Public Comment : Charter Revision Commission

10/04/2026

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Comments

I respectfully offer the attached comments for consideration by the Charter Commission.

Subject: A Possible Alternative to Boundary Expansion

Dear Members of the Charter Revision Commission,

As the discussion regarding expanding Black Point's boundaries continues, I would respectfully ask the Board to consider whether there may be another way to accommodate our neighboring properties without permanently changing Black Point's borders.

My concerns about expansion have never been about the 13 neighboring property owners. They are our neighbors and friends, and I understand why they would like access to Black Point's beaches and recreational amenities. My concern is with permanently changing the legal boundaries of Black Point when there may be a less permanent solution.

Could BPBCA legally offer these neighboring households an annual recreational-access permit for a reasonable fee? Connecticut municipalities use seasonal or daily passes to provide nonresidents with beach access, and other beach communities use badges, tags or similar systems to identify authorized users.

This alternative also seems responsive to concerns that have already been raised. At the September public hearing, Co-Chair Anita Schepker stated, **"We believe that these properties are likely still using our amenities without any tax payments. Changing boundaries to include these properties would allow us to capture that revenue."** At the May Annual Meeting, when concerns were raised about nonmembers using Black Point facilities, Ms. Chapin noted the lack of a mechanism to restrict access, and the Board acknowledged that enforcement is difficult under current policies.

But **boundary expansion does not necessarily solve that problem.** If some of the 13 properties decline the invitation to join, they will remain outside Black Point and, absent a separate access-control system, presumably could continue using the beaches just as they may today. This suggests that **recreational access and boundary expansion are really two separate issues.**

If the concern is people using our amenities without contributing, perhaps we should first explore ways to manage recreational access. Black Point itself used passes/tags during COVID, and other beach communities use badges or passes to identify authorized users. I am not suggesting that we police our beaches or become less welcoming. Rather, if access and financial contribution are reasons for expansion, we should determine whether there is a less permanent way to address those concerns.

I have reviewed the Board minutes and other materials regarding boundary expansion, and **I have not found any indication that a recreational-access permit or similar arrangement was meaningfully evaluated as an alternative to expanding Black Point's boundaries.**

If this alternative has previously been considered, I would appreciate knowing whether Association counsel was specifically asked to determine its legality. If counsel concluded that Black Point does not have the legal authority to establish such a program, I would respectfully ask that the membership be provided with the legal basis for that conclusion. Simply deciding not to pursue the alternative is different from determining that Black Point is legally prohibited from doing so.

The February 26 report summarizing the telephone consultation with Association counsel indicates that counsel was asked about initiation fees (similar to a country club) and the process for properties joining an expanded district. I do not see that counsel was asked whether recreational access could be provided without expanding the Black Point borders.

Perhaps the answer is that Black Point legally cannot do this. **But before making a permanent change to our boundaries, I believe we should know.**

If legally permissible, this could provide a reasonable compromise: **welcome our neighbors, have those using our amenities contribute toward their cost, and keep Black Point's existing borders intact.**

Thank you for considering this alternative.

Sharon Bruce

Boundary Expansion and the Risk of Future Challenges

Prior to the Annual Memorial Day Meeting, I officially requested to the Board, that since the Charter Revision is a complicated issue, that it be addressed in a separate informational meeting so we could have time to truly understand the impact. That request was denied.

This is about the future, not the 13 property owners

I want to be very clear that my concerns are **not about the people who own these 13 properties**. They are our neighbors. We welcome them into our community, including traditions like trick-or-treating in Black Point, and I completely understand why they might want their properties to become part of the Association.

This isn't about the people; it's about the properties and the long-term implications of changing Black Point's boundaries.

People come and go, but this Charter change would remain with the properties and carry forward to future owners. Once a property is brought within Black Point's boundaries, that decision doesn't end when the current owner sells. It becomes part of the permanent makeup of the Association.

That is why I believe we need to evaluate this decision based not on who owns these properties today, but on what changing the boundary could mean for Black Point decades from now—including the precedent it may establish for other contiguous properties seeking inclusion in the future.

We can value these families as neighbors while still asking whether permanently changing Black Point's boundaries is in the long-term interest of the community. Those are two very different questions.

One of my concerns with the proposed boundary expansion is the precedent we may be creating for future requests from other properties that are contiguous with Black Point.

The current proposal has been presented as a limited, one-time opportunity for 13 properties. I understand that these particular properties were selected not simply because they are contiguous with Black Point, but because their existing driveways and access are from roads located within the Black Point community.

That distinction is important, and I think it should be clearly stated.

However, there are other properties contiguous with Black Point that are not being offered this opportunity, including two very large parcels of approximately 22 and 25 acres. Those properties do not currently have driveway access from roads within Black Point.

What happens in the future?

For example, could the owner of one of those large parcels someday purchase an adjoining property within Black Point and use that property to create driveway or other access to the larger parcel? If that occurred, the large parcel could potentially have both of the characteristics now being used to distinguish the 13 properties: **contiguity with Black Point and access from a road within the Black Point community.**

If we amend the Charter now to admit properties based upon those characteristics, what would be the basis for denying a future request from another property that later satisfies the same criteria?

That does not mean another property owner would automatically have a legal right to become part of Black Point, nor does it mean that a future lawsuit would necessarily succeed. The concern is that, for the first time in Black Point's history, we would have established a factual precedent for expanding our boundaries to admit selected contiguous properties.

A future applicant could then reasonably ask:

"My property is contiguous with Black Point and I now have access from a road within Black Point. How is my property materially different from the properties you previously allowed to join?"

That question becomes particularly important when we consider the size of these adjacent parcels. We are not necessarily talking about one additional house. The two properties in question are approximately 22 and 25 acres. If either were developed or subdivided in the future, the potential consequences of a subsequent boundary expansion could be very different from admitting the 13 properties being considered today.

Is "one-time" enough protection?

This is why I believe we need to look beyond the immediate proposal. The Board itself has already considered the question of precedent. In February, it discussed whether expansion should be a one-time opportunity or whether properties should be allowed to opt in over time, and it favored a limited, one-time approach.

But simply calling this a **"one-time" opportunity** does not necessarily prevent another property owner from making a future request. Nor does it explain what objective and legally defensible criteria Black Point would use to reject that request.

Where is the legal analysis?

Since May, I have requested access to the official legal opinion or legal analysis the Board has been relying upon to guide this process. To date, I have not been provided with that opinion, and I have not been able to locate it among the materials made available on the Black Point website.

I understand that there may be legitimate attorney-client privilege considerations that prevent the release of certain communications with Association counsel. However, if legal advice is being relied upon to support this proposed expansion and to assure the membership that it can be limited to these particular properties without compromising Black Point's ability to control future boundary requests, I believe members should be provided with **an official written statement of counsel's legal conclusions on these issues—not simply the Board's interpretation or summary of what it was told.**

This could take the form of a written opinion, memorandum, or other statement from Association counsel that addresses the relevant legal questions without disclosing privileged communications or other information that counsel determines must remain confidential. Given the potential long-term implications of changing Black Point's historic boundaries, members should be able to understand the legal conclusions being relied upon before being asked to approve a Charter change.

Questions that should be answered before changing the Charter

I believe we should have clear, official legal answers to several questions:

- **Does admitting these 13 properties create any legal precedent, expectation, equal-treatment argument, or other basis that could strengthen a future challenge by another contiguous property owner?**
- **Is the fact that these 13 properties currently obtain driveway access from roads within Black Point sufficient to legally distinguish them from other contiguous properties?**
- **What happens if an owner of one of the presently excluded contiguous parcels later acquires a property within Black Point and creates driveway access through that property? Would that parcel then satisfy the same criteria being used today?**
- **Can the Charter amendment establish objective criteria or safeguards that preserve Black Point's ability to reject future boundary-expansion requests?**

And perhaps most importantly:

Has Association counsel specifically considered these questions, and if so, what is counsel's official legal conclusion?

My concern is about the long-term effect of changing a boundary that has essentially remained in place since 1931.

Today we are being asked to consider 13 properties with a particular set of circumstances. Before making that change, I think we should understand what happens if another contiguous property presents those same circumstances five, ten or twenty years from now.

The question isn't simply whether we want to admit these 13 properties. The question is whether we are establishing a standard that we are prepared to apply to the next property that asks.

BLACK POINT CHARTER CHANGE — I THINK WE NEED TO TALK ABOUT THIS - WHAT'S THE WHY?

What is particularly frustrating to me is that the Board originally seemed to recognize the need for broader member input.

The February 26 Board minutes specifically state:

"The Board agreed to conduct an anonymous survey of current members to gauge interest and concerns about boundary expansion before proceeding with formal steps."

The minutes go on to say that the survey would be distributed to members by email and that the results would inform the May Annual Meeting discussion and potential votes.

That survey was never conducted.

When the issue subsequently appeared on the Memorial Day meeting agenda, I contacted the Board in advance with my concerns. I asked for more information before members were asked to weigh in and **suggested an informational meeting** — similar to what was done when the Association was seeking community support for the estuary project.

I was told an informational meeting wasn't necessary because "everyone already knows all about it" and that there would be plenty of opportunity for questions and discussion at the Memorial Day meeting.

Based on the conversations I've had since then, I believe everyone *did not* know all about it. I've spoken with quite a few people who knew very little about the proposal or its possible implications.

Unfortunately, the Memorial Day meeting also didn't provide the level of discussion I had hoped for. **There was no attorney present to answer legal questions.** The Board minutes do summarize some advice received from legal counsel, but as far as I know, **the membership has not been provided with the legal opinion itself or a formal written explanation from counsel addressing questions such as precedent, future expansion, zoning and potential unintended consequences.**

And while people were still waiting to speak and ask questions, the question was called and the discussion ended.

The resulting vote was 111–28. I respect that vote. But it's important to remember what we actually voted on. According to the Association's own Charter Revision page, the membership approved the Board **"further exploring"** a potential boundary expansion.

But the maximum additional tax revenue that has been discussed is approximately $16,000 per year — roughly $30 per existing Black Point household. **In fact, the January Board minutes themselves described the financial benefit as a "modestly expanded tax base."**

So I keep coming back to the same basic question:

Why is expanding the boundaries good for the existing residents of Black Point?

I've attended the meetings. I've read the minutes. I've asked the questions. I've done the research. And I still don't feel that fundamental question has been answered.

I understand people in these properties may use our beaches, are our neighbors, and trick-or-treat here. I have nothing against them, but I think it's a much bigger issue than that.

Reasonable people can look at the same information and come to different conclusions. That's okay.

What I don't think is unreasonable is asking that, before we make a potentially permanent change to Black Point's boundaries, everyone has the opportunity to understand **why we're doing it, what Black Point gains, what the risks are, and what it could mean for our community in the future.**

I attended the September 23 Charter Revision Commission hearing and still came away with more questions than answers about the proposal to expand Black Point's boundaries to include 13 privately owned properties that are currently outside the Association.

I've spoken with a number of Black Point residents since just before the Memorial Day Meeting to today, and what concerns me is how many people either didn't know this was being considered or didn't understand what the potential implications could be.

Why is expanding Black Point good for the existing residents of Black Point?

That question was asked several times at the hearing. I did not hear a compelling answer.

When it was pointed out that similar requests have apparently been made several times in our almost 100 year history and rejected, we asked: **Why now? What has changed?**

The responses included:

- That there had not previously been a "pathway," without explaining what that "pathway" is. If it was referring to opening or revising the charter, that doesn't make sense since the charter has been revised previously
- Because people asked to be allowed to join. These asks are coming from people outside of Black Point or from those who own other property within Black Point on behalf of property they own outside of Black Point.

This isn't the same as explaining why changing Black Point's boundaries is in the best interests of the people who already live here.

Another explanation offered was that residents of these properties are already using our beaches anyway. Even if some people are using the beaches now, is changing the legal boundaries of the Association the appropriate or only solution?

We were also told at the Memorial Day meeting that adding these properties could generate approximately $16,000 in additional annual taxes, if all the properties joined. Spread across the existing Black Point households, that's roughly $30 per household.

Is that enough of a benefit to justify changing boundaries that have existed for generations?

Before we change Black Point's Charter, I think the Board and Charter Revision Commission should be able to answer one very basic question:

What does Black Point gain?

This isn't about the people who own these 13 properties. I understand completely why someone adjacent to Black Point might want to become part of our community.

The question is whether changing our boundaries is good for **Black Point as a whole**.

And I don't think we've answered that yet.