prescribed by the state's Municipal Affordable Housing Trust Fund law of 2005.

## Timing

The SB, the Executive Director, and Town Counsel believe there are a number of reasons for adopting the AHT now.

1. The AHT was recommended by HPP: The development of the HPP included an extensive process of public engagement and expert analysis, and the Town has been systematically reviewing and implementing its recommendations.
2. The AHT offers an improved model: The WHDC was created in 1998, long before passage of the 2005 law which allowed communities to create a local housing trust through their municipal legislative body.
3. The WHDC is currently challenged: Several dedicated, long-time volunteers on the WHDC Board have cycled off and need to be replaced. The SB proposes to adopt the AHT rather than rebuild the WHDC Board, and believes the AHT will be more attractive to potential Board members.
4. The AHT would have an expanded Board, with connections to the SB: The AHT Board of Trustees would be made up of seven members versus five for the WHDC, including one SB member, allowing for a broader range of expertise. The Town's Executive Director, or their designee, would serve as an ex officio member of the Board.
5. The Town could be missing AH opportunities: With fewer layers of approval, the proposed AHT could act more swiftly than the WHDC on projects. The Executive Director believes the Town missed a recent opportunity to acquire property when the property was sold before the Town could consider making an offer.
6. The issue has been discussed with other Town entities: This includes the Housing Task Force which is comprised of two Planning Board members, the Planning Director, a member of the Housing Authority Commission, the Housing Authority Director, and a member of the

CPC. Public opportunities for comment included a Public Zoning Hearing, an Advisory Hearing, and a specially designated Select Board meeting, although no public comments were received.

### Advantages

The Executive Director and SB outlined advantages to the AHT model over the current WHDC.

- The AHT can act more independently than the WHDC.
  - The proposed Wellesley AHT would not need SB approval to exercise its authority, including for spending and borrowing, whereas the WHDC must obtain SB approval for all actions. By way of comparison, based on a benchmarking spreadsheet prepared by the Executive Director, some towns allow their AHT this autonomy following the state statute while others impose additional requirements for action such as SB approval, approval by a two-thirds majority of the AHT Board, or limitations on borrowing.
  - To facilitate coordination, the proposed Wellesley AHT would be required to have at least one SB member on the Board as well as the Executive Director/designee as an ex officio member. The WHDC is not required to have an SB member or the Executive Director/designee on its Board.
- Funds can be allocated to the AHT faster and more efficiently than under the WHDC.
  - For the WHDC: Funds from sources such as inclusionary zoning fees must be held until distribution is approved by TM. This process can take as long as 12-18 months.
  - For the AHT: Funds can go directly into the AHT for immediate use. For example, inclusionary zoning fees generated by a project of significant impact can be directed to the AHT without approval by TM.
  -
- The AHT is a better vehicle for holding funds.
  - WHDC funds can be held absolutely or in trust. Some WHDC funds are on the Town books, while others are in a separate bank account.
  - The funds of the proposed AHT would be held in a municipal account under the Town Treasurer. Benefits of this arrangement include that funds are all under a bonded treasurer and that consolidated funds may be invested at more advantageous interest rates.
- The AHT is a familiar structure for developers and others in the housing industry.
  - Over 110 municipalities now have AHTs, so potential partners understand it well.
  - The WHDC is a unique model whose rules need to be deciphered by developers, and the cumbersome approval processes could be a disincentive.
- Future modifications to the AHT bylaw can be made more easily.
  - Because the WHDC was created under a special act, modifications can only be made with the approval of TM and the approval of the State Legislature.
  - Modifications can be made to the AHT by the State Legislature (when the state statute is amended, the provisions of the Wellesley AHT are automatically updated); by TM (changes to the bylaw with TM approval); and by the AHT Board (changes to the Declaration of Trust by the Board of Trustees).

### Provisions

The motion is to accept Chapter 44, Section 55C of the Massachusetts General Laws, and to insert a new article into the General Bylaw of the Town. The new article establishes the AHT and defines the powers of the Board of Trustees, largely following the wording of the statute.

The enumerated powers of the AHT Board generally parallel those of the WHDC, except that the AHT may act autonomously, whereas the WHDC is required to gain SB or TM approval to execute its powers. The powers include the authority to:

- acquire or lease real or personal property;
- enter into agreements with federal, state or local governments;
- borrow money;
- receive and hold funds;
- enter contracts with professionals (lawyers, builders, etc.); and
- employ advisors and agents.

Town Counsel notes that the following circumstances would continue to involve the SB and TM:

- use of Town land would require both SB and TM approval;
- modifications to zoning would require TM action;
- designation of CPC funds would require TM action;
- use of Local Initiative Program for friendly 40B projects would require SB approval; and
- permitting would require approval from several boards/departments including SB, Planning, and ZBA.

The proposed language of the bylaw differs from the language of the statute in the following ways:

- provides further guidance on Board composition (outlined below);
- creates staggered terms by specifying that three Board members will have initial terms of one year, and specifies that members may be reappointed by the SB;
- deletes certain language related to CPC funds that Town Counsel felt may create confusion between the CPC and the AHT statutes; and
- reinforces that any debt incurred by the AHT is not debt of the Town (per Town Counsel the only way the AHT can bind the Town is if TM agrees to bind the Town).

The Motion also adds a requirement that AHT Board prepare a mission statement and action plan for the approval of the SB.

### Board Composition

- The SB appoints the voting members of the Board.
- The Executive Director or their designee will be a non-voting member.
- The bylaw provides that “[T]he members shall be preferably residents who would bring to the Trust relevant experience in the fields of real estate, housing, banking, finance, law, architecture, social services, town government, or other applicable areas of professional expertise.”
- The SB can remove Board members for cause.

The SB believes that the ability to appoint non-residents, such as a Wellesley business owner who lives outside of Town, will provide flexibility to ensure it is able to form an effective Board.

### Implementation

The Executive Director anticipates it will take about a year to get the AHT stood up including approval of the bylaw by the Attorney General; appointment of the Board; adoption/recording of

the Declaration of Trust; and development of a mission and action plan as stated in the motion. The Executive Director estimates there is approximately \$400,000 held by the WHDC that can be allocated to the AHT to start its operations.

### **Advisory Considerations**

Advisory members consistently expressed strong support for the Town's affordable housing goals, and all expressed support for the idea of replacing the WHDC with an AHT.

Some members expressed strong support for the current proposal in its current form, citing the following: the Town's significant AH needs; the current state of the WHDC; the fact that an AHT would provide a nimbler means to accomplish the Town's AH goals; and the fact that adoption of an AHT would be consistent with the Town's Housing Production Plan and the Unified Plan. These members were comfortable with the idea of having non-residents appointed to the Board of the proposed AHT, noting that the Select Board's ability to appoint and remove AHT Board members provided a sufficient oversight structure. One member was also supportive of the proposed governance model, pointing out that a former WHDC member had shared that a lack of autonomy frustrated their ability to execute the WHDC action plan.

Others expressed concerns with the governance structure of the AHT as proposed in this Article, as well as the lack of a specific mechanism to align the activities of the proposed AHT with the AH goals of the Town. More broadly, one member did not feel the AHT had the proper degree of accountability to the community.

Some members felt the AHT, as proposed, was too autonomous, especially given that there was no limit to the number of non-residents that could be appointed to the AHT Board. In light of that, several Advisory Committee members felt the proposed AHT should have greater oversight by the SB, especially as it relates to the AHT's ability to purchase and sell property and borrow money. One member observed that, based on the benchmarking data presented by the Executive Director, obtaining SB approval for transactions appeared to be fairly common. Another member felt strongly that, given that the SB meets weekly, doing so would not significantly reduce nimbleness of the AHT and that it should not be a problem to operate under a somewhat tighter oversight model.

One member expressed particular concern about the AHT's ability to borrow money without Town oversight. Specifically, that member understood that the Town would not be legally liable for the debts of the proposed AHT, but was concerned that the Town's reputation could be at risk and as a practical matter the Town may feel obligated to satisfy the AHT's debts. Others were not concerned about this point because larger projects and loans would necessarily involve oversight by TM, the SB, the Planning Department, the Finance Department, or others.

On the subject of Town-AHT alignment on AH goals, one member felt the AHT should be required to present its goals and action plan to the SB for approval at least annually. Another was concerned there should be more structure to align the AHT's goals with those of the CPC.

Overall, the members who indicated they would not vote to recommend favorable action felt the proposal needed additional work to tighten up the governance oversight model and consider putting limits on the number of non-residents who could serve on the Board. Those members said they were not ready to vote for it at this time. Some also expressed concern with the SB's approval of the Motion by a 3 to 2 vote, with one member stating they would expect the SB to achieve at least a 4 to 1 vote, while others felt there should be SB unanimity before presenting it to TM. Of the members who indicated they would vote to recommend favorable action now, some

expressed their desire to keep the Town moving forward with the AH goals, and some expressed that the current model did provide sufficient oversight given that the SB was choosing the members of the Board and that one member of the SB would serve on the Board. At least one member also stated that they thought a limit to non-residents was unnecessary given that the SB's likely goal would be to have residents make up the majority of the Board.

**Advisory recommends unfavorable action, 9 to 4.**

**ARTICLE 27.** To see if the Town will vote to amend the Zoning Bylaw by deleting every instance of the term "Wellesley Housing Development Corporation" and inserting, in place thereof, the term "Affordable Housing Trust" or "Board of Trustee", as applicable, from the Zoning Bylaw and any amendment to the Zoning Bylaw approved at the Annual Town Meeting beginning April 26, 2021; or take any other action in relation thereto.

**(Select Board)**

This article asks to amend the Zoning bylaw to replace references to the Wellesley Housing Development Corporation with the Affordable Housing Trust proposed in Article 26. As this is an implementing Article for Article 26, Advisory's vote reflects its discussions on Article 26.

**Advisory recommends unfavorable action, 9 to 4.**